LC 936
2013 Regular Session
1/10/13 (CMT/MBM/ps)

D R A F T

SUMMARY

Imposes tax on each fuel supplier and utility based on amount of carbon in carbon-based fuel that is sold by fuel supplier to consumers in state or that is used to produce carbon-generated electricity supplied by utility to consumers in state. Limits tax on certain oil and natural gas to six percent of market value of oil or natural gas. Allows credit against tax for creation of forestry carbon offsets.

Distributes proceeds of tax to State Highway Fund, Common School Fund, General Fund, State Department of Energy, Department of Environmental Quality, Department of Land Conservation and Development and Department of Education. Applies to carbon-based fuel sold to consumers or used to produce carbon-generated electricity on or after effective date of Act.

Appropriates moneys from General Fund to Department of Revenue and State Department of Energy for purpose of funding first year of administration of tax.

Repeals renewable fuels standard adopted by State Department of Agriculture. Applies to biodiesel fuel sold in Oregon after effective date of Act.

Adjusts sunset of low carbon fuel standard adopted by Environmental Quality Commission.

Repeals energy siting assessment paid to State Department of Energy. Applies to fiscal years beginning on or after effective date of Act.

Changes rate of motor vehicle fuel tax. Applies to fuel used on or after effective date of Act.

Repeals statutes and deletes provisions related to renewable portfolio standards.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to energy; creating new provisions; amending ORS 261.253, 261.305, 261.335, 261.348, 261.355, 262.015, 262.075, 291.055, 319.530, 468A.280, 469.410, 469.421, 469.681, 469A.300, 526.780, 646.921, 757.365, 757.370, 757.522, 757.531 and 757.533 and section 49, chapter 753, Oregon Laws 2009,

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.

and section 8, chapter 754, Oregon Laws 2009; repealing ORS 469A.005, 469A.010, 469A.020, 469A.025, 469A.050, 469A.052, 469A.055, 469A.060, 469A.065, 469A.070, 469A.075, 469A.100, 469A.120, 469A.130, 469A.135, 469A.140, 469A.145, 469A.150, 469A.170, 469A.180, 469A.185, 469A.200, 469A.205, 469A.210, 646.922, 757.375 and 758.552 and sections 17a, 25 and 26, chapter 301, Oregon Laws 2007, section 47a, chapter 753, Oregon Laws 2009, and section 9, chapter 754, Oregon Laws 2009; appropriating money; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. As used in sections 1 to 6 of this 2013 Act:

(1) "Carbon-based fuel" means coal, natural gas, petroleum products and any other product used for fuel that contains carbon and emits carbon dioxide when combusted. "Carbon-based fuel" does not include any product used for fuel that is from a resource that is less than 1,000 years old in its natural state.

(2) "Carbon-generated electricity" means electric energy that is produced using a carbon-based fuel.

(3) "Fuel supplier" means a person that sells carbon-based fuel to consumers.

(4) "Utility" means a public utility operating under ORS chapter 757, a people's utility district operating under ORS chapter 261, a municipal utility operating under ORS chapter 225 or any other entity that supplies carbon-generated electricity to consumers.

SECTION 2. (1) A tax is imposed on each fuel supplier and utility at a rate of $_____ per ton of carbon in a carbon-based fuel that is:

(a) Sold by a fuel supplier to consumers in this state; or

(b) Used to produce carbon-generated electricity that is supplied by a utility to consumers in this state.

(2) Notwithstanding the rate designated under subsection (1) of this section, the amount of tax imposed on oil or natural gas under this

section may not exceed six percent of the market value of oil or natural gas that is described in Article IX, section 3b, of the Oregon Constitution. If the total of all taxes imposed by all laws on oil or natural gas described in Article IX, section 3b, of the Oregon Constitution, exceeds six percent of the market value of the oil or natural gas, the amount that is in excess because of taxes imposed by the laws of this state, other than the tax imposed by this section, shall be refunded to the taxpayer.

(3) The Department of Revenue shall calculate the tax liability of a fuel supplier or utility by multiplying the rate designated in subsection (1) of this section by the total amount of carbon in carbon-based fuels that are:

(a) Sold by the fuel supplier to consumers in this state in the previous calendar year; or

(b) Used to produce carbon-generated electricity supplied by the utility to consumers in this state in the previous calendar year.

(4)(a) If a utility is unable to provide the information required for the calculation under subsection (3) of this section, the Department of Revenue shall calculate the utility's tax liability by multiplying the rate designated in subsection (1) of this section by the product of the average amount of carbon used in the production of one kilowatt of electricity supplied by the utility and the total number of kilowatts of electricity supplied by the utility to consumers in this state.

(b) The State Department of Energy shall calculate the average amount of carbon used in the production of one kilowatt of electricity supplied by the utility based upon the proportion that each carbon-based fuel constitutes of the total amount of carbon-based fuel used in the generation of the electricity by the utility and the amount of carbon used in the production of one kilowatt of electricity for each carbon-based fuel. Each year, the State Department of Energy shall recalculate and report to the Department of Revenue the average

amount of carbon used in the production of one kilowatt of electricity supplied by the utility to take into account any changes in the relative proportion of carbon-based fuels used in the generation of the electricity by the utility.

(5) The Department of Revenue and the State Department of Energy may adopt any rules necessary for the calculation of tax liability and the collection of the tax imposed under this section.

(6) The tax imposed under this section does not apply to:

(a) Carbon-based fuel or carbon-generated electricity that this state is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State of Oregon.

(b) Any fuel supplier or utility that is administered by a federal agency.

(c) Any carbon-based fuel or carbon-generated electricity that is transported through this state, or produced in this state, but not consumed in this state.

SECTION 3. (1) Every fuel supplier and utility required to pay the tax imposed under section 2 of this 2013 Act shall file a report with the Department of Revenue on or before April 1 of each year.

(2) The report filed by a fuel supplier under this section shall include:

(a) The total amount of each carbon-based fuel sold by the fuel supplier to consumers in this state in the previous calendar year;

(b) The market value of and any taxes paid for any oil or natural gas that is described in Article IX, section 3b, of the Oregon Constitution, and sold by the fuel supplier to consumers in this state in the previous calendar year; and

(c) Any other information required by the department by rule.

(3) The report filed by a utility under this section shall include:

(a) The total amount of each carbon-based fuel used to produce the carbon-generated electricity supplied by the utility to consumers in

this state in the previous calendar year;

(b) The market value of and any taxes paid for any oil or natural gas that is described in Article IX, section 3b, of the Oregon Constitution, and used to produce carbon-generated electricity supplied by the utility to consumers in this state in the previous calendar year; and

(c) Any other information required by the department by rule.

(4) If a utility is unable to provide the information required under subsection (3) of this section, the utility shall report:

(a) To the State Department of Energy the information required by the department by rule to make the calculations under section 2 (4) of this 2013 Act; and

(b) To the Department of Revenue the total number of kilowatts of electricity generated using carbon-based fuel and supplied by the utility to consumers in this state in the previous calendar year.

(5) Each fuel supplier and utility shall keep records, render statements, make returns and comply with rules adopted by the Department of Revenue and the Department of Energy related to the tax imposed under section 2 of this 2013 Act.

SECTION 4. (1) On or before June 1 of each year, the Department of Revenue shall send to each fuel supplier and utility an assessment that identifies the tax liability of the fuel supplier or utility for the previous calendar year for the tax imposed under section 2 of this 2013 Act.

(2) On or before July 1 of each year, each fuel supplier and utility that receives an assessment under subsection (1) of this section shall pay the amount of the tax liability to the department.

(3) If the amount paid by the fuel supplier or utility under subsection (2) of this section exceeds the amount of tax payable, the department shall refund the amount of the excess with interest at the rate established under ORS 305.220 for each month or fraction of a

month from the date of payment of the excess until the date of the refund. A refund is not available to a fuel supplier or utility that fails to claim the refund within two years after the due date for the filing of the return with respect to which the claim for refund relates.

(4) If a fuel supplier or utility fails to pay the tax assessed against it under subsection (1) of this section, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges. The warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

SECTION 5. Moneys received by the Department of Revenue pursuant to the tax imposed under section 2 of this 2013 Act shall be deposited in a suspense account created pursuant to ORS 293.445. Moneys in the account shall be distributed as follows:

(1) All moneys that are collected from motor vehicle fuel or any other product used for the propulsion of motor vehicles shall be used in the manner described in Article IX, section 3a, of the Oregon Constitution.

(2) All moneys that are collected from natural gas or oil described in Article VIII, section 2 (1)(g), of the Oregon Constitution, shall be used in the manner described in Article VIII, section 2 (2), of the Oregon Constitution.

(3) All moneys collected from sources not described in subsection (1) or (2) of this section, minus any amounts the Department of Revenue or State Department of Energy may collect to cover costs incurred by the Department of Revenue or State Department of Energy in the administration of the tax, shall be deposited as follows:

(a) _____ percent to the General Fund.

(b) _____ percent to the State Department of Energy, with no more

than $_____ to be used for administrative costs of the department.

(c) _____ percent to the Department of Environmental Quality.

(d) _____ percent to the Department of Land Conservation and Development.

(e) _____ percent to the Department of Education.

SECTION 6. Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316 that relate to the audit and examination of reports and returns, confidentiality and disclosure of reports and returns, determination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court, and related procedures, apply to sections 1 to 6 of this 2013 Act, the same as if the tax were a tax imposed upon or measured by net income.

SECTION 7. For the purpose of first calculating the tax liability of fuel suppliers and utilities under section 2 of this 2013 Act, the State Department of Energy shall determine the amount of carbon by weight in each carbon-based fuel and report those percentages to the Department of Revenue.

SECTION 8. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Revenue, for the biennium beginning July 1, 2013, out of the General Fund, the amount of $_____, which may be expended for the purpose of funding the first year of administration of the tax imposed under section 2 of this 2013 Act.

(2) In addition to and not in lieu of any other appropriation, there is appropriated to the State Department of Energy, for the biennium beginning July 1, 2013, out of the General Fund, the amount of $_____, which may be expended for the purpose of assisting the Department of Revenue in administering the first year of the tax imposed under section 2 of this 2013 Act.

SECTION 9. Sections 1 to 6 of this 2013 Act apply to carbon-based

fuel sold to consumers in this state or used to produce carbon-generated electricity that is supplied to consumers in this state on or after the effective date of this 2013 Act.

SECTION 10. A fuel supplier or utility, as defined in section 1 of this 2013 Act, may reduce or eliminate liability for the tax imposed under sections 1 to 6 of this 2013 Act through the creation of forestry carbon offsets as provided in ORS 526.780. Tax liability shall be reduced at a rate of _____ cents per dollar of tax otherwise due.

SECTION 11. ORS 526.780 is amended to read:

526.780. (1) The State Forester may enter into agreements with nonfederal forest landowners as a means to market, register, transfer [*or*]**,** sell **or allow as credits against the tax imposed under sections 1 to 6 of this 2013 Act** forestry carbon offsets on behalf of the landowners to provide a stewardship incentive for nonfederal forestlands.

(2) The State Forester may enter into an agreement described in this section if all of the following criteria are met:

(a) The agreement must ensure continuous management of the nonfederal forestlands at a standard that, in the judgment of the State Forester, would not occur in the absence of the agreement.

(b) Any forestry carbon offsets managed by the agreement must be attributable to the subject nonfederal forestland as determined by the forestry carbon offset accounting system established in ORS 526.783.

(c) Prices for the transfer or sale of forestry carbon offsets may be negotiated on behalf of the nonfederal forest landowner and must be at or greater than fair market value.

(d) The agreement must provide for the following distribution of proceeds from the transfer or sale of forest carbon offsets attributable to the subject nonfederal forestland:

(A) Not less than 50 percent to the nonfederal forest landowner;

(B) Not more than 25 percent to the State Forester to fund programs providing coordinated technical, financial or management planning assist-

ance to nonindustrial private forest landowners; and

(C) Not more than 25 percent to the State Forester to fund administration of the forestry carbon offset program.

(3) All revenues received and any interest earned on moneys distributed to the State Forester under subsection (2)(d)(B) and (C) of this section shall be credited to the State Forestry Department Account and may be expended only for the purposes stated in subsection (2)(d)(B) and (C) of this section.

(4) A person or governmental agency may create a forestry carbon offset by performing, financing or otherwise causing one or more of the following activities:

(a) Afforestation or reforestation of underproducing lands that are not subject to required reforestation under the Oregon Forest Practices Act;

(b) Forest management activities not required under law existing at the point of creation of the forestry carbon offset, including but not limited to the following practices:

(A) Stand density control treatments in overstocked, underproducing stands of timber;

(B) Silvicultural practices that increase forest stand biomass, including but not limited to structure based management, variable retention, uneven age management, longer rotation ages and no harvest reserves;

(C) Expanded riparian buffers and other leave areas; and

(D) Deferred harvest rotations past 50 years or the age of economic maturity, whichever is longer; and

(c) Other activities as defined by rule by the State Board of Forestry.

(5) In lieu of receiving payment under subsection (2)(d)(A) of this section, a nonfederal forest landowner may elect to claim a credit against the tax otherwise due under sections 1 to 6 of this 2013 Act.

SECTION 12. ORS 646.922 is repealed.

SECTION 13. ORS 646.921 is amended to read:

646.921. (1) The State Department of Agriculture shall study and monitor biodiesel fuel production, use and sales and certificates of analysis in this

state.

[*(2) When the capacity of biodiesel production facilities in Oregon reaches a level of at least 15 million gallons on an annualized basis, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state that the capacity of biodiesel production facilities in Oregon has reached a level of at least 15 million gallons on an annualized basis and that a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in ORS 646.922 (2) after the date that is two months after the date of the notice given by the department under this subsection.*]

[*(3)*] **(2)** All retail dealers, nonretail dealers and wholesale dealers in Oregon are required to provide, upon the request of the department, a certificate of analysis for biodiesel received.

SECTION 14. The repeal of ORS 646.922 by section 12 of this 2013 Act and the amendments to ORS 646.921 by section 13 of this 2013 Act apply to biodiesel fuel sold in this state after the effective date of this 2013 Act.

SECTION 15. Section 8, chapter 754, Oregon Laws 2009, is amended to read:

Sec. 8. Sections 6 and 7 [*of this 2009 Act*]**, chapter 754, Oregon Laws 2009,** are repealed on [*December 31, 2015*] **the effective date of this 2013 Act**.

SECTION 16. ORS 469.421 is amended to read:

469.421. (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 the 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)*] **(10)** 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 an odd-numbered year regular session of the Legislative Assembly or as revised by the Emergency Board meeting in an interim period or by the Legislative Assembly meeting in special session or in an even-numbered year regular session, 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 an odd-numbered year 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. The 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 meeting in an interim period or by the Legislative Assembly meeting in special session or in an even-numbered year regular session. However, an assessment under this section may not be used to derive revenue for funding State Department of Energy activities related to the energy efficiency and sustainable technology loan program described in ORS chapter 470.]

[*(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 adjournment sine die of the odd-numbered year 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 or 90 days following adjournment sine die of the even-numbered year regular session of the Legislative Assembly, whichever is later.*]

[*(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 3a, Article IX of the Oregon Constitution, and 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, generating, transmitting or distributing elec-*

tricity, 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 3a, Article IX of the Oregon Constitution, or 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)*] **(8)(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)*] **(9)** 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)*] **and (8)** of this section.

[*(11)(a)*] **(10)(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)*] **(8)** 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.

SECTION 17. ORS 291.055 is amended to read:

291.055. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted during the period beginning on the date of adjournment sine die of a regular session of the Legislative Assembly and ending on the date of adjournment sine die of the next regular session of the Legislative Assembly:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on adjournment sine die of the next regular session of the Legislative Assembly as described in this subsection, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and the public universities listed in ORS 352.002.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(D) Assessments paid to the Department of Consumer and Business Services under ORS 743.951 and 743.961.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and are based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by [*ORS 469.421 (8) and*] **ORS** 469.681.

(i) Any charges established by the State Parks and Recreation Director in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(m) New or increased fees that are anticipated in the legislative budgeting process for an agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted budget or the legislatively approved budget for the agency.

(n) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

(o) Convenience fees as defined in ORS 182.126 and established by the Oregon Department of Administrative Services under ORS 182.132 (3) and recommended by the Electronic Government Portal Advisory Board.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be increased to not more than their prior level without compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be increased to not more than its prior level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

SECTION 18. ORS 469.410 is amended to read:

469.410. (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 469.155, 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)*] **(8)**, 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.

SECTION 19. ORS 469.681 is amended to read:

469.681. (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 3a,*] Article IX**, section 3a,** 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.

SECTION 20. The amendments to ORS 291.055, 469.410, 469.421 and 469.681 by sections 16 to 19 of this 2013 Act apply to fiscal years beginning on or after the effective date of this 2013 Act.

SECTION 21. Section 47a, chapter 753, Oregon Laws 2009, is repealed.

SECTION 22. Section 49, chapter 753, Oregon Laws 2009, as amended by section 15, chapter 92, Oregon Laws 2010, is amended to read:

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

SECTION 23. ORS 319.530 is amended to read:

319.530. (1) To compensate this state partially for the use of its highways, an excise tax hereby is imposed at the rate of [*30*] _____ cents per gallon on the use of fuel in a motor vehicle. Except as otherwise provided in subsections (2) and (3) of this section, 100 cubic feet of fuel used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

(2) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

(3) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the same rate as a gallon of other liquid fuel.

SECTION 24. The amendments to ORS 319.530 by section 23 of this 2013 Act apply fuel used on or after the effective date of this 2013 Act.

SECTION 25. (1) ORS 469A.005, 469A.010, 469A.020, 469A.025, 469A.050, 469A.052, 469A.055, 469A.060, 469A.065, 469A.070, 469A.075, 469A.100, 469A.120, 469A.130, 469A.135, 469A.140, 469A.145, 469A.150, 469A.170, 469A.180, 469A.185, 469A.200, 469A.205, 469A.210, 757.375 and 758.552 are repealed.

(2) Sections 17a, 25 and 26, chapter 301, Oregon Laws 2007, are repealed.

SECTION 26. ORS 468A.280 is amended to read:

468A.280. (1) In addition to any registration and reporting that may be required under ORS 468A.050, the Environmental Quality Commission by rule may require registration and reporting by:

(a) Any person who imports, sells, allocates or distributes for use in this state electricity, the generation of which emits greenhouse gases.

(b) Any person who imports, sells or distributes for use in this state fossil fuel that generates greenhouse gases when combusted.

(2) Rules adopted by the commission under this section for electricity that is imported, sold, allocated or distributed for use in this state may require reporting of information necessary to determine greenhouse gas emissions from generating facilities used to produce the electricity and related electricity transmission line losses.

(3)(a) The commission shall allow consumer-owned utilities, as defined in ORS 757.270, to comply with reporting requirements imposed under this section by the submission of a report prepared by a third party. A report submitted under this paragraph may include information for more than one

consumer-owned utility, but must include all information required by the commission for each individual utility.

(b) For the purpose of determining greenhouse gas emissions related to electricity purchased from the Bonneville Power Administration by a consumer-owned utility, as defined in ORS 757.270, the commission may require only that the utility report:

(A) The number of megawatt-hours of electricity purchased by the utility from the Bonneville Power Administration, segregated by the types of contracts entered into by the utility with the Bonneville Power Administration; and

(B) The percentage of each fuel or energy type used to produce electricity purchased under each type of contract.

(4)(a) Rules adopted by the commission pursuant to this section for electricity that is purchased, imported, sold, allocated or distributed for use in this state by an electric company, as defined in ORS 757.600, must be limited to the reporting of:

(A) Greenhouse gas emissions emitted from generating facilities owned or operated by the electric company;

(B) Greenhouse gas emissions emitted from transmission equipment owned or operated by the electric company;

(C) The number of megawatt-hours of electricity purchased by the electric company for use in this state, including information, if known, on:

(i) The seller of the electricity to the electric company; and

(ii) The original generating facility fuel type or types; and

(D) An estimate of the amount of greenhouse gas emissions, using default greenhouse gas emissions factors established by the commission by rule, attributable to:

(i) Electricity purchases made by a particular seller to the electric company;

(ii) Electricity purchases from an unknown origin or from a seller who is unable to identify the original generating facility fuel type or types;

[*(iii) Electricity purchases for which a renewable energy certificate under ORS 469A.130 has been issued but subsequently transferred or sold to a person other than the electric company;*]

[*(iv)*] **(iii)** Electricity transmitted for others by the electric company; and

[*(v)*] **(iv)** Total energy losses from electricity transmission and distribution equipment owned or operated by the electric company.

(b) Pursuant to paragraph (a) of this subsection, a multijurisdictional electric company may rely upon a cost allocation methodology approved by the Public Utility Commission for reporting emissions allocated in this state.

(5) Rules adopted by the commission under this section for fossil fuel that is imported, sold or distributed for use in this state may require reporting of the type and quantity of the fuel and any additional information necessary to determine the carbon content of the fuel. For the purpose of determining greenhouse gas emissions related to liquefied petroleum gas, the commission shall allow reporting using publications or submission of data by the American Petroleum Institute but may require reporting of such other information necessary to achieve the purposes of the rules adopted by the commission under this section.

(6) To an extent that is consistent with the purposes of the rules adopted by the commission under this section, the commission shall minimize the burden of the reporting required under this section by:

(a) Allowing concurrent reporting of information that is also reported to another state agency;

(b) Allowing electronic reporting;

(c) Allowing use of good engineering practice calculations in reports, or of emission factors published by the United States Environmental Protection Agency;

(d) Establishing thresholds for the amount of specific greenhouse gases that may be emitted or generated without reporting;

(e) Requiring reporting by the fewest number of persons in a fuel distribution system that will allow the commission to acquire the information

needed by the commission; or

(f) Other appropriate means and procedures determined by the commission.

(7) As used in this section, "greenhouse gas" has the meaning given that term in ORS 468A.210.

SECTION 27. ORS 469A.300 is amended to read:

469A.300. [*To facilitate the creation of hydrogen power stations using anhydrous ammonia as a fuel source to comply with a renewable portfolio standard under ORS 469A.005 to 469A.210,*] The Public Utility Commission may allow full recovery of costs by public utilities in prudent energy investments related to the planning, financing, construction and operation of hydrogen power stations. These investments may include, but need not be limited to:

(1) Systems designed to synthesize anhydrous ammonia fuel using electricity generated from renewable energy sources [*listed in ORS 469A.025*];

(2) Infrastructure designed to store anhydrous ammonia generated from renewable energy sources as a nonpolluting fuel for electricity generation and any other purpose;

(3) Energy systems designed to use anhydrous ammonia generated from renewable energy sources as a fuel to generate electricity; and

(4) Electronic control and management systems designed to effectively integrate hydrogen power station processes into the electricity transmission grid.

SECTION 28. ORS 757.365 is amended to read:

757.365. (1) The Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity or for the nonenergy attributes of electricity, or both, from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers and that first become operational after the program begins. The cumulative nameplate capacity of the qualifying systems enrolled in all of the pilot

programs may not exceed 25 megawatts of alternating current. Qualifying systems enrolled in the pilot program may not have nameplate generating capacity greater than 500 kilowatts.

(2) The commission by rule shall adopt requirements for the pilot programs described in subsection (1) of this section. Each electric company shall file for commission approval tariff schedules for the pilot programs that conform to the requirements.

(3) The commission may establish incentive rates for the pilot programs to enable the development of the most efficient solar photovoltaic energy systems.

(4) A retail electricity consumer participating in a pilot program may receive payments based on electricity generated from solar photovoltaic energy system output for 15 years from the consumer's date of enrollment in the program, at rates or through a rate formula in a tariff schedule established at the time of enrollment, or at rates otherwise established at the time of enrollment. The consumer thereafter may receive payments based upon electricity generated from the qualifying system at a rate equal to the resource value.

(5) The commission may adjust the tariff schedule as needed for new pilot program participants for the purpose of meeting the goal established in subsection (1) of this section. Once a retail electricity consumer is enrolled in a program, the rates or rate formula for determining payments to the consumer may not be modified.

(6) The commission shall establish pilot programs designed to attain a goal of 75 percent of the capacity under each program to be deployed by residential qualifying systems and small commercial qualifying systems. The commission by rule may adjust the percentage goal for capacity deployed by residential and small commercial qualifying systems based upon the costs of the energy generated, the feasibility of attaining the goal and other factors.

(7) The commission may establish total generator nameplate capacity limits for an electric company so that the rate impact of the pilot program

for any customer class does not exceed 0.25 percent of the electric company's revenue requirement for the class in any year.

[*(8) Ownership of renewable energy certificates established under ORS 469A.130 that are associated with renewable energy generation under the pilot programs must be transferred to the electric company and may be used to comply with the renewable portfolio standard described in ORS 469A.052 or 469A.055.*]

[*(9)*] **(8)** To the extent that rates paid under a pilot program exceed the resource value, qualifying systems participating in the pilot programs are not eligible for expenditures under ORS 757.612 (3)(b)(B) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169.

[*(10)*] **(9)** All prudently incurred costs associated with compliance with this section are recoverable in the rates of an electric company.

[*(11)*] **(10)** The commission shall advise and assist the owners and operators of qualifying systems in identifying and using grants, incentive moneys, federal funding and other sources of noninvestment financial support for the construction and operation of qualifying systems.

[*(12)*] **(11)** The pilot programs described in subsection (1) of this section close to new participants on the earlier of:

(a) March 31, 2015; or

(b) The date the cumulative nameplate capacity of solar photovoltaic energy systems that have been permanently installed by retail electricity consumers under the pilot programs equals 25 megawatts of alternating current.

[*(13)*] **(12)** The commission shall submit a report to the Legislative Assembly by January 1 of each odd-numbered year. The report must evaluate the effectiveness of the pilot programs described in subsection (1) of this section compared to the effectiveness of expenditures under ORS 757.612 (3)(b)(B) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169 for promoting the use of solar photovoltaic energy systems and reducing system costs. The report must also evaluate the estimated cost of the program to retail electricity consumers.

SECTION 29. ORS 757.370 is amended to read:

757.370. (1) On or before January 1, 2020, the total solar photovoltaic generating nameplate capacity, from qualifying systems generating at least 500 kilowatts, of all electric companies in this state must be at least 20 megawatts of alternating current with no single project greater than five megawatts of alternating current.

(2) For the purpose of complying with the solar photovoltaic generating capacity standard established by this section, on or before January 1, 2020, each electric company is required to maintain a minimum generating capacity from qualifying systems. The minimum generating capacity for each electric company is determined by multiplying 20 megawatts by a fraction equal to the electric company's share of all retail electricity sales made in this state in 2008 by all electric companies.

(3) For the purposes of ORS 757.360 to 757.380, capacity of a solar photovoltaic energy system is measured on the alternating current side of the system's inverter using the measurement standards set forth by the Public Utility Commission by rule. If the system does not use an inverter, the measurement shall be made at the direct current level.

(4) An electric company may satisfy the solar photovoltaic generating capacity standard established by this section with solar photovoltaic energy systems owned by the company or with contracts for the purchase of electricity from qualifying systems.

(5) All costs prudently incurred by an electric company to comply with the solar photovoltaic generating capacity standard established by this section, including above-market costs, are recoverable in the company's rates [*and are eligible for an automatic adjustment clause established by the commission under ORS 469A.120*].

(6) The commission may adopt rules implementing and enforcing this section.

SECTION 30. ORS 757.522 is amended to read:

757.522. As used in ORS 757.522 to 757.536:

(1) "Additional interest" means:

(a) The acquisition, by the holder of an interest in a generating facility located in Oregon, of a separate interest in that generating facility that is producing energy and is in service for tax purposes, commercially operable or in rates on July 1, 2010; and

(b) The renewal of an existing contract of five or more years that includes the acquisition of baseload electricity for an additional term of five or more years where the expected greenhouse gas emissions profile of the contract renewal is substantially similar to that of the previous contract.

(2) "Annual plant capacity factor" means the ratio of the electricity produced by a generating facility during one year, measured in kilowatt-hours, to the electricity the generating facility could have produced if it had been operated at its rated capacity throughout the same year, expressed in kilowatt-hours.

(3)(a) "Baseload electricity" means electricity produced by a generating facility that is designed and intended, at the time a site certificate is issued to the owner of the facility, to provide electricity on a continuous basis at an annual plant capacity factor of at least 60 percent.

(b) "Baseload electricity" does not include electricity from:

(A) A qualifying facility under the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 to 2645; or

(B) A generating source that uses natural gas or petroleum distillates as a fuel source and that is primarily used to serve [*either*] peak demand [*or to integrate energy from a renewable energy source described in ORS 469A.025*].

(4) "Construction" has the meaning given that term in ORS 469.300.

(5) "Consumer-owned utility" has the meaning given that term in ORS 757.600.

(6) "Electric company" has the meaning given that term in ORS 757.600.

(7) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(8) "Generating facility" includes one or more jointly operated electricity

generators that use the same fuel type, have the same in-service date and operate at the same location as described in ORS 469.300.

(9) "Governing board" means the legislative authority of a consumer-owned utility.

(10)(a) "Long-term financial commitment" means an investment in or upgrade of a generating facility that produces baseload electricity, or a contract with a term of more than five years that includes acquisition of baseload electricity.

(b) "Long-term financial commitment" does not include:

(A) Routine or necessary maintenance;

(B) Installation of emission control equipment;

(C) Installation, replacement or modification of equipment that improves the heat rate of the facility or reduces a generating facility's pounds of greenhouse gases per megawatt-hour of electricity;

(D) Installation, replacement or modification of equipment where the primary purpose is to maintain reliable generation output capability and not to extend the life of the generating facility, and that does not increase the heat input or fuel usage as specified in existing generation air quality permits, but that may result in incidental increases in generation capacity;

(E) Repairs necessitated by sudden and unexpected equipment failure; or

(F) An acquisition of an additional interest.

(11) "Output-based methodology" means a greenhouse gas emissions standard that is expressed in pounds of greenhouse gases emitted per megawatt-hour, factoring in the useful thermal energy employed for purposes other than the generation of electricity.

(12) "Site certificate" has the meaning given that term in ORS 469.300.

(13) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload facility.

SECTION 31. ORS 757.531 is amended to read:

757.531. (1)(a) An electric company or electricity service supplier may not enter into a long-term financial commitment unless the baseload electricity

acquired under the commitment is produced by a generating facility that complies with a greenhouse gas emissions standard established under ORS 757.524.

(b) A generating facility complies with the greenhouse gas emissions standard established under ORS 757.524 if the rate of emissions of the facility does not exceed the emissions standard.

(c) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing baseload electricity at the generating facility are included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

(2) Notwithstanding subsection (1) of this section, the emissions standard does not apply to greenhouse gas emissions produced by a generating facility owned by an electric company or electricity service supplier or contracted through a long-term financial commitment if the emissions:

[*(a) Come from a facility powered exclusively by renewable energy sources described in ORS 469A.025;*]

[*(b)*] **(a)** Come from a cogeneration facility in this state that is fueled by natural gas, synthetic gas, distillate fuels, waste gas or a combination of these fuels, and that is producing energy, in service for tax purposes, commercially operable, or in rates as of July 1, 2010, until the facility is subject to a new long-term financial commitment; or

[*(c)*] **(b)** Come from a generating facility that has in place a plan, as determined by the Public Utility Commission, to be a low-carbon emissions resource, pursuant to sufficient technical documentation, within seven years of commencing plant operations.

(3) Notwithstanding ORS 757.524 and subsection (1) of this section, the commission may exempt a long-term financial commitment by an electric company or an electricity service supplier from the greenhouse gas emissions

standard if the commission finds that the commitment is a necessary and prudent response to:

(a) Unanticipated electricity system reliability needs; or

(b) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(4) Notwithstanding subsection (1) of this section, an electric company may enter into a long-term financial commitment that does not meet the emissions standard established under ORS 757.524 if the electric company does not seek recovery of the costs in retail sales in this state.

(5) The commission by rule shall establish:

(a) Standards for identifying contracts for electricity for which the emissions cannot readily be determined with any specificity; and

(b) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard established under ORS 757.524.

SECTION 32. ORS 757.533 is amended to read:

757.533. (1)(a) A governing board of a consumer-owned utility may not enter into a long-term financial commitment unless the baseload electricity acquired under the commitment is produced by a generating facility that complies with a greenhouse gas emissions standard established under ORS 757.528.

(b) A generating facility complies with the greenhouse gas emissions standard established under ORS 757.528 if the rate of emissions of the facility does not exceed the emissions standard.

(c) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing baseload electricity at the generating facility shall be included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

(2) Notwithstanding subsection (1) of this section, the emissions standard does not apply to greenhouse gas emissions produced by a generating facility owned by a consumer-owned utility or contracted through a long-term financial commitment if the emissions:

[*(a) Come from a facility powered exclusively by renewable energy sources described in ORS 469A.025;*]

[*(b)*] **(a)** Come from a cogeneration facility in this state that is fueled by natural gas, synthetic gas, distillate fuels, waste gas or a combination of these fuels, and that is producing energy, in service for tax purposes, commercially operable, or in rates as of July 1, 2010, until the facility is subject to a new long-term financial commitment; or

[*(c)*] **(b)** Come from a generating facility that has in place a plan to be a low-carbon emission resource, as determined by the State Department of Energy, pursuant to sufficient technical documentation, within seven years of commencing plant operations.

(3) The governing board may provide an exemption for an individual generating facility from the emissions performance standard to address:

(a) Unanticipated electricity system reliability needs;

(b) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances; or

(c) Long-term financial commitments between members of a joint operating entity recognized under federal law or the joint operating entity's predecessor organization, or with the joint operating entity for a baseload resource that the consumer-owned utility had an ownership interest in prior to July 1, 2010.

(4) A governing board shall report to the consumer-owned utility's customers or members and to the State Department of Energy information on any case-by-case exemption from the emissions performance standard granted by the governing board.

(5) For purposes of ORS 757.522 to 757.536, a long-term financial commitment for a consumer-owned utility does not include agreements to purchase

electricity from the Bonneville Power Administration.

(6) The department by rule shall establish:

(a) Standards for identifying contracts for electricity for which the emissions cannot readily be determined with any specificity; and

(b) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard established under ORS 757.528.

SECTION 33. ORS 261.253 is amended to read:

261.253. (1) A public contract entered into by a noninvestor-owned electric utility may not contain a clause or condition that imposes an unconditional and unlimited financial obligation on the electric utility that is party to the contract unless the terms and conditions of the contract are subject to approval and are approved by the electors of the people's utility district or city that owns the electric utility.

(2) Nothing in subsection (1) of this section is intended to affect provisions of law requiring approval of electors for any particular type of public contract that are in effect on October 15, 1983, or that are later enacted.

(3) Nothing in subsection (1) of this section is intended to conflict with ORS 279C.650 to 279C.670.

[*(4) This section does not apply to a public contract executed in connection with:*]

[*(a) The acquisition of renewable energy certificates;*]

[*(b) The acquisition, construction, improvement or equipping of, or the financing of any interest in, a renewable energy facility; or*]

[*(c) The acquisition or financing of any interest in electrical capacity needed to shape, firm or integrate electricity from a renewable energy facility.*]

[*(5)*] **(4)** As used in this section:

(a) "Public contract" includes a contract, note, general obligation bond or revenue bond by which the people's utility district or city or any subdivision of any of them is obligated to pay for or finance the acquisition of

goods, services, materials, real property or any interest therein, improvement, betterments or additions from any funds, including receipts from rates or charges assessed to or collected from its customers.

(b) "Unconditional and unlimited financial obligation" means a public contract containing a provision that the people's utility district or city that is party to the contract is obligated to make payments required by the contract whether or not the project to be undertaken thereunder is undertaken, completed, operable or operating notwithstanding the suspension, interruption, interference, reduction or curtailment of the output or product of the project.

SECTION 34. ORS 261.305 is amended to read:

261.305. People's utility districts shall have power:

(1) To have perpetual succession.

(2) To adopt a seal and alter it at pleasure.

(3) To sue and be sued, to plead and be impleaded.

(4) To acquire and hold, including by lease-purchase agreement, real and other property necessary or incident to the business of the districts, within or without, or partly within or partly without, the district, and to sell or dispose of that property; to acquire, develop and otherwise provide for a supply of water for domestic and municipal purposes, waterpower and electric energy, or electric energy generated from any utility, and to distribute, sell and otherwise dispose of water, waterpower and electric energy, within or without the territory of such districts.

[*(5) To acquire, own, trade, sell or otherwise transfer renewable energy certificates.*]

[*(6)*] **(5)** To exercise the power of eminent domain for the purpose of acquiring any property, within or without the district, necessary for the carrying out of the provisions of this chapter.

[*(7)*] **(6)** To borrow money and incur indebtedness; to issue, sell and assume evidences of indebtedness; to refund and retire any indebtedness that may exist against or be assumed by the district or that may exist against the

revenues of the district; to pledge any part of its revenues; and to obtain letters of credit or similar financial instruments from banks or other financial institutions. Except as provided in ORS 261.355 and 261.380, no revenue or general obligation bonds shall be issued or sold without the approval of the electors. The board of directors may borrow from banks or other financial institutions such sums as the board of directors deems necessary or advisable. No indebtedness shall be incurred or assumed except for the development, purchase and operation of electric utility facilities or for the purchase of electricity[*,*] **or** electrical capacity [*or renewable energy certificates*].

[*(8)*] **(7)** To exercise the powers otherwise granted to districts by ORS 271.390.

[*(9)*] **(8)** To levy and collect, or cause to be levied and collected, subject to constitutional limitations, taxes for the purpose of carrying on the operations and paying the obligations of the district as provided in this chapter.

[*(10)*] **(9)** To make contracts, to employ labor and professional staff, to set wages in conformance with ORS 261.345, to set salaries and provide compensation for services rendered by employees and by directors, 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 herein granted. The provision for life insurance, hospitalization, disability, health and welfare and retirement plans for employees shall be in addition to any other authority of people's utility districts to participate in those plans and shall not repeal or modify any statutes except those that may be in conflict with the provision for life insurance, hospitalization, disability, health and welfare and retirement plans.

[*(11)*] **(10)** To enter into contracts with any person, any public or private corporation, the United States Government, the State of Oregon, or with any other state, municipality or utility district, and with any department of any of these, for carrying out any provisions of this chapter.

[*(12)*] **(11)** To enter into agreements with the State of Oregon or with any

local governmental unit, utility, special district or private or public corporation for the purpose of promoting economic growth and the expansion or addition of business and industry within the territory of the people's utility district. Before spending district funds under such an agreement, the board of directors shall enter on the written records of the district a brief statement that clearly indicates the purpose and amount of any proposed expenditure under the agreement.

[*(13)*] **(12)** To fix, maintain and collect rates and charges for any water, waterpower, electricity or other commodity or service furnished, developed or sold by the district.

[*(14)*] **(13)** To construct works across or along any street or public highway, or over any lands which are property of this state, or any subdivision thereof, and to have the same rights and privileges appertaining thereto as have been or may be granted to cities within the state, and to construct its works across and 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 appropriate county court. 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 such fees. The district shall restore any such street or highway to its former state as near as may be, and shall not use the same in a manner unnecessarily to impair its usefulness.

[*(15)*] **(14)** To elect a board of five directors to manage its affairs.

[*(16)*] **(15)** 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.

[*(17)*] **(16)** To take any other actions necessary or convenient for the

proper exercise of the powers granted to a district by this chapter and by [*section 12,*] Article XI**, section 12,** of the Oregon Constitution.

SECTION 35. ORS 261.335 is amended to read:

261.335. (1) Except as otherwise provided in subsection (2) of this section, people's utility districts are subject to the public contracting and purchasing requirements of ORS 279.835 to 279.855, 279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B, except ORS 279A.140 and 279A.250 to 279A.290.

(2) The public contracting and purchasing requirements of ORS 279.835 to 279.855, 279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B do not apply to contracts entered into by districts [*for the acquisition, construction, improvement or equipping of a renewable energy facility or*] for the purchase or sale of electricity[,] **or** electrical capacity [*or renewable energy certificates*].

SECTION 36. ORS 261.348 is amended to read:

261.348. (1) Notwithstanding any other law, people's utility districts and municipal electric utilities may enter into transactions with other persons or entities for the production, supply or delivery of electricity on an economic, dependable and cost-effective basis, including financial products contracts and other service contracts that reduce the risk of economic losses in the transactions. This subsection does not authorize any transaction that:

(a) Constitutes the investment of surplus funds for the purpose of receiving interest or other earnings from the investment; or

(b) Is intended or useful for any purpose other than the production, supply or delivery of electricity on a cost-effective basis.

(2) Nothing in subsection (1) of this section prohibits a people's utility district or a municipal electric utility from entering into any transaction [*for the acquisition, construction, improvement or equipping of a renewable energy facility or*] for the purchase or sale of electricity[,] **or** electrical capacity [*or renewable energy certificates*].

SECTION 37. ORS 261.355 is amended to read:

261.355. (1) For the purpose of carrying into effect the powers granted in this chapter, any district may issue and sell revenue bonds, when authorized by a majority of its electors voting at any primary election, general election or special election.

(2) All revenue bonds issued and sold under this chapter shall be so conditioned as to be paid solely from that portion of the revenues derived by the district from the sale of water, waterpower and electricity, or any of them, or any other service, commodity or facility which may be produced, used or furnished in connection therewith, remaining after paying from those revenues all expenses of operation and maintenance, including taxes.

(3) Notwithstanding subsection (1) of this section and subject to subsection (4) of this section, any district may, by a duly adopted resolution of its board, issue and sell revenue bonds for the purpose of financing betterments and extensions of the district, including [*renewable energy facilities or*] the purchase or sale of electricity[*,*] **or** electrical capacity [*or renewable energy certificates*], but the amount of revenue bonds so issued shall be limited to the reasonable value of the betterments and extensions plus an amount not to exceed 10 percent thereof for administrative purposes. Revenue bonds shall not be issued and sold for the purpose of acquiring an initial utility system or acquiring property or facilities owned by another entity that provides electric utility service unless:

(a) The acquisition is a voluntary transaction between the district and the other entity that provides electric utility service; or

(b) The electors within the district have approved issuance of the bonds by a vote.

(4) Not later than the 30th day prior to a board meeting at which adoption of a resolution under subsection (3) of this section will be considered, the district shall:

(a) 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 of the meeting and of the intent of the board

to consider and possibly adopt the resolution; and

(b) Mail to its customers notice of the time and place of the meeting and of the intent of the board to consider and possibly adopt the resolution.

(5) Except as otherwise provided in this section, any authorizing resolution adopted for the purposes of subsection (3) of this section shall provide that electors residing within the district may file a petition with the district asking to have the question of whether to issue such bonds referred to a vote.

(6) If within 60 days after adoption of a resolution under subsection (3) of this section the district receives petitions containing valid signatures of not fewer than five percent of the electors of the district, the question of issuing the bonds shall be placed on the ballot at the next date on which a district election may be held under ORS 255.345 (1).

(7) When petitions containing the number of signatures required under subsection (6) of this section are filed with the district within 60 days after adoption of a resolution under subsection (3) of this section, revenue bonds shall not be sold until the resolution is approved by a majority of the electors of the district voting on the resolution.

(8) Any district issuing revenue bonds may pledge that part of the revenue which the district may derive from its operations as security for payment of principal and interest thereon remaining after payment from such revenues of all expenses of operation and maintenance, including taxes, and consistent with the other provisions of this chapter.

(9) Prior to any district board taking formal action to issue and sell any revenue bonds under this section, the board shall have on file with the secretary of the district a certificate executed by a qualified engineer that the net annual revenues of the district, including the property to be acquired or constructed with the proceeds of the bonds, shall be sufficient to pay the maximum amount that will be due in any one fiscal year for both principal of and interest on both the bonds then proposed to be issued and all bonds of the district then outstanding.

(10) Except as otherwise provided in this section, the district shall order an election for the authorization of revenue bonds to finance the acquisition or construction of an initial utility system, including the replacement value of the unreimbursed investment of an investor owned utility in energy efficiency measures and installations within the proposed district, as early as practicable under ORS 255.345 after filing the certificate required under subsection (9) of this section. An election for the authorization of revenue bonds to finance the acquisition or construction of an initial utility system shall be held no more than twice in any one calendar year for any district. In even-numbered years no election shall be held on any other date than the date of the primary election or general election.

(11) A district may issue revenue bonds under ORS 287A.150 without an election authorizing the issuance, except that revenue bonds shall not be issued under ORS 287A.150 for the purpose of acquiring an initial utility system or acquiring property or facilities owned by another entity that provides electric utility service unless:

(a) The acquisition is a voluntary transaction between the district and the other entity that provides electric utility service; or

(b) The electors within the district have approved issuance of the bonds by a vote.

SECTION 38. ORS 262.015 is amended to read:

262.015. (1) Any three or more cities or people's utility districts or combinations thereof, organized under the laws of this state, may form a joint operating agency to plan, acquire, construct, own, operate and otherwise promote the development of utility properties for the generation, transmission and marketing of electricity[,] **or** electrical capacity [*or renewable energy certificates*].

(2) A joint operating agency may participate with other publicly owned utilities, including other joint operating agencies, or with electric cooperatives, or with privately owned electric utility companies, or with any combination thereof, for any purpose set forth in subsection (1) of this section,

whether such agencies or utilities are organized or incorporated under the laws of this state or any other jurisdiction. However, no joint operating agency may act alone or as the managing participant to acquire, construct, own or operate utility properties.

(3) Joint operating agencies, cities, people's utility districts and privately owned utilities, or combinations thereof, may participate in joint ownership of common facilities in accordance with ORS 225.450 to 225.490 or 261.235 to 261.255.

SECTION 39. ORS 262.075 is amended to read:

262.075. (1) Each joint operating agency shall be a political subdivision of the State of Oregon, and shall be a municipal corporation with the right to sue and be sued in its own name. Except as otherwise provided, a joint operating agency shall have all the powers, rights, privileges and exemptions conferred on people's utility districts.

(2) A joint operating agency shall have the power to acquire, hold, sell and dispose of real and other property, within or without this state, which the board of directors in its discretion finds reasonably necessary or incident to the generation, transmission and marketing of electricity[,] **or** electrical capacity [*or renewable energy certificates*]. However, such an agency shall not acquire or operate any facilities for the distribution of electricity.

(3) A joint operating agency shall have the power of eminent domain which it may exercise for the purpose of acquiring property; however, a joint operating agency shall not condemn any properties owned by a publicly or privately owned utility which are being used for the generation or transmission of electricity or are being developed for such purposes with due diligence, except to acquire a right of way to cross such properties in a manner which will not interfere with the use thereof by the owner.

(4) A joint operating agency shall have the power to enter into contracts, leases and other undertakings considered necessary or proper by its board, including but not limited to contracts for any term relating to the purchase, sale, interchange, assignment, allocation, transfer or wheeling of power with

the Government of the United States, or any agency thereof, and with any other municipal corporation or privately owned utility, or any combination thereof, within or without the state, and may purchase, deliver or receive power anywhere.

(5) A joint operating agency shall have the power to borrow money and incur indebtedness, to issue, sell and assume evidences of indebtedness, to refund and retire any indebtedness that may exist against the agency or its revenues, and to pledge any part of its revenues. A joint operating agency may borrow from banks or other financial institutions such sums on such terms as the board considers necessary or advisable. A joint operating agency may also issue, sell and assume bond anticipation notes, refunding bond anticipation notes, or their equivalent, which shall bear such date or dates, mature at such time or times, be in such denominations and in such form, be payable in such medium, at such place or places, and be subject to such terms of redemption, as the board considers necessary or advisable. The issuance and sale of revenue obligations by a joint operating agency shall be governed by ORS 262.085.

(6) The joint operating agency may apply for, accept, receive and expend appropriations, grants, loans, gifts, bequests and devises in carrying out its functions as provided by law.

SECTION 40. Section 9, chapter 754, Oregon Laws 2009, is repealed on the effective date of this 2013 Act.

SECTION 41. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.
