

**Enrolled**  
**Senate Bill 100**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Department of Energy)

CHAPTER .....

AN ACT

Relating to residential energy conservation for oil-heated dwellings; creating new provisions; amending ORS 317.112, 469.673, 469.681, 469.683 and 469B.154; repealing ORS 469.675, 469.677 and 469.679; and prescribing an effective date.

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

**TRANSFER OF DUTIES RELATED TO OIL-HEATED DWELLINGS**

**SECTION 1.** The duties, functions and powers of the State Department of Energy under ORS 469.673 to 469.683 are imposed upon, transferred to and vested in the Housing and Community Services Department.

**(Records and Property)**

**SECTION 2.** (1) The Director of the State Department of Energy shall deliver to the Housing and Community Services Department all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this 2017 Act, and the Director of the Housing and Community Services Department shall take possession of the records and property.

(2) The Governor shall resolve any dispute between the State Department of Energy and the Housing and Community Services Department relating to transfers of records and property under this section, and the Governor's decision is final.

**(Unexpended Revenues)**

**SECTION 3.** (1) The unexpended balances of amounts authorized to be expended by the State Department of Energy for the biennium beginning July 1, 2017, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this 2017 Act are transferred to and are available for expenditure by the Housing and Community Services Department for the biennium beginning July 1, 2017, for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this 2017 Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the State Department of Energy remain applicable to expenditures by the Housing and Community Services Department under this section.

(Action, Proceeding, Prosecution)

**SECTION 4.** The transfer of duties, functions and powers to the Housing and Community Services Department by section 1 of this 2017 Act does not affect any action, proceeding or prosecution involving or with respect to the duties, functions and powers begun before and pending at the time of the transfer, except that the Housing and Community Services Department is substituted for the State Department of Energy in the action, proceeding or prosecution.

(Liability, Duty, Obligation)

**SECTION 5.** (1) Nothing in sections 1 to 7 of this 2017 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this 2017 Act. The Housing and Community Services Department may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the State Department of Energy legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this 2017 Act accruing under or with respect to the duties, functions and powers transferred by section 1 of this 2017 Act are transferred to the Housing and Community Services Department. For the purpose of succession to these rights and obligations, the Housing and Community Services Department is a continuation of the State Department of Energy and not a new authority.

(Rules)

**SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1 of this 2017 Act, the rules of the State Department of Energy with respect to such duties, functions or powers that are in effect on the operative date of section 1 of this 2017 Act continue in effect until superseded or repealed by rules of the Housing and Community Services Department. References in the rules of the State Department of Energy to the State Department of Energy or an officer or employee of the State Department of Energy are considered to be references to the Housing and Community Services Department or an officer or employee of the Housing and Community Services Department.

**SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 1 of this 2017 Act, reference is made to the State Department of Energy, or an officer or employee of the State Department of Energy, whose duties, functions or powers are transferred by section 1 of this 2017 Act, the reference is considered to be a reference to the Housing and Community Services Department or an officer or employee of the Housing and Community Services Department who by this 2017 Act is charged with carrying out the duties, functions and powers.

## REPEALS

**SECTION 8.** ORS 469.675, 469.677 and 469.679 are repealed.

## AMENDMENTS TO STATUTES

**SECTION 9.** ORS 469.673 is amended to read:  
469.673. As used in ORS 469.673 to 469.683:

(1) “Cash payment” means a payment made by the [State Department of Energy] **Housing and Community Services Department** to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

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

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

[(4) “Director” means the Director of the State Department of Energy appointed under ORS 469.040.]

(2) “Contractor” means a person that installs or assists a dwelling owner to install energy conservation measures in a dwelling.

[(5)] (3)(a) “Dwelling” means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant.

(b) “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing.

(c) “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

[(6)] (4) “Dwelling owner” means the person:

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

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

[(7) “Energy audit” means:]

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

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

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

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

[(B) The items installed; and]

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

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

[(B) Solar swimming pool heating, if applicable.]

(5) “Energy conservation items” includes but is not limited to air sealing, weatherstripping, ceiling and wall insulation, crawl space insulation, vapor barrier materials, programmable thermostats, insulation of heating ducts and water pipes in unheated spaces, and replacement windows.

[(8)] (6)(a) “Energy conservation measures” [means measures that include] **includes** the installation of **energy conservation** items and the **energy conservation** items installed, **where the items** [that] are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. [These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows, and dehumidifiers.]

(b) "Energy conservation measures" does not include the dwelling owner's own labor.

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

(8) "**Person**" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(9) "**Petroleum supplier**" means a petroleum refiner in this state or any person engaged in the wholesale distribution of distillate fuel oil in this state.

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

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

(12) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant.

**SECTION 10.** ORS 469.681 is amended to read:

469.681. (1) Each petroleum supplier shall **annually** pay to the [State Department of Energy] **Housing and Community Services Department its share of a petroleum supplier assessment.** [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) **Moneys received by the department under this section shall be deposited in the Oil-Heated Dwellings Energy Account to be used only to fund:**

(a) **Provision by the department of information, assistance and technical advice to residential customers of fuel oil dealers, including information about energy conservation measures and home energy audits as that term is defined in ORS 469.703;**

(b) **Cash payments to a dwelling owner or contractor for energy conservation measures; and**

(c) **The administration and enforcement of ORS 469.673 to 469.683.**

[2] (3) The amount of the assessment required by subsection (1) of this section shall be determined by the Director **of the Housing and Community Services Department** 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] (4) 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] **Housing and Community Services Department**, may institute a proceeding in the circuit court to collect the amount due.

[4] (5) 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] (6) 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 11.** ORS 469.683 is amended to read:

469.683. (1) [There is established, separate and distinct from the General Fund, the Oil-Heated Dwellings Energy Audit Account.] **The Oil-Heated Dwellings Energy Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oil-Heated Dwellings Energy Account shall be credited to the account.** [Moneys deposited in the account under subsections (2) to (5) of this section shall be used to pay the cost of the information,

*assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the Director of the State Department of Energy contracts under ORS 469.677.]*

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

*[(3)] (2) [The] Moneys in the Oil-Heated Dwellings Energy [Audit] Account are continuously appropriated to the [State Department of Energy for the purpose of:] **Housing and Community Services Department to be used only for the purposes specified in ORS 469.681 (2).***

*[(a) Paying the cost of information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677; and]*

*[(b) Providing cash payments to a dwelling owner or contractor for energy conservation measures.]*

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

*[(5)] (3) The [State Department of Energy] **department** shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy [Audit] Account.*

**SECTION 12. Section 13 of this 2017 Act is added to and made a part of ORS 469.673 to 469.683.**

**SECTION 13. The Housing and Community Services Department may adopt by rule policies and procedures for the administration and enforcement of ORS 469.673 to 469.683.**

#### **CONFORMING AMENDMENTS TO TAX CREDITS APPLICABLE TO PRIOR TAX YEARS**

**SECTION 14.** ORS 317.112 is amended to read:

317.112. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a commercial lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged during the taxable year including interest on the loan and interest on any loan fee financed at an annual rate of six and one-half percent, by the lending institution to a dwelling owner who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident for the purpose of financing energy conservation measures; and

(b) The amount of finance charge that would have been charged during the taxable year, including interest on the loan and interest on any loan fee financed by the lending institution for the loan for energy conservation measures at an annual rate that is the lesser of the following:

(A) The annual rate charged by the commercial lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for energy conservation measures is made; or

(B) An upper limit established by rule by the Director of the State Department of Energy.

(2) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise until the 15th succeeding tax year. The credit may not be carried forward beyond the 15th succeeding tax year.

(3) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall:

(a) Be made only to an owner of an oil-heated or wood-heated dwelling who presents the results of an energy audit pursuant to ORS 469.631 to 469.645, 469.649 to 469.659[, 469.673 to 469.683] or 469.685 that is conducted by [*a fuel oil dealer,*] **an** investor-owned utility or publicly owned utility or through the State Department of Energy, regardless of whether that [*fuel oil dealer or*] utility provides the dwelling's space heating energy.

(b) Be subject to an annual rate not to exceed six and one-half percent and have a term not exceeding 10 years.

(c) Not finance any materials installed in the construction of a new dwelling, additions to existing structures or remodeling that adds living space.

(d) Finance only those energy conservation measures that are recommended as cost-effective in the energy audit, and any loan fee that is included in the body of the loan.

(4) The credit allowed under this section may not be allowed to the extent that the loan exceeds \$5,000 for a single dwelling unit, or, if the dwelling owner is a corporation described in ORS 307.375, to the extent that the loan exceeds \$2,000 for a single dwelling unit.

(5) A commercial lending institution may charge, finance and collect a nonrefundable front-end loan fee, and such a fee does not affect the eligibility of the loan for a tax credit under this section. The fee, if any, may not exceed that charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for energy conservation measures is made.

(6) Nothing in this section or in rules adopted under this section shall be construed to cause a loan to violate the usury laws of this state.

(7) As used in this section, “annual rate,” “commercial lending institution,” “cost-effective,” “dwelling,” “dwelling owner,” “energy audit,” “energy conservation measures,” “finance charge,” “fuel oil dealer,” “residential fuel oil customer,” “space heating” and “wood heating resident” have the meaning given those terms in ORS 469.710.

**SECTION 15.** ORS 469B.154 is amended to read:

469B.154. (1) The owner of a rental housing unit may transfer a tax credit for energy conservation measures installed in rental housing units under ORS 469B.151 in exchange for a cash payment equal to the present value of the tax credit. To be eligible for a transfer, the energy conservation measures must have been recommended in an energy audit as provided in ORS 469.633[,] or 469.651 [or 469.675].

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section.

## MISCELLANEOUS

**SECTION 16.** (1) Sections 1 to 7, 12 and 13 of this 2017 Act, the amendments to ORS 317.112, 469.673, 469.681, 469.683 and 469B.154 by sections 9 to 11, 14 and 15 of this 2017 Act and the repeal of 469.675, 469.677 and 469.679 by section 8 of this 2017 Act become operative January 1, 2018.

(2) The State Department of Energy and the Housing and Community Services Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the State Department of Energy and the Housing and Community Services Department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the State Department of Energy and the Housing and Community Services Department by sections 1 to 7, 12 and 13 of this 2017 Act, the amendments to ORS 317.112, 469.673, 469.681, 469.683 and 469B.154 by sections 9 to 11, 14 and 15 of this 2017 Act and the repeal of 469.675, 469.677 and 469.679 by section 8 of this 2017 Act.

**SECTION 17.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2, chapter \_\_, Oregon Laws 2017 (Enrolled House Bill 5012), for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses for operations, from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds from the United States Department of Housing and Urban Development for contract services, but excluding lottery funds and federal funds not described in section 2, chapter \_\_, Oregon Laws 2017 (Enrolled House Bill 5012), collected or received by the Housing and Community Services Department, is increased by \$568,250.

**SECTION 18.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1, chapter \_\_, Oregon Laws 2017 (Enrolled House Bill 5009), for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses from

fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Department of Energy, is decreased by \$568,250.

**CAPTIONS**

**SECTION 19.** The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

**EFFECTIVE DATE**

**SECTION 20.** This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

**Passed by Senate March 6, 2017**

**Received by Governor:**

**Repassed by Senate July 6, 2017**

.....M.,....., 2017

**Approved:**

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2017

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Peter Courtney, President of Senate

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Kate Brown, Governor

**Passed by House July 6, 2017**

**Filed in Office of Secretary of State:**

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Tina Kotek, Speaker of House

.....M.,....., 2017

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Dennis Richardson, Secretary of State