

House Bill 4038

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

SUMMARY

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

Modifies statutes related to income and excise tax credits. Removes provisions requiring submission of jobs-related data by applicants for energy tax credits.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits; creating new provisions; amending ORS 285C.557, 315.141, 315.329, 315.341,
3 315.516, 317.154, 469B.106, 469B.253, 469B.256, 469B.285, 469B.291, 469B.320, 469B.326 and
4 469B.332 and section 20, chapter 913, Oregon Laws 2009; and prescribing an effective date.

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

6 **SECTION 1.** ORS 469B.256 is amended to read:

7 469B.256. (1) The Director of the State Department of Energy may require an applicant for a
8 grant under this section for a renewable energy production system to submit plans, specifications
9 and contract terms, and after examination of the plans, specifications and terms may request cor-
10 rections and revisions.

11 (2) If the director determines that the system is technically feasible and should operate in ac-
12 cordance with the representations made by the applicant, and is in accordance with the provisions
13 of ORS 469B.250 to 469B.265 and any applicable rules or standards adopted by the director, the di-
14 rector may enter into a performance agreement with the applicant [*in anticipation of awarding*] **and**
15 **award** a grant under this section **to the applicant**. The grant provided for in the performance
16 agreement may not exceed 35 percent of the cost of the project and may not exceed \$250,000 per
17 system. If construction does not begin within 12 months of an award under this section, the per-
18 formance agreement shall be void and the State Department of Energy may [*not award*] **revoke** the
19 grant.

20 (3) The director may, in accordance with ORS chapter 183, deny a grant under this section if
21 the director determines that:

22 (a) The system does not comply with the provisions of ORS 469B.250 to 469B.265 and applicable
23 rules and standards;

24 (b) The applicant was directly involved in an act for which the director has levied civil penalties
25 or revoked, canceled or suspended any certification under ORS 315.326 or 469B.130 to 469B.169, or
26 any grant under ORS 469B.250 to 469B.265; or

27 (c) The applicant or the principal, director, officer, owner, majority shareholder or member of
28 the applicant, or the manager of the applicant if the applicant is a limited liability company, is in
29 arrears for payments owed to any government agency while in any capacity with direct or indirect
30 control over a business.

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

1 (4) The department shall reduce the amount of grant allowable to an applicant if, when combined
 2 with other government incentives or grants available to the applicant, the amount calculated under
 3 subsection (2) of this section exceeds 75 percent of the total system cost calculated under this sec-
 4 tion.

5 *[(5) If the director determines that the applicant has complied with all provisions of the perform-*
 6 *ance agreement required under this section and with the provisions of ORS 469B.250 to 469B.265, the*
 7 *director shall award the grant provided in this section.]*

8 *[(6)]* (5) Upon determination by the director that the applicant has violated the provisions of the
 9 performance agreement or ORS 469B.250 to 469B.265, the applicant will be liable to the department
 10 for all grant moneys disbursed to the applicant.

11 **SECTION 2.** ORS 315.329 is amended to read:

12 315.329. (1) **In any fiscal year, the amount of tax credits allowed under ORS 315.326 may**
 13 **be reduced or eliminated, and the Legislative Assembly may, no later than 30 days prior to**
 14 **the end of each fiscal year,** in lieu of the issuance of certifications for tax credit under ORS
 15 315.326 by the State Department of Energy, *[the Legislative Assembly may, no later than 30 days prior*
 16 *to the end of each fiscal year, appropriate]* **make an appropriation** to the State Department of En-
 17 ergy for deposit into the Renewable Energy Development Subaccount, established in ORS 470.805,
 18 of the Clean Energy Deployment Fund established in ORS 470.800*[, an amount equal to the total*
 19 *amount that would otherwise be certified for tax credits during the current fiscal year, based on the*
 20 *amount of contributions and accompanying applications for credit received by the department during*
 21 *the fiscal year]*. Moneys deposited under this section are to be used only for purposes related to
 22 renewable energy development.

23 (2) If the Legislative Assembly makes the election allowed in subsection (1) of this section[:],

24 *[(a)]* any contributions made pursuant to ORS 315.326 to the Renewable Energy Development
 25 Subaccount during the current fiscal year and for which an application for a credit under ORS
 26 315.326 is *[pending]* **denied** shall, at the request of the taxpayer, be refunded by the State Depart-
 27 ment of Energy[: and]

28 *[(b) A credit under ORS 315.326 may not be claimed for any contribution made during the current*
 29 *fiscal year].*

30 **SECTION 3.** ORS 469B.253 is amended to read:

31 469B.253. (1) Prior to the installation or construction of a renewable energy production system,
 32 any person may apply to the State Department of Energy for a grant under ORS 469B.256 if:

33 (a) The applicant will be the owner, contract purchaser or lessee of the system at the time of
 34 installation or construction of the proposed system;

35 (b) The system does not exceed 35 megawatts of nameplate capacity;

36 (c) The system is located in Oregon; and

37 (d) The system complies with the standards or rules adopted by the Director of the State De-
 38 partment of Energy.

39 (2) An application for a grant under ORS 469B.256 shall be made in writing on a form prepared
 40 by the department and shall contain:

41 (a) A detailed description of the system and its operation and information showing that the
 42 system will operate as represented in the application and remain in operation for at least five years,
 43 unless the director by rule specifies another period of operation.

44 (b) The anticipated total system cost.

45 *[(c) Information on the number and type of jobs that will be created by the system, and the number*

1 *of jobs sustained throughout the construction, installation and operation of the system.]*

2 [(d)] (c) Information demonstrating that the system will comply with applicable state and local
3 laws and regulations and obtain required licenses and permits.

4 [(e)] (d) Any other information the director considers necessary to determine whether the system
5 is in accordance with the provisions of ORS 469B.250 to 469B.265, and any applicable rules or
6 standards adopted by the director.

7 (3) An application for a grant shall be accompanied by a fee established under ORS 469B.259.
8 The director may refund all or a portion of the fee if the application for a grant is rejected.

9 (4) The director may allow an applicant to file the application for a grant after the start of in-
10 stallation or construction of the system if the director finds that:

11 (a) Filing the application before the start of installation or construction is inappropriate because
12 special circumstances render filing earlier unreasonable; and

13 (b) The system would otherwise qualify for a grant under ORS 469B.250 to 469B.265.

14 **SECTION 4. The amendments to ORS 315.329, 469B.253 and 469B.256 by sections 1 to 3**
15 **of this 2012 Act apply to applications for grants submitted under 469B.253 after July 1, 2011,**
16 **and to tax years beginning on or after January 1, 2011.**

17 **SECTION 5.** ORS 469B.320 is amended to read:

18 469B.320. As used in ORS 315.336 and 469B.320 to 469B.347:

19 (1) "Alternative fuel vehicle infrastructure project" includes a facility for mixing, storing, com-
20 pressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable
21 equipment.

22 (2) "Cost" includes capital expenditures and core expenses such as vehicle repair, fuel, personnel
23 and administrative expenses.

24 (3) "Transportation project" means [*a public or nonprofit entity that provides*] transit services
25 **provided** to members of the public [*and*] **by a public or nonprofit entity** that receives state or
26 federal funding for those services, or an alternative fuel vehicle infrastructure project.

27 **SECTION 6.** ORS 469B.326 is amended to read:

28 469B.326. (1) Prior to the acquisition or performance of a transportation project, a person may
29 apply to the State Department of Energy for preliminary certification for the project under ORS
30 469B.329 if:

31 (a) The project complies with the standards adopted by the Director of the State Department
32 of Energy; and

33 (b) The applicant will be the owner, contract purchaser or lessee of the project at the time of
34 acquisition or performance of the project.

35 (2) An application for preliminary certification shall be made in writing on a form prepared by
36 the department and shall contain:

37 (a) A statement that the applicant plans to acquire or perform a project that substantially re-
38 duces the consumption of purchased **petroleum** energy.

39 (b) A detailed description of the project and its operation and information showing that the
40 project will operate as represented in the application and remain in operation for at least five years,
41 unless the director by rule specifies another period of operation.

42 (c) Information on the amount by which consumption of purchased energy by the applicant will
43 be reduced, and, if applicable, information about the expected level of project performance.

44 (d) The anticipated total project cost.

45 [(e) *Information on the number and types of jobs that will be created by the project, the number*

1 *of jobs sustained throughout the acquisition and performance of the project.]*

2 [(f)] (e) Information demonstrating that the project will comply with applicable state and local
3 laws and regulations and obtain required licenses and permits.

4 [(g)] (f) Any other information the director considers necessary to determine whether the project
5 is in accordance with the provisions of ORS 469B.320 to 469B.347, and any applicable rules or
6 standards adopted by the director.

7 (3) An application for preliminary certification shall be accompanied by a fee established under
8 ORS 469B.335. The director may refund all or a portion of the fee if the application for certification
9 is rejected.

10 (4) The director may allow an applicant to file the application for preliminary certification after
11 the start of acquisition or performance of the project if the director finds that:

12 (a) Filing the application before the start of acquisition or performance is inappropriate because
13 special circumstances render filing earlier unreasonable; and

14 (b) The project would otherwise qualify for certification under ORS 469B.320 to 469B.347.

15 (5) Except as provided in subsection (6) of this section, a preliminary certification shall remain
16 valid for a period of three calendar years after the date on which the preliminary certification is
17 issued by the director, after which the certification becomes invalid even if:

18 (a) The applicant is awaiting identification of a pass-through partner; or

19 (b) The preliminary certification has been amended.

20 (6) Any preliminary certification for a facility consistent with a transportation project, under
21 ORS 469B.157, that remains outstanding as of July 1, 2011, shall expire on July 1, 2014.

22 **SECTION 7.** ORS 469B.332 is amended to read:

23 469B.332. (1) A final certification for a transportation project may not be issued by the Director
24 of the State Department of Energy under this section unless:

25 (a) The project was acquired or performed under a preliminary certificate of approval issued
26 under ORS 469B.329;

27 (b) The applicant demonstrates the ability to provide the information required by ORS 469B.326
28 (2) and does not violate any condition that may be imposed as described in subsection (4) of this
29 section; and

30 (c) The project was acquired or performed in accordance with the applicable provisions of ORS
31 469B.320 to 469B.347 and any applicable rules or standards adopted by the director.

32 (2) A person may apply to the State Department of Energy for final certification of a project:

33 (a) If the person received preliminary certification for the project under ORS 469B.329; and

34 (b) After completion of the acquisition or performance of the project.

35 (3) An application for final certification shall be made in writing on a form prepared by the
36 department and shall contain:

37 (a) A statement that the conditions of the preliminary certification have been complied with;

38 (b)(A) The actual cost of the project attested to by a certified public accountant who is not an
39 employee of the applicant or[,] **the applicant's completed audit in compliance with federal Office**
40 **of Management and Budget Circular A-113; or**

41 (B) If the actual cost of the project is less than \$50,000, copies of receipts for acquisition and
42 performance of the project;

43 (c) The amount of the credit under ORS 315.336 that is to be claimed;

44 [(d)] *The number and types of jobs created by the acquisition and performance of the project over*
45 *the five-year period beginning on the date of issuance of the preliminary certification under ORS*

1 469B.329;]

2 [(e)] (d) Information sufficient to demonstrate that the project will remain in operation for at
3 least five years, unless the director by rule specifies another period of operation;

4 [(f)] (e) Documentation of compliance with applicable state and local laws and regulations and
5 licensing and permitting requirements as defined by the director; and

6 [(g)] (f) Any other information determined by the director to be necessary prior to issuance of
7 a final certificate, including inspection of the project by the department.

8 (4) After the filing of the application under this section, the director may issue the certificate
9 together with any conditions that the director determines are appropriate to promote the purposes
10 of ORS 315.336 and 469B.320 to 469B.347. If the applicant is an entity subject to regulation by the
11 Public Utility Commission, the director may consult with the commission prior to issuance of the
12 certificate. The action of the director shall include certification of the actual cost of the project.
13 However, the director may not certify an amount for tax credit purposes that is more than the
14 amount of credit approved in the preliminary certificate issued for the project.

15 (5) If the director rejects an application for final certification, or certifies a lesser amount of
16 credit than was claimed in the application, the director shall send to the applicant written notice
17 of the action, together with a statement of the findings and reasons for the action, by certified mail,
18 before the 60th day after the filing of the application. Failure of the director to act constitutes re-
19 jection of the application.

20 (6) Upon approval of an application for final certification of a project, the director shall certify
21 the project. The final certification shall indicate the amount of projected energy savings attributable
22 to the project and the certified cost of the project.

23 (7) The director may establish by rule timelines and intermediate deadlines for submission of
24 application materials.

25 **SECTION 8. The amendments to ORS 469B.320, 469B.326 and 469B.332 by sections 5 to 7**
26 **of this 2012 Act apply to applications for preliminary certification submitted under ORS**
27 **469B.326 after July 1, 2011, and to tax years beginning on or after January 1, 2011.**

28 **SECTION 9.** ORS 469B.106 is amended to read:

29 469B.106. (1) Subject to the limitations in section 75, chapter 730, Oregon Laws 2011, any person
30 may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the
31 person:

32 (a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

33 (b) Meets the requirements of ORS 469B.100 to 469B.118; and

34 (c) Pays, subject to subsection (10) of this section, all or a portion of the costs of an alternative
35 energy device.

36 (2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling
37 station necessary to operate an alternative fuel vehicle.

38 (3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming a
39 tax credit for construction or installation of an alternative energy device (including a fueling sta-
40 tion) shall have the device certified by the State Department of Energy or constructed or installed
41 by a contractor certified by the department under subsection (5) of this section. This paragraph does
42 not apply to an alternative fuel vehicle or to related equipment.

43 (b) Certification of an alternative fuel vehicle or related equipment shall be accomplished under
44 rules that shall be adopted by the Director of the State Department of Energy.

45 (4) Verification of the purchase, construction or installation of an alternative energy device

1 shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall
2 contain:

3 (a) The location of the alternative energy device;

4 (b) A description of the type of device;

5 (c) If the device was constructed or installed by a contractor, evidence that the contractor has
6 any license, bond, insurance and permit required to sell and construct or install the alternative en-
7 ergy device;

8 (d) If the device was constructed or installed by a contractor, a statement signed by the con-
9 tractor that the applicant has received:

10 (A) A statement of the reasonably expected energy savings of the device;

11 (B) A copy of consumer information published by the State Department of Energy;

12 (C) An operating manual for the alternative energy device; and

13 (D) A copy of the contractor's certification certificate or alternative energy device system cer-
14 tificate for the alternative energy device, as appropriate;

15 (e) If the device was not constructed or installed by a contractor, evidence that:

16 (A) The State Department of Energy has issued an alternative energy device system certificate
17 for the alternative energy device; and

18 (B) The taxpayer has obtained all building permits required for construction or installation of
19 the device;

20 (f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device
21 was constructed or installed by a contractor, that the construction or installation meets all the re-
22 quirements of ORS 469B.100 to 469B.118 or, if the device is a fueling station and the taxpayer is the
23 contractor, a statement signed by the contractor that the construction or installation meets all of
24 the requirements of ORS 469B.100 to 469B.118;

25 (g) The date the alternative energy device was purchased;

26 (h) The date the alternative energy device was placed in service; and

27 (i) Any other information that the Director of the State Department of Energy or the Depart-
28 ment of Revenue determines is necessary.

29 (5)(a) When the State Department of Energy finds that an alternative energy device can meet
30 the standards adopted under ORS 469B.103, the Director of the State Department of Energy may
31 issue a contractor system certification to the person selling and constructing or installing the al-
32 ternative energy device.

33 (b) Any person who sells or installs more than 12 alternative energy devices in one year shall
34 apply for a contractor system certification. An application for a contractor system certification shall
35 be made in writing on a form provided by the State Department of Energy and shall contain:

36 (A) A statement that the contractor has any license, bonding, insurance and permit that is re-
37 quired for the sale and construction or installation of the alternative energy device;

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

41 (C) The addresses of three installations of the device that are available for inspection by the
42 State Department of Energy;

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

44 (E) Any important construction, installation or operating instructions; and

45 (F) Any other information that the State Department of Energy determines is necessary.

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

3 (d) The State Department of Energy may issue contractor system certificates to each contractor
4 who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and
5 installation of the same domestic water heating alternative energy devices authorized by the dealer
6 certification.

7 (e) If the State Department of Energy finds that an alternative energy device can meet the
8 standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue
9 an alternative energy device system certificate to the taxpayer constructing or installing or having
10 an alternative energy device constructed or installed.

11 (f) An application for an alternative energy device system certificate shall be made in writing
12 on a form provided by the State Department of Energy and shall contain:

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

16 (B) The constructed or installed cost of the device; and

17 (C) A statement that the taxpayer has all permits required for construction or installation of the
18 device.

19 (6) *[An applicant seeking a credit for a third-party alternative energy device installation must ob-*
20 *tain certification from the State Department of Energy under subsection (5) of this section prior to*
21 *commencing installation of alternative energy devices. An applicant may receive certifications for no*
22 *more than 25 devices under this subsection in one application.]* **Prior to commencing installation**
23 **of alternative energy devices, installers of third-party alternative energy device installations**
24 **must apply to the State Department of Energy to reserve credits on behalf of owners of**
25 **residential property. Installers may reserve credit for no more than 25 installations under**
26 **this subsection in one application.**

27 (7) To claim the tax credit, the verification form described in subsection (4) of this section shall
28 be submitted with the taxpayer's tax return for the year the alternative energy device is placed in
29 service or the immediately succeeding tax year. A copy of the contractor's certification certificate,
30 alternative energy device system certificate or alternative fuel vehicle or related equipment certif-
31 icate also shall be submitted.

32 (8) The verification form and contractor's certificate, alternative energy device system certif-
33 icate or alternative fuel vehicle or related equipment certificate described under this section shall
34 be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

35 (9) The verification form and contractor's certificate described under this section may be
36 transferred to the first purchaser of a dwelling or, in the case of construction or installation of a
37 fueling station in an existing dwelling, the current owner, who intends to use or is using the
38 dwelling as a principal or secondary residence.

39 (10) Any person that pays the present value of the tax credit for an alternative energy device
40 provided under ORS 316.116 or 317.115 and 469B.100 to 469B.118 to the person who constructs or
41 installs the alternative energy device shall be entitled to claim the credit in the manner and subject
42 to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The
43 State Department of Energy may establish by rule uniform discount rates to be used in calculating
44 the present value of a tax credit under this subsection.

45 **SECTION 10. The amendments to ORS 469B.106 by section 9 of this 2012 Act apply to al-**

1 **ternative energy devices certified by the State Department of Energy on or after January**
 2 **1, 2012, and to tax years beginning on or after January 1, 2012.**

3 **SECTION 11.** ORS 315.141 is amended to read:

4 315.141. (1) As used in this section:

5 (a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in
 6 Oregon, as biofuel or to produce biofuel.

7 (b) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been con-
 8 verted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct
 9 biomass energy use at the biofuel producer's site.

10 (c) "Biofuel producer" means a person that through activities in Oregon:

11 (A) Alters the physical makeup of biomass to convert it into biofuel;

12 (B) Changes one biofuel into another type of biofuel; or

13 (C) Uses biomass in Oregon to produce energy.

14 (d) "Biomass" means organic matter that is available on a renewable or recurring basis and that
 15 is derived from:

16 (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
 17 or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

18 (B) Wood material from hardwood timber described in ORS 321.267 (3);

19 (C) Agricultural residues;

20 (D) Offal and tallow from animal rendering;

21 (E) Food wastes collected as provided under ORS chapter 459 or 459A;

22 (F) Wood debris collected as provided under ORS chapter 459 or 459A;

23 (G) Wastewater solids; or

24 (H) Crops grown solely to be used for energy.

25 (e) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, in-
 26 organic arsenic or other inorganic chemical compounds or waste, other than matter described in
 27 paragraph (d) of this subsection.

28 (f) "Biomass collector" means a person that collects biomass in Oregon to be used, in Oregon,
 29 as biofuel or to produce biofuel.

30 (g) "Oilseed processor" means a person that receives agricultural oilseeds and separates them
 31 into meal and oil by mechanical or chemical means.

32 (2) The Director of the State Department of Energy may adopt rules to define criteria, only as
 33 the criteria apply to organic biomass, to determine additional characteristics of biomass for purposes
 34 of this section.

35 (3)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes
 36 that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
 37 chapter 317 or 318 for:

38 (A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce
 39 biofuel; or

40 (B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

41 (b) A credit under this section may be claimed in the tax year in which the credit is certified
 42 under subsection (5) of this section.

43 (c) A taxpayer may be allowed a credit under this section for more than one of the roles defined
 44 in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or
 45 a biomass collector may not claim a credit under this section.

1 **(d) The director may reduce the amount of credit allowed a taxpayer for subsequent**
 2 **processings of oilseeds.**

3 [(d)] (e) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain
 4 corn, but a tax credit shall be allowed for other corn material.

5 (4) The amount of the credit shall equal the amount certified under subsection (5) of this section.

6 (5)(a) The State Department of Energy may establish by rule procedures and criteria for deter-
 7 mining the amount of the tax credit to be certified under this section, consistent with ORS 469B.403.
 8 The department shall provide written certification to taxpayers that are eligible to claim the credit
 9 under this section.

10 (b) The State Department of Energy may charge and collect a fee from taxpayers for certif-
 11 ication of credits under this section. The fee may not exceed the cost to the department of deter-
 12 mining the amount of certified cost.

13 (c) The State Department of Energy shall provide to the Department of Revenue a list, by tax
 14 year, of taxpayers for which a credit is certified under this section, upon request of the Department
 15 of Revenue.

16 (6) The amount of the credit claimed under this section for any tax year may not exceed the tax
 17 liability of the taxpayer.

18 (7) Each agricultural producer or biomass collector shall maintain the written documentation
 19 of the amount certified for tax credit under this section in its records for a period of at least five
 20 years after the tax year in which the credit is claimed and provide the written documentation to the
 21 Department of Revenue upon request.

22 (8) The credit shall be claimed on a form prescribed by the Department of Revenue that contains
 23 the information required by the department.

24 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 25 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
 26 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
 27 forward and used in the second succeeding tax year, and likewise any credit not used in that second
 28 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
 29 credit not used in that third succeeding tax year may be carried forward and used in the fourth
 30 succeeding tax year, but may not be carried forward for any tax year thereafter.

31 (10) In the case of a credit allowed under this section:

32 (a) A nonresident shall be allowed the credit under this section in the proportion provided in
 33 ORS 316.117.

34 (b) If a change in the status of the taxpayer from resident to nonresident or from nonresident
 35 to resident occurs, the credit allowed by this section shall be determined in a manner consistent
 36 with ORS 316.117.

37 (c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the
 38 department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this
 39 section shall be prorated or computed in a manner consistent with ORS 314.085.

40 **SECTION 12.** ORS 317.154 is amended to read:

41 317.154. (1) A credit against taxes otherwise due under this chapter shall be allowed for quali-
 42 fied research expenses that exceed 10 percent of Oregon sales.

43 (2) For purposes of this section:

44 (a) "Oregon sales" shall be computed using the laws and administrative rules for calculating the
 45 numerator of the Oregon sales factor under ORS 314.665.

1 (b) "Qualified research" has the meaning given the term under section 41(d) of the Internal Re-
2 venue Code and shall consist only of research conducted in Oregon.

3 (3) The credit under this section is equal to five percent of the amount by which the qualified
4 research expenses exceed 10 percent of Oregon sales.

5 (4) The credit under this section shall not exceed \$10,000 times the number of percentage points
6 by which the qualifying research expenses exceed 10 percent of Oregon sales.

7 (5) The maximum credit under this section may not exceed \$1 million.

8 **(6) A deduction may not be taken for the portion of expenses or payments, otherwise**
9 **allowable as a deduction, that is equal to the amount of the credit claimed under this section.**

10 [(6)] (7) Any tax credit that is otherwise allowable under this section and that is not used by
11 the taxpayer in that year may be carried forward and offset against the taxpayer's tax liability for
12 the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may
13 be carried forward and used in the second succeeding tax year, and likewise any credit not used in
14 that second succeeding tax year may be carried forward and used in the third succeeding tax year,
15 and any credit not used in that third succeeding tax year may be carried forward and used in the
16 fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be car-
17 ried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax
18 year thereafter.

19 **SECTION 13.** ORS 315.341 is amended to read:

20 315.341. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
21 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of a
22 renewable energy resource equipment manufacturing facility during the period for which the facility
23 is certified under ORS 285C.540 to 285C.559. The credit allowed under this section in each of five
24 succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the
25 tax liability of the taxpayer.

26 (2) In order for a tax credit to be allowable under this section:

27 (a) The facility must be located in Oregon;

28 (b) The facility must have received:

29 (A) Final certification from the Director of the Oregon Business Development Department under
30 ORS 285C.540 to 285C.559; or

31 (B) Final certification from the Director of the State Department of Energy under ORS 469B.130
32 to 469B.169, prior to January 1, 2012; and

33 (c) The taxpayer must be an eligible applicant under ORS 285C.547 (1)(b).

34 (3) The total amount of credit allowable to an eligible taxpayer under this section may not ex-
35 ceed 50 percent of the certified cost of a facility.

36 (4)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
37 facility, notice thereof shall be given to the Director of the Oregon Business Development Depart-
38 ment, who shall revoke the certificate covering the facility as of the date of such disposition.

39 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new cer-
40 tificate under ORS 285C.553. The new lessor or owner must meet the requirements of ORS 285C.540
41 to 285C.559 and may claim a tax credit under this section only if all moneys owed to the State of
42 Oregon have been paid, the facility continues to operate, unless continued operation is waived by
43 the Oregon Business Development Department, and all conditions in the final certification are met.
44 The tax credit available to the new owner shall be limited to the amount of credit not claimed by
45 the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all

1 previous leases.

2 *[(c) A transferee holding a credit that has been transferred under ORS 285C.549 may not claim the*
3 *tax credit under this section for any tax year prior to the tax year in which the transferee obtained the*
4 *credit.]*

5 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
6 particular year may be carried forward and offset against the taxpayer's tax liability for the next
7 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
8 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
9 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
10 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
11 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
12 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
13 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
14 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
15 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
16 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
17 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
18 yond the years specified in subsection (1) of this section only as provided in this subsection.

19 (6) The credit allowed under this section is not in lieu of any depreciation or amortization de-
20 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
21 316, 317 or 318 for such year.

22 (7) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax
23 credits allowed under this section.

24 (8) The definitions in ORS 285C.540 apply to this section.

25 **SECTION 14.** ORS 285C.557 is amended to read:

26 285C.557. (1) A certificate issued under ORS 285C.553 or 469B.161 is required for purposes of
27 obtaining tax credits in accordance with ORS 315.341. Such certification shall be granted for a pe-
28 riod not to exceed five years. The five-year period shall begin with the tax year of the applicant
29 during which the completed application for final certification of the facility under ORS 285C.553 is
30 received by the State Department of Energy.

31 **(2) If the original owner of the certificate uses any portion of the credit, the certificate**
32 **becomes nontransferable.**

33 **(3) For a transferee holding a credit that has been transferred under ORS 285C.549, the**
34 **five-year period shall begin with the tax year in which the transferee pays for the credit.**

35 **SECTION 15.** The amendments to ORS 285C.557, 315.141, 315.341 and 317.154 by sections
36 11 to 14 of this 2012 Act apply to tax years beginning on or after January 1, 2012.

37 **SECTION 16.** Section 20, chapter 913, Oregon Laws 2009, as amended by section 4, chapter 730,
38 Oregon Laws 2011, is amended to read:

39 **Sec. 20.** (1) A credit may not be claimed under ORS 317.122 (1) for tax years beginning on or
40 after January 1, 2018.

41 **(2) A credit may not be claimed under ORS 317.122 (2) for tax years beginning on or after**
42 **January 1, 2012.**

43 **SECTION 17.** ORS 315.516 is amended to read:

44 315.516. (1) **In any fiscal year, the amount of tax credits allowed under ORS 315.514 may**
45 **be reduced or eliminated, and the Legislative Assembly may, no later than 30 days prior to**

1 **the end of each fiscal year**, in lieu of the issuance of certifications for tax credit under ORS
 2 315.514 by the Oregon Film and Video Office, [*the Legislative Assembly may, no later than 30 days*
 3 *prior to the end of each fiscal year, appropriate*] **make an appropriation** to the Oregon Business
 4 Development Department for deposit into the Oregon Production Investment Fund [*an amount equal*
 5 *to the total amount that would otherwise be certified for tax credits during the upcoming fiscal year,*
 6 *based on the amount of contributions and accompanying applications for credit received by the office*
 7 *during the fiscal year*].

8 (2) If the Legislative Assembly makes the election allowed in subsection (1) of this section[.],
 9 [(a)] any contributions to the Oregon Production Investment Fund made for the upcoming fiscal
 10 year and for which an application for a credit under ORS 315.514 is [*pending*] **denied** shall, at the
 11 request of the taxpayer, be refunded by the Oregon Film and Video Office[; and]

12 [(b) A credit under ORS 315.514 may not be claimed for any contribution made during the current
 13 fiscal year].

14 **SECTION 18. The amendments to ORS 315.516 by section 17 of this 2012 Act apply to tax**
 15 **credit certifications issued by the Oregon Film and Video Office on or after June 30, 2012.**

16 **SECTION 19.** ORS 469B.285 is amended to read:

17 469B.285. (1) Prior to the installation or construction of an energy conservation project, any
 18 person may apply to the State Department of Energy for preliminary certification under ORS
 19 469B.288 if:

20 (a) The project complies with the standards adopted by the Director of the State Department
 21 of Energy; and

22 (b) The applicant will be the owner, contract purchaser or lessee of the project at the time of
 23 installation or construction of the project.

24 (2) An application for preliminary certification shall be made in writing on a form prepared by
 25 the department and shall contain:

26 (a) A statement that the applicant plans to acquire, construct or install a project that substan-
 27 tially reduces the consumption of purchased energy or uses energy more efficiently.

28 (b) A detailed description of the project and its operation and information showing that the
 29 project will operate as represented in the application and remain in operation for at least five years,
 30 unless the director by rule specifies another period of operation.

31 (c) Information on the amount by which consumption of purchased energy by the applicant will
 32 be reduced, and, if applicable, information about the expected level of sustainable building practices
 33 project performance.

34 (d) The anticipated total project cost.

35 [(e) Information on the number and type of jobs that will be created by the project, the number of
 36 jobs sustained throughout the construction, installation and operation of the project and the benefits
 37 of the project with regard to overall economic activity in this state.]

38 [(f)] (e) Information demonstrating that the project will comply with applicable state and local
 39 laws and regulations and obtain required licenses and permits.

40 [(g)] (f) Information relating to the standards described in ORS 469B.279.

41 [(h)] (g) A recommendation for a research and development project as demonstrative of inno-
 42 vation that has been made by a qualified third party selected by the director.

43 [(i)] (h) Any other information the director considers necessary to determine whether the project
 44 is in accordance with the provisions of ORS 469B.270 to 469B.306, and any applicable rules or
 45 standards adopted by the director.

1 (3) An application for preliminary certification shall be accompanied by a fee established under
 2 ORS 469B.294. The director may refund all or a portion of the fee if the application for certification
 3 is rejected.

4 (4) The director may allow an applicant to file the application for preliminary certification after
 5 the start of installation or construction of the project if the director finds that:

6 (a) Filing the application before the start of installation or construction is inappropriate because
 7 special circumstances render filing earlier unreasonable; and

8 (b) The project would otherwise qualify for certification under ORS 469B.270 to 469B.306.

9 (5) The director may, by rule, waive preliminary certification under ORS 469B.288, or may es-
 10 tablish an informational filing system in place of preliminary certification, for projects that:

11 (a) Have eligible costs of less than \$20,000;

12 (b) Consist of measures that the director determines to be eligible for waiver of preliminary
 13 certification; and

14 (c) Comply with any other requirements established by the director.

15 (6) Except as provided in subsection (7) of this section, a preliminary certification shall remain
 16 valid for a period of three calendar years after the date on which the preliminary certification is
 17 issued by the director, after which the certification becomes invalid even if:

18 (a) The applicant is awaiting identification of a pass-through partner; or

19 (b) The preliminary certification has been amended.

20 (7) Any preliminary certification for a facility consistent with an energy conservation project,
 21 under ORS 469B.157, that remains outstanding as of July 1, 2011, shall expire on July 1, 2014.

22 **SECTION 20.** ORS 469B.291 is amended to read:

23 469B.291. (1) The Director of the State Department of Energy may issue a final certification for
 24 an energy conservation project under this section only if:

25 (a) The project was installed or constructed under a preliminary certificate of approval issued
 26 under ORS 469B.288, unless preliminary certification is waived under ORS 469B.285 (5);

27 (b) The applicant demonstrates the ability to provide the information required by ORS 469B.285
 28 (2) and does not violate any condition that may be imposed as described in subsection (4) of this
 29 section; and

30 (c) The project was installed or constructed in accordance with the applicable provisions of ORS
 31 469B.270 to 469B.306 and any applicable rules or standards adopted by the director.

32 (2) Any person may apply to the State Department of Energy for final certification of a project:

33 (a) If the person received preliminary certification for the project under ORS 469B.288; and

34 (b) After completion of the installation or construction of the project.

35 (3) An application for final certification shall be made in writing on a form prepared by the
 36 department and shall contain:

37 (a) A statement that the conditions of the preliminary certification have been complied with;

38 (b) The actual cost of the project attested to by a certified public accountant who is not an
 39 employee of the applicant or, if the actual cost of the project is less than \$50,000, copies of receipts
 40 for purchase and installation of the project;

41 (c) The amount of the credit under ORS 315.331 that is to be claimed;

42 *[(d) The number and type of jobs created by the operation and maintenance of the project over the*
 43 *five-year period beginning with the year of preliminary certification under ORS 469B.288 and infor-*
 44 *mation on the benefits of the project with regard to overall economic activity in this state;]*

45 *[(e)]* (d) Information sufficient to demonstrate that the project will remain in operation for at

1 least five years, unless the director by rule specifies another period of operation;

2 [(f)] (e) Documentation of compliance with applicable state and local laws and regulations and
 3 licensing and permitting requirements as defined by the director;

4 [(g)] (f) Information, if applicable, pertaining to prior recommendation of the project by a qual-
 5 ified third party selected by the director; and

6 [(h)] (g) Any other information determined by the director to be necessary prior to issuance of
 7 a final certificate, including inspection of the project by the department.

8 (4) After the filing of the application under this section, the director may issue the certificate
 9 together with any conditions that the director determines are appropriate to promote the purposes
 10 of ORS 315.331 and 469B.270 to 469B.306. If the applicant is an entity subject to regulation by the
 11 Public Utility Commission, the director may consult with the commission prior to issuance of the
 12 certificate. The action of the director shall include certification of the actual cost of the project.
 13 However, the director may not certify an amount for tax credit purposes that is more than the
 14 amount approved in the preliminary certificate issued for the project.

15 (5) If the director rejects an application for final certification, or certifies a lesser amount of
 16 credit than was claimed in the application, the director shall send to the applicant written notice
 17 of the action, together with a statement of the findings and reasons for the action, by certified mail,
 18 before the 60th day after the filing of the application. Failure of the director to act constitutes re-
 19 jection of the application.

20 (6) Upon approval of an application for final certification of a project, the director shall certify
 21 the project. The final certification shall indicate the amount of projected energy savings attributable
 22 to the project and the total project cost.

23 (7) The director may establish by rule timelines and intermediate deadlines for submission of
 24 application materials.

25 **SECTION 21. The amendments to ORS 469B.285 and 469B.291 by sections 19 and 20 of this**
 26 **2012 Act apply to applications for preliminary certification submitted under ORS 469B.285**
 27 **after July 1, 2011, and to tax years beginning on or after January 1, 2011.**

28 **SECTION 22. This 2012 Act takes effect on the 91st day after the date on which the 2012**
 29 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

30