

House Bill 3404

Sponsored by Representative BOONE

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 and redesigns pollution control tax credit into "beyond federal requirements device" tax credit. Eliminates sunset date for credit.

Applies to beyond federal requirements device certifications issued on or after effective date of Act.

Creates Ground Water Protection Account. Continuously appropriates moneys in account to Department of Environmental Quality for ground water protection programs.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to environmental improvement tax incentives; creating new provisions; amending ORS
3 307.405, 307.430, 315.304, 465.015, 468.153, 468.155, 468.163, 468.165, 468.167, 468.170, 468.173,
4 468.185, 468.190, 468A.020 and 468A.605 and section 3, chapter 928, Oregon Laws 2001; repealing
5 ORS 468.150, 468.160, 468.172, 468.180 and 468.183; appropriating money; and prescribing an ef-
6 fective date.

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

8 **SECTION 1. ORS 307.405, 315.304 and 468.155 to 468.190 may be cited as the Environmental**
9 **and Economic Improvement Tax Incentives Program.**

10 **SECTION 2.** ORS 468.153 is amended to read:

11 468.153. [(1) *The Legislative Assembly finds that the concept of environmental responsibility has*
12 *matured beyond basic compliance with regulatory requirements to one in which citizens and businesses*
13 *voluntarily implement innovative solutions to achieve shared environmental goals.*]

14 [(2)] (1) The Legislative Assembly declares that [*a pollution control*] **an environmental im-**
15 **provement** tax credit that shifts the majority of the incentive away from compensation for basic
16 regulatory compliance and toward encouraging voluntary investment is an effective way to achieve
17 [*environmental*] **sustainability** goals.

18 [(3)] (2) The Legislative Assembly finds and declares that it is the policy of this state to promote
19 sustainability and provide incentives for the voluntary prevention, elimination, reduction or control
20 of air pollution, water pollution, solid waste and hazardous waste through the voluntary application
21 of innovative solutions to achieve the environmental goals of this state.

22 [(4)] (3) The Legislative Assembly declares it to be the policy of this state to promote social,
23 economic and environmental principles of sustainability by providing incentives to individuals and
24 businesses that support social, economic and environmental sustainability goals.

25 **SECTION 3.** ORS 468.155 is amended to read:

26 468.155. (1)[(a)] As used in ORS 468.155 to 468.190, unless the context requires otherwise, [*pol-*
27 *lution control facility* or *facility*] "**beyond federal requirements device**" or "**device**" means any
28 land, structure, building, installation, excavation, machinery, equipment or device, or any addition

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 to, reconstruction of or improvement of, land or an existing structure, building, installation, exca-
 2 vation, machinery, equipment or device reasonably used, erected, constructed or installed by any
 3 person if[.]

4 [(A)] the principal purpose of such use, erection, construction or installation is to [*comply with*
 5 *a requirement*] **exceed requirements** imposed by [*the Department of Environmental Quality,*] the
 6 federal Environmental Protection Agency [*or regional air pollution authority*] to prevent, control or
 7 reduce air, water or noise pollution or solid or hazardous waste [*or to recycle or provide for the ap-*
 8 *propriate disposal of used oil; or*], **as demonstrated by the fact that:**

9 **(a) The facility is a nonpoint source environmental improvement device or a device that**
 10 **the Environmental Quality Commission has identified by rule as reducing or controlling sig-**
 11 **nificant amounts of nonpoint source pollution, including that from confined animal feeding**
 12 **operations or agricultural field sanitation; or**

13 **(b) The facility is designed or used, in whole or part, to comply with a requirement or**
 14 **emission or effluent limit imposed by the state or a local government that is not specifically**
 15 **required by a federal statute or regulation as a numeric standard with nationwide applica-**
 16 **bility.**

17 [(B) *The sole purpose of such use, erection, construction or installation is to prevent, control or*
 18 *reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle*
 19 *or provide for the appropriate disposal of used oil.*]

20 [(b) *Such prevention, control or reduction required by this subsection shall be accomplished by:*]

21 [(A) *The disposal or elimination of or redesign to eliminate industrial waste and the use of treat-*
 22 *ment works for industrial waste as defined in ORS 468B.005;*]

23 [(B) *The disposal or elimination of or redesign to eliminate air contaminants or air pollution or*
 24 *air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;*]

25 [(C) *The substantial reduction or elimination of or redesign to eliminate noise pollution or noise*
 26 *emission sources as defined by rule of the Environmental Quality Commission;*]

27 [(D) *The use of a material recovery process which obtains useful material from material that would*
 28 *otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or*
 29 *used oil as defined in ORS 459A.555; or*]

30 [(E) *The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce*
 31 *or eliminate hazardous waste as defined in ORS 466.005.*]

32 [(2)(a) *As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” includes a non-*
 33 *point source pollution control facility.*]

34 [(b) *As used in this subsection, “nonpoint source pollution control facility” means a facility that the*
 35 *Environmental Quality Commission has identified by rule as reducing or controlling significant*
 36 *amounts of nonpoint source pollution.*]

37 [(3)] **(2)** As used in ORS 468.155 to 468.190, [*“pollution control facility” or “facility”*] **“beyond**
 38 **federal requirements device” or “device”** does not include:

39 (a) Air conditioners;

40 (b) Septic tanks or other [*facilities*] **devices** for human waste;

41 (c) Property installed, constructed or used for moving sewage to the collecting [*facilities*] **de-**
 42 **vices** of a public or quasi-public sewerage system;

43 (d) Any distinct portion of a [*pollution control facility*] **device** that makes an insignificant con-
 44 tribution to the principal or sole purpose of the [*facility*] **device** including the following specific
 45 items:

- 1 (A) Office buildings and furnishings;
- 2 (B) Parking lots and road improvements;
- 3 (C) Landscaping;
- 4 (D) External lighting;
- 5 (E) Company or related signs; *[and]*
- 6 (F) Automobiles; **and**

7 **(G) Portable wood chipping or wood grinding devices;**

8 (e) Replacement or reconstruction of all or a part of any *[facility]* **device** for which a pollution
 9 control *[facility]* **tax credit** certificate has previously been issued under ORS 468.170, except:

10 (A) If the cost to replace or reconstruct the *[facility]* **device** is greater than the like-for-like re-
 11 placement cost of the original *[facility]* **device** due to a requirement imposed by the *[department]*
 12 **Department of Environmental Quality**, the federal Environmental Protection Agency or a re-
 13 gional air pollution authority, then the *[facility]* **device** may be eligible for tax credit certification
 14 up to an amount equal to the difference between the cost of the new *[facility]* **device** and the like-
 15 for-like replacement cost of the original *[facility]* **device**; *[or]*

16 (B) If a *[facility]* **device** is replaced or reconstructed before the end of its useful life then the
 17 *[facility]* **device** may be eligible for the remainder of the tax credit certified to the original
 18 *[facility]* **device**; **or**

19 **(C) If the device meets criteria established under rules promulgated by the commission;**

- 20 (f) Asbestos abatement; or
- 21 (g) Property installed, constructed or used for cleanup of emergency spills or unauthorized re-
 22 leases, as defined by the commission.

23 **SECTION 4.** ORS 468.163 is amended to read:

24 468.163. For purposes of ORS 468.155 to 468.190, the construction or installation of a *[facility]*
 25 **beyond federal requirements device** is commenced when the person constructing or installing the
 26 *[facility]* **device** has obtained all necessary preliminary approvals and has begun continuous on-site
 27 modification, construction, installation or other activity, the completion of which will cause the
 28 person to be able to obtain certification under ORS 468.155 to 468.190. Interruptions and delays re-
 29 sulting from natural disasters, strikes, litigation or other matters beyond the control of the owner
 30 shall be disregarded in determining whether the actions undertaken by the person are continuous.
 31 The burden of demonstrating that construction or installation of a *[facility]* **device** is commenced
 32 shall be borne by the person filing an application for certification under ORS 468.165.

33 **SECTION 5.** ORS 468.165 is amended to read:

34 468.165. (1) Any person may apply to the Environmental Quality Commission for certification
 35 under ORS 468.170 of a *[pollution control facility]* **beyond federal requirements device** or portion
 36 thereof erected, constructed or installed by the person in Oregon *[if:]*.

37 *[(a) The air or water pollution control facility was erected, constructed or installed on or after*
 38 *January 1, 1967.]*

39 *[(b) The noise pollution control facility was erected, constructed or installed on or after January*
 40 *1, 1977.]*

41 *[(c) The solid waste facility was under construction on or after January 1, 1973, the hazardous*
 42 *waste or used oil facility was under construction on or after October 3, 1979, and if:]*

43 *[(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and*
 44 *(2);]*

45 *[(B) The facility will utilize material that would otherwise be solid waste as defined in ORS*

1 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by me-
 2 chanical process or chemical process or through the production, processing including presegregation,
 3 or use of, materials which have useful chemical or physical properties and which may be used for the
 4 same or other purposes, or materials which may be used in the same kind of application as its prior
 5 use without change in identity;]

6 [(C) The end product of the utilization is an item of real economic value;]

7 [(D) The end product of the utilization, other than a usable source of power, is competitive with
 8 an end product produced in another state; and]

9 [(E) The Oregon law regulating solid waste imposes standards at least substantially equivalent to
 10 the federal law.]

11 [(d) The hazardous waste control facility was erected, constructed or installed on or after January
 12 1, 1984, and if:]

13 [(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and
 14 (2); and]

15 [(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined
 16 in ORS 466.005.]

17 (2) The application shall be made in writing in a form prescribed by the Department of Envi-
 18 ronmental Quality and shall contain information on the actual cost of the [facility] **device**, a de-
 19 scription of the materials incorporated therein, all machinery and equipment made a part thereof,
 20 the existing or proposed operational procedure thereof, and a statement of the purpose of pre-
 21 vention, control or reduction of air, water or noise pollution or solid or hazardous waste [or recycl-
 22 ing or appropriate disposal of used oil served or to be served] by the [facility] **device** and the portion
 23 of the actual cost properly allocable to the prevention, control or reduction of air, water or noise
 24 pollution or solid or hazardous waste [or to recycling or appropriately disposing of used oil].

25 (3) The Director of the Department of Environmental Quality may require any further informa-
 26 tion the director considers necessary before a certificate is issued.

27 (4) The application shall be accompanied by a fee established under subsection (5) of this sec-
 28 tion. The fee may be refunded if the application for certification is rejected.

29 (5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the
 30 department may require of applicants for certificates issued under ORS 468.167 and 468.170. Before
 31 the adoption or revision of any such fees the commission shall estimate the total cost of the program
 32 to the department. **A base fee established by the commission shall be sufficient to allow the**
 33 **department to recoup its costs and the costs of the commission in administering the pro-**
 34 **gram.** The fees shall be based on the anticipated cost of filing, investigating, granting and rejecting
 35 the applications and shall be designed not to exceed the total cost estimated by the commission. Any
 36 excess **base** fees shall be held by the department and shall be used by the commission to reduce any
 37 future fee increases. The fee may vary according to the size and complexity of the [facility] **device**.
 38 The fees may not be considered by the commission as part of the cost of the [facility] **device** to be
 39 certified.

40 (6) The application shall be submitted after construction of the [facility] **device** is substantially
 41 completed and the [facility] **device** is placed in service and within one year after construction of the
 42 [facility] **device** is substantially completed. Failure to file a timely application shall make the [fa-
 43 cility] **device** ineligible for tax credit certification. An application may not be considered filed until
 44 it is complete and ready for processing. The commission may grant an extension of time to file an
 45 application for circumstances beyond the control of the applicant that would make a timely filing

1 unreasonable. [However, the period for filing an application may not be extended to a date beyond
2 December 31, 2008.]

3 **SECTION 6.** (1) In addition to the base fee required under ORS 468.165, an applicant for
4 certification of a beyond federal requirements device under ORS 468.170 must pay to the
5 Department of Environmental Quality a surcharge equal to 1.5 percent of the certified cost
6 of the facility.

7 (2) All moneys collected under subsection (1) of this section shall be deposited in the
8 Ground Water Protection Account established under section 17 of this 2007 Act.

9 **SECTION 7.** Section 6 of this 2007 Act is added to and made a part of ORS 468.155 to
10 468.190.

11 **SECTION 8.** ORS 468.167 is amended to read:

12 468.167. (1) Any person proposing to apply for certification for tax relief under ORS 468.155 to
13 468.190 may apply, before the completion of a [pollution control facility] **beyond federal require-**
14 **ments device**, for precertification of the [facility] **device** with the Environmental Quality Commis-
15 sion.

16 (2)(a) The application shall be made in writing in a form prescribed by the Department of En-
17 vironmental Quality. The application shall contain the following information:

18 (A) A statement of the purpose of prevention, control or reduction of air, water or noise pol-
19 lution or solid or hazardous waste or recycling [or appropriate disposal of used oil served or to be
20 served] by the [facility] **device**.

21 (B) A description of the materials for incorporation into the [facility] **device** or incorporated into
22 the [facility] **device**, machinery and equipment to be made or made a part of the [facility] **device** and
23 the proposed or existing operational procedure of the [facility] **device**.

24 (C) Any further information the Director of the Department of Environmental Quality considers
25 necessary before precertification is issued.

26 (b) The application need not contain information on the actual cost of the [facility] **device** or the
27 portion of the actual cost properly allocable to the prevention, control or reduction of air, water
28 or noise pollution or solid or hazardous waste or to recycling [or appropriately disposing of used
29 oil].

30 (c) The application shall be accompanied by a fee as provided under ORS 468.165 (5). The fee
31 may be refunded if the application for preliminary certification is rejected.

32 (3) If the commission determines that the person and the [pollution control facility] **device** will
33 be eligible for tax relief under ORS 307.405 or 315.304 if the [facility] **device** is erected, constructed,
34 reconstructed, added to, installed, improved or used in accordance with the application for precer-
35 tification, the commission shall precertify the [facility] **device** by approving the application.

36 (4) If the [facility] **device** is erected, constructed, reconstructed, added to, installed, improved
37 or used as proposed in the application for precertification, the commission's approval of the appli-
38 cation shall be prima facie evidence that the [facility] **device** is qualified for certification for tax
39 relief under ORS 468.170. However, precertification shall not ensure that a [facility] **device** erected,
40 constructed, reconstructed, added to, installed, improved or used by the precertified person will re-
41 ceive certification under ORS 468.170 or tax relief under ORS 307.405 or 315.304.

42 (5) If the commission fails or refuses to precertify a person and [facility] **device**, the person may
43 appeal as provided in ORS 468.170 (3).

44 **SECTION 9.** ORS 468.170 is amended to read:

45 468.170. (1) The Environmental Quality Commission shall act on an application for certification

1 before the 120th day after the filing of the application under ORS 468.165. The action of the com-
 2 mission shall include certification of the actual cost of the [facility] **device** and the portion of the
 3 actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution
 4 or solid or hazardous waste or to recycling [*or appropriately disposing of used oil*]. The actual cost
 5 or portion of the actual cost certified may not exceed the taxpayer's own cash investment in the
 6 [facility] **device** or portion of the [facility] **device**. Each certificate shall bear a separate serial
 7 number for each such [facility] **device**.

8 (2) If the commission rejects an application for certification, or certifies a lesser actual cost of
 9 the [facility] **device** or a lesser portion of the actual cost properly allocable to the prevention, con-
 10 trol or reduction of air, water or noise pollution or solid or hazardous waste or to recycling [*or*
 11 *appropriately disposing of used oil*] than was claimed in the application for certification, the com-
 12 mission shall cause written notice of its action, and a concise statement of the findings and reasons
 13 therefor, to be sent by registered or certified mail to the applicant before the 120th day after the
 14 filing of the application.

15 (3) If the application is rejected for any reason, including the information furnished by the ap-
 16 plicant as to the cost of the [facility] **device**, or if the applicant is dissatisfied with the certification
 17 of actual cost or portion of the actual cost properly allocable to prevention, control or reduction
 18 of air, water or noise pollution or solid or hazardous waste [*or to recycling or appropriately disposing*
 19 *of used oil*], the applicant may appeal from the rejection as provided in ORS 468.110. The rejection
 20 or the certification is final and conclusive on all parties unless the applicant takes an appeal
 21 therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commis-
 22 sion.

23 (4)(a) The commission shall certify a [*pollution control, solid waste, hazardous waste or used oil*
 24 *facility*] **device** or portion thereof, for which an application has been made under ORS 468.165, if the
 25 commission finds that the [facility] **device**:

26 (A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165
 27 (1);

28 (B) Is designed for, and is being operated or will operate in accordance with the requirements
 29 of ORS 468.155; and

30 (C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255,
 31 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468,
 32 468A and 468B and rules thereunder.

33 (b) No determination of the proportion of the actual cost of the [facility] **device** to be certified
 34 shall be made until receipt of the application.

35 (c) If one or more [facilities] **devices** constitute an operational unit, the commission may certify
 36 such [facilities] **devices** under one certificate.

37 [(d) A certificate under this section is effective for purposes of tax relief in accordance with ORS
 38 307.405 and 315.304 if, on or before December 31, 2007, erection, construction or installation of the fa-
 39 cility is completed, the facility is placed in service and the application for certification is filed with the
 40 commission under ORS 468.165.]

41 (5) A person receiving a certificate under this section may take tax relief only under ORS
 42 315.304, depending upon the tax status of the person's trade or business except that:

43 (a) A corporation organized under ORS chapter 65 or any subsequent transferee of the corpo-
 44 ration shall take tax relief only under ORS 307.405; and

45 (b)[(A)] A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62

1 relating to the incorporation of cooperative associations or the subsequent transferee of the corpo-
 2 ration may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405.
 3 The corporation shall make the election at the time of applying for the certificate[, *except that a*
 4 *corporation receiving a certificate prior to December 31, 1995, may make the election at any time on*
 5 *or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the tax*
 6 *relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the corporation*
 7 *for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making the election*
 8 *shall be waived*].

9 [(B) *In the case of a corporation making the election under subparagraph (A) of this paragraph,*
 10 *the election applies to:*]

11 [(i) *All existing or future facilities that are certified under this section, if the corporation claimed*
 12 *a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995; or]*

13 [(ii) *All future facilities that are certified under this section, if the corporation did not claim a*
 14 *credit under ORS 315.304 for a tax year beginning prior to December 31, 1995.*]

15 [(6) *If the person receiving the certificate is a partnership, each partner shall be entitled to take tax*
 16 *credit relief as provided in ORS 315.304, based on that partner's pro rata share of the certified cost*
 17 *of the facility.*]

18 [(7)] (6) Certification under this section of a [pollution control facility] **device** qualifying under
 19 ORS 468.165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall
 20 begin with the tax year of the person in which the [facility] **device** is certified under this section,
 21 except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 62 or
 22 65 the [facility] **device** shall be exempt from ad valorem taxation for a period of 20 consecutive
 23 years.

24 [(8)] (7) Portions of a [facility] **device** qualifying under ORS 468.165 (1)(c) may be certified
 25 separately under this section if ownership of the portions is in more than one person. Certification
 26 of such portions of a [facility] **device** shall include certification of the actual cost of the portion of
 27 the [facility] **device** to the person receiving the certification. The actual cost certified for all
 28 portions of a [facility] **device** separately certified under this subsection may not exceed the total cost
 29 of the [facility] **device** that would have been certified under one certificate. The provisions of ORS
 30 315.304 [(8)] (7) apply to any sale, exchange or other disposition of a certified portion of a [facility]
 31 **device**.

32 [(9)] (8) A certificate issued under this section shall state the applicable percentage of the cer-
 33 tified cost of the [facility] **device**, as determined under ORS 468.173.

34 [(10) *If the construction or installation of a facility is commenced after December 31, 2005, the fa-*
 35 *cility may be certified only if the facility or applicant is described in ORS 468.173 (3). A facility de-*
 36 *scribed in ORS 468.173 (2) for which construction or installation is commenced after December 31,*
 37 *2005, may not be certified under this section.*]

38 **SECTION 10.** ORS 468.173 is amended to read:

39 468.173. For purposes of ORS 315.304, the applicable percentage of the certified cost of a
 40 [facility] **beyond federal requirements device that is certified on or after January 1, 2007**, shall
 41 be [one of the following:] **40 percent**.

42 [(1) *If the facility is certified under ORS 468.155 to 468.190 (1999 Edition) or if construction or*
 43 *installation of the facility is commenced prior to January 1, 2001, and completed prior to January 1,*
 44 *2004, 50 percent.*]

45 [(2) *Except as provided in subsection (1) or (3) of this section, if the facility is certified pursuant*

1 to application for certification filed on or after January 1, 2002, and:]

2 [(a) Construction or installation of the facility is commenced on or after January 1, 2001, and on
3 or before December 31, 2003, 25 percent; or]

4 [(b) Construction or installation of the facility is commenced after December 31, 2003, and on or
5 before December 31, 2005, 15 percent.]

6 [(3) If certified pursuant to application for certification filed on or after January 1, 2002, 35 percent
7 if:]

8 [(a) The applicant is certified under International Organization for Standardization standard ISO
9 14001;]

10 [(b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;]

11 [(c) The facility is a nonpoint source or is regulated as a confined animal feeding operation under
12 ORS 468B.200 to 468B.230;]

13 [(d) The facility is used for material recovery or recycling, as those terms are defined in ORS
14 459.005;]

15 [(e) The facility is used in an agricultural or forest products operation and is used for energy re-
16 covery, as defined in ORS 459.005;]

17 [(f) The certified cost of the facility does not exceed \$200,000;]

18 [(g) Construction or installation of the facility is entirely voluntary and no portion of it is required
19 in order to comply with a federal law administered by the United States Environmental Protection
20 Agency, a state law administered by the Department of Environmental Quality or a law administered
21 by a regional air pollution authority;]

22 [(h) The facility is, at the time of certification, located within an enterprise zone established under
23 ORS 285C.050 to 285C.250 or within an area that has been designated a distressed area, as defined in
24 ORS 285A.010, by the Economic and Community Development Department; or]

25 [(i) The applicant demonstrates to the Department of Environmental Quality that the applicant uses
26 an environmental management system at the facility. In order for the department to determine that the
27 applicant uses an environmental management system at the facility:]

28 [(A) The applicant must have the environmental management system used at the facility reviewed
29 by an independent third party familiar with environmental management systems and submit a report
30 to the department stating that the provisions of this paragraph have been met. The report shall be ac-
31 companied by supporting materials that document compliance with the provisions of this paragraph.
32 The report shall include certification from a registered or certified environmental management auditor
33 employed by, or under contract with, the independent third party that reviewed the environmental
34 management system; or]

35 [(B) The department shall contract with an independent third party familiar with environmental
36 management systems to review the environmental management system employed at the facility. The
37 third party shall review the environmental management system, and, if the third party determines that
38 the environmental management system meets the provisions of this paragraph, a registered or certified
39 environmental management system auditor employed by, or contracted with, the third party shall certify
40 that determination to the department. The department shall recover from the applicant the costs in-
41 curred by the department as prescribed in ORS 468.073. An applicant shall be liable for the costs of
42 the department under this subparagraph without regard to whether the department certifies the facility
43 as a pollution control facility. The department may not certify a facility to which this subparagraph
44 applies until the department has received full payment from the applicant.]

45 **SECTION 11.** ORS 468.185 is amended to read:

1 468.185. (1) Pursuant to the procedures for a contested case under ORS chapter 183, the Envi-
 2 ronmental Quality Commission may order the revocation of the certification issued under ORS
 3 468.170 of any [*pollution control or solid waste, hazardous wastes or used oil facility*] **beyond federal**
 4 **requirements device**, if it finds that:

5 (a) The certification was obtained by fraud or misrepresentation; or

6 (b) The holder of the certificate has failed substantially to operate the [*facility*] **device** for the
 7 purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise
 8 pollution or solid waste, **or** hazardous wastes [*or used oil*] as specified in such certificate.

9 (2) As soon as the order of revocation under this section has become final, the commission shall
 10 notify the Department of Revenue and the county assessor of the county in which the [*facility*] **de-**
 11 **vice** is located of such order.

12 (3) If the certification of a [*pollution control or solid waste, hazardous wastes or used oil*
 13 *facility*] **device** is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax relief
 14 provided to the holder of such certificate by virtue of such certificate shall be forfeited and the
 15 Department of Revenue or the proper county officers shall proceed to collect those taxes not paid
 16 by the certificate holder as a result of the tax relief provided to the holder under any provision of
 17 ORS 307.405 and 315.304.

18 (4) Except as provided in subsection (5) of this section, if the certification of a [*pollution control*
 19 *or solid waste, hazardous wastes or used oil facility*] **device** is ordered revoked pursuant to sub-
 20 section (1)(b) of this section, the certificate holder shall be denied any further relief provided under
 21 ORS 307.405 or 315.304 in connection with such [*facility*] **device**, as the case may be, from and after
 22 the date that the order of revocation becomes final.

23 (5) The commission may reinstate a tax credit certification revoked under subsection (1)(b) of
 24 this section if the commission finds the [*facility*] **device** has been brought into compliance. If the
 25 commission reinstates certification under this subsection, the commission shall notify the Depart-
 26 ment of Revenue or the county assessor of the county in which the [*facility*] **device** is located that
 27 the tax credit certification is reinstated for the remaining period of the tax credit, less the period
 28 of revocation as determined by the commission.

29 **SECTION 12.** ORS 468.190 is amended to read:

30 468.190. (1) Subject to subsections (2), (3) and (4) of this section, in establishing the portion of
 31 costs properly allocable to the prevention, control or reduction of air, water or noise pollution or
 32 solid or hazardous waste or to recycling [*or appropriately disposing of used oil*] for [*facilities*] **beyond**
 33 **federal requirements devices** qualifying for certification under ORS 468.170, the Environmental
 34 Quality Commission shall consider the following factors:

35 (a) If applicable, the extent to which the [*facility*] **device** is used to recover and convert waste
 36 products into a salable or usable commodity.

37 (b) The estimated annual percent return on the investment in the [*facility*] **device**.

38 (c) If applicable, the alternative methods, equipment and costs for achieving the same [*pollution*
 39 *control*] **environmental improvement** objective.

40 (d) Any related savings or increase in costs which occur or may occur as a result of the in-
 41 stallation of the [*facility*] **device**.

42 (e) Any other factors which are relevant in establishing the portion of the actual cost of the
 43 [*facility*] **device** properly allocable to the prevention, control or reduction of air, water or noise
 44 pollution or solid or hazardous waste or to recycling [*or appropriately disposing of used oil*].

45 (2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments

1 of one percent. If zero percent, the commission shall issue an order denying certification.

2 (3) If the cost of the [*facility (or facilities)*] **device (or devices)** certified under one certificate)
 3 does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion
 4 that the ratio of the time the [*facility*] **device** is used for prevention, control or reduction of air,
 5 water or noise pollution or solid or hazardous waste [*or to recycling or appropriately disposing of*
 6 *used oil*] bears to the entire time the [*facility*] **device** is used for any purpose.

7 (4) In the case of a business described in ORS 315.304 (4)(a)(C)(i), the Environmental Quality
 8 Commission shall consider the factors listed in subsection (1) of this section as if the person oper-
 9 ating the [*facility*] **device** or conducting the trade or business that utilizes property requiring such
 10 a [*facility*] **device** were the applicant for the credit, regardless of whether the person is the lessee
 11 or lessor of the [*facility*] **device**.

12 (5) The commission may adopt rules establishing methods to be used to determine the portion
 13 of costs properly allocable to the prevention, control or reduction of air, water or noise pollution
 14 or solid or hazardous waste or to recycling [*or appropriately disposing of used oil*].

15 **SECTION 13.** ORS 307.405 is amended to read:

16 307.405. (1) A [*pollution control facility or facilities*] **beyond federal requirements device or**
 17 **devices** which have been constructed in accordance with the requirements of ORS 468.165 (1), and
 18 have been certified by the Environmental Quality Commission pursuant to ORS 468.170 are exempt
 19 to the extent of the highest percentage figure certified by the Environmental Quality Commission
 20 as the portion of the actual cost properly allocable to the prevention, control or reduction of pol-
 21 lution. The exemption shall be allowed only if the taxpayer is a corporation organized under ORS
 22 chapter 62 or 65, or any predecessor to ORS chapter 62 relating to incorporation of cooperative
 23 associations, or is a subsequent transferee of such a corporation. If the subsequent transferee is
 24 organized under other than ORS chapter 62 or 65, the exemption shall only be allowed if the transfer
 25 occurs after the expiration of five years from the date of original certification by the commission.

26 (2) To qualify for the ad valorem tax relief:

27 (a) The [*pollution control facility*] **device** must be erected, constructed or installed in connection
 28 with the trade or business conducted by the taxpayer on Oregon property owned or leased by said
 29 taxpayer.

30 (b) The taxpayer must be the owner of the trade or business that utilizes Oregon property re-
 31 quiring a [*pollution control facility*] **device** to prevent or minimize pollution or a person who, as a
 32 lessee under a written lease or pursuant to a written agreement, conducts the trade or business that
 33 operates or utilizes such property and who by the terms of such lease or agreement is obliged to
 34 pay the ad valorem taxes on such property. As used in this subsection, "owner" includes a contract
 35 purchaser.

36 (3) The ad valorem exemption of a [*facility*] **device** shall expire, in any event, 20 years from the
 37 date of its first certification for any owner or lessee by the Environmental Quality Commission.

38 (4) Upon any sale, exchange, or other disposition of a [*facility*] **device**, notice thereof shall be
 39 given to the Environmental Quality Commission who shall revoke the certification covering such
 40 [*facility*] **device** as of the date of such disposition. The transferee may apply for a new certificate
 41 under ORS 468.170, but the number of years of ad valorem tax exemption that may be claimed by
 42 the transferee is the remainder of the exemption period specified in subsection (3) of this section.

43 (5) If the [*facility*] **device** also functions to prevent pollution from operations conducted on other
 44 property owned or leased by the taxpayer the Environmental Quality Commission shall state in its
 45 certification of the [*facility*] **device** the percentage of the [*facility*] **device** used to prevent pollution

1 from such qualifying trade or business conducted on such qualifying property. The exemption from
 2 ad valorem taxes under this section shall be limited to such percentage of the value of the
 3 *[facility]* **device**.

4 **SECTION 14.** ORS 307.430 is amended to read:

5 307.430. (1) Upon receipt of notice of the revocation of a certification of a *[pollution control fa-*
 6 *cility]* **beyond federal requirements device** pursuant to ORS 468.185 (1)(a), the county assessor
 7 shall proceed to correct the assessment and tax roll or rolls from which the *[facility]* **device** was
 8 omitted from taxation, in the manner provided in ORS 311.216 to 311.232, and in all cases shall add
 9 interest in the manner provided in ORS 311.229. The five-year limitation provided for in ORS 311.205
 10 shall not apply to such corrections.

11 (2) Upon receipt of notice of the revocation of a certification of a *[pollution control facility]* **de-**
 12 **vice** pursuant to ORS 468.185 (1)(b), if the final revocation occurs before September 15 of any as-
 13 sessment year, the exemption otherwise allowable shall terminate and not be allowed beginning with
 14 the assessment and tax rolls prepared as of January 1 of the assessment year.

15 **SECTION 15.** ORS 315.304 is amended to read:

16 315.304. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
 17 ration, under ORS chapter 317 or 318) for a *[pollution control facility or facilities]* **beyond federal**
 18 **requirements device or devices** certified under ORS 468.170 shall be allowed if the taxpayer
 19 qualifies under subsection (4) of this section.

20 (2) For a *[facility]* **device** certified under ORS 468.170, the maximum credit allowed in any one
 21 tax year shall be the lesser of the tax liability of the taxpayer or the applicable percentage of the
 22 certified cost of the *[facility]* **device**, as determined under ORS 468.173 *[or 468.183]*, multiplied by the
 23 certified percentage allocable to pollution control, divided by the number of years of the *[facility's]*
 24 **devices** useful life. The number of years of the *[facility's]* **device's** useful life used in this calculation
 25 shall be the remaining number of years of useful life at the time the *[facility]* **device** is certified but
 26 not less than one year nor more than 10 years.

27 (3) To qualify for the credit the *[pollution control facility]* **device** must be erected, constructed
 28 or installed in accordance with the provisions of ORS 468.165 (1) and must be certified for tax relief
 29 under ORS 468.155 to 468.190.

30 (4) To qualify for a tax credit under this section:

31 (a) The taxpayer who is allowed the credit must be:

32 (A) The owner, including a contract purchaser, of the trade or business that utilizes Oregon
 33 property requiring a *[pollution control facility]* **device** to prevent or minimize pollution;

34 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
 35 operates or utilizes such property; or

36 (C) A person who, as an owner, including a contract purchaser, or lessee, owns or leases a
 37 *[pollution control facility]* **device** that is used:

38 (i) In a business that is engaged in a production activity described in 40 C.F.R. 430.20 (as of July
 39 1, 1998); or

40 (ii) For recycling, material recovery or energy recovery as defined in ORS 459.005; and

41 (b) The *[facility]* **device** must be owned or leased during the tax year by the taxpayer claiming
 42 the credit and must have been in use and operation during the tax year for which the credit is
 43 claimed.

44 *[(5) Regardless of when the facility is erected, constructed or installed, a credit under this section*
 45 *may be claimed by a taxpayer:]*

1 [(a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
2 on or after January 1, 1967.]

3 [(b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after
4 January 1, 1973.]

5 [(c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
6 January 1, 1984.]

7 [(6)] (5) For a [facility] **device** certified under ORS 468.170, the maximum total credit allowable
8 shall not exceed one-half of the certified cost of the [facility] **device** multiplied by the certified per-
9 centage allocable to pollution control.

10 [(7)] (6) The credit provided by this section is not in lieu of any depreciation or amortization
11 deduction for the [facility] **device** to which the taxpayer otherwise may be entitled under ORS
12 chapter 316, 317 or 318 for such year.

13 [(8)] (7) Upon any sale, exchange or other disposition of a [facility] **device**, notice thereof shall
14 be given to the Environmental Quality Commission who shall revoke the certification covering such
15 [facility] **device** as of the date of such disposition. [Notwithstanding ORS 468.170 (4)(c), the] **The**
16 transferee may apply for a new certificate under ORS 468.170, but the tax credit available to such
17 transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange
18 or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue
19 Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other dis-
20 position of a [facility] **device** for purposes of this subsection.

21 [(9)] (8) Any tax credit otherwise allowable under this section which is not used by the taxpayer
22 in a particular year may be carried forward and offset against the taxpayer's tax liability for the
23 next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be
24 carried forward and used in the second succeeding tax year, and likewise, any credit not used in
25 that second succeeding tax year may be carried forward and used in the third succeeding tax year,
26 but may not be carried forward for any tax year thereafter. Credits may be carried forward to and
27 used in a tax year beyond the years specified in ORS 468.170.

28 [(10)] (9) The taxpayer's adjusted basis for determining gain or loss shall not be further de-
29 creased by any tax credits allowed under this section.

30 [(11)] (10) A person described in subsection (4)(a)(C) of this section may, but need not, operate
31 the [facility] **device** or conduct a trade or business that utilizes property requiring the [facility] **de-**
32 **vice**. If more than one person has an interest under subsection (4)(a)(C) of this section in the
33 [facility] **device**, only one person may claim the credit allowed under this section. However, portions
34 of the [facility] **device** may be certified separately in the same manner as provided in ORS 468.170
35 [(8)] (7) if ownership of the portions is in more than one person. The person claiming the credit as
36 between an owner, including a contract purchaser, and lessee under this subsection shall be desig-
37 nated in a written statement signed by both the lessor and lessee of the [facility] **device**. This
38 statement shall be filed with the Department of Revenue not later than the final day of the first tax
39 year for which a tax credit is claimed.

40 [(12)(a)] (11)(a) A taxpayer may not be allowed a tax credit under this section for any tax year
41 during which the taxpayer is convicted of a felony under ORS 468.922 to 468.956 that is related to
42 the [facility] **device** for which the tax credit would otherwise be claimed, or for the four tax years
43 succeeding the tax year during which the taxpayer is convicted.

44 (b) The amount of any tax credit that is otherwise allowable under this section but for para-
45 graph (a) of this subsection shall be considered to be claimed by the taxpayer for purposes of de-

1 terminating the amount of tax credit that may be claimed in a tax year in which paragraph (a) of this
2 subsection permits the taxpayer to claim the credit.

3 **SECTION 16.** Section 3, chapter 928, Oregon Laws 2001, is amended to read:

4 **Sec. 3.** (1) Notwithstanding ORS 315.304 [(9)] (8), in the case of a [*pollution control facility*] **de-**
5 **vice** for which unexpired tax credits exist as of the tax year of the taxpayer that begins in the 2001
6 calendar year, if the [*facility*] **device** is in use and operation during the tax year immediately fol-
7 lowing the third succeeding tax year described in ORS 315.304 [(9)] (8), any credit under ORS
8 315.304 remaining unused may be carried forward to that fourth succeeding tax year. If the
9 [*facility*] **device** is in use and operation during the tax year immediately following the fourth suc-
10 ceeding tax year, any credit under ORS 315.304 remaining unused may be carried forward to that
11 fifth succeeding tax year. If the [*facility*] **device** is in use and operation during the tax year imme-
12 diately following the fifth succeeding tax year, any credit under ORS 315.304 remaining unused may
13 be carried forward to that sixth succeeding tax year, but may not be carried forward to any tax year
14 thereafter.

15 (2) For purposes of this section, unexpired tax credits include credits claimed pursuant to ORS
16 315.304 (2) and credits carried over from previous tax years pursuant to ORS 315.304 [(9)] (8).

17 **SECTION 17.** (1) **The Ground Water Protection Account is established in the State**
18 **Treasury, separate and distinct from the General Fund. Interest earned by the Ground Wa-**
19 **ter Protection Account shall be credited to the account.**

20 (2) **Moneys in the Ground Water Protection Account are continuously appropriated to the**
21 **Department of Environmental Quality for the purpose of funding ground water protection**
22 **programs.**

23 **SECTION 18.** **For purposes of pollution control devices certified under ORS 468.155 to**
24 **468.190 prior to January 1, 2007, a pollution control facility, as defined in ORS 468.155 (2005**
25 **Edition or earlier edition), shall constitute a beyond federal requirements device under ORS**
26 **468.155 to 468.190.**

27 **SECTION 19.** **ORS 468.150, 468.160, 468.172, 468.180 and 468.183 are repealed.**

28 **SECTION 20.** **The amendments to ORS 468.153, 468.155, 468.163, 468.165, 468.167, 468.170,**
29 **468.173, 468.185 and 468.190 and section 3, chapter 928, Oregon Laws 2001, by sections 2 to 5,**
30 **8 to 12 and 16 of this 2007 Act and the repeal of ORS 468.150, 468.160, 468.172, 468.180 and**
31 **468.183 by section 19 of this 2007 Act do not affect certifications issued under ORS 468.170**
32 **prior to the effective date of this 2007 Act or tax credits, under ORS 315.304, or property tax**
33 **exemptions, under ORS 307.405, that were first claimed for tax years beginning prior to the**
34 **effective date of this 2007 Act.**

35 **SECTION 21.** **The amendments to ORS 307.405, 307.430, 315.304, 468.153, 468.155, 468.163,**
36 **468.165, 468.167, 468.170, 468.173, 468.185 and 468.190 and section 3, chapter 928, Oregon Laws**
37 **2001, by sections 2 to 5 and 8 to 16 of this 2007 Act apply to certifications issued under ORS**
38 **468.155 to 468.190 or after the effective date of this 2007 Act.**

39 **SECTION 22.** ORS 465.015 is amended to read:

40 465.015. (1) Except as provided in subsection (2) of this section, a person shall, within 120 days
41 after notification in writing by the Department of Environmental Quality that the person meets the
42 definition of a toxics user, complete a toxics use reduction and hazardous waste reduction plan. At
43 a minimum, a plan shall include:

44 (a) A written policy articulating organizational support for the toxics use reduction and haz-
45 arduous waste reduction plan and a commitment by the organization to implement plan goals.

1 (b) A description of its scope and objectives, including the evaluation of technologies, procedures
2 and personnel training programs to ensure unnecessary toxic substances are not used and unneces-
3 sary waste is not generated.

4 (c) Internal analysis and periodic assessment of individual processes for toxics use and hazard-
5 ous waste generation.

6 (d) Identification of opportunities to reduce or eliminate toxics use and hazardous waste gener-
7 ation.

8 (e) Employee awareness and training programs that involve employees in toxics use reduction
9 and hazardous waste reduction planning and implementation.

10 (f) Institutionalization of the plan by incorporating the plan into management practices and
11 procedures.

12 (2) A person is not required to complete a plan if the person has implemented an environmental
13 management system[, *as defined in ORS 468.172*].

14 (3) A toxics user shall incorporate into the plan and associated decision-making process, the
15 costs of using toxic substances and generating hazardous waste. The costs may represent, among
16 other things, the costs of management, liability insurance, regulatory compliance and oversight.

17 (4) As part of each plan, a toxics user shall evaluate technically and economically practicable
18 toxics use reduction and hazardous waste reduction opportunities for:

19 (a) Any toxic substance for which the toxics user reports as a large user; and

20 (b) Any hazardous waste representing 10 percent or more by weight of the cumulative hazardous
21 waste stream generated per year.

22 (5) A toxics user shall explain the rationale for each toxics use reduction and waste reduction
23 opportunity specified in the plan, including any impediments, such as technical or economic barriers,
24 to toxics use reduction and hazardous waste reduction.

25 (6) A toxics use reduction and hazardous waste reduction plan developed under this section or
26 the documentation for an environmental management system shall be retained at the facility. To
27 the extent that a plan or system may be considered a public record under ORS 192.410, the infor-
28 mation contained in the plan or system is confidential and is exempt from public disclosure pursuant
29 to ORS 192.502.

30 (7) It is the policy of this state that plans developed under this section be kept current and that
31 the plans reflect changes in toxics use over time. In furtherance of this policy, a toxics user may
32 update its plan or modify its environmental management system to reflect any changes.

33 **(8) As used in this section, “environmental management system” means a continual cycle**
34 **of planning, implementing, reviewing and improving the actions undertaken at the facility**
35 **to meet environmental obligations and improve environmental performance that meet:**

36 **(a) The standards established by the International Organization for Standardization un-**
37 **der ISO 14001;**

38 **(b) The standards established in the Green Permit program established under ORS 468.501**
39 **to 468.521; or**

40 **(c) Other standards that meet criteria established by the Environmental Quality Com-**
41 **mission by rule.**

42 **SECTION 23.** ORS 468A.020 is amended to read:

43 468A.020. (1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution
44 laws contained in ORS chapters 468, 468A and 468B do not apply to:

45 (a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or

1 animals, except field burning which shall be subject to regulation pursuant to ORS 468.140,
2 [468.150,] 468A.555 to 468A.620 and 468A.992 and this section;

3 (b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls
4 or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140,
5 [468.150,] 468A.555 to 468A.620 and 468A.992 and this section;

6 (c) Barbecue equipment used in connection with any residence;

7 (d) Agricultural land clearing operations or land grading;

8 (e) Heating equipment in or used in connection with residences used exclusively as dwellings for
9 not more than four families, except woodstoves which shall be subject to regulation under this sec-
10 tion, ORS 468A.460 to 468A.480, 468A.490 and 468A.515;

11 (f) Fires set or permitted by any public agency when such fire is set or permitted in the per-
12 formance of its official duty for the purpose of weed abatement, prevention or elimination of a fire
13 hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the
14 agency is necessary;

15 (g) Fires set pursuant to permit for the purpose of instruction of employees of private industrial
16 concerns in methods of fire fighting, or for civil defense instruction;

17 (h) The propagation and raising of nursery stock, except boilers used in connection with the
18 propagation and raising of nursery stock;

19 (i) The propane flaming of mint stubble; or

20 (j) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the
21 period beginning October 1 and ending May 31 of the following year.

22 (2) As used in subsection (1) of this section, "field burning" does not include propane flaming
23 of mint stubble.

24 **SECTION 24.** ORS 468A.605 is amended to read:

25 468A.605. The Department of Environmental Quality, in coordinating efforts under ORS 468.140,
26 [468.150,] 468A.020, 468A.555 to 468A.620 and 468A.992, shall:

27 (1) Enforce all field burning rules adopted by the Environmental Quality Commission and all
28 related statutes; and

29 (2) Monitor and prevent unlawful field burning.

30 **SECTION 25. This 2007 Act takes effect on the 91st day after the date on which the**
31 **regular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

32