Senate Bill 316

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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.**

Creates or expands property tax exemptions for facilities producing ethanol, biofuel or certain fuel additives. Allows taxing district to opt out of exemptions. Limits period for which new facilities may claim exemption.

Creates income tax credit for production or collection of biomass used to produce biofuel. Creates income tax credit for consumer use of biofuel fuel blends or solid biofuel. Creates income tax credit for diesel engine repowers and retrofits.

Establishes renewable fuel use standards, including labeling and blending requirements. Prohibits sale of gasoline that contains certain additives. Modifies energy facility siting requirement exemptions.

Modifies reporting requirements for alternative energy device tax credit.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to energy; creating new provisions; amending ORS 215.203, 215.283, 283.327, 307.701, 308A.056, 314.752, 318.031, 469.180, 469.320, 646.905 and 646.910 and section 4, chapter 475, Oregon Laws 1993; and prescribing an effective date.

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

BIOFUEL, ETHANOL AND VERIFIED FUEL ADDITIVE FACILITIES

SECTION 1. ORS 307.701 is amended to read:

307.701. (1) As used in this section**:**

(a) "Biodiesel" means a diesel fuel substitute produced from vegetable oils, animal fats, biomass or other nonpetroleum renewable resources that meet the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency and any blending components derived from renewable fuel.

(b) "Biofuel" means biodiesel or liquid, gaseous or solid fuel produced from an organic source, including but not limited to waste and residue from agriculture, forestry or related industries or other industrial or municipal waste in any form.

(c) "Biomass":

(A) Means any organic matter that is available on a renewable or recurring basis and that is derived from wood, forest or field residues, wastewater biosolids or crops grown solely to be used for energy; and

(B) Does not include wood that has been treated with creosote, pentachlorophenol, inorganic arsenic or other chemical compounds.

(d) "Ethanol" has the meaning given [*the term under*] **that term in** ORS 646.905.

(e) "Production facility" means a facility that is used to produce ethanol, biofuel or ver-

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.

ified fuel additives.

(f) "Verified fuel additive" means a fuel additive that:

(A) Has been verified under the United States Environmental Protection Agency's Environmental Technology Verification Protocol or the California Air Resources Board verification programs; and

(B) Is composed of at least 90 percent renewable materials.

(2) Upon compliance with subsection (4) of this section, the real and personal property of [*an ethanol*] **a** production facility that meets the requirements of subsection (3) of this section is exempt from taxation. The exemption shall be 50 percent of the assessed value of the property determined under ORS 308.146. The exemption under this section may be claimed for five assessment years.

(3) [*An ethanol*] **A** production facility may qualify for exemption from taxation under this section if the facility:

(a) Is [*first*] in the process of construction, erection or installation as a new facility after July 1, 1993;

(b) Is or will be placed in service to produce ethanol**, biofuel or verified fuel additives** within [*four*] **five** years after January 1 of the first assessment year for which [*the*] **an** exemption [*under this section*] is claimed **under this section or ORS 285C.170 or 285C.175**; [*and*]

(c) Consists of newly constructed, installed or acquired property, including property that was previously owned by a different owner and used at a different location, that is first placed in service during the calendar year preceding the assessment year for which an exemption listed in paragraph (b) of this subsection is claimed; and

[*(c)*] **(d)** Within [*four*] **five** years after January 1 of the first assessment year for which [*the*] **an** exemption [*under this section*] **listed in paragraph (b) of this subsection** is claimed, is or will be certified by the State Department of Agriculture as a facility that produces**:**

(A) Ethanol capable of blending or mixing with gasoline. The blend or mixture shall meet the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. 7545 and 40 C.F.R. Part 79[.]**;**

(B) Biofuel; or

(C) Verified fuel additives.

(4)(a)**(A)** In order to claim an exemption from taxation under this section for any assessment year, the owner of [*an ethanol*] **a** production facility shall file with the county assessor, on or before April 1 of the year for which exemption is claimed, a statement verified by the oath or affirmation of the owner listing all real and personal property claimed to be exempt and showing the purpose for which the property will be or is used.

(B) In the case of a biofuel production facility or a verified fuel additive production facility, in addition to the requirements of subparagraph (A) of this paragraph, the owner claiming exemption shall do all of the following:

(i) Prepare a list of the taxing districts in which the property is located.

(ii) Send a written notice to each taxing district. The notice must:

(I) State that the claimant is seeking a property tax exemption under this section;

(II) State that a taxing district may elect not to participate in the exemption, in which case taxes of the district will continue to be imposed on the property of the claimant; and

(III) Comply with any other requirements established by the Department of Revenue.

(iii) Include a copy of the list of taxing districts and notice prepared under this subpar-

agraph with the claim for exemption.

(b) If the ownership and use of the **production facility** property included in the statement **described in paragraph (a)(A) of this subsection and** filed for a prior year remain the same, a new statement [*shall not be*] **is not** required. However, if the ownership or use changes, or if the facility property is added to or retired, a new statement is required and the property [*shall*] **may** not be exempt under this section if the statement is not filed. The new statement shall be filed no later than December 31 of the year to which the statement pertains.

(5) If the **production** facility property is not placed in service within the time required under subsection (3) of this section, or if the certification required under subsection (3) of this section is not obtained within the required time, then the [*facility*] property shall not be exempt for any year under this section. For any year for which the property has been granted exemption under this section, the county assessor shall add the property to the assessment and tax roll as omitted property in the manner provided under ORS 311.216 to 311.232.

SECTION 2. (1) A city, county or other local taxing district with property tax authority may elect not to participate in the exemptions for a biofuel production facility or a verified fuel additive production facility granted under ORS 307.701.

(2) A taxing district may make the election by filing written notification of the election with the county assessor of the county in which the taxing district is located before July 1 of the first tax year for which the election is to be effective.

(3) An election made under this section shall be valid for all tax years following the year for which the election is first made, until the election is revoked by the taxing district.

(4) A taxing district may revoke an election made under this section by filing written notification of the revocation with the county assessor of the county in which the taxing district is located before July 1 of the first tax year for which the revocation is to be effective.

(5) The written notifications of election and revocation described in this section shall contain the information and be in the form prescribed by the Department of Revenue.

(6) An election or revocation made under this section applies to all biofuel production facility property or verified fuel additive production facility property within the taxing district:

(a) For which a claim has been filed under ORS 307.701; and

(b) That qualifies for exemption under ORS 307.701.

SECTION 3. The amendments to ORS 307.701 by section 1 of this 2007 Act apply to production facilities for which a claim for exemption under ORS 307.701 is first filed on or after January 1, 2008, for tax years beginning on or after July 1, 2008.

SECTION 4. Section 4, chapter 475, Oregon Laws 1993, is amended to read:

Sec. 4. [*(1) An ad valorem property tax exemption provided by section 2 of this Act is first applicable to the tax year beginning July 1, 1994.*]

[*(2) Section 2 of this Act is repealed on July 1, 2008. The repeal applies to tax years beginning on or after July 1, 2008. Notwithstanding that an ethanol production facility has not received five years of exemption under section 2 of this Act, no exemption for the facility shall be granted under section 2 of this Act for a tax year beginning on or after July 1, 2008.*] **An exemption for a production facility may not be granted under ORS 307.701 for any production facility that has not qualified for at least one year of exemption as of July 1, 2014.**

PRODUCERS OF BIOFUEL RAW MATERIALS

SECTION 5. Sections 6 and 7 of this 2007 Act are added to and made a part of ORS chapter 315.

SECTION 6. (1) As used in this section and section 9 of this 2007 Act:

(a) "Agricultural producer" means a person that produces plant or animal matter that is used in Oregon as biofuel or to produce biofuel.

(b) "Biofuel" has the meaning given that term in ORS 307.701.

(c) "Biomass" means any of the following that are transferred to a biofuel producer by an agricultural producer or a biomass collector:

(A) Plant or animal matter;

(B) Forest products;

(C) Wood waste;

(D) Forest, farmland or rangeland vegetative matter;

(E) Wastewater biosolids; or

(F) Waste grease.

(d) "Biomass collector" means a person that collects forest products, wood waste, wastewater biosolids, waste grease or forest, farmland or rangeland vegetative matter that is used in Oregon as biofuel or to produce biofuel.

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

(A) The production of biomass that is used to produce biofuel in this state; or

(B) The collection of biomass that is used to produce biofuel in this state.

(b) A credit under this section shall be allowed only:

(A) For the tax year in which the agricultural producer or biomass collector transfers biomass to a biofuel producer; and

(B) If the taxpayer has obtained tax credit certification from the State Department of Energy under section 9 of this 2007 Act.

(3) The amount of the credit shall be calculated as follows:

(a) Determine the quantity of biomass transferred to a biofuel producer during the tax year;

(b) Categorize the biomass into appropriate categories as prescribed in rules adopted under section 9 of this 2007 Act; and

(c) Multiply the quantity of biomass in a particular category by the appropriate credit rate for that category, expressed in dollars and cents, that is prescribed in rules adopted under section 9 of this 2007 Act.

(4) Notwithstanding subsection (3) of this section, the credit may not exceed:

(a) One dollar per million Btu of biofuel;

(b) The amount stated on the tax credit certification issued under section 9 of this 2007 Act; and

(c) Except as provided in subsection (7) of this section, the tax liability of the taxpayer.

(5)(a) A biofuel producer shall provide a written receipt to an agricultural producer or biomass collector at the time biomass is transferred from the agricultural producer or biomass collector to the biofuel producer. The receipt must state the quantity and type of

biomass being transferred and that the biomass is to be used to produce biofuel.

(b) Each agricultural producer or biomass collector shall maintain the receipts described in this subsection in their records for a period of at least five years after the tax year in which the credit is claimed or for a longer period of time prescribed by the Department of Revenue.

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

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

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

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

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

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

SECTION 7. (1) A person that has obtained a tax credit certification under section 9 of this 2007 Act may transfer the certification for consideration to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

(2) In order to transfer the certification, the person that obtained the certification and the taxpayer that will claim the credit under section 6 of this 2007 Act shall jointly file a notice of tax credit certification transfer with the Department of Revenue. The notice shall be given on a form prescribed by the department that contains all of the following:

(a) The name, address and taxpayer identification number of the transferor and transferee of the certification;

(b) The amount certified as eligible for a tax credit under section 6 of this 2007 Act; and

(c) Any other information required by the department.

(3) A tax credit certification may not be transferred under this section if the person to whom the certification was issued has claimed any portion of the tax credit:

(a) Allowed under section 6 of this 2007 Act; and

(b) Authorized by the certification.

SECTION 8. Section 9 of this 2007 Act is added to and made a part of ORS chapter 469.

SECTION 9. (1) The State Department of Energy shall by rule:

(a) Identify categories of biomass that, when used by a biofuel producer to produce biofuel in this state, qualify for a tax credit under section 6 of this 2007 Act; and

(b) Establish a dollar rate per quantity of biomass in each category identified in rules

adopted under paragraph (a) of this subsection, to be used to calculate the amount of credit allowed under section 6 of this 2007 Act.

(2)(a) The department shall review rules adopted under subsection (1) of this section at least annually.

(b) Rules adopted under subsection (1) of this section must state the income and corporate excise tax years to which the rules apply.

(3)(a) Each agricultural producer or biomass collector seeking a tax credit under section 6 of this 2007 Act shall apply for and obtain a tax credit certification from the department. The producer or collector shall apply to the department for certification:

(A) In the calendar year in which begins the tax year for which the credit will be claimed under section 6 of this 2007 Act; and

(B) For the specific amount of biomass for which certification is sought.

(b) The application shall be on a form prescribed by the department that contains the information required by the department, including the amount of tax credit the taxpayer intends to claim.

(c) The department shall process applications in the order in which the applications are filed and shall certify the amount stated on the application, or a lesser amount that the department determines is within the annual limit set forth in subsection (4) of this section. The department may deny an application for tax certification if the application is incomplete or if the department determines that the application does not state a reasonable basis for the allowance of any tax credit under section 6 of this 2007 Act.

(d) The department shall give written notice of the certified amount to the applicant.

(4) For each calendar year, the department may not certify more than $_____ per applicant as eligible for a tax credit under section 6 of this 2007 Act.

(5)(a) A decision to deny certification or to certify a lesser amount than was sought in the application for certification may be appealed to the department as a contested case under ORS chapter 183.

(b) Notwithstanding paragraph (a) of this subsection, a decision to deny certification or to certify a lesser amount may not be appealed if the reason for the decision is that certification of the amount sought in the application would result in exceeding the annual limitation on total certification described in subsection (4) of this section.

(6) The definitions in section 6 of this 2007 Act apply to this section.

SECTION 10. Sections 6, 7 and 9 of this 2007 Act apply to tax credit certifications issued under section 9 of this 2007 Act for tax years beginning on or after January 1, 2008, and before January 1, 2013.

SECTION 11. ORS 314.752 is amended to read:

314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the

manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) **and section 6 of this 2007 Act (biomass production for biofuel)**.

SECTION 12. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 6 of this 2007 Act** (all only to the extent applicable [*for*] **to** a corporation) and ORS chapter 317.

RENEWABLE FUEL STANDARDS

SECTION 13. ORS 646.905 is amended to read:

646.905. As used in ORS 646.910 to 646.920:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH(2n+1)OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Biodiesel" means a diesel fuel substitute produced from nonpetroleum renewable resources (inclusive of vegetable oils, animal fats and biomass) that meet the registration requirements for fuels and fuel additives established by the United States Environmental Protection Agency and any blending components derived from renewable fuel.

[*(2)*] **(3)** "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

[*(3)*] **(4)** "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[*(4)*] **(5)** "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or un-

leaded.

[*(5)*] **(6)** "Methanol" means methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[*(6)*] **(7)** "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

[*(7)*] **(8)** "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to nonretail customers.

[*(8)*] **(9)** "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

[*(9)*] **(10)** "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another.

SECTION 14. Sections 15, 16, 18 and 19 of this 2007 Act are added to and made a part of ORS 646.910 to 646.920.

SECTION 15. (1) The State Department of Agriculture shall study and monitor biodiesel production, use and sales in this state.

(2) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least five million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (4) of this section.

(3) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least 15 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (4) of this section.

(4) The notice under subsections (2) and (3) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of biodiesel has reached the level described in subsection (2) or (3) of this section; and

(b) Three months from the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale only diesel fuel described in section 16 of this 2007 Act.

SECTION 16. (1) Three months after the date of the notice given under section 15 (2) of this 2007 Act, a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume.

(2) Three months after the date of the notice given under section 15 (3) of this 2007 Act, a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume.

(3) The State Department of Agriculture shall adopt standards for biodiesel sold in this state. The department shall consult the specifications established for biodiesel in ASTM International specification D6751-06a, or similar specifications, in forming its standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content requirement under subsections (1) and (2) of this

section does not apply to diesel fuel sold or offered for sale for use by railroad locomotives.

(5) A retail dealer that offers diesel fuel for sale shall place a label on each fuel pump at the dealer's location that states the percentage by volume of biodiesel in the fuel being sold and:

(a) That the biodiesel was produced in the northwest if the biodiesel was produced in Oregon, Washington, Idaho or Montana; or

(b) That the biodiesel was produced outside of the northwest if the biodiesel was produced outside of Oregon, Washington, Idaho and Montana.

(6)(a) The blending of diesel fuel and biodiesel required by subsections (1) and (2) of this section must occur at the terminal storage facility from which the first sale, use or distribution of the diesel fuel occurs.

(b) The definitions of "first sale, use or distribution" and "terminal storage facility" in ORS 319.010 apply to this section.

SECTION 17. Section 16 of this 2007 Act becomes operative on a date that is three months following the date of the first notice required under section 15 of this 2007 Act.

SECTION 18. (1) The State Department of Agriculture shall study and monitor the ethanol fuel production, use and sales in this state.

(2) When production of ethanol in this state reaches a level of at least 90 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of ethanol has reached the levels described in subsection (2) of this section; and

(b) Three months from the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale only gasoline described in section 19 of this 2007 Act.

SECTION 19. (1) A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale gasoline unless the gasoline contains at least 10 percent ethanol by volume.

(2) Gasoline containing ethanol that is sold or offered for sale meets the requirements of this section if the gasoline, exclusive of denaturants and permitted contaminants, contains not less than 9.2 percent by volume of agriculturally derived, denatured ethanol that complies with the standards for ethanol adopted by the State Department of Agriculture.

(3) The department shall adopt standards for ethanol blended with gasoline sold in this state. The standards adopted shall require that the gasoline blended with ethanol:

(a) Contains ethanol that is derived from agricultural or woody waste or residue;

(b) Contains ethanol denatured as specified in 27 C.F.R. parts 20 and 21;

(c) Complies with the volatility requirements specified in 40 C.F.R. part 80;

(d) Complies with or is produced from a gasoline base stock that complies with ASTM International specification D4814-06, or an equivalent standard;

(e) Is not blended with casinghead gasoline, absorption gasoline, drip gasoline or natural gasoline after it has been sold, transferred or otherwise removed from a refinery or terminal; and

(f) Complies with ASTM International specification D4806-06a, or an equivalent standard.

(4) The department may review specifications adopted by ASTM International, or equiv-

alent organizations, and federal regulations and revise the standards adopted pursuant to this section as necessary.

(5) A retail dealer that offers gasoline for sale shall place a label on each fuel pump at the dealer's location that states the percentage by volume of ethanol in the fuel being sold and:

(a) That the ethanol was produced in the northwest if the ethanol was produced in Oregon, Washington, Idaho or Montana; or

(b) That the ethanol was produced outside of the northwest if the ethanol was produced outside of Oregon, Washington, Idaho and Montana.

(6)(a) The blending of gasoline and ethanol required by subsection (1) of this section must occur at the terminal storage facility from which the first sale, use or distribution of the blended gasoline occurs.

(b) The definitions of "first sale, use or distribution" and "terminal storage facility" in ORS 319.010 apply to this section.

SECTION 20. Section 19 of this 2007 Act becomes operative on a date that is three months following the date of the notice required under section 18 of this 2007 Act.

GASOLINE ADDITIVE RESTRICTIONS

SECTION 21. ORS 646.910 is amended to read:

646.910. [*No*] **(1) A** wholesale or retail dealer may **not** sell or offer to sell any gasoline blended or mixed with**:**

(a) [*Alcohol*] **Ethanol** unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79[.]**;**

(b) Methyl tertiary butyl ether in concentrations that exceed five-tenths of one percent by volume; or

(c) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of:

(A) Diisopropylether.

(B) Ethyl tert-butylether.

(C) Iso-butanol.

(D) Iso-propanol.

(E) N-butanol.

(F) N-propanol.

(G) Sec-butanol.

(H) Tert-amyl methyl ether.

(I) Tert-butanol.

(J) Tert-pentanol or tert-amyl alcohol.

(K) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

(2) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed five-tenths of one percent by volume or any of the oxygenates listed in subsection (1)(c) of this section, provided:

(a) The gasoline is used or disposed of outside this state; and

(b) The gasoline is segregated from gasoline intended for use within this state.

SECTION 22. The amendments to ORS 646.910 by section 21 of this 2007 Act become operative November 1, 2009.

SECTION 22a. Section 22b of this 2007 Act is added to and made a part of ORS 646.910 to 646.920.

SECTION 22b. Notwithstanding ORS 646.910, a person may sell, supply or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board, the California Environmental Policy Council or the United States Environmental Protection Agency allows the use of the oxygenate.

STATE GOVERNMENT USE OF BIOFUEL

SECTION 23. ORS 283.327 is amended to read:

283.327. (1) To the maximum extent economically possible, state-owned motor vehicles shall use alternative fuel for operation.

(2) State agencies shall acquire only motor vehicles capable of using alternative fuel, except that acquired vehicles assigned to areas unable economically to dispense alternative fuel need not be so configured.

(3) Each agency owning motor vehicles shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

(4) To the maximum extent economically possible, state-owned structures shall use biofuel, or direct-application electricity generated from biofuel, where diesel is currently utilized for stationary or back-up generation.

BIOFUEL CONSUMER INCOME TAX CREDIT

SECTION 24. Section 25 of this 2007 Act is added to and made a part of ORS chapter 315.

SECTION 25. (1) As used in this section:

(a) "Alternative fuel vehicle" means a motor vehicle that can operate on a fuel blend.

(b) "Biodiesel" has the meaning given that term in ORS 307.701.

(c) "Biomass" has the meaning given that term in section 6 of this 2007 Act.

(d) "Bone dry ton" means matter that is dried to less than one percent moisture content and that weighs 2,000 pounds.

(e) "Fuel blend" means diesel fuel of blends equal to or exceeding 99 percent biodiesel or gasoline of a blend equal to or exceeding 85 percent methanol or ethanol.

(2)(a) A resident individual shall be allowed a credit against the taxes otherwise due under ORS chapter 316 for costs paid or incurred to purchase fuel blends for use in an alternative fuel vehicle.

(b) A resident individual shall be allowed a credit against the taxes otherwise due under ORS chapter 316 for costs paid or incurred to purchase forest or agriculture waste or residue solid biofuel that contains 100 percent biomass.

(3) The amount of the credit shall be calculated as follows:

(a) Determine the quantity of fuel blend or solid biofuel purchased by the taxpayer during

the tax year;

(b) Categorize the fuel blend or solid biofuel as prescribed in rules adopted under section 28 of this 2007 Act; and

(c) Multiply the quantity of fuel blend or solid biofuel in a particular category by the appropriate credit rate for that category, expressed in dollars and cents, that is prescribed in rules adopted under section 28 of this 2007 Act.

(4) Notwithstanding subsection (3) of this section:

(a) The credit allowed under this section for diesel blended fuel may not exceed $0.50 per gallon and in any one tax year may not exceed $200 per Oregon registered motor vehicle that is owned or leased by the taxpayer under a lease of greater than 30 days′ duration and that is capable of using a fuel blend.

(b) The credit allowed under this section for gasoline blended fuel may not exceed $0.50 per gallon and in any one tax year may not exceed $200 per Oregon registered motor vehicle that is owned or leased by the taxpayer under a lease of greater than 30 days′ duration and that is capable of using a fuel blend.

(c) The credit allowed under this section for forest or agriculture waste or residue solid biofuel may not exceed $10 per bone dry ton of solid biofuel and in any one tax year may not exceed $200 per taxpayer.

(d) The credit allowed under this section in any one tax year may not exceed the tax liability of the taxpayer and may not be carried forward to a subsequent tax year.

(5) For each tax year for which a credit is claimed under this section, the taxpayer shall maintain records sufficient to determine the taxpayer′s purchase of qualifying fuel blends. A taxpayer shall maintain the records required under this subsection for at least five years.

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

(7) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer′s taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

(9) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

SECTION 26. Section 25 of this 2007 Act applies to tax years beginning on or after January 1, 2007, and before January 1, 2012.

SECTION 27. Section 28 of this 2007 Act is added to and made a part of ORS chapter 469.

SECTION 28. (1) The State Department of Energy shall by rule:

(a) Identify categories of fuel blend and solid biofuel that qualify for the personal income tax credit allowed under section 25 of this 2007 Act; and

(b) Subject to section 25 (4) of this 2007 Act, for each category identified in rules adopted under this section, prescribe a dollar rate per quantity of fuel blend or solid biofuel, to be used to calculate the amount of credit allowed under section 25 of this 2007 Act.

(2) The department shall review rules adopted under this section at least annually.

SECTION 29. The State Department of Energy shall adopt rules under section 28 of this 2007 Act on or before 60 days after the effective date of this 2007 Act.

ENERGY FACILITY SITING PROCESS; EXCEPTIONS

SECTION 30. ORS 469.320 is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) A site certificate is not required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Exclusively uses **biomass, including but not limited to** grain, whey, potatoes, oil seeds, waste vegetable oil or cellulosic biomass**,** as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; [*and*]

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling

facility located within one mile of the facility or is transported from the facility by rail or barge**; and**

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

(g) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this

section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(8) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

EXCLUSIVE FARM USE FOR ON-FARM BIOFUEL PRODUCTION

SECTION 31. ORS 215.203 is amended to read:

215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use**, including the commercial processing of farm crops into biofuel**. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

(b) "Current employment" of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3); and

(K) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training of greyhounds for racing.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a marketable species;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

SECTION 32. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,

grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

(k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(L) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(m) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(n) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for

activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops **or the production of biofuel that is** located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be ap-

plied in a manner that prohibits the siting of the processing facility.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(z) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(u) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center au-

thorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(s) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in subsection (1)(j) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the

county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscaping business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

SECTION 33. ORS 308A.056 is amended to read:

308A.056. (1) As used in ORS 308A.050 to 308A.128, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by:

(a) Raising, harvesting and selling crops;

(b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;

(c) Dairying and selling dairy products;

(d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

(e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

(f) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;

(g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land described in this section; [*or*]

(h) Commercial processing of farm crops into biofuel; or

[*(h)*] **(i)** Using land described in this section for any other agricultural or horticultural use or animal husbandry or any combination thereof.

(2) "Farm use" does not include the use of land subject to timber and forestland taxation under ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood).

(3) For purposes of this section, land is currently employed for farm use if the land is:

(a) Farmland, the operation or use of which is subject to any farm-related government program;

(b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of this subsection, prior to maturity;

(d) Land not in an exclusive farm use zone that has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that is not currently being used for any economic farm use;

(f) Except for land under a single family dwelling, land under buildings supporting accepted farming practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

(g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(i) Land lying idle for no more than one year when the absence of farming activity is the result of the illness of the farmer or a member of the farmer's immediate family, including injury or infirmity, regardless of whether the illness results in death;

(j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood); or

(k) Land used for the primary purpose of obtaining a profit in money by breeding, raising, kenneling or training greyhounds for racing.

(4) As used in this section:

(a) "Accepted farming practice" means a mode of operation that is common to farms of a similar

nature, necessary for the operation of these similar farms to obtain a profit in money and customarily utilized in conjunction with farm use.

(b) "Cultured Christmas trees" means trees:

(A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(B) Of a marketable species;

(C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

(D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices:

(i) Basal pruning;

(ii) Fertilizing;

(iii) Insect and disease control;

(iv) Stump culture;

(v) Soil cultivation; or

(vi) Irrigation.

SECTION 34. The amendments to ORS 308A.056 by section 33 of this 2007 Act apply to tax years beginning on or after July 1, 2006.

ALTERNATIVE ENERGY DEVICE TAX CREDIT

SECTION 35. Section 36 of this 2007 Act is added to and made a part of ORS 469.160 to 469.180.

SECTION 36. (1) For each tax year for which any tax credit is claimed under ORS 316.116 or 317.115 by a taxpayer that is the owner of the alternative energy device for which the credit is being claimed, the taxpayer shall report to the State Department of Energy under penalty for false swearing that the device is in use by the taxpayer and continues to qualify for the credit.

(2) The State Department of Energy shall report to the Department of Revenue annually the names of taxpayers that have reported to the State Department of Energy pursuant to this section.

(3) If the basis for the initial allowance of a credit under ORS 316.116 or 317.115 is the construction, installation and ownership of an alternative energy device, the taxpayer claims any portion of a credit under ORS 316.116 or 317.115 and the taxpayer's name is not on the report filed with the Department of Revenue under subsection (2) of this section, the Department of Revenue shall forfeit the credit and collect all taxes not previously paid because of the credit, as prescribed in ORS 469.180.

SECTION 37. ORS 469.180 is amended to read:

469.180. (1) Upon the Department of Revenue's own motion, or upon request of the State Department of Energy, the Department of Revenue [*may*] **shall** initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) In the case of a solar electric system or an alternative energy device other than an alter-

native fuel vehicle or related equipment, the solar electric system or alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or

(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device or solar electric system by the State Department of Energy after a reasonable, written request for such an inspection by the State Department of Energy. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(e) The taxpayer was required to report to the State Department of Energy under section 36 of this 2007 Act and failed to do so, but claimed a credit for the tax year under ORS 316.116 or 317.115.

(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a contractor certificate issued under ORS 469.170 if the director finds that:

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;

(b) The contractor's performance for the alternative energy device or solar electric system for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device or solar electric system.

(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or installation of an alternative energy device or solar electric system is ordered forfeited due to an action of the taxpayer or investor owned utility under subsection (1)(a), (c) [*or*]**,** (d) **or (e)** of this section, all prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a result of the tax credit relief under ORS 316.116 or 317.115.

(4) If the tax credit for the construction or installation of an alternative energy device or solar electric system is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. As long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the State Department of Energy or its representative may inspect an alternative energy device or solar electric system that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices or solar electric systems, the State Department of Energy may obtain energy consumption records for the dwelling the device or system serves, for a 12-month period, in order to verify eligibility and amount of the tax credit.

SECTION 38. Section 36 of this 2007 Act and the amendments to ORS 469.180 by section

37 of this 2007 Act apply to tax years beginning on or after January 1, 2007.

TAX CREDIT FOR
DIESEL VEHICLE REPOWER OR RETROFIT

SECTION 39. (1) A personal income or corporate income or excise taxpayer is allowed a credit against the taxes that are otherwise due under ORS chapter 316, 317 or 318 for the certified costs of a repower or retrofit of a diesel engine if:

(a) The repower or retrofit has been identified as qualifying for the credit under rules adopted by the Environmental Quality Commission; and

(b) The taxpayer has obtained a tax credit cost certification from the Department of Environmental Quality under section 42 of this 2007 Act for the cost of the repower or retrofit.

(2) The maximum amount of the tax credit allowed under this section for each qualifying repower or retrofit is _____ percent of the certified cost of the repower or retrofit, but not to exceed $_____.

(3) The amount of the tax credit allowed to the taxpayer under this section in any one tax year may not exceed the tax liability of the taxpayer for the tax year.

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

(5) The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the engine to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318. The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax credits allowed under this section.

(6)(a) The Department of Revenue may disallow the credit allowed under this section if the department finds that the credit was obtained by fraud or misrepresentation.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the department shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(7)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

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

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

(8) The taxpayer shall claim the credit on a form prescribed by the Department of Re-

venue containing the information required by the Department of Revenue. The taxpayer shall maintain the tax credit cost certification issued by the Department of Environmental Quality under section 42 of this 2007 Act in the records of the taxpayer for the length of time prescribed by the Department of Revenue and shall provide a copy of the cost certification to the Department of Revenue if requested.

(9) As used in this section:

(a) "Repower" means to replace an old engine with a new engine, a used engine or a remanufactured engine or with electric motors, drives or fuel cells.

(b) "Retrofit" means to equip an engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

SECTION 40. Section 39 of this 2007 Act applies to diesel engine repower and retrofit tax credit cost certifications issued in tax years beginning on or after January 1, 2008.

SECTION 41. (1) The Environmental Quality Commission shall adopt rules to implement this section and sections 39 and 42 of this 2007 Act, including rules:

(a) Identifying technologies approved as repowers or retrofits that qualify for the tax credit allowed under section 39 of this 2007 Act because the technologies have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(b) Approving technologies not described in paragraph (a) of this subsection as repowers or retrofits that qualify for the tax credit allowed under section 39 of this 2007 Act.

(2) The Environmental Quality Commission shall consult with the Department of Revenue prior to adopting or amending rules under this section.

SECTION 42. (1) A person seeking a tax credit under section 39 of this 2007 Act shall first apply to the Department of Environmental Quality for certification of the cost of a qualified repower or retrofit of a diesel engine for purposes of the tax credit under section 39 of this 2007 Act.

(2) The application must contain the following information:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) A description of the technologies used in the repower or retrofit that are sufficient for the department to determine whether the repower or retrofit qualifies for the tax credit;

(c) Invoices or other documentation of the cost and payment of the repower or retrofit; and

(d) Any other information required by the department or required under rules adopted by the Environmental Quality Commission.

(3) The taxpayer shall file the application within one year following the date of the invoice for the qualifying repower or retrofit.

(4) The department shall consider completed applications and determine whether the application describes a repower or retrofit that qualifies for a tax credit under section 39 of this 2007 Act and, if qualified, the certified cost of the repower or retrofit. The department shall send written notice of the certified cost to the taxpayer.

(5) If the department determines that a repower or retrofit does not qualify for a tax credit under section 39 of this 2007 Act or certifies a lesser amount than was sought in the application, the taxpayer may appeal the determination as a contested case under ORS

chapter 183.

(6) As used in this section, "repower" and "retrofit" have the meanings given those terms in section 39 of this 2007 Act.

SECTION 43. (1) Section 39 of this 2007 Act is added to and made a part of ORS chapter 315.

(2) Sections 41 and 42 of this 2007 Act are added to and made a part of ORS chapter 468A.

CAPTIONS

SECTION 44. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.

EFFECTIVE DATE

SECTION 45. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.