

A-Engrossed
Senate Bill 875

Ordered by the Senate April 24
Including Senate Amendments dated April 24

Sponsored by Senator VERGER; Senator WALKER, Representatives BOONE, COWAN, KRIEGER, SCHAUFLE

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.

[Requires posting of 100 percent bond for removal and restoration in order to obtain permit to operate wave energy facility.]

Adds ocean wave energy to definition of "renewable energy resource" for purposes of tax credit certification provisions.

Authorizes Director of Department of State Lands to adopt rules relating to licensing of wave energy facilities or devices.

Requires owner or operator of wave energy facility or device, unless exempted under rules, to maintain cost estimates of financial assurance necessary for proper closure and post-closure maintenance, and corrective action required to be taken at site of facility or device. Requires owner or operator to provide evidence of financial assurance at time license to operate facility or device is issued.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to wave energy facilities; creating new provisions; amending ORS 469.185; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 469.185 is amended to read:

6 469.185. As used in ORS 469.185 to 469.225 and 469.878:

7 (1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State Depart-
8 ment of Energy by rule that is used primarily in connection with the conduct of a trade or business
9 and that is manufactured or modified to use an alternative fuel, including but not limited to elec-
10 tricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption
11 savings.

12 (2) "Car sharing facility" means the expenses of operating a car sharing program, including but
13 not limited to the fair market value of parking spaces used to store the fleet of cars available for
14 a car sharing program, but does not include the costs of the fleet of cars.

15 (3) "Car sharing program" means a program in which drivers pay to become members in order
16 to have joint access to a fleet of cars from a common parking area on an hourly basis. "Car sharing
17 program" does not include operations conducted by car rental agencies.

18 (4) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection,
19 construction and installation of a facility, including site development costs and expenses for a
20 sustainable building practices facility.

21 (5) "Energy facility" means any capital investment for which the first year energy savings yields
22 a simple payback period of greater than one year. An energy facility includes:

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 (a) Any land, structure, building, installation, excavation, machinery, equipment or device, or
2 any addition to, reconstruction of or improvement of, land or an existing structure, building, instal-
3 lation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or in-
4 stalled by any person in connection with the conduct of a trade or business and actually used in the
5 processing or utilization of renewable energy resources to:

6 (A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

7 (B) Provide the initial use of energy where electricity, petroleum or natural gas would have been
8 used;

9 (C) Generate electricity to replace an existing source of electricity or to provide a new source
10 of electricity for sale by or use in the trade or business; or

11 (D) Perform a process that obtains energy resources from material that would otherwise be solid
12 waste as defined in ORS 459.005.

13 (b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing
14 structure, building, installation, excavation, machinery, equipment or device necessarily acquired,
15 erected, constructed or installed by any person in connection with the conduct of a trade or business
16 in order to substantially reduce the consumption of purchased energy.

17 (c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is
18 defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance
19 standard in the state building code.

20 (d) The replacement of an electric motor with another electric motor that substantially reduces
21 the consumption of electricity.

22 (6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing
23 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
24 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling
25 station.

26 (7) "Qualified transit pass contract" means a purchase agreement entered into between a
27 transportation provider and a person, the terms of which obligate the person to purchase transit
28 passes on behalf or for the benefit of employees, students, patients or other individuals over a
29 specified period of time.

30 (8) "Recycling facility" means equipment used by a trade or business solely for recycling:

31 (a) Including:

32 (A) Equipment used solely for hauling and refining used oil;

33 (B) New vehicles or modifications to existing vehicles used solely to transport used recyclable
34 materials that cannot be used further in their present form or location such as glass, metal, paper,
35 aluminum, rubber and plastic;

36 (C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to
37 or attached to existing waste collection vehicles; and

38 (D) Any equipment used solely for processing recyclable materials such as bailers, flatteners,
39 crushers, separators and scales.

40 (b) But not including equipment used for transporting or processing scrap materials that are
41 recycled as a part of the normal operation of a trade or business as defined by the director.

42 (9)(a) "Renewable energy resource" includes, but is not limited to, straw, forest slash, wood
43 waste or other wastes from farm or forest land, industrial waste, **ocean wave energy**, solar energy,
44 wind power, water power or geothermal energy.

45 (b) "Renewable energy resource" does not include a hydroelectric generating facility larger than

1 one megawatt of installed capacity unless the facility qualifies as a research, development or dem-
2 onstration facility.

3 (10) "Sustainable building practices facility" means a commercial building in which building
4 practices that reduce the amount of energy, water or other resources needed for construction and
5 operation of the building are used. "Sustainable building practices facility" may be further defined
6 by the State Department of Energy by rule, including rules that establish traditional building prac-
7 tice baselines in energy, water or other resource usage for comparative purposes for use in deter-
8 mining whether a facility is a sustainable building practices facility.

9 (11) "Transportation facility" means a transportation project that reduces energy use during
10 commuting to and from work or school, during work-related travel, or during travel to obtain med-
11 ical or other services, and may be further defined by the department by rule. "Transportation facil-
12 ity" includes, but is not limited to, a qualified transit pass contract or a transportation services
13 contract.

14 (12) "Transportation provider" means a public, private or nonprofit entity that provides trans-
15 portation services to members of the public.

16 (13) "Transportation services contract" means a contract that is related to a transportation fa-
17 cility, and may be further defined by the department by rule.

18 **SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS chapter 274.**

19 **SECTION 3. (1) In accordance with applicable provisions of ORS chapter 183, the Director**
20 **of the Department of State Lands may adopt rules for the licensing of wave energy facilities**
21 **or devices.**

22 **(2) Unless exempted under rules adopted by the director under this section, an owner or**
23 **operator of a facility or device sited within Oregon's territorial sea, as defined in ORS**
24 **196.405, that converts the kinetic energy of waves into electricity shall maintain cost esti-**
25 **mates of the amount of financial assurance that is necessary, and demonstrate evidence of**
26 **financial assurance, for:**

27 **(a) The costs of closure and post-closure maintenance, excluding the removal of anchors**
28 **that lie beneath submerged lands in Oregon's territorial sea, of the facility or device; and**

29 **(b) Any corrective action required to be taken at the site of the facility or device.**

30 **(3) The financial assurance requirements established by subsection (2) of this section may**
31 **be satisfied by any one or a combination of the following:**

32 **(a) Insurance;**

33 **(b) Establishment of a trust fund;**

34 **(c) A surety bond;**

35 **(d) A letter of credit;**

36 **(e) Qualification as a self-insurer; or**

37 **(f) Any other method set forth in rules adopted by the director.**

38 **(4) In adopting rules to implement the provisions of this section, the director may specify**
39 **policy or other contractual terms, conditions or defenses necessary to establish evidence of**
40 **financial assurance.**

41 **(5)(a) The owner or operator of a facility or device described in subsection (2) of this**
42 **section must provide the evidence of financial assurance required under this section for**
43 **closure, post-closure maintenance and corrective action at the time a license to operate the**
44 **facility or device is issued.**

45 **(b) By January 31 of each subsequent calendar year, the owner or operator of the facility**

1 or device must update the information required under this subsection with the Department
2 of State Lands.

3 (6) When financial assurance is required for corrective action at the site of a facility or
4 device described in subsection (2) of this section, the owner or operator shall provide evi-
5 dence of financial assurance before beginning corrective action.

6 (7) An owner or operator required to provide financial assurance under this section shall
7 establish provisions satisfactory to the director for disposing of any excess moneys received
8 or interest earned on moneys received for financial assurance.

9 (8) This section does not apply to a wave energy project that:

10 (a) Is located within Oregon's territorial sea;

11 (b) Has a nominal electric generating capacity, as defined in ORS 469.300, that does not
12 exceed five megawatts; and

13 (c) Does not require a license under the Federal Power Act, 16 U.S.C. 791a et seq., to
14 either construct or operate the project.

15 **SECTION 4.** Section 3 of this 2007 Act applies to all applications for licenses to operate
16 a wave energy facility or device issued on or after July 1, 2007.

17 **SECTION 5.** This 2007 Act being necessary for the immediate preservation of the public
18 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
19 July 1, 2007.
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