

A-Engrossed House Bill 3619

Ordered by the House February 13
Including House Amendments dated February 13

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Revenue)

SUMMARY

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

[Establishes renewable energy resource equipment manufacturing facility tax credit with standards that are different from business energy tax credit standards. Modifies requirements for sales of business energy tax credits.]

Modifies business energy tax credit provisions as they apply to renewable energy resource equipment manufacturing facilities, including provisions for sales of credits. Increases monetary cap on allowable affordable housing tax credits.

Applies *[to sales of business energy tax credits occurring in tax years beginning on or after January 1, 2007, and]* to applications for preliminary tax credit certification of renewable energy resource equipment manufacturing facilities that are *[filed]* **approved** on or after January 1, 2008, and *[before January 1, 2014]* **to tax years beginning on or after January 1, 2008.**

Applies to affordable housing tax credits claimed in tax years beginning on or after January 1, 2009.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to tax credits; creating new provisions; amending ORS 317.097, 469.197, 469.200, 469.205, 469.215 and 469.225; and prescribing an effective date.

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

SECTION 1. ORS 469.197 is amended to read:

469.197. The State Department of Energy shall by rule establish all of the following criteria:

(1) For a high-performance home, the minimum design and construction standards that must be met or exceeded for a dwelling to be considered a high-performance home, including but not limited to standards for the building envelope, HVAC systems, lighting, appliances, water conservation measures, use of sustainable building materials and on-site renewable energy systems. The criteria must also establish the minimum reduction in estimated net purchased energy that a dwelling must achieve to be considered a high-performance home.

(2) For a homebuilder-installed renewable energy system, the minimum performance and efficiency standards that a solar electric system, solar domestic water heating system, passive solar space heating system, wind power system, geothermal heating system, fuel cell system or other system utilizing renewable resources must achieve to be considered a homebuilder-installed renewable energy system.

(3) For a high-efficiency combined heat and power facility, the minimum performance and efficiency standards that the facility must achieve to be considered a high-efficiency combined heat and power facility.

(4) For a renewable energy resource equipment manufacturing facility[,]:

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.

(a) Standards relating to the type of equipment, machinery or other products being manufactured and related performance and efficiency standards applicable to the manufactured products[.];

(b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a single renewable energy resource equipment manufacturing facility and what constitutes property that is not included within a renewable energy resource equipment manufacturing facility;

(c) Standards relating to the minimum level of increased employment in Oregon for a renewable energy resource equipment manufacturing facility;

(d) Standards relating to indicators of financial viability of an applicant for preliminary certification under ORS 469.205; and

(e) Standards relating to the likelihood of long-term success of a renewable energy resource equipment manufacturing facility.

SECTION 2. ORS 469.200 is amended to read:

469.200. (1) **For a facility**, the total cost [*of a facility*] that receives a preliminary certification from the Director of the State Department of Energy for tax credits in any calendar year may not exceed:

(a) \$20 million, in the case of a facility using or producing renewable energy resources[, a renewable energy resource equipment manufacturing facility] or a high-efficiency combined heat and power facility; [*or*]

(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility; or

[(b)] (c) \$10 million, in the case of any other facility.

(2) **Notwithstanding subsection (1)(b) of this section, the director may certify a lesser amount than the total cost of the renewable energy resource equipment manufacturing facility, or need not certify any amount, if any of the following conditions exist at the time of preliminary certification:**

(a) The last quarterly economic and revenue forecast for a biennium indicates that moneys available to the General Fund for the next biennium will be at least three percent less than appropriations from the General Fund for the current biennium;

(b) A quarterly economic and revenue forecast projects that revenues in the General Fund in the current biennium will be at least two percent below what revenues were projected to be in the revenue forecast on which the legislatively adopted budget, as defined in ORS 291.002, for the current biennium was based;

(c) The proposed facility, in the estimate of the director, does not possess the likelihood of success established in criteria of success under ORS 469.197 (4);

(d) The proposed facility, in the estimate of the director, is not likely to increase employment in Oregon to the minimum threshold level established in rules under ORS 469.197 (4); or

(e) The applicant lacks the minimum level of financial viability established in rules adopted under ORS 469.197 (4).

[(2)] (3) The director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the deter-

mination.

SECTION 3. ORS 469.205 is amended to read:

469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any person may apply to the State Department of Energy for preliminary certification under ORS 469.210 if:

(a) The erection, construction, installation or acquisition of the facility is to be commenced on or after October 3, 1979;

(b) The facility complies with the standards or rules adopted by the Director of the State Department of Energy; and

(c) The applicant meets one of the following criteria:

(A) The applicant is a person to whom a tax credit has been transferred; or

(B) The applicant will be the owner or contract purchaser of the facility at the time of erection, construction, installation or acquisition of the proposed facility, and:

(i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the facility in connection with Oregon property; or

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person who will utilize the facility in connection with Oregon property.

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

(a) A statement that the applicant or the lessee of the applicant's facility:

(A) Intends to convert from a purchased energy source to a renewable energy resource;

(B) Plans to acquire, construct or install a facility that will use a renewable energy resource or solid waste instead of electricity, petroleum or natural gas;

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

(D) Plans to acquire, construct or install a facility that substantially reduces the consumption of purchased energy;

(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (11);

(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alternative fuel vehicle;

(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

(H) Plans to acquire transit passes for use by individuals specified by the applicant;

(I) Plans to acquire, construct or install a transportation facility;

(J) Plans to acquire a sustainable building practices facility;

(K) Plans to acquire a car sharing facility and operate a car sharing program;

(L) Plans to construct a high-efficiency combined heat and power facility;

(M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;

(N) Is a homebuilder and plans to construct a high-performance home; or

(O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing facility.

(b) A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application.

(c) Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy that will be produced for sale, as the result of using the facility or, if applicable, information about

1 the expected level of sustainable building practices facility performance.

2 (d) The projected cost of the facility.

3 (e) If applicable, a copy of the proposed qualified transit pass contract, transportation services
4 contract or contract for lease of parking spaces for a car sharing facility.

5 (f) Any other information the director considers necessary to determine whether the proposed
6 facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or
7 standards adopted by the director.

8 (3) An application for preliminary certification shall be accompanied by a fee established under
9 ORS 469.217. The director may refund the fee if the application for certification is rejected.

10 (4) The director may allow an applicant to file the preliminary application after the start of
11 erection, construction, installation or acquisition of the facility if the director finds:

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

14 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
15 469.225.

16 (5) A preliminary certification of a sustainable building practices facility shall be applied for and
17 issued as prescribed by the department by rule.

18 **(6) A preliminary certification of a renewable energy resource equipment manufacturing**
19 **facility shall remain valid for a period of five calendar years after the date the preliminary**
20 **certification is issued by the director.**

21 **SECTION 4.** ORS 469.215 is amended to read:

22 469.215. (1) A final certification may not be issued by the Director of the State Department of
23 Energy under this section unless the facility was acquired, erected, constructed or installed under
24 a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applica-
25 ble provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the di-
26 rector.

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

28 (a) If the department issued preliminary certification for the facility under ORS 469.210; and

29 (b)(A) After completion of erection, construction, installation or acquisition of the proposed fa-
30 cility or, if the facility is a qualified transit pass contract, after entering into the contract with a
31 transportation provider; or

32 (B) After transfer of the facility, as provided in ORS 315.354 (5).

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

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

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

39 (c) A statement that the facility is in operation or, if not in operation, that the applicant has
40 made every reasonable effort to make the facility operable; and

41 (d) Any other information determined by the director to be necessary prior to issuance of a final
42 certificate, including inspection of the facility by the department.

43 (4) The director shall act on an application for certification before the 60th day after the filing
44 of the application under this section. The director[, *after consultation with the Public Utility Com-*
45 *mission,*] may issue the certificate together with such conditions as the director determines are ap-

1 appropriate to promote the purposes of *[this section and ORS 315.354, 469.185, 469.200, 469.205 and*
 2 *469.878.]* **ORS 315.354, 469.185 to 469.225 and 469.878. If the applicant is an entity subject to**
 3 **regulation by the Public Utility Commission, the director may consult with the commission**
 4 **prior to issuance of the certificate.** The action of the director shall include certification of the
 5 actual cost of the facility. However, *[in no event shall]* the director **may not** certify an amount for
 6 tax credit purposes which is more than 10 percent in excess of the amount approved in the prelim-
 7 inary certificate issued for the facility.

8 (5) If the director rejects an application for final certification, or certifies a lesser actual cost
 9 of the facility than was claimed in the application, the director shall send to the applicant written
 10 notice of the action, together with a statement of the findings and reasons therefor, by certified mail,
 11 before the 60th day after the filing of the application. Failure of the director to act constitutes re-
 12 jection of the application.

13 (6) Upon approval of an application for final certification of a facility, the director shall certify
 14 the facility. Each certificate shall bear a separate serial number for each device. Where one or
 15 more devices constitute an operational unit, the director may certify the operational unit under one
 16 certificate.

17 **SECTION 5.** ORS 469.225 is amended to read:

18 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
 19 the State Department of Energy may order the revocation of the certificate issued under ORS
 20 469.215 if the director finds that:

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

22 (b) The holder of the certificate has failed *[substantially]* to construct or *[to make every reason-*
 23 *able effort to]* operate the facility in compliance with the plans, specifications and procedures in
 24 *[such]* **the** certificate.

25 (2) As soon as the order of revocation under this section becomes final, the director shall notify
 26 the Department of Revenue of *[such]* **the order of revocation.**

27 (3) If the certificate is ordered revoked *[pursuant to subsection (1)(a) of this section]*, all prior tax
 28 credits provided to the holder of the certificate by virtue of *[such]* **the** certificate shall be forfeited
 29 and upon notification under subsection (2) of this section the Department of Revenue immediately
 30 shall proceed to collect:

31 **(a) In the case where no portion of a certificate has been transferred under ORS 469.206,**
 32 those taxes not paid by the certificate holder as a result of the tax credits provided to the holder
 33 under ORS 315.354.

34 **(b) In the case where all or a portion of a certificate has been transferred under ORS**
 35 **469.206, the maximum amount of the tax credits allowable under ORS 315.354, as of the date**
 36 **of revocation.**

37 (4) The Department of Revenue shall have the benefit of all laws of this state pertaining to the
 38 collection of income and excise taxes **and may proceed to collect the amounts described in**
 39 **subsection (3) of this section from the person that obtained certification from the State De-**
 40 **partment of Energy or any successor in interest to that person.** No assessment of *[such taxes]*
 41 **tax** shall be necessary and no statute of limitation shall preclude the collection of *[such]* taxes **de-**
 42 **scribed in this subsection.**

43 *[(4)]* (5) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the
 44 certificate holder shall be denied any further relief under ORS 315.354 in connection with *[such]* **the**
 45 facility from and after the date that the order of revocation becomes final.

(6) Notwithstanding subsections (1) to (5) of this section, the revocation of a certificate under subsections (1) to (5) of this section does not reduce the amount of tax credit allowable under ORS 315.354 to a transferee of the credit under a transfer allowed under ORS 469.206 prior to the date the certificate is revoked.

SECTION 6. ORS 317.097 is amended to read:

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

(a) The amount of finance charge charged by the lending institution during the taxable year at an annual rate less than the market rate for a loan that is made before January 1, 2020, that complies with the requirements of this section; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing construction, development, acquisition or rehabilitation measured at the annual rate charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing construction, development, acquisition or rehabilitation is made.

(2) The maximum amount of credit for the difference between the amounts described in subsection (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

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

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

(a) Made to an individual or individuals who own the dwelling, participate in an owner-occupied community rehabilitation program and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income;

(b)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition or rehabilitation of housing; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the:

(i) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Full amount of savings from the reduced interest rate provided by the lending institution is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project;

(c)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed; or

(d)(A) Made to a qualified borrower;

(B) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing preserved by the loan:

(i) Is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Has a rent assistance contract with the United States Department of Housing and Urban Development or the United States Department of Agriculture that will be maintained by the qualified borrower.

(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this section.

(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan also shall be accompanied by a written certification by the Housing and Community Services Department that:

(a) Specifies the period, as determined by the Housing and Community Services Department, during which the loan is eligible for the tax credit under subsection (1) of this section; and

(b) States that the loan is within the limitation imposed by subsection (7) of this section.

(7)(a) The Housing and Community Services Department may certify loans that are eligible under subsection (4) of this section if the total credits attributable to all loans eligible for credits under subsection (1) of this section and then outstanding do not exceed [*\$13 million*] **\$17 million** for any fiscal year. In making loan certifications, the Housing and Community Services Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the state that are determined by the State Housing Council to have the greatest need for affordable housing.

(b) The certification under subsection (6) of this section shall state the period for which the credit will be allowed, which may not exceed 20 years.

(8) The applicant's receipt of a credit under section 42 of the Internal Revenue Code does not affect the credit allowed under this section.

(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a qualified assignee with or without the lending institution's retaining servicing of the loan so long as a designated lending institution maintains records annually verified by a loan servicer that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

(10) As used in this section:

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.

(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, any mortgage banking company that maintains an office in this state or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2006.

(f) "Preservation project" means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.

(g) "Qualified assignee" means any investor participating in the secondary market for real estate loans.

(h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(i) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

(11) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer any part or all of any tax credit arising under subsection (1) of this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more loans that generate the tax credit under subsection (1) of this section.

(12) The lending institution shall file an annual statement with the Housing and Community Services Department, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

(13) The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

SECTION 7. The amendments to ORS 469.197, 469.200, 469.205, 469.215 and 469.225 by sections 1 to 5 of this 2008 Act apply to applications for preliminary certification approved on or after January 1, 2008, and to tax years beginning on or after January 1, 2008.

SECTION 8. The amendments to ORS 317.097 by section 6 of this 2008 Act apply to tax years beginning on or after January 1, 2009.

SECTION 9. This 2008 Act takes effect on the 91st day after the date on which the special session of the Seventy-fourth Legislative Assembly adjourns sine die.