

HOUSE AMENDMENTS TO HOUSE BILL 3619

By COMMITTEE ON REVENUE

February 13

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and delete line 3
2 and insert “317.097, 469.197, 469.200, 469.205, 469.215 and 469.225; and prescribing an effective
3 date.”.

4 Delete lines 5 through 27 and delete pages 2 through 18 and insert:

5 **“SECTION 1.** ORS 469.197 is amended to read:

6 “469.197. The State Department of Energy shall by rule establish all of the following criteria:

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

13 “(2) For a homebuilder-installed renewable energy system, the minimum performance and effi-
14 ciency standards that a solar electric system, solar domestic water heating system, passive solar
15 space heating system, wind power system, geothermal heating system, fuel cell system or other sys-
16 tem utilizing renewable resources must achieve to be considered a homebuilder-installed renewable
17 energy system.

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

21 “(4) For a renewable energy resource equipment manufacturing facility[.]:

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

24 **“(b) Standards, consistent with the definitions in ORS 469.185, relating to what consti-
25 tutes a single renewable energy resource equipment manufacturing facility and what consti-
26 tutes property that is not included within a renewable energy resource equipment
27 manufacturing facility;**

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

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

32 **“(e) Standards relating to the likelihood of long-term success of a renewable energy re-
33 source equipment manufacturing facility.**

34 **“SECTION 2.** ORS 469.200 is amended to read:

35 “469.200. (1) **For a facility**, the total cost [*of a facility*] that receives a preliminary certification

1 from the Director of the State Department of Energy for tax credits in any calendar year may not
2 exceed:

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

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

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

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

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

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

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

22 “(d) **The proposed facility, in the estimate of the director, is not likely to increase em-**
23 **ployment in Oregon to the minimum threshold level established in rules under ORS 469.197**
24 **(4); or**

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

27 “[2)] (3) The director shall determine the dollar amount certified for any facility and the pri-
28 ority between applications for certification based upon the criteria contained in ORS 469.185 to
29 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may
30 consider the status of a facility as a research, development or demonstration facility of new
31 renewable resource generating and conservation technologies or a qualified transit pass contract in
32 the determination.

33 “**SECTION 3.** ORS 469.205 is amended to read:

34 “469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
35 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
36 if:

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

39 “(b) The facility complies with the standards or rules adopted by the Director of the State De-
40 partment of Energy; and

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

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

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

45 “(i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans

1 to utilize the facility in connection with Oregon property; or

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

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

6 “(a) A statement that the applicant or the lessee of the applicant’s facility:

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

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

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

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

14 “(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185
15 (11);

16 “(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alter-
17 native fuel vehicle;

18 “(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehi-
19 cles;

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

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

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

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

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

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

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

27 “(O) Plans to acquire, construct or install a renewable energy resource equipment manufactur-
28 ing facility.

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

31 “(c) Information on the amount by which consumption of electricity, petroleum or natural gas
32 by the applicant or the lessee of the applicant’s facility will be reduced, and on the amount of energy
33 that will be produced for sale, as the result of using the facility or, if applicable, information about
34 the expected level of sustainable building practices facility performance.

35 “(d) The projected cost of the facility.

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

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

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

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

45 “(a) Filing the application before the start of erection, construction, installation or acquisition

1 is inappropriate because special circumstances render filing earlier unreasonable; and

2 “(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
3 469.225.

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

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

9 “**SECTION 4.** ORS 469.215 is amended to read:

10 “469.215. (1) A final certification may not be issued by the Director of the State Department of
11 Energy under this section unless the facility was acquired, erected, constructed or installed under
12 a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applica-
13 ble provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the di-
14 rector.

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

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

17 “(b)(A) After completion of erection, construction, installation or acquisition of the proposed
18 facility or, if the facility is a qualified transit pass contract, after entering into the contract with
19 a transportation provider; or

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

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

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

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

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

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

31 “(4) The director shall act on an application for certification before the 60th day after the filing
32 of the application under this section. The director[, *after consultation with the Public Utility Com-*
33 *mission,*] may issue the certificate together with such conditions as the director determines are ap-
34 propriate to promote the purposes of [*this section and ORS 315.354, 469.185, 469.200, 469.205 and*
35 *469.878.*] **ORS 315.354, 469.185 to 469.225 and 469.878. If the applicant is an entity subject to**
36 **regulation by the Public Utility Commission, the director may consult with the commission**
37 **prior to issuance of the certificate.** The action of the director shall include certification of the
38 actual cost of the facility. However, [*in no event shall*] the director **may not** certify an amount for
39 tax credit purposes which is more than 10 percent in excess of the amount approved in the prelim-
40 inary certificate issued for the facility.

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

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

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

6 “469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
7 the State Department of Energy may order the revocation of the certificate issued under ORS
8 469.215 if the director finds that:

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

10 “(b) The holder of the certificate has failed [*substantially*] to construct or [*to make every rea-*
11 *sonable effort to*] operate the facility in compliance with the plans, specifications and procedures in
12 [*such*] **the** certificate.

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

15 “(3) If the certificate is ordered revoked [*pursuant to subsection (1)(a) of this section*], all prior
16 tax credits provided to the holder of the certificate by virtue of [*such*] **the** certificate shall be for-
17 feited and upon notification under subsection (2) of this section the Department of Revenue imme-
18 diately shall proceed to collect:

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

22 “(b) **In the case where all or a portion of a certificate has been transferred under ORS**
23 **469.206, the maximum amount of the tax credits allowable under ORS 315.354, as of the date**
24 **of revocation.**

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

31 “[*(4)*] (5) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the
32 certificate holder shall be denied any further relief under ORS 315.354 in connection with [*such*] **the**
33 facility from and after the date that the order of revocation becomes final.

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

38 “**SECTION 6.** ORS 317.097 is amended to read:

39 “317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall
40 be allowed to a lending institution in an amount equal to the difference between:

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

44 “(b) The amount of finance charge that would have been charged during the taxable year by the
45 lending institution for the loan for housing construction, development, acquisition or rehabilitation

1 measured at the annual rate charged by the lending institution for nonsubsidized loans made under
2 like terms and conditions at the time the loan for housing construction, development, acquisition or
3 rehabilitation is made.

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

7 “(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in
8 a particular year may be carried forward and offset against the taxpayer’s tax liability for the next
9 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
10 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
11 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
12 credit not used in that third succeeding tax year may be carried forward and used in the fourth
13 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
14 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
15 thereafter.

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

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

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

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

24 “(C) Accompanied by a written certification by the Housing and Community Services Depart-
25 ment that the:

26 “(i) Housing created by the loan is or will be occupied by households earning less than 80 per-
27 cent of the area median income; and

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

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

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

34 “(C) Accompanied by a written certification by the Housing and Community Services Depart-
35 ment that the housing will continue to be operated as a manufactured dwelling park during the pe-
36 riod for which the tax credit is allowed; or

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

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

40 “(C) Accompanied by a written certification by the Housing and Community Services Depart-
41 ment that the housing preserved by the loan:

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

44 “(ii) Has a rent assistance contract with the United States Department of Housing and Urban
45 Development or the United States Department of Agriculture that will be maintained by the quali-

1 fied borrower.

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

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

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

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

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

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

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

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

26 “(10) As used in this section:

27 “(a) ‘Annual rate’ means the yearly interest rate specified on the note, and not the annual per-
28 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

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

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

34 “(d) ‘Manufactured dwelling park’ has the meaning given that term in ORS 446.003.

35 “(e) ‘Nonprofit corporation’ means a corporation that is exempt from income taxes under section
36 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2006.

37 “(f) ‘Preservation project’ means housing that was previously developed as affordable housing
38 with a contract for rent assistance from the United States Department of Housing and Urban De-
39 velopment or the United States Department of Agriculture and that is being acquired by a spon-
40 soring entity.

41 “(g) ‘Qualified assignee’ means any investor participating in the secondary market for real estate
42 loans.

43 “(h) ‘Qualified borrower’ means any borrower that is a sponsoring entity that has a controlling
44 interest in the real property that is financed by the loan described in subsection (4) of this section.
45 Such a controlling interest includes, but is not limited to, a controlling interest in the general

1 partner of a limited partnership that owns the real property.

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

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

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

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

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

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

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