

House Bill 3619

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 **as introduced**.

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.

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 on or after January 1, 2008, and before January 1, 2014.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to tax credits; creating new provisions; amending ORS 315.354, 315.356, 469.185, 469.197, 469.200, 469.205, 469.206, 469.215 and 469.225; and prescribing an effective date.

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

SECTION 1. Sections 2 to 9 of this 2008 Act are added to and made a part of ORS chapter 469.

SECTION 2. As used in sections 2 to 9 of this 2008 Act:

(1) "Construction" means the physical construction or erection of real property improvements, the installation of equipment, the acquisition of land onto which improvements are to be constructed and related site development activities.

(2) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a renewable energy resource equipment manufacturing facility, including land acquisition and site development costs and expenses.

(3) "Facility" means a renewable energy resource equipment manufacturing facility.

(4) "Renewable energy resource" has the meaning given that term in ORS 469.185.

(5) "Renewable energy resource equipment manufacturing facility" means any structure, building, installation, excavation, machinery, equipment or device, or reconstruction of or an addition or improvement to land or an existing structure, building, installation, excavation, machinery, equipment or device, that:

(a) Is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business;

(b) Is used primarily to manufacture equipment, machinery or other products designed to use a renewable energy resource; and

(c) Meets the criteria established under section 3 of this 2008 Act.

SECTION 3. (1) The State Department of Energy shall by rule establish all of the following criteria for the designation of 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 engaged in at a facility.

(b) Standards relating to the minimum level of increased employment in Oregon upon the facility being placed in service.

(c) Standards relating to the increased production and deployment of renewable energy in this state as a result of the facility being placed in service.

(d) Standards relating to the minimal financial attributes of the applicant for preliminary certification under section 5 of this 2008 Act.

(e) Standards relating to the likelihood of long-term success of the facility.

(2) The State Department of Energy may establish additional criteria applicable to facilities, including but not limited to standards relating to:

(a) The minimal required benefits to the state economy as the result of a facility being placed in service.

(b) The degree of diversity of renewable energy sources located in this state.

(c) The degree to which a facility will attract related business or other economic development.

(d) The extent to which a facility must promote the use of renewable resources in this state.

(e) The diversity of size of businesses operating facilities in this state.

(3) The State Department of Energy shall consult with the Economic and Community Development Department prior to adopting standards under this section.

SECTION 4. (1) The total cost of a renewable energy resource equipment manufacturing facility that receives a preliminary certification under section 5 of this 2008 Act from the Director of the State Department of Energy for tax credits in any calendar year may not exceed:

(a) \$20 million; or

(b) \$40 million, in the case of a facility for which two applications for preliminary certification have been filed under section 5 of this 2008 Act.

(2) The director may not approve more than two applications for preliminary certification for a facility for all years and may not precertify more than \$200 million in costs of all facilities in this state in a calendar year.

SECTION 5. (1) Prior to the construction of a renewable energy resource equipment manufacturing facility, a person seeking a tax credit under section 13 of this 2008 Act shall apply to the State Department of Energy for preliminary certification under this section.

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

(a) A statement that the applicant is or will be the owner, contract purchaser or lessee of the facility at the time the facility is placed in service;

(b) A statement that the applicant intends to begin construction within two years of the date of the application;

(c) A description of the property and improvements that are intended to constitute a facility upon being placed in service, a description of the proposed operation of the facility and information showing that the proposed facility will operate as represented in the application;

1 (d) The projected cost of the facility; and

2 (e) Any other information the Director of the State Department of Energy considers
3 necessary to determine whether the property and improvements that are the subject of the
4 application will constitute a renewable energy resource equipment manufacturing facility
5 upon being placed in service.

6 (3) An application for preliminary certification shall be accompanied by a fee established
7 under section 8 of this 2008 Act. The director may refund the fee if the application for cer-
8 tification is rejected.

9 (4) The director may allow an applicant to file the preliminary application after the start
10 of construction of the facility if the director finds that:

11 (a) Filing the application before the start of construction is inappropriate because special
12 circumstances render filing earlier unreasonable; and

13 (b) The facility would otherwise qualify for preliminary certification under this section.

14 (5) The director may require the submission of plans, specifications and contract terms
15 and, after examination thereof, may request corrections and revisions of the plans, specifi-
16 cations and terms. The director may consult with the Economic and Community Develop-
17 ment Department on the likelihood of success of the proposed facility in satisfying the
18 standards adopted by the State Department of Energy under section 3 of this 2008 Act. If the
19 facility is owned or leased by an entity subject to regulation by the Public Utility Commis-
20 sion, the director shall consult with the commission on the extent to which the proposed
21 facility will achieve the purposes of sections 2 to 9 and 13 of this 2008 Act prior to issuing a
22 preliminary certificate under this section.

23 (6) If the director determines that the proposed construction is technically feasible and
24 should operate in accordance with the representations made by the applicant, and is in ac-
25 cordance with the applicable provisions of sections 2 to 9 of this 2008 Act and any applicable
26 rules or standards adopted by the department, the director shall issue a preliminary certif-
27 icate approving the construction of the facility. The preliminary certification shall include a
28 cost being approved for the facility and a date by which construction of the facility must be
29 begun. If the director determines that the proposed construction or the application for pre-
30 liminary certification does not comply with the applicable provisions of sections 2 to 9 of this
31 2008 Act and applicable rules and standards, the director shall issue an order denying pre-
32 liminary certification.

33 (7) If construction of the facility does not begin by the date specified on the preliminary
34 certificate, the director shall revoke the preliminary certificate. If the preliminary certificate
35 is revoked under this subsection, the certified cost on the revoked preliminary certificate
36 shall be added to the annual limit on total certified cost under section 4 (2) of this 2008 Act
37 for the year in which the revocation occurs.

38 **SECTION 6.** (1) A person that has been issued a preliminary certification under section
39 5 of this 2008 Act, or a successor operator of the facility that is the subject of the applica-
40 tion, may apply to the State Department of Energy for final certification under this section.
41 A tax credit under section 13 of this 2008 Act may be claimed only if a final certification with
42 respect to the facility has been issued under this section.

43 (2) A final certification may not be issued by the Director of the State Department of
44 Energy under this section unless the facility was constructed under a preliminary certif-
45 ication issued under section 5 of this 2008 Act and in accordance with the applicable pro-

visions of sections 2 to 9 of this 2008 Act and any applicable rules or standards adopted by the department.

(3) Any person may apply to the department for final certification of a facility:

(a) If the director issued preliminary certification for the facility under section 5 of this 2008 Act; and

(b)(A) After completing construction of the facility within two years of the date of preliminary certification; or

(B) After transfer of the facility, as provided in section 13 (4) of this 2008 Act.

(4) An application for final certification shall be made in writing on a form prescribed by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been met;

(b) A statement of the actual cost of the facility that has been certified by a certified public accountant who is not an employee of the applicant;

(c) A statement that the facility is in operation; and

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

(5) The director shall act on an application for final certification before the 60th day after the filing of the application under this section. The action of the director shall include certification of the actual cost of the facility. However, the director may not certify an amount for tax credit purposes that is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

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

(7) Upon approval of an application for final certification of a facility, the director shall certify the facility. If the facility was the subject of two applications for preliminary certification, two applications for final certification must be made. The director shall make an independent determination of final certification for each application and shall certify separate costs to correspond with each application for final certification.

(8)(a) If the director denies final certification, the certified cost on the related preliminary certification shall be added to the annual limit on total certified cost under section 4 (2) of this 2008 Act for the year in which the denial is made.

(b) If the certified cost on a final certification is less than the certified cost on the related preliminary certification by a factor of at least 10 percent, the difference in certified cost between the preliminary and final certifications shall be added to the annual limit on total certified cost under section 4 (2) of this 2008 Act for the year in which the final certification is made.

SECTION 7. (1) A person seeking final certification under section 6 of this 2008 Act or the holder of a final certificate issued under section 6 of this 2008 Act may transfer all or a portion of the tax credit that would otherwise be allowable under section 6 of this 2008 Act by obtaining transfer approval under this section.

(2) The person seeking transfer approval shall apply for the approval on a form prescribed by the State Department of Energy that sets forth:

(a) The name and taxpayer identification number of each taxpayer to whom all or a portion of the tax credit is to be transferred;

(b) A schedule of the apportionment of the tax credit, showing each transferee's portion of the credit and the portion of the credit that is retained by the transferor, if any; and

(c) Any other information required by the department.

(3) The Director of the State Department of Energy shall approve a credit transfer sought under this section only if:

(a) Each transferee is subject to Oregon personal income or corporate income or excise taxes as of the date of the transfer approval application;

(b) The tax credit is to be apportioned to no more than 100 taxpayers following transfer;

(c) Except as allowed under section 13 (4) of this 2008 Act, the tax credit has not previously been transferred; and

(d) The tax credit with respect to the facility has yet to be claimed on an income or excise tax return filed with the Department of Revenue.

(4) The transfer of a tax credit under this section may not be approved until on or after the date that the director has determined to issue final certification under section 6 of this 2008 Act. If a final certificate had previously been issued with respect to the tax credit, that certificate is revoked. The director shall issue a final certificate to each transferee under this section showing the transferee's portion of the tax credit, the total cost being certified and the apportioned cost being certified to the transferee. A final certificate issued to a transferee under this subsection shall include the date of issue of any original final certificate, for purposes of determining the end of the five-year period described in section 13 (2)(b) of this 2008 Act.

(5) Upon approval of the transfer of a tax credit under this section, the director shall transmit to the Department of Revenue any information concerning the transfer that the Department of Revenue has requested.

(6) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section.

(7) If a transferee is required to file a tax report under ORS 757.268, the report shall reflect the tax liability of the transferee before taking into account the credit allowed under section 13 of this 2008 Act.

SECTION 8. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification under sections 2 to 9 of this 2008 Act. Before the adoption or revision of the fees, the department shall estimate the total cost to the department of reviewing and acting on applications for preliminary and final certification. The department shall use the fees to recover the anticipated cost of filing, investigating, granting and rejecting applications for certification and shall design the fees to not exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fees may vary according to the size and complexity of the facility. The fees may not be considered as part of the cost of the facility to be certified.

SECTION 9. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a final certificate issued under section 6 of this 2008 Act if the director finds that:

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

2 (b) The holder of the certificate has failed substantially to construct or to make every
3 reasonable effort to operate the facility in compliance with the plans, specifications and
4 procedures in such certificate.

5 (2) As soon as the order of revocation under this section becomes final, the director shall
6 notify the Department of Revenue of the order.

7 (3) If the certificate is ordered revoked pursuant to subsection (1)(a) of this section, all
8 prior tax credits provided to the holder of the certificate by virtue of such certificate shall
9 be forfeited and upon notification under subsection (2) of this section, the Department of
10 Revenue immediately shall proceed to collect those taxes not paid by the certificate holder
11 as a result of the tax credits provided to the holder under section 13 of this 2008 Act. The
12 Department of Revenue shall have the benefit of all laws of this state pertaining to the col-
13 lection of income and excise taxes. No assessment of tax shall be necessary and no statute
14 of limitation shall preclude the collection of taxes due under this section.

15 (4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the
16 certificate holder shall be denied any further relief under section 13 of this 2008 Act in con-
17 nection with the facility from and after the date that the order of revocation becomes final.

18 (5) Notwithstanding subsections (1) to (4) of this section, a final certificate may not be
19 revoked if the tax credit was transferred under section 7 of this 2008 Act prior to the date
20 the certificate would otherwise be revoked.

21 **SECTION 10.** Sections 2 to 9 of this 2008 Act apply to applications for preliminary cer-
22 tification issued on or after January 1, 2008, and before January 1, 2014.

23 **SECTION 11.** An application for preliminary certification of a proposed renewable energy
24 resource equipment manufacturing facility under ORS 469.185 to 469.225 that was filed with
25 the State Department of Energy on or after January 1, 2008, and before the effective date
26 of this 2008 Act shall be considered an application for preliminary certification under section
27 5 of this 2008 Act. The Director of the State Department of Energy shall allow the application
28 to be amended to conform to the requirements of section 5 of this 2008 Act if the director
29 determines that the amendment is needed to comply with sections 2 to 9 of this 2008 Act.

30 **SECTION 12.** Section 13 of this 2008 Act is added to and made a part of ORS chapter 315.

31 **SECTION 13.** (1) A credit is allowed against the taxes otherwise due under ORS chapter
32 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the cer-
33 tified cost of a renewable energy resource equipment manufacturing facility during the pe-
34 riod for which a final certification for that facility has been issued under sections 2 to 9 of
35 this 2008 Act. The credit shall be allowed in each of five succeeding tax years, equal to 10
36 percent of the certified cost of the facility, but may not exceed the tax liability of the tax-
37 payer.

38 (2) In order for a tax credit to be allowable under this section:

39 (a) The facility must be located in Oregon;

40 (b) The facility must have received final certification from the Director of the State De-
41 partment of Energy under sections 2 to 9 of this 2008 Act within five years preceding the date
42 of the first tax year for which a credit is claimed under this section;

43 (c) The taxpayer must be named in the certificate issued under section 6 of this 2008 Act;
44 and

45 (d) The taxpayer must be an eligible applicant under section 5 (2)(a) of this 2008 Act.

(3) The total amount of credit allowable to an eligible taxpayer under this section may not exceed 50 percent of the certified cost of the facility.

(4) Upon any sale, termination of the lease or contract, exchange or other disposition of the facility, notice thereof shall be given to the director, who shall revoke the final certificate applicable to the facility as of the date of such disposition. The new owner or, upon re-leasing of the facility, the new lessor may apply for a new final certification under section 6 of this 2008 Act, but the tax credit available to the new owner shall be limited to the amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all previous leases.

(5) 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 that 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 likewise, any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (1) of this section only as provided in this subsection.

(6) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318 for such year.

(7) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax credits allowed under this section.

(8) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer, the amount shall be allowed without proration under ORS 316.117.

(9) Notwithstanding subsection (2)(c) of this section, the Department of Revenue may prescribe by rule the method for allowing a tax credit under this section if the ownership or filing status of an entity for which a final certificate has been issued changes prior to the exhaustion of the tax credit.

(10) The definitions in section 2 of this 2008 Act apply to this section.

SECTION 14. Section 13 of this 2008 Act applies to tax years beginning on or after January 1, 2008.

SECTION 15. ORS 469.185 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

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

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

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

(6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home[, **or** a homebuilder-installed renewable energy system[, *or a renewable energy resource equipment manufacturing facility*].

(7) "High-efficiency combined heat and power facility" means a device or equipment that simultaneously produces heat and electricity from a single source of fuel and that meets the criteria established for a high-efficiency combined heat and power facility under ORS 469.197.

(8) "High-performance home" means a new single-family dwelling that:

(a) Is designed and constructed to reduce net purchased energy through use of both energy ef-

1 efficiency and on-site renewable energy resources; and

2 (b) Meets the criteria established for a high-performance home under ORS 469.197.

3 (9) "Homebuilder-installed renewable energy system" means a renewable energy resource system
4 that:

5 (a) Meets the criteria established for a renewable energy resource system under ORS 469.197;
6 and

7 (b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder con-
8 structing the dwelling.

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

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

14 (a) Including:

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

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

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

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

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

25 (12)(a) "Renewable energy resource" includes, but is not limited to:

26 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant
27 or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal
28 energy; or

29 (B) A hydroelectric generating facility that obtains all applicable permits and complies with all
30 state and federal statutory requirements for the protection of fish and wildlife and:

31 (i) That does not exceed 10 megawatts of installed capacity; or

32 (ii) Qualifies as a research, development or demonstration facility.

33 (b) "Renewable energy resource" does not include a hydroelectric generating facility that is not
34 described in paragraph (a) of this subsection.

35 [(13) "Renewable energy resource equipment manufacturing facility" means any structure, building,
36 installation, excavation, machinery, equipment or device, or an addition, reconstruction or improvement
37 to land or an existing structure, building, installation, excavation, machinery, equipment or device, that
38 is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade
39 or business, that is used primarily to manufacture equipment, machinery or other products designed to
40 use a renewable energy resource and that meets the criteria established under ORS 469.197.]

41 [(14)] (13) "Sustainable building practices facility" means a commercial building in which build-
42 ing practices that reduce the amount of energy, water or other resources needed for construction
43 and operation of the building are used. "Sustainable building practices facility" may be further de-
44 fined by the State Department of Energy by rule, including rules that establish traditional building
45 practice baselines in energy, water or other resource usage for comparative purposes for use in

determining whether a facility is a sustainable building practices facility.

[(15)] (14) "Transportation facility" means a transportation project that reduces energy use during commuting to and from work or school, during work-related travel, or during travel to obtain medical or other services, and may be further defined by the department by rule. "Transportation facility" includes, but is not limited to, a qualified transit pass contract or a transportation services contract.

[(16)] (15) "Transportation provider" means a public, private or nonprofit entity that provides transportation services to members of the public.

[(17)] (16) "Transportation services contract" means a contract that is related to a transportation facility, and may be further defined by the department by rule.

SECTION 16. 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, standards relating to the type of equipment, machinery or other products being manufactured and related performance and efficiency standards applicable to the manufactured products.]

SECTION 17. ORS 469.200 is amended to read:

469.200. (1) 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) \$10 million, in the case of any other facility.

(2) 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 determination.

SECTION 18. 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;

or

(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 the expected level of sustainable building practices facility performance.

(d) The projected cost of the facility.

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

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

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

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

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

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

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

SECTION 19. ORS 315.354 is amended to read:

315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit is allowed as follows:

(a) Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in each of the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability of the taxpayer.

(b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit allowable under subsection (4) of this section may be claimed in the first tax year for which the credit may be claimed, but may not exceed the tax liability of the taxpayer.

(c) If the facility uses or produces renewable energy resources or is a renewable energy resource equipment manufacturing facility, the credit allowed in each of five succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

(2) Notwithstanding subsection (1) of this section:

(a) If the facility is one or more renewable energy resource systems installed in a single-family dwelling, the amount of the credit for each system shall be determined as if the facility was considered a residential alternative energy device under ORS 316.116, but subject to the maximum credit amount under subsection (4)(b) of this section;

(b) If the facility is a high-performance home, the amount of the credit shall equal the amount determined under paragraph (a) of this subsection plus \$3,000; and

(c) If the facility is a high-performance home or a homebuilder-installed renewable energy system, the total amount of the credit may be claimed in the first tax year for which the credit is claimed, but may not exceed the tax liability of the taxpayer.

(3) In order for a tax credit to be allowable under this section:

(a) The facility must be located in Oregon;

(b) The facility must have received final certification from the Director of the State Department of Energy under ORS 469.185 to 469.225 **within five years preceding the first tax year for which a credit is claimed under this section; [and]**

1 **(c) The taxpayer must be named in the certificate issued under ORS 469.215; and**

2 [(c)] **(d) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c).**

3 (4) The total amount of credit allowable to an eligible taxpayer under this section may not ex-
4 ceed:

5 (a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy
6 resource equipment manufacturing facility or a high-efficiency combined heat and power facility;

7 (b) \$9,000 per single-family dwelling for homebuilder-installed renewable energy systems;

8 (c) \$12,000 per single-family dwelling for homebuilder-installed renewable energy systems, if the
9 dwelling also constitutes a high-performance home; or

10 (d) 35 percent of the certified cost of any other facility.

11 (5)[(a)] Upon any sale, termination of the lease or contract, exchange or other disposition of the
12 facility, notice thereof shall be given to the Director of the State Department of Energy who shall
13 revoke the certificate covering the facility as of the date of such disposition. The new owner, or
14 upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215,
15 but the tax credit available to the new owner shall be limited to the amount of credit not claimed
16 by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all
17 previous leases.

18 [(b) *The State Department of Energy may not revoke the certificate covering a facility under para-*
19 *graph (a) of this subsection if the tax credit associated with the facility has been transferred to a tax-*
20 *payer who is an eligible applicant under ORS 469.205 (1)(c)(A).]*

21 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
22 particular year may be carried forward and offset against the taxpayer's tax liability for the next
23 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
24 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
25 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
26 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
27 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
28 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
29 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
30 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
31 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
32 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
33 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
34 yond the years specified in subsection (1) of this section only as provided in this subsection.

35 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
36 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
37 316, 317 or 318 for such year.

38 (8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax
39 credits allowed under this section.

40 (9) If a homebuilder claims a credit under this section with respect to a homebuilder-installed
41 renewable energy system or a high-performance home:

42 (a) The homebuilder may not claim credits for both a homebuilder-installed renewable energy
43 system and a high-performance home with respect to the same dwelling;

44 (b) The homebuilder must inform the buyer of the dwelling that the homebuilder is claiming a
45 tax credit under this section with respect to the dwelling; and

(c) The buyer of the dwelling may not claim a credit under this section that is based on any facility for which the homebuilder has already claimed a credit.

(10) Notwithstanding subsection (3)(c) of this section, the Department of Revenue may prescribe by rule the method for allowing a tax credit under this section if the ownership or filing status of a person for which a final certificate has been issued changes prior to the exhaustion of the tax credit.

[(10)] (11) The definitions in ORS 469.185 apply to this section.

SECTION 19a. ORS 315.354, as amended by section 19 of this 2008 Act, is amended to read:

315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit is allowed as follows:

(a) Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in each of the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability of the taxpayer.

(b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit allowable under subsection (4) of this section may be claimed in the first tax year for which the credit may be claimed, but may not exceed the tax liability of the taxpayer.

(c) If the facility uses or produces renewable energy resources [*or is a renewable energy resource equipment manufacturing facility*], the credit allowed in each of five succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

(2) Notwithstanding subsection (1) of this section:

(a) If the facility is one or more renewable energy resource systems installed in a single-family dwelling, the amount of the credit for each system shall be determined as if the facility was considered a residential alternative energy device under ORS 316.116, but subject to the maximum credit amount under subsection (4)(b) of this section;

(b) If the facility is a high-performance home, the amount of the credit shall equal the amount determined under paragraph (a) of this subsection plus \$3,000; and

(c) If the facility is a high-performance home or a homebuilder-installed renewable energy system, the total amount of the credit may be claimed in the first tax year for which the credit is claimed, but may not exceed the tax liability of the taxpayer.

(3) In order for a tax credit to be allowable under this section:

(a) The facility must be located in Oregon;

(b) The facility must have received final certification from the Director of the State Department of Energy under ORS 469.185 to 469.225 within five years preceding the first tax year for which a credit is claimed under this section;

(c) The taxpayer must be named in the certificate issued under ORS 469.215; and

(d) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c).

(4) The total amount of credit allowable to an eligible taxpayer under this section may not exceed:

(a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy resource equipment manufacturing facility or a high-efficiency combined heat and power facility;

(b) \$9,000 per single-family dwelling for homebuilder-installed renewable energy systems;

1 (c) \$12,000 per single-family dwelling for homebuilder-installed renewable energy systems, if the
 2 dwelling also constitutes a high-performance home; or

3 (d) 35 percent of the certified cost of any other facility.

4 (5) Upon any sale, termination of the lease or contract, exchange or other disposition of the
 5 facility, notice thereof shall be given to the Director of the State Department of Energy who shall
 6 revoke the certificate covering the facility as of the date of such disposition. The new owner, or
 7 upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215,
 8 but the tax credit available to the new owner shall be limited to the amount of credit not claimed
 9 by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all
 10 previous leases.

11 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 12 particular year may be carried forward and offset against the taxpayer's tax liability for the next
 13 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
 14 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
 15 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
 16 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
 17 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
 18 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
 19 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
 20 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
 21 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
 22 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
 23 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
 24 yond the years specified in subsection (1) of this section only as provided in this subsection.

25 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
 26 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
 27 316, 317 or 318 for such year.

28 (8) The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax
 29 credits allowed under this section.

30 (9) If a homebuilder claims a credit under this section with respect to a homebuilder-installed
 31 renewable energy system or a high-performance home:

32 (a) The homebuilder may not claim credits for both a homebuilder-installed renewable energy
 33 system and a high-performance home with respect to the same dwelling;

34 (b) The homebuilder must inform the buyer of the dwelling that the homebuilder is claiming a
 35 tax credit under this section with respect to the dwelling; and

36 (c) The buyer of the dwelling may not claim a credit under this section that is based on any
 37 facility for which the homebuilder has already claimed a credit.

38 (10) Notwithstanding subsection (3)(c) of this section, the Department of Revenue may prescribe
 39 by rule the method for allowing a tax credit under this section if the ownership or filing status of
 40 a person for which a final certificate has been issued changes prior to the exhaustion of the tax
 41 credit.

42 (11) The definitions in ORS 469.185 apply to this section.

43 **SECTION 20.** ORS 315.356 is amended to read:

44 315.356. (1) If a taxpayer obtains a grant from the federal government in connection with a fa-
 45 cility that has been certified by the Director of the State Department of Energy, the certified cost

of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits that the taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 **and sections 2 to 9 and 13 of this 2008 Act** after any reduction described in this subsection may not be reduced by the federal grant. A taxpayer applying for a federal grant shall notify the Department of Revenue by certified mail within 30 days after each application, and after the receipt of any grant.

(2) A taxpayer is eligible to participate in both this tax credit program and low interest, government-sponsored loans.

(3) A taxpayer who receives a tax credit or property tax relief on a pollution control facility or an alternative energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 315.354 and 469.185 to 469.225, **or sections 2 to 9 and 13 of this 2008 Act.**

(4) A credit may not be allowed under ORS 315.354 if the taxpayer has received a tax credit on the same facility or device under ORS 315.324.

SECTION 21. ORS 469.215 is amended to read:

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

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

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

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

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

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

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

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

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

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

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The director[, *after consultation with the Public Utility Commission,*] may issue the certificate together with such conditions as the director determines are appropriate to promote the purposes of this section and ORS 315.354, 469.185, 469.200, 469.205 and 469.878. **If the entity is subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate.** The action of the director shall include certification of the actual cost of the facility. However, in no event shall the director certify an amount for tax credit purposes which is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

(5) If the director rejects an application for final certification, or certifies a lesser actual cost

of the facility than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons therefor, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

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

SECTION 22. ORS 469.206 is amended to read:

469.206. (1) *[The owner of a facility may transfer a tax credit for the facility in exchange for a cash payment equal to the present value of the tax credit.]* **A person seeking final certification under ORS 469.215 or the holder of a final certificate issued under ORS 469.215 may transfer all or a portion of the tax credit that would otherwise be allowable under ORS 315.354 by obtaining transfer approval under this section.**

(2) The person seeking transfer approval shall apply for the approval on a form prescribed by the State Department of Energy that sets forth:

(a) The name and taxpayer identification number of each taxpayer to whom all or a portion of the tax credit is to be transferred;

(b) A schedule of the apportionment of the tax credit, showing each transferee's portion of the credit and the portion of the credit that is retained by the transferor, if any; and

(c) Any other information required by the department.

(3) The Director of the State Department of Energy shall approve a credit transfer sought under this section only if:

(a) Each transferee is subject to Oregon personal income or corporate income or excise taxes as of the date of the transfer approval application;

(b) The tax credit is to be apportioned to no more than 100 taxpayers following transfer;

(c) The tax credit has not previously been transferred; or

(d) The tax credit with respect to the facility has been claimed on an income tax return filed with the Department of Revenue.

(4) The transfer of a tax credit under this section may not be approved until on or after the date that the director has determined to issue final certification under ORS 469.215. If a final certificate had previously been issued with respect to the tax credit, that certificate is revoked. The director shall issue a final certificate to each transferee under this section showing the transferee's portion of the tax credit, the total cost being certified and the apportioned cost being certified to the transferee. A final certificate issued to a transferee under this subsection shall include the date of issue of any original final certificate, for purposes of determining the end of the five-year period described in ORS 315.354 (3)(b).

(5) Upon approval of the transfer of a tax credit under this section, the director shall transmit to the Department of Revenue any information concerning the transfer that the Department of Revenue has requested.

[(2)] (6) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section.

[(3) Notwithstanding any other provision of law, a tax credit transferred pursuant to this section does not decrease the amount of taxes required to be reported by a public utility.]

(7) If a transferee is required to file a tax report under ORS 757.268, the report shall re-

1 **flect the tax liability of the transferee before taking into account the credit allowed under**
 2 **ORS 315.354.**

3 **SECTION 23.** ORS 469.225 is amended to read:

4 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
 5 the State Department of Energy may order the revocation of the certificate issued under ORS
 6 469.215 if the director finds that:

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

8 (b) The holder of the certificate has failed substantially to construct or to make every reason-
 9 able effort to operate the facility in compliance with the plans, specifications and procedures in such
 10 certificate.

11 (2) As soon as the order of revocation under this section becomes final, the director shall notify
 12 the Department of Revenue of such order.

13 (3) If the certificate is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax
 14 credits provided to the holder of the certificate by virtue of such certificate shall be forfeited and
 15 upon notification under subsection (2) of this section the Department of Revenue immediately shall
 16 proceed to collect those taxes not paid by the certificate holder as a result of the tax credits pro-
 17 vided to the holder under ORS 315.354. The Department of Revenue shall have the benefit of all laws
 18 of this state pertaining to the collection of income and excise taxes. No assessment of such taxes
 19 shall be necessary and no statute of limitation shall preclude the collection of such taxes.

20 (4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certif-
 21 icate holder shall be denied any further relief under ORS 315.354 in connection with such facility
 22 from and after the date that the order of revocation becomes final.

23 **(5) Notwithstanding subsections (1) to (4) of this section, a final certificate may not be**
 24 **revoked if the tax credit was transferred under ORS 469.205 prior to the date the certificate**
 25 **would otherwise be revoked.**

26 **SECTION 24.** The amendments to ORS 315.354, 469.206 and 469.225 by sections 19, 22 and
 27 **23 of this 2008 Act apply to tax years beginning on or after January 1, 2007.**

28 **SECTION 25.** Notwithstanding ORS 469.206 and 469.225, the Director of the State De-
 29 partment of Energy may affirm any action undertaken by the State Department of Energy
 30 on or after January 1, 2007, and before the effective date of this 2008 Act concerning the
 31 transfer of tax credits under ORS 315.354 and 469.185 to 469.225.

32 **SECTION 26.** The amendments to ORS 315.354, 315.356, 469.185, 469.197, 469.200, 469.205
 33 and 469.215 by sections 15 to 18, 19a, 20 and 21 of this 2008 Act apply to applications for pre-
 34 liminary certification filed on or after January 1, 2008, and to tax years beginning on or after
 35 January 1, 2008.

36 **SECTION 27.** This 2008 Act takes effect on the 91st day after the date on which the
 37 special session of the Seventy-fourth Legislative Assembly adjourns sine die.