

Senate Bill 1091

Sponsored by Senator BURDICK (Presession filed.)

SUMMARY

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

Creates environmental investment tax credit.
Creates Ground Water Protection Account. Continuously appropriates moneys from account to Department of Environmental Quality for ground water protection programs.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to environmental investments; creating new provisions; amending ORS 314.255, 314.752, 315.324 and 315.356; appropriating money; and prescribing an effective date.

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

SECTION 1. Sections 2 to 15 of this 2008 Act are added to and made a part of ORS chapter 468.

SECTION 2. Definitions. As used in sections 2 to 15 of this 2008 Act:

(1) "Application for certification" means an application for certification of an environmental investment under section 5 of this 2008 Act.

(2) "Eligible environmental facility" means an environmental facility described in section 3 of this 2008 Act.

(3) "Environmental benefit" means:

(a) The prevention, control or reduction of air or water pollution;

(b) The prevention, control or reduction of solid waste or hazardous waste; or

(c) The recycling or environmentally safe disposal of used oil.

(4) "Environmental facility" means:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device used, erected, constructed or installed in Oregon for the purpose of providing an environmental benefit; or

(b) Any addition to, reconstruction of or improvement of land or of an existing structure, building, installation, excavation, machinery, equipment or device used, erected, constructed or installed in Oregon for the purpose of providing an environmental benefit.

(5) "Environmental investment" means the amount of an investment in an eligible environmental facility as determined under section 9 of this 2008 Act.

(6) "Hazardous waste" has the meaning given that term in ORS 466.005.

(7) "Material recovery process" means a process that obtains useful material from material that would otherwise be solid waste, hazardous waste or used oil.

(8) "Solid waste" has the meaning given that term in ORS 459.005.

(9) "Used oil" has the meaning given that term in ORS 459A.555.

SECTION 3. Eligible environmental facilities. The Environmental Quality Commission

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 may certify an investment in an environmental facility under sections 2 to 15 of this 2008
2 Act if the facility:

3 (1) Disposes of or eliminates industrial waste or water pollution, including a facility that
4 uses treatment works for industrial waste as those terms are defined in ORS 468B.005.

5 (2) Disposes of or eliminates air contaminants, air pollution or air contamination sources,
6 including a facility that uses air-cleaning devices as defined in ORS 468A.005.

7 (3) Uses a material recovery process.

8 (4) Uses a plastic reclaimed through a material recovery process in the manufacture of
9 an end product having economic value.

10 (5) Treats, reduces or eliminates a substantial quantity of hazardous waste.

11 **SECTION 4. Certifiable environmental investments.** The Environmental Quality Com-
12 mission may certify an environmental investment under sections 2 to 15 of this 2008 Act if:

13 (1) The investment is in an eligible environmental facility;

14 (2) The investment is not required at the time the certificate is issued, or at any time
15 during the term of the certificate, by reason of a statute, rule, order, ordinance or other law
16 that is in effect on the date the certificate is issued; and

17 (3) The investment is for an environmental benefit.

18 **SECTION 5. Application for certification; contents.** (1) Any person may apply to the De-
19 partment of Environmental Quality for certification under sections 2 to 15 of this 2008 Act
20 of an environmental investment. A certificate issued under sections 2 to 15 of this 2008 Act
21 may be used for the purposes of the tax credit under section 17 of this 2008 Act.

22 (2) An application for certification must be made in writing in a form prescribed by the
23 department. The department may require that an applicant provide with the application:

24 (a) Documentation of the cost of the environmental facility.

25 (b) A description of the environmental facility in which the environmental investment is
26 made and documentation supporting a finding that the facility is an eligible environmental
27 facility.

28 (c) Documentation describing how the environmental investment will meet the require-
29 ment that approved environmental facilities employ innovative techniques or strategies as
30 described in section 11 (1) of this 2008 Act.

31 (d) Documentation and data supporting a finding that the environmental investment
32 meets the requirements of section 4 of this 2008 Act.

33 (e) Proposed operating procedures for the environmental facility in which the environ-
34 mental investment is made.

35 (f) Any other information the department considers necessary.

36 (3) The department may require that an applicant provide with the application for cer-
37 tification a statement prepared by an independent engineer holding a valid certificate under
38 ORS 672.002 to 672.325, or by a department engineer, that documents:

39 (a) The extent to which the environmental facility will provide environmental benefits.

40 (b) The cost of the environmental facility.

41 (c) Statutes, rules, orders, ordinances and other laws that impose requirements on the
42 applicant relating to the environmental benefits.

43 (d) Other information required by rule of the Environmental Quality Commission.

44 **SECTION 6. Application fee.** (1) An application for certification must be accompanied by
45 the fee established under subsection (2) of this section. The Department of Environmental

1 Quality may refund the fee if the application is rejected or withdrawn.

2 (2) The Environmental Quality Commission may adopt a schedule of fees for certificates
3 issued under sections 2 to 15 of this 2008 Act. Before adopting or revising fees under this
4 section, the commission shall estimate the total cost to the department and to the commis-
5 sion of administering sections 2 to 15 of this 2008 Act. The fees shall be based on the esti-
6 mated cost to the department and commission, and shall be calculated to generate an
7 amount that does not exceed the total estimated cost. Any fees collected by the department
8 in excess of the total estimated cost shall be held by the department and used by the com-
9 mission to reduce future fees. The fee may vary according to the size and complexity of the
10 environmental facility identified in the application for certification.

11 (3) The commission may not include any fee paid under this section as part of the certi-
12 fied environmental investment.

13 **SECTION 7. Time limitation on filing application for certification; sunset.** (1) An appli-
14 cation for certification must be filed with the Department of Environmental Quality within
15 one year after the environmental facility in which the investment is made is placed in ser-
16 vice.

17 (2) The Environmental Quality Commission may not certify an environmental investment
18 under sections 2 to 15 of this 2008 Act if an application for certification is not filed with the
19 department within the time allowed by this section. The commission may grant an extension
20 of time to file an application for certification for circumstances beyond the control of the
21 applicant that prevented timely filing of the application.

22 (3) An application for certification may not be considered filed for the purposes of this
23 section until the application is complete.

24 (4) The department may not accept an application for certification more than four years
25 after construction or installation of the environmental facility is commenced as described in
26 subsection (6) of this section.

27 (5) The department may not accept an application for certification if construction or in-
28 stallation of the environmental facility is commenced as described in subsection (6) of this
29 section after December 31, 2013.

30 (6) Construction or installation of an environmental facility is commenced for the pur-
31 poses of this section on the date on which the person constructing or installing the facility
32 obtains all necessary preliminary approvals and begins continuous on-site construction or
33 installation of the facility. A person engages in continuous on-site construction or installa-
34 tion of an environmental facility for the purposes of this subsection even though the con-
35 struction or installation is interrupted or delayed by natural disasters, strikes, litigation or
36 other matters beyond the control of the person.

37 **SECTION 8. Precertification.** (1) Any person may apply to the Department of Environ-
38 mental Quality for precertification of an investment in an environmental facility before the
39 facility is placed in service. The application for precertification must be made in writing in
40 a form prescribed by the department and must be accompanied by a fee established under
41 section 6 of this 2008 Act.

42 (2) An application for precertification need not contain information relating to the cost
43 of the environmental facility.

44 (3) If the Environmental Quality Commission determines that the facility in which the
45 environmental investment is made is an eligible environmental facility under section 3 of this

2008 Act, the commission shall precertify the investment.

(4) If the facility in which the environmental investment is made is completed as proposed in the application for precertification, the commission's approval of the application shall be prima facie evidence that the facility is an eligible environmental facility and that all or part of the costs of the facility are allowable as an environmental investment.

(5) If the commission fails to act on an application within 120 days after the application is filed with the department, or refuses to precertify an environmental investment, the applicant for precertification may appeal the commission's decision in the manner provided in ORS 468.110.

(6) Precertification of an environmental investment under this section does not affect the requirement that the construction or installation of the facility in which the investment is made commence before January 1, 2014.

SECTION 9. Determination of the environmental investment. (1) The environmental investment determined by the Environmental Quality Commission may not exceed the actual expenditures for the facility in which the investment is made.

(2) The environmental investment may include only those costs attributable to the environmental benefit provided by the facility in which the investment is made.

(3) Subject to subsections (6), (7) and (8) of this section, if the facility in which the investment is made is used solely to provide an environmental benefit, the environmental investment includes all costs of the facility.

(4) For an environmental facility that costs \$50,000 or less and is used both to provide an environmental benefit and for other purposes, the commission shall calculate the costs of the facility allocable to the environmental benefit based on the time the facility is used to achieve the environmental benefit as compared to the total time the facility is in use.

(5) For an environmental facility that costs more than \$50,000 and is used both to provide an environmental benefit and for other purposes, the commission shall establish methods to determine the environmental investment.

(6) In determining the environmental investment, the commission may not include the cost of:

(a) Air conditioners.

(b) Septic tanks or other facilities for human waste.

(c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system.

(d) Equipment of less than 100 total horsepower for chipping or shredding wood waste.

(e) Any separate portion of an environmental facility that does not make a significant contribution to an environmental benefit, including:

(A) Office buildings and furnishings;

(B) Parking lots and road improvements;

(C) Landscaping;

(D) External lighting;

(E) Company or related signs; and

(F) Automobiles.

(f) Asbestos abatement.

(g) Property installed, constructed or used for cleanup of emergency spills or unauthorized releases, as defined by the commission by rule.

(h) Cleanup of land or the sediment of the watercourses of this state.

(i) Any other property or expense identified by the commission as not includable in determining the environmental investment.

(7) In determining the environmental investment, the commission may not include the cost of replacement or reconstruction of all or a part of any environmental facility if a certificate has previously been issued under sections 2 to 15 of this 2008 Act for the facility, except:

(a) If the cost of replacement or reconstruction would otherwise be allowable as an environmental investment and the cost is greater than the cost of simple replacement or reconstruction of the environmental facility, the difference between the cost actually incurred and cost of simple replacement or reconstruction may be included in the environmental investment; and

(b) If the environmental facility is replaced or reconstructed before the end of the certificate's term, the cost of replacement or reconstruction may be included in the environmental investment for the remainder of the term of the original certificate.

(8) In determining the environmental investment, the commission may not include the cost of a material recovery process if:

(a) The major purpose of the process is to produce, from solid waste, hazardous waste or used oil, fuel that can be utilized for heat or other forms of energy; or

(b) The process burns waste to produce energy or to reduce the amount of waste.

SECTION 10. Percentage of the environmental investment that may be certified. (1) Except as provided in this section, the Environmental Quality Commission may certify no more than _____ percent of an environmental investment.

(2) The commission may certify no more than _____ percent of an environmental investment if the applicant installs an environmental management system for the facility in which the investment is made that includes a systematic, documented, continual cycle of planning, implementing, reviewing and improving the processes used to achieve an environmental benefit. The system must measure the environmental benefits provided by the facility and must meet:

(a) The standards established by the International Organization for Standardization under ISO 14001;

(b) The standards established in the Green Permit program under ORS 468.501 to 468.521; or

(c) Other criteria established by the commission by rule.

(3)(a) An applicant seeking certification under subsection (2) of this section must submit a report to the Department of Environmental Quality stating that the provisions of subsection (2) of this section have been met. The report must be prepared by an independent third party that is familiar with environmental management systems. The report must include a statement from a registered or certified environmental management system auditor that indicates that the system meets the requirements of subsection (2) of this section.

(b) The independent third party preparing a report under this subsection may be contracted for by the applicant or by the department. If the department contracts for the services, the department shall recover the costs of the services from the applicant in the manner prescribed in ORS 468.073. An applicant is liable for the costs of the services without regard to whether the commission accepts or rejects the application. The commission may

1 not certify an environmental investment until the department has received full payment
2 from the applicant.

3 (4) The commission shall prepare an estimate of the revenue impact of tax credits under
4 section 17 of this 2008 Act for all environmental investments certified in a calendar year. The
5 commission may not certify environmental investments in a calendar year in excess of an
6 aggregate amount estimated by the commission to cause a revenue impact in excess of \$10
7 million in any subsequent calendar year. The Department of Revenue shall monitor the ac-
8 tual revenue impact of tax credits claimed under section 17 of this 2008 Act. If the actual
9 revenue impact in any calendar year exceeds \$10 million, the Department of Revenue shall
10 report the amount of the excess to the commission and the commission shall reduce the
11 amount of environmental investments certified in subsequent calendar years to offset the
12 excess and to avoid a revenue impact in excess of \$10 million in any subsequent calendar
13 year.

14 (5) The commission may not certify more than \$5 million in environmental investments
15 for any single facility.

16 SECTION 11. Approval and rejection of application; issuance of certificate. (1) In certi-
17 fying environmental investments, the Environmental Quality Commission shall give priority
18 to investments in environmental facilities that the commission determines exemplify future
19 best practices or demonstrate innovative techniques or strategies.

20 (2) The commission shall act on an application for certification within 120 days after the
21 filing of the application under section 5 of this 2008 Act. The commission shall give the ap-
22 plicant written notice of the commission's decision and, if the application is rejected, a con-
23 cise statement of the commission's findings and reasons.

24 (3) If the commission rejects an application for certification, or the applicant objects to
25 the amount certified by the commission, the applicant may appeal the commission's decision
26 in the manner provided in ORS 468.110. An appeal under this subsection must be made not
27 more than 30 days after notice of the decision is mailed by the commission to the applicant.

28 (4) The commission shall issue a certificate for an environmental investment if the
29 commission finds that the investment meets the requirements of sections 2 to 15 of this 2008
30 Act. The certificate must state the investment that has been certified.

31 (5) If one or more environmental facilities constitute a single operational unit, the com-
32 mission may certify the environmental investment in the facilities under a single certificate.

33 SECTION 12. Term of certificate. A certificate for an environmental investment is valid
34 for a term of 10 years.

35 SECTION 13. Revocation of certificate. (1) The Environmental Quality Commission shall
36 order the revocation of a certificate issued under sections 2 to 15 of this 2008 Act if the
37 commission finds that:

38 (a) The certificate was obtained by fraud or misrepresentation; or

39 (b) The certificate holder has failed to utilize the environmental facility in which the
40 environmental investment is made to provide an environmental benefit.

41 (2) The commission shall notify the Department of Revenue when an order of revocation
42 becomes final.

43 (3) If the commission orders the revocation of a certificate under subsection (1)(a) of this
44 section, all prior tax relief provided to the certificate holder by virtue of the certificate is
45 forfeited, and the Department of Revenue shall proceed to collect those taxes not paid by the

certificate holder as a result of the tax credit provided under the provisions of section 17 of this 2008 Act.

(4) Except as provided in subsection (5) of this section, if the commission orders the revocation of a certificate under subsection (1)(b) of this section, the certificate holder shall be denied any further tax relief under section 17 of this 2008 Act after the order of revocation becomes final.

(5) The commission may reinstate a certificate revoked under subsection (1)(b) of this section if the commission finds the environmental facility is once more being used to provide an environmental benefit. If the commission reinstates a certificate under this subsection, the commission shall notify the Department of Revenue that the certificate has been reinstated for the remainder of the certificate's term.

(6) Revocation of a certificate under this section may be appealed in the manner provided in ORS 468.110.

SECTION 14. Ground water protection surcharge. (1) In addition to the application fee required under section 6 of this 2008 Act, an applicant for certification of an environmental investment under sections 2 to 15 of this 2008 Act must pay to the Department of Environmental Quality a surcharge equal to 1.5 percent of the amount certified by the commission under section 10 of this 2008 Act.

(2) All moneys collected under subsection (1) of this section shall be deposited in the Ground Water Protection Account established under section 15 of this 2008 Act.

SECTION 15. Ground Water Protection Account. (1) The Ground Water Protection Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Ground Water Protection Account shall be credited to the account.

(2) Moneys in the Ground Water Protection Account are continuously appropriated to the Department of Environmental Quality for the purpose of funding ground water protection programs.

SECTION 16. Section 17 of this 2008 Act is added to and made a part of ORS chapter 315.

SECTION 17. Tax credit for environmental investments. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) for an environmental investment certified under sections 2 to 15 of this 2008 Act shall be allowed if the taxpayer qualifies for the credit under this section.

(2) The maximum credit allowed in any one tax year under this section is the lesser of the tax liability of the taxpayer or the amount certified by the Environmental Quality Commission under section 10 of this 2008 Act, divided by the number of years of the useful life of the environmental facility in which the investment is made. For the purposes of this calculation, the number of years of the facility's useful life is the remaining number of years of useful life at the time the environmental investment is certified. The number of years of the facility's useful life may not be less than one year or more than 10 years.

(3) To qualify for a tax credit under this section, the taxpayer must be:

(a) The owner or contract purchaser of the trade or business that utilizes the environmental facility;

(b) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes the facility; or

(c) A person who, as an owner, contract purchaser or lessee, owns or leases the environmental facility that is used in a business that is engaged in a production activity de-

1 scribed in 40 C.F.R. 430.20, as in effect on July 1, 1998, or is used for recycling, material
2 recovery or energy recovery as those terms are defined in ORS 459.005. A person described
3 in this paragraph need not operate the facility, or conduct a trade or business that utilizes
4 the facility.

5 (4) To qualify for a tax credit under this section, the environmental facility in which the
6 investment is made must be owned or leased during the tax year by the taxpayer claiming
7 the credit and must have been in use and operation during the tax year for which the credit
8 is claimed.

9 (5) The maximum credit allowed in all tax years under this section may not exceed the
10 amount certified by the commission under section 10 of this 2008 Act.

11 (6) The credit provided by this section is in addition to any depreciation or amortization
12 deduction that the taxpayer otherwise may be entitled to under ORS chapter 316, 317 or 318
13 for the environmental facility in which the investment is made.

14 (7) Upon any sale, exchange or other disposition of an environmental facility for which
15 an environmental investment has been certified under sections 2 to 15 of this 2008 Act, the
16 person making the disposition shall give notice of the disposition to the Environmental
17 Quality Commission. The commission shall revoke the certificate for the environmental in-
18 vestment in the facility, as of the date of the disposition, in the manner provided by section
19 13 of this 2008 Act. The transferee may apply for certification of the investment in the fa-
20 cility under sections 2 to 15 of this 2008 Act, but the tax credit available to the transferee
21 shall be reduced by any credit claimed by the transferor. The sale, exchange or other dispo-
22 sition of shares in an S corporation as defined in section 1361 of the Internal Revenue Code,
23 or of a partner's interest in a partnership, is not a disposition for purposes of this sub-
24 section.

25 (8) Any tax credit otherwise allowable under this section that is not used by the taxpayer
26 in a tax year may be carried forward and offset against the taxpayer's tax liability for the
27 next succeeding tax year. Any credit remaining unused in the next succeeding tax year may
28 be carried forward and used in the second succeeding tax year. Any credit not used in that
29 second succeeding tax year may be carried forward and used in the third succeeding tax
30 year. The credit may not be carried forward for any tax year after that third succeeding
31 year. Credits may be carried forward to and used in a tax year after the term of the certif-
32 icate specified in section 12 of this 2008 Act.

33 (9) The taxpayer's adjusted basis for determining gain or loss shall not be decreased by
34 reason of a tax credit allowed under this section.

35 (10) If more than one person has an interest in a facility described in subsection (3)(c)
36 of this section, only one person may claim the credit allowed under this section. If a person
37 described in subsection (3)(c) of this section is a lessee of the environmental facility, the
38 person must submit a written statement signed by the lessor of the facility that authorizes
39 the person to claim the credit. The statement must be filed with the Department of Revenue
40 not later than the final day of the first tax year for which the tax credit is claimed.

41 (11) A taxpayer may not be allowed a tax credit under this section for any tax year in
42 which the taxpayer is convicted of a felony under ORS 468.922 to 468.956 that is related to
43 the environmental facility in which the certified environmental investment is made. If a tax
44 credit is disallowed under this subsection, a tax credit may not be allowed to the taxpayer
45 under this section for the four tax years following the tax year in which the taxpayer is

1 convicted.

2 **SECTION 18.** Section 17 of this 2008 Act applies to tax years beginning on or after Jan-
3 uary 1, 2009.

4 **SECTION 19.** Section 20 of this 2008 Act is added to and made a part of ORS chapter 314.

5 **SECTION 20. Taxpayer reports.** (1) On or before March 15 of each year in which a tax-
6 payer claims a tax credit for an environmental investment under section 17 of this 2008 Act,
7 the person that owns the environmental facility in which the investment is made shall pro-
8 vide a report to the Department of Environmental Quality in a form prescribed by the de-
9 partment. The report must:

10 (a) Attest to the continued use of the facility and the continued environmental benefit
11 provided by the facility; and

12 (b) Identify and quantify the environmental benefit provided by the facility.

13 (2) If the holder of a certificate for an environmental investment under sections 2 to 15
14 of this 2008 Act fails to file a report by the date prescribed in this section, the Environmental
15 Quality Commission may order revocation of the certificate in the manner provided by sec-
16 tion 13 of this 2008 Act.

17 (3) Each biennium, the commission shall prepare and make available to the Legislative
18 Assembly a written report that summarizes the information reported by taxpayers under
19 this section.

20 **SECTION 21.** ORS 314.255 is amended to read:

21 314.255. (1) Upon receipt of notice of the revocation of a certification of a pollution control fa-
22 cility pursuant to ORS 468.185 (1), **or of an environmental investment under section 13 of this**
23 **2008 Act**, the Department of Revenue immediately shall collect any taxes due by reason of [such]
24 the revocation, and shall have the benefit of all laws of this state pertaining to the collection of
25 income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation
26 shall preclude the collection of such taxes.

27 (2) [No] Tax relief [shall] **may not** be allowed under ORS 307.405 or 315.304 for [any] a pollution
28 control facility, **or under section 17 of this 2008 Act for an investment in an environmental**
29 **facility, if the facility is** constructed or used by or for the benefit of any governmental or quasi-
30 governmental body or public corporation or form thereof, [except where such] **unless the** facilities
31 are used for resource recovery.

32 **SECTION 22.** ORS 314.752 is amended to read:

33 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
34 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
35 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
36 allowable to the shareholders of the S corporation.

37 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
38 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
39 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
40 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
41 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
42 manner prescribed under section 1377(a) of the Internal Revenue Code.

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

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

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), **section 17 of this 2008 Act (environmental investment)**, ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel).

SECTION 23. ORS 314.752, as amended by section 13, chapter 625, Oregon Laws 2007, is amended to read:

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

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

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

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

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.254 (youth apprenticeship sponsorship),

1 ORS 315.304 (pollution control facility), **section 17 of this 2008 Act (environmental investment)**,
 2 ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS
 3 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604
 4 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alterna-
 5 tive fuel vehicle) and ORS 315.141 (biomass production for biofuel).

6 **SECTION 24.** ORS 314.752, as amended by section 13, chapter 625, Oregon Laws 2007, and
 7 section 3, chapter 883, Oregon Laws 2007, is amended to read:

8 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 9 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 10 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 11 allowable to the shareholders of the S corporation.

12 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
 13 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
 14 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 15 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 16 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 17 manner prescribed under section 1377(a) of the Internal Revenue Code.

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

21 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 22 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 23 316.117, then that provision shall apply to the nonresident shareholder.

24 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 25 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 26 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 27 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 28 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 29 (tribal taxes on reservation enterprise zones), ORS 315.134 (fish habitat improvement), ORS 315.156
 30 (crop gleanings), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care as-
 31 sistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 32 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), **section 17 of**
 33 **this 2008 Act (environmental investment)**, ORS 315.324 (plastics recycling), ORS 315.354 and ORS
 34 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced
 35 telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling
 36 stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for
 37 biofuel).

38 **SECTION 25.** ORS 315.324 is amended to read:

39 315.324. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
 40 ration, under ORS chapter 317) for the investments certified under ORS 468.466 shall be allowed if
 41 the taxpayer qualifies under subsection (4) of this section.

42 (2) A taxpayer shall be allowed a tax credit under this section each year for five tax years be-
 43 ginning in the tax year the investment receives final certification under ORS 468.466. The maximum
 44 credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or 10 per-
 45 cent of the certified cost of the taxpayer's investment.

(3) To qualify for the credit the investment must be made in accordance with the provisions of ORS 468.461.

(4)(a) The taxpayer who is allowed the credit must be:

(A) The owner of the business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product;

(B) A person who, as a lessee or pursuant to an agreement, conducts the business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product; or

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. If more than one person has an interest under this subparagraph in a qualifying business and one or more persons receive a certificate, such person or persons may allocate all or any part of the certified investment cost among any persons and their successors or assigns having an interest under this subparagraph. Such allocation shall be evidenced by a written statement signed by the person or persons receiving the certificate and designating the persons to whom the certified investment costs have been allocated and the amount of certified investment cost allocated to each. This statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate certified investment costs allocated between or among more than one person exceed the amount of the total certified cost of the investment. As used in this paragraph, "owner" includes a contract purchaser;

(b) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in paragraph (a)(C) of this subsection, and must have been collecting, transporting or processing reclaimed plastic or manufacturing a reclaimed plastic product during the tax year for which the credit is claimed; and

(c) The reclaimed plastic collected, transported, processed or used to manufacture the reclaimed plastic product must not be an industrial waste generated by the person claiming the tax credit, but must be purchased from a plastic recycler other than the person claiming the tax credit.

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

(6) Upon any sale, exchange, or other disposition of a qualifying business, notice thereof shall be given to the Environmental Quality Commission [*who*], **which** shall revoke the certification covering the investment of such business as of the date of such disposition. Notwithstanding ORS 468.461 (6), the transferee may apply for a new certificate under ORS 468.466, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(7) Any tax credit otherwise allowable under this section which 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 such 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

1 credit not used in that third succeeding tax year may be carried forward and used in the fourth
 2 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
 3 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
 4 thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in
 5 ORS 468.461.

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

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

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

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

16 (12) No credit shall be allowed under this section and under ORS 468.451 to 468.491 for any
 17 portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS
 18 307.405, 315.304, 315.354, 315.356 and 469.185 to 469.225 or 316.116 **or section 17 of this 2008 Act.**

19 **SECTION 26.** ORS 315.356 is amended to read:

20 315.356. (1) If a taxpayer obtains a grant from the federal government in connection with a fa-
 21 cility that has been certified by the Director of the State Department of Energy, the certified cost
 22 of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits that
 23 the taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 after any reduction de-
 24 scribed in this subsection may not be reduced by the federal grant. A taxpayer applying for a federal
 25 grant shall notify the Department of Revenue by certified mail within 30 days after each application,
 26 and after the receipt of any grant.

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

29 (3) A taxpayer who receives a tax credit or property tax relief on a pollution control facility,
 30 **an environmental investment** or an alternative energy device under ORS 307.405, 315.304 or
 31 316.116 **or section 17 of this 2008 Act** is not eligible for a tax credit on the same facility or device
 32 under ORS 315.354 and 469.185 to 469.225.

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

35 **SECTION 27.** The section captions used in this 2008 Act are provided only for the con-
 36 venience of the reader and do not become part of the statutory law of this state or express
 37 any legislative intent in the enactment of this 2008 Act.

38 **SECTION 28.** This 2008 Act takes effect on the 91st day after the date on which the
 39 special session of the Seventy-fourth Legislative Assembly adjourns sine die.