

A-Engrossed
House Bill 2472

Ordered by the House May 6
Including House Amendments dated May 6

Sponsored by COMMITTEE ON REVENUE

SUMMARY

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

[Establishes calendar year limit on total cost of facilities for which State Department of Energy may issue preliminary certificates for business energy tax credit.]

[Applies to applications for preliminary certification received on or after January 1, 2010.]

Prohibits State Department of Energy from issuing preliminary certification to applicant seeking tax credit for erection, construction, installation or acquisition of large facility unless applicant meets specified criteria. Authorizes Director of State Department of Energy to revoke certificate if holder of certificate fails to comply with criteria.

Prohibits Department of Revenue, if tax credit is transferred, from paying interest on amounts claimed by transferee in amended income tax return.

Broadens definition of "renewable energy resource equipment manufacturing facility" to include place primarily used to manufacture certain electric vehicles for provisions relating to renewable energy resources.

Decreases amount that certain facilities must cost to qualify for preliminary certification.

Authorizes State Department of Energy to treat certain multiple applications for preliminary certification as single application under specified circumstances.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to business energy tax credits; creating new provisions; amending ORS 469.185, 469.200,
3 469.215 and 469.225; prescribing an effective date; and providing for revenue raising that re-
4 quires approval by a three-fifths majority.

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

6 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 469.185 to**
7 **469.225.**

8 **SECTION 2. (1) As used in this section, "large facility" means a facility with a projected**
9 **cost of \$5 million or more.**

10 **(2) The State Department of Energy may not issue a preliminary certification to an ap-**
11 **plicant under ORS 469.205 for the erection, construction, installation or acquisition of a large**
12 **facility unless the applicant establishes that:**

13 **(a) The applicant has applied for all licenses and permits required by state or local law**
14 **for the facility;**

15 **(b) The applicant is not in arrears on any tax owed to the state or to a local government;**
16 **and**

17 **(c) To the satisfaction of the department, the facility will be in continuous operation for**
18 **at least five years after the facility is placed in operation.**

19 **(3) In addition to the criteria established by the State Department of Energy under ORS**

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 **469.197, the department may consider issuing a preliminary certification to an applicant un-**
2 **der ORS 469.205 for the erection, construction, installation or acquisition of a large facility**
3 **based on the following criteria:**

4 (a) **The number of jobs that would be created if the facility was constructed;**

5 (b) **The economic benefits of constructing the facility for the state and for the area in**
6 **which the facility would be constructed;**

7 (c) **The revenue impact of granting the certification, as compared with the projected**
8 **benefits of the construction and operation of the facility; and**

9 (d) **Whether construction of the facility is dependent upon preliminary certification under**
10 **ORS 469.185 to 469.225.**

11 (4) **If a certificate is issued under ORS 469.215 for the erection, construction, installation**
12 **or acquisition of a large facility, and tax credit based on the certificate is transferred under**
13 **ORS 469.206, the Department of Revenue may not pay any interest on amounts claimed by**
14 **a transferee by reason of the application of the tax credit in an amended return filed by the**
15 **transferee.**

16 (5) **The State Department of Energy may not issue a certificate under ORS 469.215 for a**
17 **large facility unless the applicant has been issued all permits and licenses required by state**
18 **or local law for the facility. The department may condition the granting of a certificate under**
19 **ORS 469.215 for a large facility on the applicant continuing to meet the requirements of**
20 **subsection (2)(b) and (c) of this section during the period that the certificate is valid.**

21 **SECTION 3.** ORS 469.185 is amended to read:

22 469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

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

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

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

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

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

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

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

1 used;

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

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

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

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

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

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

17 (6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing
18 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
19 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling
20 station, a high-efficiency combined heat and power facility, a high-performance home, a
21 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-
22 facturing facility.

23 (7) "High-efficiency combined heat and power facility" means a device or equipment that simul-
24 taneously produces heat and electricity from a single source of fuel and that meets the criteria es-
25 tablished for a high-efficiency combined heat and power facility under ORS 469.197.

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

27 (a) Is designed and constructed to reduce net purchased energy through use of both energy ef-
28 ficiency and on-site renewable energy resources; and

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

30 (9) "Homebuilder-installed renewable energy system" means a renewable energy resource system
31 that:

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

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

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

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

41 (a) Including:

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

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

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

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

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

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

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

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

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

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

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

17 (13) "Renewable energy resource equipment manufacturing facility" means any structure, build-
18 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-
19 provement to land or an existing structure, building, installation, excavation, machinery, equipment
20 or device, that is necessarily acquired, constructed or installed by a person in connection with the
21 conduct of a trade or business, that is used primarily to manufacture:

22 (a) Equipment, machinery or other products designed to use a renewable energy resource and
23 that meets the criteria established under ORS 469.197; or

24 (b) **Electric vehicles designed for use as modes of transportation on public roads and**
25 **highways or component parts of electric vehicles, but not including component parts that**
26 **may be used in both electric and conventional vehicles.**

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

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

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

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

42 **SECTION 4.** ORS 469.200, as amended by section 2, chapter 29, Oregon Laws 2008, is amended
43 to read:

44 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
45 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

1 (a) [\$20] **\$15 million**, in the case of a facility using or producing renewable energy resources or
2 a high-efficiency combined heat and power facility;

3 **(b) \$20 million, in the case of a facility that has an installed capacity of 20 megawatts or**
4 **less and:**

5 **(A) That uses or produces renewable energy resources; or**

6 **(B) That is a high-efficiency combined heat and power facility;**

7 [(b)] (c) \$40 million, in the case of a renewable energy resource equipment manufacturing facil-
8 ity; or

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

10 (2) Notwithstanding subsection [(1)(b)] (1)(c) of this section, the director may certify a lesser
11 amount than the total cost of the renewable energy resource equipment manufacturing facility, or
12 need not certify any amount, if any of the following conditions exist at the time of preliminary cer-
13 tification:

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

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

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

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

25 (e) The applicant lacks the minimum level of financial viability established in rules adopted un-
26 der ORS 469.197 (4); or

27 (f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or
28 expand a facility in Oregon on allowance of the tax credit, given the criteria established in rules
29 under ORS 469.197 (4).

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

35 **(4) If more than one application for preliminary certification is made to the State De-**
36 **partment of Energy for the same site or by the same applicant, the department may treat**
37 **the applications as a single application for the purpose of the limitations imposed by this**
38 **section, and for the purpose of determining whether the application is for a large facility as**
39 **defined in section 2 of this 2009 Act, if the department finds that the applications are for**
40 **facilities that are in such close proximity, or so closely related, as to constitute a single fa-**
41 **cility.**

42 **SECTION 5.** ORS 469.215, as amended by section 4, chapter 29, Oregon Laws 2008, is amended
43 to read:

44 469.215. (1) A final certification may not be issued by the Director of the State Department of
45 Energy under this section unless the facility was acquired, erected, constructed or installed under

1 a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applica-
2 ble provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the di-
3 rector.

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

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

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

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

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

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

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

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

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

20 (4) The director shall act on an application for certification before the 60th day after the filing
21 of the application under this section. The director may issue the certificate together with such
22 conditions as the director determines are appropriate to promote the purposes of ORS 315.354,
23 469.185 to 469.225 and 469.878. If the applicant is an entity subject to regulation by the Public
24 Utility Commission, the director may consult with the commission prior to issuance of the certif-
25 icate. The action of the director shall include certification of the actual cost of the facility. How-
26 ever, the director may not certify an amount for tax credit purposes [*which*] **that** is more than [*10*
27 *percent in excess of*] the amount approved in the preliminary certificate issued for the facility.

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

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

37 **SECTION 6.** ORS 469.225, as amended by section 5, chapter 29, Oregon Laws 2008, is amended
38 to read:

39 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
40 the State Department of Energy may order the revocation of the certificate issued under ORS
41 469.215 if the director finds that:

42 (a) The certification was obtained by fraud or misrepresentation; [*or*]

43 (b) The holder of the certificate has failed to construct or operate the facility in compliance with
44 the plans, specifications and procedures in the certificate; **or**

45 **(c) The holder of the certificate has failed to comply with conditions imposed under sec-**

1 **tion 2 (2) of this 2009 Act.**

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

4 (3) If the certificate is issued for a facility that is not a renewable energy resource equipment
5 manufacturing facility and is ordered revoked pursuant to subsection (1)(a) of this section, all prior
6 tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited and
7 upon notification under subsection (2) of this section the Department of Revenue immediately shall
8 proceed to collect those taxes not paid by the certificate holder as a result of the tax credits pro-
9 vided to the holder under ORS 315.354.

10 (4) If the certificate is issued for a renewable energy resource equipment manufacturing facility
11 and is ordered revoked, upon notification under subsection (2) of this section the Department of
12 Revenue immediately shall proceed to collect:

13 (a) In the case where no portion of a certificate has been transferred under ORS 469.206, those
14 taxes not paid by the certificate holder as a result of the tax credits provided to the certificate
15 holder under ORS 315.354, from the certificate holder or a successor in interest to the business in-
16 terests of the certificate holder. All prior tax credits provided to the holder of the certificate by
17 virtue of the certificate shall be forfeited.

18 (b) In the case where all or a portion of a certificate has been transferred under ORS 469.206,
19 the maximum theoretical amount of the tax credits allowable under ORS 315.354, from the
20 transferor.

21 (5)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to
22 the collection of income and excise taxes and may proceed to collect the amounts described in
23 subsection (3) or (4) of this section from the person that obtained certification from the State De-
24 partment of Energy or any successor in interest to the business interests of that person. No as-
25 sessment of tax shall be necessary and no statute of limitation shall preclude the collection of taxes
26 described in this subsection.

27 (b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires
28 an interest through bankruptcy or through foreclosure of a security interest is not considered to be
29 a successor in interest to the business interests of the person that obtained certification from the
30 State Department of Energy.

31 (6) If the certificate is issued for a facility that is not a renewable energy resource equipment
32 manufacturing facility and is ordered revoked pursuant to subsection (1)(b) of this section, the cer-
33 tificate holder shall be denied any further relief under ORS 315.354 in connection with the facility
34 from and after the date that the order of revocation becomes final.

35 (7) Notwithstanding subsections (1) to (6) of this section, a certificate or portion of a certificate
36 held by a transferee under ORS 469.206 may not be considered revoked for purposes of the
37 transferee, the tax credit allowable to the transferee under ORS 315.354 may not be reduced and a
38 transferee is not liable under subsections (3) to (5) of this section.

39 **SECTION 7. Section 2 of this 2009 Act and the amendments to ORS 469.185, 469.200,**
40 **469.215 and 469.225 by sections 3 to 6 of this 2009 Act apply to preliminary certifications is-**
41 **ssued on or after the effective date of this 2009 Act.**

42 **SECTION 8. This 2009 Act takes effect on the 91st day after the date on which the reg-**
43 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

44