

House Bill 3411

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 **as introduced**.

Establishes mandatory grounds for denial of tax credit certification for erection, construction, installation or acquisition of certain large renewable energy facilities with project costs of \$5 million or more. Requires that such facilities be in continuous operation for at least five years after facility is placed in operation.

Allows State Department of Energy to decline to issue tax credit preliminary certification based on specified criteria.

Allows State Department of Energy to treat multiple applications for tax credit preliminary certification as single application for specified purposes if department finds that applications are for facilities that are in such close proximity, or so closely related, as to constitute single facility.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits; creating new provisions; amending ORS 469.200 and 469.225; and prescribing
3 an effective date.

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

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

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

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

12 **(a) The applicant has complied with all state and local requirements for licenses and**
13 **permits required for the facility;**

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

16 **(c) The facility will be in continuous operation for at least five years after the facility is**
17 **placed in operation.**

18 **(3) In addition to any failure of an applicant or facility to meet the criteria established**
19 **by the State Department of Energy under ORS 469.197, the department may decline to issue**
20 **a preliminary certification to an applicant under ORS 469.205 for the erection, construction,**
21 **installation or acquisition of a large facility based on the following criteria:**

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

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

25 **(c) The environmental impact of constructing and operating the facility;**

26 **(d) The revenue impact of granting the certification, as compared with the projected**
27 **benefits of the construction and operation of the facility; and**

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 (e) Whether construction of the facility is dependent upon preliminary certification under
 2 ORS 469.185 to 469.225.

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

8 (5) The State Department of Energy may condition the granting of a certificate under
 9 ORS 469.215 for a large facility on the applicant continuing to meet the requirements of
 10 subsection (2) of this section during the period that the certificate is valid.

11 **SECTION 3.** ORS 469.200, as amended by section 2, chapter 29, Oregon Laws 2008, is amended
 12 to read:

13 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
 14 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

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

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

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

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

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

44 (4) If more than one application for preliminary certification is made to the State De-
 45 partment of Energy by the same applicant, the department may treat the applications as a

1 **single application for the purpose of the limitations imposed by this section, and for the**
2 **purpose of determining whether the application is for a large facility as defined in section 2**
3 **of this 2009 Act, if the department finds that the applications are for facilities that are in**
4 **such close proximity, or so closely related, as to constitute a single facility.**

5 **SECTION 4.** ORS 469.225, as amended by section 5, chapter 29, Oregon Laws 2008, is amended
6 to read:

7 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
8 the State Department of Energy may order the revocation of the certificate issued under ORS
9 469.215 if the director finds that:

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

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

13 **(c) The holder of the certificate has failed to comply with conditions imposed under sec-**
14 **tion 2 (2) of this 2009 Act.**

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

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

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

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

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

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

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

44 (6) If the certificate is issued for a facility that is not a renewable energy resource equipment
45 manufacturing facility and is ordered revoked pursuant to subsection (1)(b) of this section, the cer-

1 tificate holder shall be denied any further relief under ORS 315.354 in connection with the facility
2 from and after the date that the order of revocation becomes final.

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

7 **SECTION 5. This 2009 Act takes effect on the 91st day after the date on which the reg-**
8 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

9