

# House Bill 3444

Sponsored by COMMITTEE ON RULES

## 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**.

Modifies policy related to business energy tax credits. Adds provision regarding force majeure. Requires Secretary of State to conduct audit of certain facilities. Limits amount that may be offered for tax credits in calendar year and specifies how amounts may be allocated. Requires applicants for preliminary certification to provide certain information. Adds provisions regarding revocation of certificates.

## A BILL FOR AN ACT

1  
2 Relating to tax credits; creating new provisions; and amending ORS 469.190, 469.200, 469.205 and  
3 469.225.

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

5 **SECTION 1.** ORS 469.190 is amended to read:

6 469.190. (1) In the interest of the public health, safety and welfare, it is the policy of the State  
7 of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax  
8 relief for Oregon facilities that conserve energy resources or meet energy requirements through the  
9 use of renewable resources.

10 (2) **Providing tax relief for Oregon facilities:**

11 (a) **Produces long-term economic growth with high wages and opportunities for career**  
12 **advancement for all Oregonians who are willing to work;**

13 (b) **Establishes Oregon as a global leader in energy efficient technology and carbon**  
14 **emissions reduction, just as Silicon Valley is the global leader in the computer software in-**  
15 **dustry;**

16 (c) **Reduces the dependence of Oregonians, the Pacific Northwest and the United States**  
17 **on fossil fuels and eliminates the need to import fossil fuels from overseas, particularly from**  
18 **unstable and undemocratic areas of the world;**

19 (d) **Diversifies Oregon's economy and job base;**

20 (e) **Ensures a just transition to a new economy for workers and low-income consumers;**  
21 **and**

22 (f) **Lowers energy costs over the long-term.**

23 **SECTION 2.** Sections 3 to 4 of this 2009 Act are added to and made a part of ORS 469.185  
24 to 469.225.

25 **SECTION 3.** (1) A holder of a certificate issued under ORS 469.215 that is unable to  
26 comply with the provisions of ORS 469.185 to 469.225 by reason of force majeure may not be  
27 deemed to have failed to comply with the provisions of ORS 469.185 to 469.225.

28 (2) **As soon as reasonably possible after the event that constitutes force majeure occurs,**  
29 **a holder of a certificate issued under ORS 469.215 shall notify the State Department of En-**  
30 **ergy and state in writing the nature of the force majeure, the anticipated effect on the**

**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 holder's obligations under ORS 469.185 to 469.225 and when the holder will be able to resume  
2 compliance with the obligations. If the department does not agree to excuse the holder from  
3 compliance, the department shall notify the holder within 45 days after the department re-  
4 ceives the notice.

5 **SECTION 4.** (1) At least two times during the period a tax credit is provided under ORS  
6 315.354, the Secretary of State shall conduct an audit of each holder of a certificate issued  
7 under ORS 469.215 to determine compliance with the provisions of ORS 469.185 to 469.225.

8 (2)(a) Each holder of a certificate issued under ORS 469.215 that receives a tax credit  
9 pursuant to the provisions of ORS 469.185 to 469.225 shall submit a report by December 31  
10 of each calendar year to the Governor, Secretary of State, State Treasurer, President of the  
11 Senate and Speaker of the House of Representatives. The report shall detail compliance with  
12 the provisions of ORS 469.185 to 469.225. Within one month of submission of a report to the  
13 Governor, the Governor shall post the report on the website of the Governor.

14 (b) A holder of a certificate issued under ORS 469.215 that fails to provide the report  
15 required pursuant to this subsection shall pay a fine of \$1,000 for each day of violation to the  
16 Department of Revenue, which shall deposit the moneys in the General Fund to be available  
17 for payment of the general expenses of the state.

18 **SECTION 5.** ORS 469.200, as amended by section 2, chapter 29, Oregon Laws 2008, is amended  
19 to read:

20 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-  
21 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

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

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

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

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

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

6 (4) **Total costs that may receive preliminary certification under ORS 469.210 in any cal-  
 7 endar year may not exceed \$125 million, to be allocated as follows:**

8 (a) **\$25 million to fund the construction of facilities that generate renewable energy, in-  
 9 cluding but not limited to solar, wind and wave energy. Preliminary certification granted  
 10 under this paragraph may only be granted to facilities that pledge to create at least 50 per-  
 11 manent jobs.**

12 (b) **\$75 million to fund the construction of facilities that manufacture products, compo-  
 13 nents or consumers good in the renewable energy sector, including but not limited to  
 14 windmills, turbines, fuel cell components, renewable building materials, electric motor vehi-  
 15 cles, energy efficient appliances and energy efficient consumer electronics. Of the \$75 million  
 16 specified in this paragraph, \$25 million is allocated for facilities that pledge to create 26 to  
 17 49 permanent jobs and \$50 million is allocated for facilities that pledge to create at least 50  
 18 permanent jobs.**

19 (c) **\$15 million for retrofitting existing industrial and commercial structures that will  
 20 produce at least a 25 percent reduction in carbon emissions and energy consumption.**

21 (d) **\$10 million for small businesses with fewer than 25 employees to develop and expand  
 22 carbon emissions reduction projects and technologies. Of the \$10 million specified in this  
 23 paragraph, \$5 million is allocated for facilities in cities, located outside the Portland metro-  
 24 politan area, with less than 50,000 residents.**

25 **SECTION 6.** ORS 469.205, as amended by section 3, chapter 29, Oregon Laws 2008, is amended  
 26 to read:

27 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any  
 28 person may apply to the State Department of Energy for preliminary certification under ORS 469.210  
 29 if:

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

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

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

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

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

38 (i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to  
 39 utilize the facility in connection with Oregon property; or

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

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

44 (a) A statement that the applicant or the lessee of the applicant's facility:

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

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

3 (C) Plans to use a renewable energy resource in the generation of electricity for sale or to re-  
4 place an existing or proposed use of an existing source of electricity;

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

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

8 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-  
9 tive fuel vehicle;

10 (G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

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

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

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

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

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

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

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

18 (O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing  
19 facility.

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

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

26 (d) The projected cost of the facility.

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

29 **(f) A detailed description of how the proposed facility will create the jobs required by ORS**  
30 **469.200 (4), including a description of job categories and wage ranges. Of the requirements**  
31 **specified for the numbers of jobs required under ORS 469.200 (4), 80 percent must be long-**  
32 **term jobs that pay the median manufacturing wage as reported by the Employment Depart-**  
33 **ment each year in January and that offer health insurance coverage equal to that of the**  
34 **lowest cost plan offered to employees of the state by the Public Employees' Benefit Board.**  
35 **The requirements specified for numbers of jobs must be maintained for an average of three**  
36 **years over a five-year period, with a deviation of not more than 20 percent below any re-**  
37 **quirement in any one year.**

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

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

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

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

1 inappropriate because special circumstances render filing earlier unreasonable; and

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

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

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

9 **SECTION 7.** ORS 469.225, as amended by section 5, chapter 29, Oregon Laws 2008, is amended  
10 to read:

11 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of  
12 the State Department of Energy may order the revocation of the certificate issued under ORS  
13 469.215 if the director finds that:

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

15 (b) The holder of the certificate has failed to construct or operate the facility in compliance with  
16 the plans, specifications and procedures in the certificate[.];

17 **(c) The holder of the certificate relocates its operations or more than 20 percent of its**  
18 **jobs outside this state during the period it receives the tax credit or within 10 years of re-**  
19 **ceiving the tax credit, whichever is longer;**

20 **(d) The holder of the certificate fails to meet the requirements specified for the number**  
21 **of jobs created or to pay the median manufacturing wage as reported by the Employment**  
22 **Department, as required by ORS 469.200 (4) and 469.205 (2)(f);**

23 **(e) The holder of the certificate does not provide a report within six months of the De-**  
24 **cember 31 deadline specified in section 4 of this 2009 Act; or**

25 **(f) The holder of the certificate is not excused from compliance by reason of force**  
26 **majeure pursuant to section 3 of this 2009 Act.**

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

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

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

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

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

1       **(c) In the case specified in subsection (1)(c) of this section, the amount of the tax credits**  
 2       **allowable under ORS 315.354 plus five percent.**

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

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

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

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

21       **SECTION 8. The amendments to ORS 469.200, 469.205 and 469.225 by sections 5, 6 and 7**  
 22 **of this 2009 Act apply to applications for preliminary certification approved on or after Jan-**  
 23 **uary 1, 2010, and to tax years beginning on or after January 1, 2010.**