

A-Engrossed
House Bill 3680

Ordered by the House February 8
Including House Amendments dated February 8

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.

[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 conditions. Authorizes Director of State Department of Energy to revoke certificate if holder of certificate fails to comply with conditions.]

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

[For certain types of facilities, lowers limit on cost eligible for preliminary certification.]

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

For facilities using or producing renewable energy resources, limits, per biennium, the total amount of potential tax credits for which preliminary certifications may be issued to applicants. Directs Director of State Department of Energy to develop system to allocate issuance of certifications within limitation, based on certain criteria as defined by rule.

Requires taxpayer to provide additional information to department to support application for certification for energy tax credit.

Modifies procedures and criteria for issuance, suspension and revocation of certification.

Modifies definition of renewable energy resource to include renewable energy storage device. Modifies definition of "transportation facility" to include purchase of efficient truck technology for commercial motor vehicles.

Extends sunsets for energy tax credits.

For facilities using wind technology that have installed capacity of more than 10 megawatts, reduces amount of available tax credits in each of three tax years, beginning with tax years beginning on or after January 1, 2010.

Provides that, for facility using or producing renewable energy resources with certified cost in excess of \$10 million, taxpayer may not begin to claim tax credit until tax year following final certification.

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 315.354, 315.357, 469.185, 469.195,
3 469.197, 469.200, 469.205, 469.210, 469.215, 469.220 and 469.225; prescribing an effective date; and
4 providing for revenue raising that requires 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 2010 Act is added to and made a part of ORS 469.185 to**
7 **469.225.**

8 **SECTION 2. (1) The total amount of potential tax credits for all facilities using or**
9 **producing renewable energy resources in this state may not, at the time of preliminary cer-**
10 **tification under ORS 469.210, exceed:**

11 (a) **\$300 million for the biennium ending June 30, 2011.**

12 (b) **\$150 million for the year beginning July 1, 2011, and ending June 30, 2012.**

13 (2) **In the event that the Director of the State Department of Energy receives applica-**

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 **tions for preliminary certification with a total cost in excess of the limitations in subsection**
2 **(1) of this section, the director shall allocate the issuance of preliminary certifications ac-**
3 **ording to the criteria required by ORS 469.195.**

4 **(3) The director shall review applications and issue preliminary certifications:**

5 **(a) Within 90 days of the date on which the application is received, in the case of an ap-**
6 **plication for certification with a cost of less than \$6 million.**

7 **(b) Within six months of the date on which the application is received, in the case of an**
8 **application for certification with a cost of \$6 million or more.**

9 **SECTION 3.** ORS 315.354 is amended to read:

10 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
11 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
12 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
13 is allowed as follows:

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

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

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

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

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

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

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

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

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

38 (b) The facility must have received final certification from the Director of the State Department
39 of Energy under ORS 469.185 to 469.225;

40 (c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c); and

41 (d) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not designed for electric
42 plug-in charging, it must be purchased before January 1, 2010.

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

45 (a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy

1 resource equipment manufacturing facility or a high-efficiency combined heat and power facility;

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

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

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

6 (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
7 facility, notice thereof shall be given to the Director of the State Department of Energy, who shall
8 revoke the certificate covering the facility as of the date of such disposition.

9 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new cer-
10 tificate under ORS 469.215[, *but*]. **The new lessor or owner must meet the requirements of ORS**
11 **469.185 to 469.225 and may claim a tax credit under this section only if all moneys owed to**
12 **the State of Oregon have been paid, the facility continues to operate and all conditions in the**
13 **final certification are met.** The tax credit available to the new owner shall be limited to the
14 amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not
15 claimed by the lessor under all previous leases.

16 [(b)] (c) The State Department of Energy may not revoke the certificate covering a facility un-
17 der paragraph (a) of this subsection if the tax credit associated with the facility has been transferred
18 to a taxpayer who is an eligible applicant under ORS 469.205 (1)(c)(A).

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

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

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

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

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

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

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

1 (10) The definitions in ORS 469.185 apply to this section.

2 **SECTION 4.** ORS 469.185 is amended to read:

3 469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing
44 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
45 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling

1 station, a high-efficiency combined heat and power facility, a high-performance home, a
2 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-
3 facturing facility.

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

7 (8) “High-performance home” means a new single-family dwelling that:

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

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

11 (9) “Homebuilder-installed renewable energy system” means a renewable energy resource system
12 that:

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

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

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

21 (11) “Recycling facility” means equipment used by a trade or business solely for recycling:

22 (a) Including:

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

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

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

29 (D) Any equipment used solely for processing recyclable materials such as balers, flatteners,
30 crushers, separators and scales.

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

33 (12)(a) “Renewable energy resource” includes, but is not limited to:

34 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant
35 or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal
36 energy; [or]

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

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

40 (ii) Qualifies as a research, development or demonstration facility[.]; **or**

41 **(C) A renewable energy storage device as defined by the director by rule.**

42 (b) “Renewable energy resource” does not include a hydroelectric generating facility that is not
43 described in paragraph (a) of this subsection.

44 (13) “Renewable energy resource equipment manufacturing facility” means any structure, build-
45 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-

1 improvement to land or an existing structure, building, installation, excavation, machinery, equipment
2 or device, that is necessarily acquired, constructed or installed by a person in connection with the
3 conduct of a trade or business, that is used primarily to manufacture equipment, machinery or other
4 products designed to use a renewable energy resource **or to manufacture renewable energy**
5 **storage devices** and that meets the criteria established under ORS 469.197.

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

12 (15) "Transportation facility" means a transportation project that reduces energy use during
13 commuting to and from work or school, during work-related travel, or during travel to obtain med-
14 ical or other services, and may be further defined by the department by rule. "Transportation facil-
15 ity" includes, but is not limited to[,]:

16 (a) A qualified transit pass contract or a transportation services contract[.]; **or**

17 (b) **The purchase of efficient truck technology and related truck trailers, as defined in**
18 **ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered**
19 **under ORS 803.420, or for commercial motor vehicles that are proportionally registered un-**
20 **der ORS 826.009 or 826.011.**

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

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

25 **SECTION 5.** ORS 315.357 is amended to read:

26 315.357. [A taxpayer may not be allowed a credit under ORS 315.354 if the first tax year for which
27 the credit with respect to a facility certified under ORS 469.215 would otherwise be allowed begins on
28 or after January 1, 2012.]

29 (1) **Except as provided in subsection (2) of this section, a taxpayer may not be allowed a**
30 **credit under ORS 315.354 unless the taxpayer receives final certification under ORS 469.215**
31 **before July 1, 2012.**

32 (2) **A taxpayer may not be allowed a credit under ORS 315.354 for a renewable energy**
33 **resource equipment manufacturing facility unless the taxpayer receives preliminary certif-**
34 **ication under ORS 469.210 before January 1, 2014.**

35 **SECTION 6.** ORS 469.195 is amended to read:

36 469.195. (1) In determining the eligibility of [*facilities*] **any facility** for tax credits, preference
37 shall be given to those projects [*which*] **that:**

38 [(1)] (a) Provide energy savings for real or personal property within the state inhabited as the
39 principal residence of a tenant, including:

40 [(a)] (A) Nonowner occupied single family dwellings; and

41 [(b)] (B) Multiple unit residential housing; or

42 [(2)] (b) Provide long-term energy savings from the use of renewable resources or conservation
43 of energy resources.

44 (2) **The Director of the State Department of Energy shall establish by rule a tiered pri-**
45 **ority system to be used in evaluating applicants for certification of facilities using or**

1 producing renewable energy resources. The tier system shall be based upon the projected
2 costs of facilities. In determining the eligibility for tax credits and in allocating the available
3 certified cost under section 2 of this 2010 Act among facilities, the director shall subject fa-
4 cilities with higher projected costs to closer scrutiny, shall compare projects of similar costs
5 against each other and may base decisions to certify less than the total cost of any facility
6 on this evaluation. The director shall employ criteria including the following factors as de-
7 fined by rule:

- 8 (a) Technology-specific energy production standards;
- 9 (b) Market sector;
- 10 (c) Delivery of energy into existing distribution and transmission network;
- 11 (d) Investment payback period;
- 12 (e) Expected lifespan of the facility;
- 13 (f) Potential for long-term viability;
- 14 (g) Environmental standards established by the director;
- 15 (h) Potential to create and sustain new jobs;
- 16 (i) Projected siting in a location that is geologically or socioeconomically advantageous;
- 17 (j) Demonstrated readiness to begin implementation;
- 18 (k) Amount and quality of energy generated;
- 19 (L) Strength of business plan;
- 20 (m) Provision of operations and maintenance data, with appropriate protections for trade
21 secrets consistent with ORS chapter 192;
- 22 (n) Connection to existing infrastructure;
- 23 (o) Third-party review of the applicant's business plan; and
- 24 (p) Data related to projected return on investment.

25 **SECTION 7.** ORS 469.197 is amended to read:

26 469.197. The State Department of Energy shall by rule establish all of the following criteria:

27 (1) For a high-performance home, the minimum design and construction standards that must be
28 met or exceeded for a dwelling to be considered a high-performance home, including but not limited
29 to standards for the building envelope, HVAC systems, lighting, appliances, water conservation
30 measures, use of sustainable building materials and on-site renewable energy systems. The criteria
31 must also establish the minimum reduction in estimated net purchased energy that a dwelling must
32 achieve to be considered a high-performance home.

33 (2) For a homebuilder-installed renewable energy system, the minimum performance and effi-
34 ciency standards that a solar electric system, solar domestic water heating system, passive solar
35 space heating system, wind power system, geothermal heating system, fuel cell system or other sys-
36 tem utilizing renewable resources must achieve to be considered a homebuilder-installed renewable
37 energy system.

38 (3) For a high-efficiency combined heat and power facility, the minimum performance and effi-
39 ciency standards that the facility must achieve to be considered a high-efficiency combined heat and
40 power facility.

41 (4) For a renewable energy resource equipment manufacturing facility:

42 (a) Standards relating to the type of equipment, machinery or other products being manufactured
43 and related performance and efficiency standards applicable to the manufactured products;

44 (b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a
45 single renewable energy resource equipment manufacturing facility and what constitutes property

1 that is not included within a renewable energy resource equipment manufacturing facility;

2 (c) Standards relating to the minimum level of increased employment in Oregon for a renewable
3 energy resource equipment manufacturing facility;

4 (d) Standards relating to indicators of financial viability of an applicant for preliminary certif-
5 ication under ORS 469.205;

6 (e) Standards relating to the likelihood of long-term success of a renewable energy resource
7 equipment manufacturing facility; and

8 (f) Standards relating to the likelihood that an applicant seeking preliminary certification of a
9 renewable energy resource equipment manufacturing facility will base decisions to locate or expand
10 a facility in Oregon on the allowance of a tax credit under ORS 315.354.

11 **(5) For a facility using or producing renewable energy resources, standards relating to**
12 **criteria required under ORS 469.195 (2).**

13 **(6) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes**
14 **a single facility.**

15 **SECTION 8.** ORS 469.200 is amended to read:

16 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
17 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

20 (b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility;
21 [or]

22 **(c) Five percent of the total cost of the facility but no more than \$7 million, in the case**
23 **of a facility that uses or produces renewable energy resources and is a wind facility with an**
24 **installed capacity of more than 10 megawatts; or**

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

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

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

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

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

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

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

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

45 (3) The director shall determine the dollar amount certified for any facility and the priority be-

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

5 **SECTION 9.** ORS 469.200, as amended by section 8 of this 2010 Act, is amended to read:

6 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
7 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

11 (c) Five percent of the total cost of the facility but no more than [*\$7 million*] **\$5 million**, in the
12 case of a facility that uses or produces renewable energy resources and is a wind facility with an
13 installed capacity of more than 10 megawatts; or

14 (d) \$10 million, in the case of any other facility.

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

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

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

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

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

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

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

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

39 **SECTION 9a.** ORS 469.200, as amended by sections 8 and 9 of this 2010 Act, is amended to read:

40 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
41 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

45 (c) Five percent of the total cost of the facility but no more than [*\$5 million*] **\$3 million**, in the

1 case of a facility that uses or produces renewable energy resources and is a wind facility with an
2 installed capacity of more than 10 megawatts; or

3 (d) \$10 million, in the case of any other facility.

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

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

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

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

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

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

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

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

28 **SECTION 10.** ORS 469.205 is amended to read:

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

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

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

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

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

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

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

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

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

- 1 (a) A statement that the applicant or the lessee of the applicant's facility:
2 (A) Intends to convert from a purchased energy source to a renewable energy resource;
3 (B) Plans to acquire, construct or install a facility that will use a renewable energy resource
4 or solid waste instead of electricity, petroleum or natural gas;
5 (C) Plans to use a renewable energy resource in the generation of electricity for sale or to re-
6 place an existing or proposed use of an existing source of electricity;
7 (D) Plans to acquire, construct or install a facility that substantially reduces the consumption
8 of purchased energy;
9 (E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (11);
10 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-
11 tive fuel vehicle;
12 (G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;
13 (H) Plans to acquire transit passes for use by individuals specified by the applicant;
14 (I) Plans to acquire, construct or install a transportation facility;
15 (J) Plans to acquire a sustainable building practices facility;
16 (K) Plans to acquire a car sharing facility and operate a car sharing program;
17 (L) Plans to construct a high-efficiency combined heat and power facility;
18 (M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;
19 (N) Is a homebuilder and plans to construct a high-performance home; or
20 (O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing
21 facility.
- 22 (b) A detailed description of the proposed facility and its operation and information showing that
23 the facility will operate as represented in the application **and remain in operation for at least five**
24 **years.**
- 25 (c) Information on the amount by which consumption of electricity, petroleum or natural gas by
26 the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy
27 that will be produced for sale, as the result of using the facility or, if applicable, information about
28 the expected level of sustainable building practices facility performance.
- 29 (d) The projected cost of the facility.
- 30 (e) If applicable, a copy of the proposed qualified transit pass contract, transportation services
31 contract or contract for lease of parking spaces for a car sharing facility.
- 32 **(f) Information on the amount and type of jobs that will be created, the number of jobs**
33 **sustained throughout the construction, installation and operation of the facility and benefits**
34 **for other economic activity in this state related to these jobs.**
- 35 **(g) Information demonstrating that the proposed facility will comply with applicable state**
36 **and local laws and regulations and obtain required licenses and permits.**
- 37 **(h) Information relating to the criteria required under ORS 469.195.**
- 38 [(f)] (i) 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 **all or a portion of** the fee if the application for certification
43 is rejected.
- 44 (4) The director may allow an applicant to file the preliminary application **or a reapplication**
45 **under ORS 469.210 (3)** after the start of erection, construction, installation or acquisition of the

1 facility if the director finds:

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

4 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
5 469.225.

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

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

11 **SECTION 11.** ORS 469.210 is amended to read:

12 469.210. (1) The Director of the State Department of Energy may require the submission of plans,
13 specifications and contract terms, and after examination thereof, may request corrections and re-
14 visions of the plans, specifications and terms.

15 (2) If the director determines that the proposed acquisition, erection, construction or installation
16 is technically feasible and should operate in accordance with the representations made by the ap-
17 plicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules
18 or standards adopted by the director, the director shall issue a preliminary certificate approving the
19 acquisition, erection, construction or installation of the facility. **The certificate shall indicate the
20 potential amount of tax credit allowable and shall list any conditions for claiming the credit.**

21 **(3) A preliminary certificate shall remain valid for a period of three calendar years after
22 the date on which the preliminary certificate is issued by the director. The director may
23 extend this period for two additional years upon reapplication and submission of the fee re-
24 quired by ORS 469.205.**

25 (4) *[If]* The director **may issue an order altering, conditioning, suspending or denying pre-
26 liminary certification if the director** determines that:

27 (a) The acquisition, erection, construction or installation does not comply with the provisions
28 of ORS 469.185 to 469.225 and applicable rules and standards[, *the director shall issue an order de-
29 nying certification.*];

30 (b) **The applicant has previously received preliminary or final certification for the same
31 costs;**

32 (c) **The applicant is unable to demonstrate that the facility would be economically viable
33 without the allowance of a credit under ORS 315.354;**

34 (d) **The applicant was directly involved in an act for which the director has levied civil
35 penalties or revoked, canceled or suspended any certification under ORS 469.185 to 469.225;
36 or**

37 (e) **The applicant or the principal, director, officer, owner, majority shareholder or
38 member of the applicant, or the manager of the applicant if the applicant is a limited liability
39 company, is in arrears for payments owed to any government agency while in any capacity
40 with direct or indirect control over a business.**

41 **SECTION 12.** ORS 469.215 is amended to read:

42 469.215. (1) A final certification may not be issued by the Director of the State Department of
43 Energy under this section unless:

44 (a) The facility was acquired, erected, constructed or installed under a preliminary certificate
45 of approval issued under ORS 469.210 [*and*];

1 **(b) The applicant demonstrates the ability to provide the information required by ORS**
2 **469.205 (2) and does not violate any condition that may be imposed as described in ORS**
3 **469.210 (4); and**

4 **(c) The facility was acquired, erected, constructed or installed** in accordance with the ap-
5 plicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the
6 director.

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

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

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

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

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

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

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

19 **(c) The amount of the credit under ORS 315.354 that is to be claimed;**

20 **(d) The number and type of jobs created by the operation and maintenance of the facility**
21 **over the five-year period beginning with the year of preliminary certification under ORS**
22 **469.210 and information on benefits for other economic activity in this state related to these**
23 **jobs;**

24 **(e) Information sufficient to demonstrate that the facility will remain in operation for**
25 **at least five years;**

26 **(f) Information sufficient to demonstrate, in the case of a research, development or**
27 **demonstration facility that is not in operation, that the applicant has made reasonable ef-**
28 **forts to make the facility operable and meet the requirements of the preliminary certificate;**

29 **(g) Documentation of compliance with applicable state and local laws and regulations and**
30 **licensing and permitting requirements as defined by the director; and**

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

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

35 **(4) Except as provided in section 2 (3) of this 2010 Act,** the director shall act on an appli-
36 cation for certification before the 60th day after the filing of the application under this section. The
37 director may issue the certificate, **or certificates for efficient truck technology within a trans-**
38 **portation facility,** together with such conditions as the director determines are appropriate to
39 promote the purposes of ORS 315.354, 469.185 to 469.225 and 469.878. If the applicant is an entity
40 subject to regulation by the Public Utility Commission, the director may consult with the commis-
41 sion prior to issuance of the certificate. The action of the director shall include certification of the
42 actual cost of the facility. *[However, the director may not certify an amount for tax credit purposes*
43 *which is more than 10 percent in excess of the amount approved in the preliminary certificate issued*
44 *for the facility.]*

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

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

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

9 **SECTION 13.** ORS 469.220 is amended to read:

10 469.220. (1) A certificate issued under ORS 469.215 is required for purposes of obtaining tax
 11 credits in accordance with ORS 315.354. Such certification shall be granted for a period not to ex-
 12 ceed five years. The five-year period shall begin with the tax year of the applicant during which [*a*
 13 *certified facility is placed into operation, or the year*] the facility is certified under ORS 469.215[*at*
 14 *the election of the applicant*].

15 **(2) Notwithstanding subsection (1) of this section, for a facility using or producing**
 16 **renewable energy resources with a certified cost that exceeds \$10 million and that receives**
 17 **final certification under ORS 469.215 after January 1, 2010, the five-year period shall begin**
 18 **with the tax year immediately following the tax year during which the facility is certified**
 19 **under ORS 469.215.**

20 **SECTION 14.** ORS 469.225 is amended to read:

21 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
 22 the State Department of Energy may order the **suspension or** revocation of the certificate issued
 23 under ORS 469.215 if the director finds that:

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

25 (b) The holder of the certificate **or the operator of the facility** has failed to construct or op-
 26 erate the facility in compliance with the plans, specifications and procedures in the certificate[.];
 27 **or**

28 **(c) The facility is no longer in operation.**

29 (2) As soon as the order of revocation under this section becomes final, the director shall notify
 30 the Department of Revenue, **the facility owner and any transferee under ORS 469.206** of the
 31 order of revocation.

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

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

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

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

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

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

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

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

22 **SECTION 15. (1) Section 2 of this 2010 Act and the amendments to ORS 315.357, 469.185,**
23 **469.195, 469.197, 469.205, 469.210 and 469.215 by sections 4 to 7 and 10 to 12 of this 2010 Act**
24 **apply to preliminary certifications issued under ORS 469.210 on or after July 1, 2009.**

25 **(2) The amendments to ORS 469.200 by section 8 of this 2010 Act apply to preliminary**
26 **certifications issued under ORS 469.210 on or after January 1, 2010, and before January 1,**
27 **2011.**

28 **(3) The amendments to ORS 469.200 by section 9 of this 2010 Act apply to preliminary**
29 **certifications issued under ORS 469.210 on or after January 1, 2011, and before January 1,**
30 **2012.**

31 **(4) The amendments to ORS 469.200 by section 9a of this 2010 Act apply to preliminary**
32 **certifications issued under ORS 469.210 on or after January 1, 2012.**

33 **(5) The amendments to ORS 469.220 by section 13 of this 2010 Act apply to final certif-**
34 **ications issued under ORS 469.215 on or after January 1, 2010.**

35 **(6) The amendments to ORS 315.354 and 469.225 by sections 3 and 14 of this 2010 Act apply**
36 **to tax years beginning on or after January 1, 2009, and any tax year for which a taxpayer**
37 **may file an amended return or for which the Department of Revenue may issue a notice of**
38 **deficiency.**

39 **SECTION 16. This 2010 Act takes effect on the 91st day after the date on which the**
40 **special session of the Seventy-fifth Legislative Assembly adjourns sine die.**

41