

B-Engrossed
House Bill 3680

Ordered by the Senate February 19
Including House Amendments dated February 8 and Senate Amendments
dated February 19

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.

For **renewable energy resource equipment manufacturing facilities** and 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. For **facilities using or producing renewable energy resources**, 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. **Modifies definition of "renewable energy resource equipment manufacturing facility" to allow credit for manufacturing certain types of electric vehicles and components.**

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.

Clarifies that provisions relating to enterprise zones equally apply to reservation enterprise zones and reservation partnership zones. Extends sunset on tax credit for eligible businesses in reservation enterprise zones or reservation partnership zones.

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 192.502, 285C.050, 285C.090,
3 285C.115, 285C.245, 285C.255, 285C.300, 285C.309, 285C.320, 314.752, 315.354, 315.357, 469.185,
4 469.195, 469.197, 469.200, 469.205, 469.210, 469.215, 469.220 and 469.225 and section 21, chapter
5 913, Oregon Laws 2009; repealing section 26, chapter 843, Oregon Laws 2007; prescribing an
6 effective date; and providing for revenue raising that requires approval by a three-fifths major-
7 ity.

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

9 **SECTION 1. Section 2 of this 2010 Act is added to and made a part of ORS 469.185 to**
10 **469.225.**

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

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

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

2 **(2) In the event that the Director of the State Department of Energy receives applica-**
3 **tions for preliminary certification with a total amount of potential tax credits in excess of**
4 **the limitations in subsection (1) of this section, the director shall allocate the issuance of**
5 **preliminary certifications according to the criteria required by ORS 469.195.**

6 **(3) The director shall review applications and make determinations whether to issue**
7 **preliminary certifications for proposed facilities using or producing renewable energy re-**
8 **sources:**

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

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

13 **(4) The total amount of potential tax credits for all renewable energy resource equipment**
14 **manufacturing facilities in this state may not, at the time of preliminary certification under**
15 **ORS 469.210, exceed:**

16 **(a) \$200 million for the biennium ending June 30, 2011.**

17 **(b) \$200 million for the biennium ending June 30, 2013.**

18 **(c) \$50 million for the six months beginning July 1, 2013, and ending December 31, 2013.**

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

20 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
21 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
22 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
23 is allowed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy
11 resource equipment manufacturing facility or a high-efficiency combined heat and power facility;

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

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

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

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

19 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new cer-
20 tificate under ORS 469.215[, *but*]. **The new lessor or owner must meet the requirements of ORS**
21 **469.185 to 469.225 and may claim a tax credit under this section only if all moneys owed to**
22 **the State of Oregon have been paid, the facility continues to operate, unless continued op-**
23 **eration is waived by the State Department of Energy, and all conditions in the final certif-**
24 **ication are met.** The tax credit available to the new owner shall be limited to the amount of credit
25 not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor
26 under all previous leases.

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

30 (d) **A transferee holding a credit that has been transferred under ORS 469.206 or 469.208**
31 **may not claim the tax credit under this section for any tax year prior to the tax year in**
32 **which the transferee obtained the credit.**

33 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
34 particular year may be carried forward and offset against the taxpayer's tax liability for the next
35 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
36 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
37 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
38 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
39 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
40 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
41 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
42 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
43 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
44 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
45 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-

1 yond the years specified in subsection (1) of this section only as provided in this subsection.

2 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
3 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
4 316, 317 or 318 for such year.

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

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

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

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

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

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

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

17 469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (9) "Homebuilder-installed renewable energy system" means a renewable energy resource system
26 that:

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

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

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

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

36 (a) Including:

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

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

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

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

45 (b) But not including equipment used for transporting or processing scrap materials that are

1 recycled as a part of the normal operation of a trade or business as defined by the director.

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

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

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

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

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

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

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

13 (13) "Renewable energy resource equipment manufacturing facility" means any structure, build-
14 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-
15 provement to land or an existing structure, building, installation, excavation, machinery, equipment
16 or device, that is necessarily acquired, constructed or installed by a person in connection with the
17 conduct of a trade or business, that is used primarily to manufacture *[equipment, machinery or other*
18 *products designed to use a renewable energy resource and that meets the criteria established under*
19 *ORS 469.197.]*:

20 (a) **Equipment, machinery or other products designed to use a renewable energy resource**
21 **and that meets the criteria established under ORS 469.197.**

22 (b) **Electric vehicles, including three-wheeled vehicles, that are designed for use as Class**
23 **I or Class II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and**
24 **that are used for agricultural, commercial, industrial or governmental purposes, or designed**
25 **for use as modes of transportation on public roads and highways, or component parts of**
26 **electric vehicles, but not including component parts that may be used in both electric and**
27 **conventional vehicles. The director may further define "agricultural, commercial, industrial**
28 **or governmental purposes" of electric vehicles by rule. For purposes of this paragraph,**
29 **"component parts" does not include batteries.**

30 (c) **Renewable energy storage devices.**

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

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

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

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

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

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

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

6 315.357. [A taxpayer may not be allowed a credit under ORS 315.354 if the first tax year for which
7 the credit with respect to a facility certified under ORS 469.215 would otherwise be allowed begins on
8 or after January 1, 2012.]

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

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

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

16 469.195. (1) In determining the eligibility of [facilities] **any facility** for tax credits, preference
17 shall be given to those projects [which] **that:**

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

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

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

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

24 (2) **The Director of the State Department of Energy shall establish by rule a tiered pri-**
25 **ority system to be used in evaluating applicants for certification of facilities using or**
26 **producing renewable energy resources. The tier system shall be based upon the projected**
27 **costs of facilities. In determining the eligibility for tax credits and in allocating the available**
28 **certified cost pursuant to section 2 (1) of this 2010 Act among facilities, the director shall**
29 **subject facilities with higher projected costs to closer scrutiny, shall compare projects of**
30 **similar costs against each other and may certify less than the total cost of any facility based**
31 **on this evaluation. The director may employ criteria including the following factors as de-**
32 **defined by rule:**

33 (a) **Technology-specific energy production standards;**

34 (b) **Market sector;**

35 (c) **Delivery of energy into existing distribution and transmission network;**

36 (d) **Investment payback period;**

37 (e) **Expected lifespan of the facility;**

38 (f) **Potential for long-term viability;**

39 (g) **Environmental standards established by the director;**

40 (h) **Potential to create and sustain new jobs;**

41 (i) **Projected siting in a location that is geographically or socioeconomically advanta-**
42 **geous;**

43 (j) **Demonstrated readiness to begin implementation;**

44 (k) **Amount and quality of energy generated;**

45 (L) **Strength of business plan;**

1 **(m) Provision of operations and maintenance data, with appropriate protections for trade**
2 **secrets consistent with ORS chapter 192;**

3 **(n) Connection to existing infrastructure;**

4 **(o) Third-party review of the applicant's business plan; or**

5 **(p) Data related to projected return on investment.**

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

7 469.197. The State Department of Energy shall by rule establish all of the following criteria:

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

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

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

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

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

25 (b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a
26 single renewable energy resource equipment manufacturing facility [*and what constitutes property*
27 *that is not included within a renewable energy resource equipment manufacturing facility;*] **that in-**
28 **clude:**

29 **(A) Standards establishing what constitutes property that is not included within a**
30 **renewable energy resource equipment manufacturing facility; and**

31 **(B) The consideration of such factors as phases of development, expansion of or additions**
32 **to existing facilities or product lines, increased production and number of jobs created or**
33 **maintained by an applicant;**

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

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

38 (e) Standards relating to the likelihood of long-term **operation and** success of a renewable en-
39 ergy resource equipment manufacturing facility; and

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

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

45 **(6) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes**

1 **a single facility.**

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

3 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
4 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

7 (b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility
8 **other than a facility used to manufacture electric vehicles; [or]**

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

12 **(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing fa-**
13 **cility used to manufacture electric vehicles; or**

14 [(c)] (e) \$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)[.]; **or**

34 **(g) During a time period listed in section 2 (4) of this 2010 Act, the director receives ap-**
35 **plications for preliminary certification with a total amount of potential tax credits in excess**
36 **of the limitation for the time period.**

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

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

43 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
44 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

45 (a) \$20 million, in the case of a facility using or producing renewable energy resources or a

1 high-efficiency combined heat and power facility;

2 (b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility
3 other than a facility used to manufacture electric vehicles;

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

7 (d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility
8 used to manufacture electric vehicles; or

9 (e) \$10 million, in the case of any other facility.

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

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

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

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

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

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

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

29 (g) During a time period listed in section 2 (4) of this 2010 Act, the director receives applications
30 for preliminary certification with a total amount of potential tax credits in excess of the limitation
31 for the time period.

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

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

38 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
39 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

42 (b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility
43 other than a facility used to manufacture electric vehicles;

44 (c) Five percent of the total cost of the facility but no more than [*\$5 million*] **\$3 million**, in the
45 case of a facility that uses or produces renewable energy resources and is a wind facility with an

1 installed capacity of more than 10 megawatts;

2 (d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility
3 used to manufacture electric vehicles; or

4 (e) \$10 million, in the case of any other facility.

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

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

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

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

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

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

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

24 (g) During a time period listed in section 2 (4) of this 2010 Act, the director receives applications
25 for preliminary certification with a total amount of potential tax credits in excess of the limitation
26 for the time period.

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

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

33 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
34 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
35 if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) A detailed description of the proposed facility and its operation and information showing that
27 the facility will operate as represented in the application **and remain in operation for at least five**
28 **years, unless the director by rule specifies a shorter period of operation.**

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

33 (d) The projected cost of the facility.

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

36 **(f) Information on the amount and type of jobs that will be created, the number of jobs**
37 **sustained throughout the construction, installation and operation of the facility and the**
38 **benefits of the facility with regard to overall economic activity in this state.**

39 **(g) Information demonstrating that the proposed facility will comply with applicable state**
40 **and local laws and regulations and obtain required licenses and permits.**

41 **(h) Information relating to the criteria required under ORS 469.195.**

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

45 (3) An application for preliminary certification shall be accompanied by a fee established under

1 ORS 469.217. The director may refund **all or a portion of** the fee if the application for certification
2 is rejected.

3 (4) The director may allow an applicant to file the preliminary application **or a reapplication**
4 **under subsection (6) of this section** after the start of erection, construction, installation or ac-
5 quisition of the facility if the director finds:

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

8 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
9 469.225.

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

12 (6) A preliminary certification of a renewable energy resource equipment manufacturing facility
13 shall remain valid for a period of five calendar years after the date the preliminary certification is
14 issued by the director. **For all other facilities, a preliminary certification shall remain valid for**
15 **a period of three calendar years after the date the preliminary certification is issued by the**
16 **director. The director may extend the three-year period for two additional calendar years**
17 **upon reapplication and submission of the fee required by this section.**

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

19 469.210. (1) The Director of the State Department of Energy may require the submission of plans,
20 specifications and contract terms, and after examination thereof, may request corrections and re-
21 visions of the plans, specifications and terms.

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

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

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

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

35 (c) **The applicant is unable to demonstrate that the facility would be economically viable**
36 **without the allowance of additional credits under ORS 315.354;**

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

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

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

45 469.215. (1) A final certification may not be issued by the Director of the State Department of

1 Energy under this section unless:

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

4 (b) **The applicant demonstrates the ability to provide the information required by ORS**
5 **469.205 (2) and does not violate any condition that may be imposed as described in ORS**
6 **469.210 (3); and**

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

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

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

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

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

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

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

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

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

23 (d) **The number and type of jobs created by the operation and maintenance of the facility**
24 **over the five-year period beginning with the year of preliminary certification under ORS**
25 **469.210 and information on the benefits of the facility with regard to overall economic activ-**
26 **ity in this state;**

27 (e) **Information sufficient to demonstrate that the facility will remain in operation for**
28 **at least five years, unless the director by rule specifies a shorter period of operation;**

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

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

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

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

38 (4) The director shall act on an application for certification before the 60th day after the filing
39 of the application under this section. The director may issue the certificate, **or certificates for**
40 **efficient truck technology within a transportation facility**, together with such conditions as the
41 director determines are appropriate to promote the purposes of ORS 315.354, 469.185 to 469.225 and
42 469.878. If the applicant is an entity subject to regulation by the Public Utility Commission, the di-
43 rector may consult with the commission prior to issuance of the certificate. The action of the di-
44 rector shall include certification of the actual cost of the facility. *[However, the director may not*
45 *certify an amount for tax credit purposes which is more than 10 percent in excess of the amount ap-*

1 *proved in the preliminary certificate issued for the facility.] However, the director may not certify*
2 **an amount for tax credit purposes that is more than the amount approved in the preliminary**
3 **certificate issued for the facility.**

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

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

13 **(7) The director may establish by rule timelines and intermediate deadlines for sub-**
14 **mission of application materials.**

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

16 469.220. (1) A certificate issued under ORS 469.215 is required for purposes of obtaining tax
17 credits in accordance with ORS 315.354. Such certification shall be granted for a period not to ex-
18 ceed five years. The five-year period shall begin with the tax year of the applicant during which [*a*
19 *certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the*
20 *election of the applicant]* **the completed application for final certification of the facility under**
21 **ORS 469.215 is received by the State Department of Energy.**

22 **(2) Notwithstanding subsection (1) of this section, for a facility using or producing**
23 **renewable energy resources with a certified cost that exceeds \$10 million and that receives**
24 **final certification under ORS 469.215 after January 1, 2010, the five-year period shall begin**
25 **with the tax year immediately following the tax year during which the completed application**
26 **for final certification of the facility under ORS 469.215 is received by the department.**

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

28 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
29 the State Department of Energy may order the **suspension or** revocation of the certificate issued
30 under ORS 469.215 if the director finds that:

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

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

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

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

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

45 (4) If the certificate is issued for a renewable energy resource equipment manufacturing facility

1 and is ordered **suspended or** revoked, upon notification under subsection (2) of this section the
2 Department of Revenue immediately shall proceed to collect:

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

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

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

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

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

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

29 **SECTION 15.** ORS 192.502 is amended to read:

30 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

31 (1) Communications within a public body or between public bodies of an advisory nature to the
32 extent that they cover other than purely factual materials and are preliminary to any final agency
33 determination of policy or action. This exemption shall not apply unless the public body shows that
34 in the particular instance the public interest in encouraging frank communication between officials
35 and employees of public bodies clearly outweighs the public interest in disclosure.

36 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
37 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
38 public interest by clear and convincing evidence requires disclosure in the particular instance. The
39 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
40 tute an unreasonable invasion of privacy.

41 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and
42 telephone numbers contained in personnel records maintained by the public body that is the em-
43 ployer or the recipient of volunteer services. This exemption:

44 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
45 unteers who are elected officials, except that a judge or district attorney subject to election may

1 seek to exempt the judge's or district attorney's address or telephone number, or both, under the
2 terms of ORS 192.445;

3 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
4 shows by clear and convincing evidence that the public interest requires disclosure in a particular
5 instance;

6 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-
7 fessional education association of which the substitute teacher may be a member; and

8 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

9 (4) Information submitted to a public body in confidence and not otherwise required by law to
10 be submitted, where such information should reasonably be considered confidential, the public body
11 has obliged itself in good faith not to disclose the information, and when the public interest would
12 suffer by the disclosure.

13 (5) Information or records of the Department of Corrections, including the State Board of Parole
14 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
15 a person in custody of the department or substantially prejudice or prevent the carrying out of the
16 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
17 terest in disclosure.

18 (6) Records, reports and other information received or compiled by the Director of the Depart-
19 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
20 otherwise required by law to be made public, to the extent that the interests of lending institutions,
21 their officers, employees and customers in preserving the confidentiality of such information out-
22 weighs the public interest in disclosure.

23 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

24 (8) Any public records or information the disclosure of which is prohibited by federal law or
25 regulations.

26 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
27 wise made confidential or privileged under Oregon law.

28 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information
29 compiled in a public record when:

30 (A) The basis for the claim of exemption is ORS 40.225;

31 (B) The factual information is not prohibited from disclosure under any applicable state or fed-
32 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410
33 to 192.505;

34 (C) The factual information was compiled by or at the direction of an attorney as part of an
35 investigation on behalf of the public body in response to information of possible wrongdoing by the
36 public body;

37 (D) The factual information was not compiled in preparation for litigation, arbitration or an
38 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
39 or against the public body; and

40 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
41 characterizing or partially disclosing the factual information compiled by or at the attorney's di-
42 rection.

43 (10) Public records or information described in this section, furnished by the public body ori-
44 ginally compiling, preparing or receiving them to any other public officer or public body in con-
45 nection with performance of the duties of the recipient, if the considerations originally giving rise

1 to the confidential or exempt nature of the public records or information remain applicable.

2 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
3 programs pursuant to ORS 469.530.

4 (12) Employee and retiree address, telephone number and other nonfinancial membership records
5 and employee financial records maintained by the Public Employees Retirement System pursuant to
6 ORS chapters 238 and 238A.

7 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
8 agents of the treasurer or the council relating to active or proposed publicly traded investments
9 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
10 liquidation of the investments. For the purposes of this subsection:

11 (a) The exemption does not apply to:

12 (A) Information in investment records solely related to the amount paid directly into an invest-
13 ment by, or returned from the investment directly to, the treasurer or council; or

14 (B) The identity of the entity to which the amount was paid directly or from which the amount
15 was received directly.

16 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange
17 or liquidation of the investment has been concluded.

18 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
19 Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual
20 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a
21 private asset including but not limited to records regarding the solicitation, acquisition, deployment,
22 exchange or liquidation of the investments including but not limited to:

23 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
24 or to their respective investment vehicles.

25 (B) Financial statements of an investment fund, an asset ownership or their respective invest-
26 ment vehicles.

27 (C) Meeting materials of an investment fund, an asset ownership or their respective investment
28 vehicles.

29 (D) Records containing information regarding the portfolio positions in which an investment
30 fund, an asset ownership or their respective investment vehicles invest.

31 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
32 spective investment vehicles.

33 (F) Investment agreements and related documents.

34 (b) The exemption under this subsection does not apply to:

35 (A) The name, address and vintage year of each privately placed investment fund.

36 (B) The dollar amount of the commitment made to each privately placed investment fund since
37 inception of the fund.

38 (C) The dollar amount of cash contributions made to each privately placed investment fund since
39 inception of the fund.

40 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
41 Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the
42 treasurer, council or board from each privately placed investment fund.

43 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
44 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
45 Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

1 (F) The net internal rate of return of each privately placed investment fund since inception of
2 the fund.

3 (G) The investment multiple of each privately placed investment fund since inception of the fund.

4 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
5 basis to each privately placed investment fund.

6 (I) The dollar amount of cash profit received from each privately placed investment fund on a
7 fiscal year-end basis.

8 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
9 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
10 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

11 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted
12 by ORS 98.352.

13 (17)(a) The following records, communications and information submitted to the Oregon Business
14 Development Commission, the Oregon Business Development Department, the State Department of
15 Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in
16 ORS 777.005, by applicants for investment funds, loans or services including, but not limited to,
17 those described in ORS 285A.224:

18 [(a)] (A) Personal financial statements.

19 [(b)] (B) Financial statements of applicants.

20 [(c)] (C) Customer lists.

21 [(d)] (D) Information of an applicant pertaining to litigation to which the applicant is a party
22 if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that
23 such litigation is reasonably likely to occur; this exemption does not apply to litigation which has
24 been concluded, and nothing in this [paragraph] subparagraph shall limit any right or opportunity
25 granted by discovery or deposition statutes to a party to litigation or potential litigation.

26 [(e)] (E) Production, sales and cost data.

27 [(f)] (F) Marketing strategy information that relates to applicant's plan to address specific mar-
28 kets and applicant's strategy regarding specific competitors.

29 **(b) The following records, communications and information submitted to the State De-**
30 **partment of Energy by applicants for tax credits:**

31 **(A) Personal financial statements.**

32 **(B) Financial statements of applicants.**

33 **(C) Customer lists.**

34 **(D) Information of an applicant pertaining to litigation to which the applicant is a party**
35 **if the complaint has been filed, or if the complaint has not been filed, if the applicant shows**
36 **that such litigation is reasonably likely to occur; this exemption does not apply to litigation**
37 **which has been concluded, and nothing in this subparagraph shall limit any right or oppor-**
38 **tunity granted by discovery or deposition statutes to a party to litigation or potential liti-**
39 **gation.**

40 **(E) Production, sales and cost data.**

41 **(F) Marketing strategy information that relates to applicant's plan to address specific**
42 **markets and applicant's strategy regarding specific competitors.**

43 (18) Records, reports or returns submitted by private concerns or enterprises required by law
44 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
45 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such

1 information is in a form which would permit identification of the individual concern or enterprise.
2 Nothing in this subsection shall limit the use which can be made of such information for regulatory
3 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
4 payer of the delinquency immediately by certified mail. However, in the event that the payment or
5 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
6 public body shall disclose, upon the request of any person, the following information:

7 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
8 payment or delivery of the taxes.

9 (b) The period for which the taxes are delinquent.

10 (c) The actual, or estimated, amount of the delinquency.

11 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
12 pointed counsel, and all information supplied to the court from whatever source for the purpose of
13 verifying the financial eligibility of a person pursuant to ORS 151.485.

14 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
15 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
16 ness Services, in any of the following circumstances:

17 (a) When necessary for insurers, self-insured employers and third party claim administrators to
18 process workers' compensation claims.

19 (b) When necessary for the director, other governmental agencies of this state or the United
20 States to carry out their duties, functions or powers.

21 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
22 to identify any worker who is the subject of a claim.

23 (d) When a worker or the worker's representative requests review of the worker's claim record.

24 (21) Sensitive business records or financial or commercial information of the Oregon Health and
25 Science University that is not customarily provided to business competitors.

26 (22) Records of Oregon Health and Science University regarding candidates for the position of
27 president of the university.

28 (23) The records of a library, including:

29 (a) Circulation records, showing use of specific library material by a named person;

30 (b) The name of a library patron together with the address or telephone number of the patron;
31 and

32 (c) The electronic mail address of a patron.

33 (24) The following records, communications and information obtained by the Housing and Com-
34 munity Services Department in connection with the department's monitoring or administration of
35 financial assistance or of housing or other developments:

36 (a) Personal and corporate financial statements and information, including tax returns.

37 (b) Credit reports.

38 (c) Project appraisals.

39 (d) Market studies and analyses.

40 (e) Articles of incorporation, partnership agreements and operating agreements.

41 (f) Commitment letters.

42 (g) Project pro forma statements.

43 (h) Project cost certifications and cost data.

44 (i) Audits.

45 (j) Project tenant correspondence.

1 (k) Personal information about a tenant.

2 (L) Housing assistance payments.

3 (25) Raster geographic information system (GIS) digital databases, provided by private forestland
4 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
5 that is not otherwise required by law to be submitted.

6 (26) Sensitive business, commercial or financial information furnished to or developed by a
7 public body engaged in the business of providing electricity or electricity services, if the information
8 is directly related to a transaction described in ORS 261.348, or if the information is directly related
9 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
10 disclosure of the information would cause a competitive disadvantage for the public body or its re-
11 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
12 velopment or review of generally applicable rate schedules.

13 (27) Sensitive business, commercial or financial information furnished to or developed by the
14 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
15 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
16 and disclosure of the information would cause a competitive disadvantage for the Klamath
17 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
18 ment or review of generally applicable rate schedules.

19 (28) Personally identifiable information about customers of a municipal electric utility or a
20 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,
21 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
22 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
23 lease personally identifiable information about a customer, and a public body providing water, sewer
24 or storm drain services may release the name, date of birth, driver license number, telephone num-
25 ber, electronic mail address or Social Security number of a customer, if the customer consents in
26 writing or electronically, if the disclosure is necessary for the utility, district or other public body
27 to render services to the customer, if the disclosure is required pursuant to a court order or if the
28 disclosure is otherwise required by federal or state law. The utility, district or other public body
29 may charge as appropriate for the costs of providing such information. The utility, district or other
30 public body may make customer records available to third party credit agencies on a regular basis
31 in connection with the establishment and management of customer accounts or in the event such
32 accounts are delinquent.

33 (29) A record of the street and number of an employee's address submitted to a special district
34 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

35 (30) Sensitive business records, capital development plans or financial or commercial information
36 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

37 (31) Documents, materials or other information submitted to the Director of the Department of
38 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
39 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
40 or subsidiaries under ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602 to
41 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank
42 Act or the Insurance Code when:

43 (a) The document, material or other information is received upon notice or with an under-
44 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
45 the document, material or other information; and

1 (b) The director has obligated the Department of Consumer and Business Services not to dis-
2 close the document, material or other information.

3 (32) A county elections security plan developed and filed under ORS 254.074.

4 (33) Information about review or approval of programs relating to the security of:

5 (a) Generation, storage or conveyance of:

6 (A) Electricity;

7 (B) Gas in liquefied or gaseous form;

8 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

9 (D) Petroleum products;

10 (E) Sewage; or

11 (F) Water.

12 (b) Telecommunication systems, including cellular, wireless or radio systems.

13 (c) Data transmissions by whatever means provided.

14 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-
15 ignates the information as confidential by rule under ORS 1.002.

16 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

17 (b) As used in this subsection, "employer account records" means all records maintained in any
18 form that are specifically related to the account of any employer insured, previously insured or un-
19 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
20 mation obtained or developed by the corporation in connection with providing, offering to provide
21 or declining to provide insurance to a specific employer. "Employer account records" includes, but
22 is not limited to, an employer's payroll records, premium payment history, payroll classifications,
23 employee names and identification information, experience modification factors, loss experience and
24 dividend payment history.

25 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
26 discovery documents in litigation pursuant to applicable rules of civil procedure.

27 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

28 (b) As used in this subsection, "claimant files" includes, but is not limited to, all records held
29 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
30 records pertaining to such a claim.

31 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
32 discovery documents in litigation pursuant to applicable rules of civil procedure.

33 (37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge
34 or other separation from military service.

35 **SECTION 16.** (1) **Section 2 of this 2010 Act and the amendments to ORS 315.357, 469.185,**
36 **469.195, 469.197, 469.205, 469.210 and 469.215 by sections 4 to 7 and 10 to 12 of this 2010 Act**
37 **apply to preliminary certifications issued under ORS 469.210 on or after July 1, 2009.**

38 (2) **The amendments to ORS 469.200 by section 8 of this 2010 Act apply to preliminary**
39 **certifications issued under ORS 469.210 on or after January 1, 2010, and before January 1,**
40 **2011.**

41 (3) **The amendments to ORS 469.200 by section 9 of this 2010 Act apply to preliminary**
42 **certifications issued under ORS 469.210 on or after January 1, 2011, and before January 1,**
43 **2012.**

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

1 (5) The amendments to ORS 469.220 by section 13 of this 2010 Act apply to final certifi-
2 cations issued under ORS 469.215 on or after January 1, 2010.

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

7 **SECTION 17. Section 26, chapter 843, Oregon Laws 2007, is repealed.**

8 **SECTION 18.** ORS 285C.050 is amended to read:

9 285C.050. As used in ORS 285C.050 to 285C.250, unless the context requires otherwise:

10 (1) "Assessment date" and "assessment year" have the meanings given those terms in ORS
11 308.007.

12 (2) "Authorized business firm" means an eligible business firm that has been authorized under
13 ORS 285C.140.

14 (3) "Business firm" means a person operating or conducting one or more trades or businesses,
15 a people's utility district organized under ORS chapter 261 or a joint operating agency formed under
16 ORS chapter 262, but does not include any other governmental agency, municipal corporation or
17 nonprofit corporation.

18 (4) "County average annual wage" means:

19 (a) The most recently available average annual covered payroll for the county in which the en-
20 terprise zone is located, as determined by the Employment Department; or

21 (b) If the enterprise zone is located in more than one county, the highest county average annual
22 wage as determined under paragraph (a) of this subsection.

23 (5) "Electronic commerce" means engaging in commercial or retail transactions predominantly
24 over the Internet or a computer network, utilizing the Internet as a platform for transacting busi-
25 ness, or facilitating the use of the Internet by other persons for business transactions, and may be
26 further defined by the Oregon Business Development Department by rule.

27 (6) "Eligible business firm" means a firm engaged in an activity described under ORS 285C.135
28 that may file an application for authorization under ORS 285C.140.

29 (7) "Employee" means a person who works more than 32 hours per week, but does not include
30 a person with a temporary or seasonal job or a person hired solely to construct qualified property.

31 (8) "Enterprise zone" means one of the 30 areas designated or terminated and redesignated by
32 order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, one of the
33 areas designated by the Director of the Oregon Business Development Department under ORS
34 285C.080, a federal enterprise zone area designated under ORS 285C.085, an area designated under
35 ORS 285C.250 or a reservation enterprise zone designated, **or a reservation partnership zone**
36 **cosponsored**, under ORS 285C.306.

37 (9) "Federal enterprise zone" means any discrete area wholly or partially within this state that
38 is designated as an empowerment zone, an enterprise community, a renewal community or some
39 similar designation for purposes of improving the economic and community development of the area.

40 (10) "First-source hiring agreement" means an agreement between an authorized business firm
41 and a publicly funded job training provider whereby the provider refers qualified candidates to the
42 firm for new jobs and job openings in the firm.

43 (11) "In service" means being used or occupied or fully ready for use or occupancy for com-
44 mercial purposes consistent with the intended operations of the business firm as described in the
45 application for authorization.

1 (12) "Modification" means modernization, renovation or remodeling of an existing building,
2 structure or real property machinery or equipment.

3 (13) "New employees hired by the firm":

4 (a) Includes only those employees of an authorized business firm engaged for a majority of their
5 time in eligible operations.

6 (b) Does not include individuals employed in a job or position that:

7 (A) Is created and first filled after December 31 of the first tax year in which qualified property
8 of the firm is exempt under ORS 285C.175;

9 (B) Existed prior to the submission of the relevant application for authorization; or

10 (C) Is performed primarily at a location outside of the enterprise zone.

11 (14) "Publicly funded job training provider" includes but is not limited to a community college,
12 a service provider under the federal Workforce Investment Act Title I-B (29 U.S.C. 2801 et seq.), or
13 a similar program.

14 (15) "Qualified business firm" means a business firm described in ORS 285C.200, the qualified
15 property of which is exempt from property tax under ORS 285C.175.

16 (16) "Qualified property" means property described under ORS 285C.180.

17 (17) "Rural enterprise zone" means:

18 (a) An enterprise zone located in an area of this state in which an urban enterprise zone could
19 not be located; or

20 (b) A reservation enterprise zone designated, **or a reservation partnership zone cosponsored,**
21 under ORS 285C.306.

22 (18) "Sparsely populated county" means a county with a density of 100 or fewer persons per
23 square mile, based on the most recently available population figure for the county from the Portland
24 State University Population Research Center.

25 (19) "Sponsor" means:

26 (a) The city, county or port, or any combination of cities, counties or ports, that received ap-
27 proval of an enterprise zone under ORS 284.150 and 284.160 (1987 Replacement Part), under ORS
28 285C.065 and 285C.075, under ORS 285C.085 or under ORS 285C.250;

29 (b) The tribal government, in the case of a reservation enterprise zone; [or]

30 (c) **The tribal government and the cosponsoring city, county or port, in the case of a**
31 **reservation partnership zone; or**

32 [(c)] (d) A city, county or port that joined the enterprise zone through a boundary change under
33 ORS 285C.115 (7) or a port that joined the enterprise zone under ORS 285C.068.

34 (20) "Tax year" has the meaning given that term in ORS 308.007.

35 (21) "Urban enterprise zone" means an enterprise zone in a metropolitan statistical area, as
36 defined by the most recent federal decennial census, that is located inside a regional or metropolitan
37 urban growth boundary.

38 (22) "Year" has the meaning given that term in ORS 308.007.

39 **SECTION 19.** ORS 285C.090 is amended to read:

40 285C.090. (1) A proposed enterprise zone must be located in a local area in which:

41 (a) Fifty percent or more of the households have incomes below 80 percent of the median income
42 of this state, as defined by the most recent federal decennial census;

43 (b) The unemployment rate is at least 2.0 percentage points greater than the comparable unem-
44 ployment rate for this entire state, as defined by the most recently available data published or offi-
45 cially provided and verified by the United States Government, the Employment Department of this

1 state, the Portland State University Population Research Center or special studies conducted under
2 a contract with a regional academic institution; or

3 (c) The Oregon Business Development Department determines on a case-by-case basis using ev-
4 idence provided by the cities, counties or ports applying for designation of the proposed enterprise
5 zone that there exists a level of economic hardship at least as severe as that described in paragraph
6 (a) or (b) of this subsection. The evidence shall be based on the most recently available data from
7 official sources and may include, but is not limited to, a contemporary decline of the population in
8 the proposed enterprise zone, the percentage of persons in the proposed enterprise zone below the
9 poverty level relative to the percentage of the entire population of this state below the poverty level
10 or the unemployment rate for the county or counties in which the proposed enterprise zone is lo-
11 cated.

12 (2) An enterprise zone must consist of a total area of not more than 12 square miles in size. The
13 area of the zone shall be calculated by excluding that portion of the zone that lies below the ordi-
14 nary high water mark of a navigable body of water.

15 (3) Except as provided in subsection (4) of this section:

16 (a) An enterprise zone must have 12 miles or less as the greatest distance between any two
17 points within the zone; and

18 (b) Unconnected areas of an enterprise zone may not be more than five miles apart.

19 (4) Unconnected areas of a rural enterprise zone may not be more than 15 miles apart when an
20 unconnected area is entirely within a sparsely populated county, and the zone:

21 (a) Must have 20 miles or less as the greatest distance between any two points within the zone,
22 if only a portion of the zone is contained within a sparsely populated county; or

23 (b) Must have 25 miles or less as the greatest distance between any two points within the zone,
24 if the zone is entirely contained within a sparsely populated county.

25 (5) This section does not apply to the designation or redesignation of a reservation enterprise
26 zone **or a reservation partnership zone.**

27 **SECTION 20.** ORS 285C.115 is amended to read:

28 285C.115. (1) The sponsor of an enterprise zone may submit a request to the Oregon Business
29 Development Department to change the boundary of the enterprise zone. A request shall include:

30 (a) A copy of the resolution of the governing body of the sponsor requesting the change;

31 (b) If subsection (7) of this section applies, a copy of the resolution described in subsection (7)
32 of this section;

33 (c) A map clearly indicating the existing boundary and the proposed change thereto;

34 (d) A legal description of each area to be withdrawn from or added to the existing enterprise
35 zone; and

36 (e) Other information required by the department.

37 (2) The amended enterprise zone shall:

38 (a) Add land zoned for use by eligible business firms that has or will have infrastructure facili-
39 ties, road access, on-site water, on-site sewage disposal and necessary utility services;

40 (b) Continue to include any authorized business firms within the enterprise zone;

41 (c) Add residential areas or nonresidential areas that are adjacent to residential areas only if
42 the level of economic hardship in the areas to be added is at least as severe as the conditions that
43 existed at the time the original enterprise zone was designated or that currently exist in the original
44 enterprise zone;

45 (d) Retain at least 50 percent of the lands in the original enterprise zone; and

1 (e) Meet the applicable total area and greatest distance requirements set forth in ORS 285C.090.

2 (3) If the enterprise zone is a reservation enterprise zone **or a reservation partnership zone**
3 and the land to be added to the zone is not described in ORS 285C.306, the request for a boundary
4 change, and the resulting boundary of the zone, must fully satisfy the provisions of this section.

5 (4) A request under subsection (1) of this section may include a proposal to:

6 (a) Remove only the land that is residential or not zoned or available for use by eligible business
7 firms; or

8 (b) Change the name of the enterprise zone.

9 (5) The boundary of an urban enterprise zone may not be modified to include land located out-
10 side a regional or metropolitan urban growth boundary.

11 (6) A request to modify the boundary of a rural enterprise zone to include land located outside
12 an urban growth boundary shall satisfy the requirements of subsections (1) and (2) of this section
13 and shall satisfy any other criteria that the department may adopt by rule.

14 (7) If an area to be added to an enterprise zone is under the jurisdiction of a city, county or port
15 that is not a sponsor of the enterprise zone, the governing body of that city, county or port shall
16 submit a resolution requesting the change and requesting that the city, county or port become a
17 sponsor, or shall submit a resolution consenting to the change, as provided under ORS 285C.065 (1).
18 The resolution of the joining city, county or port shall be submitted jointly with the resolution
19 adopted by the governing body of the existing sponsor. The joining resolution of the city, county or
20 port may:

21 (a) Include a binding proposal for enhanced local public services, local incentives or local reg-
22 ulatory flexibility to be effective within the portion of the enterprise zone to be under the jurisdic-
23 tion of that city, county or port; or

24 (b) Include a restriction described in ORS 285C.070 (4). A restriction made under this paragraph
25 may be made without regard to the time limitation described in ORS 285C.070 (4)(c) and becomes
26 final on the effective date of the boundary change.

27 (8) The department shall review the request for a boundary change. If the request is incomplete
28 or does not satisfy the requirements of this section, the department shall seek additional information
29 as necessary or shall return the request to the sponsor. If the request is returned, the sponsor may
30 submit a revised request at any time. If the request is complete and does satisfy the requirements
31 of this section, the Director of the Oregon Business Development Department shall order a change
32 in the boundary of an enterprise zone based on the request of the sponsor and specify the effective
33 date of the boundary change, which may not be earlier than the receipt of a completed request.

34 (9) A change in the boundary of an enterprise zone under this section does not change the ter-
35 mination date of the enterprise zone under ORS 285C.245 (2).

36 **SECTION 21.** ORS 285C.245 is amended to read:

37 285C.245. (1) When the termination of an enterprise zone occurs under this section:

38 (a) The termination of the enterprise zone does not affect:

39 (A) The continuation of a qualified business firm's property tax exemption first allowed before
40 the effective date of the termination of the enterprise zone; or

41 (B) The ability of an authorized business firm to claim exemption under ORS 285C.175 if:

42 (i) The authorization application of the firm was filed with the sponsor before the effective date
43 of the termination of the zone;

44 (ii) The firm remains authorized at the time the exemption is claimed;

45 (iii) The firm completes construction, addition, modification or installation of the qualified

1 property within a reasonable time and without interruption of construction, addition, modification
2 or installation activity; and

3 (iv) The property meets all other applicable requirements for exemption under ORS 285C.175.

4 (b) A business firm that is currently authorized or qualified in the enterprise zone shall be al-
5 lowed until 10 years after the effective date of the termination of the enterprise zone to apply for
6 authorization under ORS 285C.140 and to subsequently claim the exemption for any qualified prop-
7 erty that is constructed, added, modified or installed inside the former enterprise zone boundaries,
8 as those boundaries existed at the time of termination, and entirely outside of the boundaries of any
9 current enterprise zone. Construction, addition, modification or installation of qualified property
10 must commence prior to the end of the final tax year in which qualified property of the firm is ex-
11 empt under ORS 285C.175 and must be completed within a reasonable time and without interruption
12 of construction, addition, modification or installation activity. The property must meet all other ap-
13 plicable requirements for exemption under ORS 285C.175.

14 (c) Disqualification under ORS 285C.240 of all exempt property of the business firm after the
15 effective date of the termination of the enterprise zone shall prohibit and terminate all authori-
16 zations sought or obtained by the business firm that would not otherwise be allowed except for
17 paragraph (b) of this subsection. Disqualification under ORS 285C.240 of all exempt property of the
18 business firm on or after the effective date of the termination of the enterprise zone shall cause the
19 assessor to deny any claim for exemption under ORS 285C.175 of qualified property of the business
20 firm made in a subsequent tax year.

21 (2) An enterprise zone designated by the Director of the Oregon Business Development Depart-
22 ment under ORS 285C.080, 285C.085 or 285C.250 shall terminate when 10 years plus that number of
23 days necessary to delay the date of termination to the June 30 next following have elapsed since the
24 enterprise zone was originally designated.

25 (3) An enterprise zone designated by the director under ORS 285C.080, 285C.085 and 285C.250
26 shall terminate prior to the time specified in subsection (2) of this section only as provided in sub-
27 sections (4) to (6) of this section.

28 (4) The governing body of the sponsor may submit a resolution requesting termination of the
29 enterprise zone to the Oregon Business Development Department. The sponsor shall provide copies
30 of the resolution to the county assessor and the Department of Revenue. After receipt of the request,
31 the director shall order termination of the enterprise zone and shall specify the effective date of the
32 termination.

33 (5) If a sponsor is unable or unwilling to carry out its responsibilities under ORS 285C.105, the
34 director shall order termination of the enterprise zone and shall specify the effective date of the
35 termination. However, in the case of failure to provide enhanced local public services, local incen-
36 tives or local regulatory flexibility included in the application for designation as an enterprise zone
37 or in the resolution under ORS 285C.115 (7), termination is not required if the sponsor provides to
38 authorized or qualified business firms new enhanced local public services, local incentives or local
39 regulatory flexibility that is of comparable value, or makes reasonable corrections of shortcomings
40 in existing local incentives. A sponsor may reduce the time within which it will provide enhanced
41 local public services, local incentives and local regulatory flexibility to a time period equal to the
42 amount of time allowed for an exemption under ORS 285C.175 without causing termination under
43 this section.

44 (6) An enterprise zone designated on or after January 1, 2004, shall terminate if no qualified
45 business firm has located within the zone by December 31 following the date that is six years after

1 the date the zone was designated.

2 (7) A reservation enterprise zone designated, **or a reservation partnership zone cosponsored,**
3 under ORS 285C.306 shall terminate in accordance with subsection (2) of this section, but may be
4 redesignated at any time under ORS 285C.306.

5 **SECTION 22.** ORS 285C.255 is amended to read:

6 285C.255. (1) Notwithstanding any other provision of ORS 285C.050 to 285C.250:

7 (a) An area may not be designated as an enterprise zone after June 30, 2013;

8 (b) A business firm may not obtain authorization under ORS 285C.140 after June 30, 2013; and

9 (c) An enterprise zone, except for a reservation enterprise zone **or a reservation partnership**
10 **zone,** that is in existence on June 29, 2013, is terminated on June 30, 2013.

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

12 (a) A reservation enterprise zone may be designated, **and a reservation partnership zone may**
13 **be cosponsored,** under ORS 285C.306 after June 30, 2013; and

14 (b) A business firm may obtain authorization under ORS 285C.140 after June 30, 2013:

15 (A) If located in a reservation enterprise zone **or a reservation partnership zone;** or

16 (B) As allowed under ORS 285C.245 (1)(b).

17 **SECTION 23.** ORS 285C.300 is amended to read:

18 285C.300. As used in ORS 285C.300 to 285C.320:

19 (1) "Eligible business" means a business that:

20 (a) Is engaged within a reservation enterprise zone **or a reservation partnership zone** in the
21 manufacture or provision of goods, products or services to other businesses or to the general public,
22 through activities including, but not limited to, manufacturing, assembly, fabrication, processing,
23 shipping, storage, retail sales or services, child care, housing, retail food service, health care,
24 tourism, entertainment, financial services, professional services, energy development, construction
25 or similar activities; and

26 (b) Occupies or owns a new business facility within a reservation enterprise zone **or a reser-**
27 **vation partnership zone.**

28 (2) "New business facility":

29 (a) Means a physical asset within a reservation enterprise zone **or a reservation partnership**
30 **zone** that satisfies the following requirements:

31 (A) The facility is used by a business in the operation of a revenue-producing enterprise, except
32 that the revenue-producing enterprise must consist of activity other than leasing the facility to an-
33 other person; and

34 (B) The facility is acquired by or leased to a business on or after January 1, 2002, including a
35 facility, the title or possession of which is transferred to the business on or after January 1, 2002,
36 or a facility, the construction, erection or installation of which is completed on or after January 1,
37 2002;

38 (b) Subject to paragraph (c) of this subsection, includes a facility acquired or leased from a
39 person that used the facility in a revenue-producing enterprise within the boundaries of the same
40 Indian reservation immediately prior to the transfer of title or possession of the facility to the
41 business; and

42 (c) Does not include:

43 (A) A facility that is used in a revenue-producing enterprise that is the same or substantially
44 identical to the revenue-producing enterprise in which the facility was previously used within the
45 boundaries of the same Indian reservation; or

1 (B) Any property that merely replaces existing property and that does not expand the capacity
2 of the revenue-producing enterprise in which the facility is to be used.

3 (3) "Reservation enterprise zone" means [a] **an enterprise** zone designated [by] **under** ORS
4 285C.306.

5 **(4) "Reservation partnership zone" means an enterprise zone cosponsored under ORS**
6 **285C.306.**

7 [(4)] (5) "Tribal government" means the governing body of an Indian tribe, if the governing body
8 has the authority to levy, impose and collect taxes within the boundaries of the reservation of the
9 tribe.

10 [(5)] (6) "Tribal tax" means any specific tax that is or may be levied or imposed by a tribal
11 government upon a business and that is measured with reference to a specific level or quantity of
12 that business's income, operations, use or ownership of property. "Tribal tax" includes, but is not
13 limited to, an income or excise tax, an ad valorem property tax, a gross receipts tax or a sales and
14 use tax.

15 **SECTION 24.** ORS 285C.309 is amended to read:

16 285C.309. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the
17 taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to an eligible business operating
18 a new business facility in a reservation enterprise zone **or a reservation partnership zone.**

19 (2) The amount of the credit allowed to the eligible business shall equal:

20 (a) The amount of tribal property tax imposed on a new business facility of an eligible business
21 that is paid or incurred by the eligible business during the income or corporate excise tax year of
22 the eligible business; or

23 (b) If the eligible business has not previously conducted business operations within the reser-
24 vation enterprise zone **or reservation partnership zone**, the amount of tribal tax paid or incurred
25 by the eligible business during the income or corporate excise tax year of the eligible business.

26 (3) The credit allowed to the eligible business may not exceed the tax liability of the eligible
27 business for the tax year and may not be carried over to another tax year.

28 (4) A credit is allowable under this section only to the extent the tribal tax on which the credit
29 is based is imposed on businesses not owned by Indians on a uniform basis within the territory over
30 which the tribal government has the authority to levy, impose and collect taxes.

31 (5) The credit shall be claimed on a form prescribed by the Department of Revenue containing
32 the information required by the department, including information sufficient for the department to
33 determine that the taxpayer is an eligible business and that the facility operated by the business is
34 a new business facility.

35 (6) An eligible nonresident individual shall be allowed the credit computed in the same manner
36 and subject to the same limitations as the credit allowed a resident by subsection (1) of this section.
37 However, the credit shall be prorated using the proportion provided in ORS 316.117.

38 (7) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
39 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
40 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

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

44 (9) An eligible business claiming a credit under this section shall maintain records sufficient to
45 authenticate the allowance of the credit claimed under this section and shall furnish the department

1 with these records upon the request of the department.

2 (10) A credit claimed by an eligible business may not be disallowed solely because the eligible
3 business conducts business operations both within and outside of a reservation enterprise zone **or**
4 **a reservation partnership zone.**

5 **SECTION 25.** ORS 285C.320 is amended to read:

6 285C.320. (1) A reservation enterprise zone [*is a rural enterprise zone*] **and a reservation**
7 **partnership zone are rural enterprise zones** for purposes of ORS 285C.050 to 285C.250. [*The tribal*
8 *government of the reservation is the sponsor of the reservation enterprise zone.*]

9 (2) Reservation enterprise zones **and reservation partnership zones** may not be taken into
10 account in determining the number of rural enterprise zones allowable in this state under ORS
11 285C.050 to 285C.250, and are not subject to numerical limitation under ORS 285C.050 to 285C.250.

12 (3) Exemptions and tax credits available in connection with an enterprise zone are available in
13 connection with a reservation enterprise zone **or a reservation partnership zone.** In order for
14 property within a reservation enterprise zone **or a reservation partnership zone** to be exempt
15 under ORS 285C.175, the business firm and property must meet the requirements applicable to
16 business firms and property in an enterprise zone.

17 (4) As used in this section, “business firm” has the meaning given that term in ORS 285C.050.

18 **SECTION 26.** ORS 314.752 is amended to read:

19 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
20 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
21 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
22 allowable to the shareholders of the S corporation.

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

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

32 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
33 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
34 316.117, then that provision shall apply to the nonresident shareholder.

35 (5) As used in this section, “business tax credit” means a tax credit granted to personal income
36 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
37 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
38 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
39 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
40 (tribal taxes on reservation enterprise zones **and reservation partnership zones**), ORS 315.104
41 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening,
42 by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker hous-
43 ing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213
44 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycl-
45 ing), ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce),

1 ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant ex-
2 penses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS
3 315.141 (biomass production for biofuel).

4 **SECTION 27. The amendments to ORS 285C.050, 285C.090, 285C.115, 285C.245, 285C.255,**
5 **285C.300, 285C.309, 285C.320 and 314.752 by sections 18 to 26 of this 2010 Act apply to reser-**
6 **vation enterprise zones designated, and reservation partnership zones cosponsored, on or**
7 **after January 1, 2010.**

8 **SECTION 28.** Section 21, chapter 913, Oregon Laws 2009, is amended to read:

9 **Sec. 21.** A credit may not be claimed under ORS 285C.309 for tax years beginning on or after
10 January 1, [2014] **2018.**

11 **SECTION 29. This 2010 Act takes effect on the 91st day after the date on which the**
12 **special session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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