

HOUSE AMENDMENTS TO HOUSE BILL 3680

By COMMITTEE ON REVENUE

February 8

1 On page 1 of the printed bill, line 2, delete “469.200, 469.215 and 469.225” and insert “315.354,
2 315.357, 469.185, 469.195, 469.197, 469.200, 469.205, 469.210, 469.215, 469.220 and 469.225”.

3 Delete lines 6 through 27 and delete pages 2 through 4.

4 On page 5, delete lines 1 through 9 and insert:

5 **“SECTION 1. Section 2 of this 2010 Act is added to and made a part of ORS 469.185 to**
6 **469.225.**

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

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

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

12 **“(2) In the event that the Director of the State Department of Energy receives applica-**
13 **tions for preliminary certification with a total cost in excess of the limitations in subsection**
14 **(1) of this section, the director shall allocate the issuance of preliminary certifications ac-**
15 **cording to the criteria required by ORS 469.195.**

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

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

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

21 **“SECTION 3. ORS 315.354 is amended to read:**

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

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

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

34 **“(c) If the facility uses or produces renewable energy resources or is a renewable energy re-**
35 **source equipment manufacturing facility, the credit allowed in each of five succeeding tax years**

1 shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the
2 taxpayer.

3 “(2) Notwithstanding subsection (1) of this section:

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

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

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

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

14 “(a) The facility must be located in Oregon;

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

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

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

20 “(4) The total amount of credit allowable to an eligible taxpayer under this section may not
21 exceed:

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

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

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

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

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

31 “(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new
32 certificate under ORS 469.215[*but*]. **The new lessor or owner must meet the requirements of**
33 **ORS 469.185 to 469.225 and may claim a tax credit under this section only if all moneys owed**
34 **to the State of Oregon have been paid, the facility continues to operate and all conditions in**
35 **the final certification are met.** The tax credit available to the new owner shall be limited to the
36 amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not
37 claimed by the lessor under all previous leases.

38 “[*b*] (c) The State Department of Energy may not revoke the certificate covering a facility
39 under paragraph (a) of this subsection if the tax credit associated with the facility has been trans-
40 ferred to a taxpayer who is an eligible applicant under ORS 469.205 (1)(c)(A).

41 “(6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in
42 a particular year may be carried forward and offset against the taxpayer’s tax liability for the next
43 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
44 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
45 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,

1 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
2 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
3 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
4 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
5 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
6 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
7 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
8 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
9 yond the years specified in subsection (1) of this section only as provided in this subsection.

10 “(7) The credit provided by this section is not in lieu of any depreciation or amortization de-
11 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
12 316, 317 or 318 for such year.

13 “(8) The taxpayer’s adjusted basis for determining gain or loss may not be decreased by any tax
14 credits allowed under this section.

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

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

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

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

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

24 “**SECTION 4.** ORS 469.185 is amended to read:

25 “469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

31 “(2) ‘Car sharing facility’ means the expenses of operating a car sharing program, including but
32 not limited to the fair market value of parking spaces used to store the fleet of cars available for
33 a car sharing program, but does not include the costs of the fleet of cars.

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

37 “(4) ‘Cost’ means the capital costs and expenses necessarily incurred in the acquisition, erection,
38 construction and installation of a facility, including site development costs and expenses for a
39 sustainable building practices facility.

40 “(5) ‘Energy facility’ means any capital investment for which the first year energy savings yields
41 a simple payback period of greater than one year. An energy facility includes:

42 “(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or
43 any addition to, reconstruction of or improvement of, land or an existing structure, building, instal-
44 lation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or in-
45 stalled by any person in connection with the conduct of a trade or business and actually used in the

1 processing or utilization of renewable energy resources to:

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

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

4 been used;

5 “(C) Generate electricity to replace an existing source of electricity or to provide a new source

6 of electricity for sale by or use in the trade or business;

7 “(D) Perform a process that obtains energy resources from material that would otherwise be

8 solid waste as defined in ORS 459.005; or

9 “(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol,

10 methanol, gasohol or biodiesel.

11 “(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing

12 structure, building, installation, excavation, machinery, equipment or device necessarily acquired,

13 erected, constructed or installed by any person in connection with the conduct of a trade or business

14 in order to substantially reduce the consumption of purchased energy.

15 “(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is

16 defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance

17 standard in the state building code.

18 “(d) The replacement of an electric motor with another electric motor that substantially reduces

19 the consumption of electricity.

20 “(6) ‘Facility’ means an energy facility, recycling facility, transportation facility, car sharing

21 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-

22 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling

23 station, a high-efficiency combined heat and power facility, a high-performance home, a

24 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-

25 facturing facility.

26 “(7) ‘High-efficiency combined heat and power facility’ means a device or equipment that simul-

27 taneously produces heat and electricity from a single source of fuel and that meets the criteria es-

28 tablished for a high-efficiency combined heat and power facility under ORS 469.197.

29 “(8) ‘High-performance home’ means a new single-family dwelling that:

30 “(a) Is designed and constructed to reduce net purchased energy through use of both energy

31 efficiency and on-site renewable energy resources; and

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

33 “(9) ‘Homebuilder-installed renewable energy system’ means a renewable energy resource system

34 that:

35 “(a) Meets the criteria established for a renewable energy resource system under ORS 469.197;

36 and

37 “(b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder con-

38 structing the dwelling.

39 “(10) ‘Qualified transit pass contract’ means a purchase agreement entered into between a

40 transportation provider and a person, the terms of which obligate the person to purchase transit

41 passes on behalf or for the benefit of employees, students, patients or other individuals over a

42 specified period of time.

43 “(11) ‘Recycling facility’ means equipment used by a trade or business solely for recycling:

44 “(a) Including:

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

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

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

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

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

10 “(12)(a) ‘Renewable energy resource’ includes, but is not limited to:

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

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

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

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

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

19 “(b) ‘Renewable energy resource’ does not include a hydroelectric generating facility that is not
20 described in paragraph (a) of this subsection.

21 “(13) ‘Renewable energy resource equipment manufacturing facility’ means any structure, build-
22 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-
23 provement to land or an existing structure, building, installation, excavation, machinery, equipment
24 or device, that is necessarily acquired, constructed or installed by a person in connection with the
25 conduct of a trade or business, that is used primarily to manufacture equipment, machinery or other
26 products designed to use a renewable energy resource **or to manufacture renewable energy**
27 **storage devices** and that meets the criteria established under ORS 469.197.

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

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

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

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

43 “(16) ‘Transportation provider’ means a public, private or nonprofit entity that provides trans-
44 portation services to members of the public.

45 “(17) ‘Transportation services contract’ means a contract that is related to a transportation fa-

1 cility, and may be further defined by the department by rule.

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

3 “315.357. [A taxpayer may not be allowed a credit under ORS 315.354 if the first tax year for
4 which the credit with respect to a facility certified under ORS 469.215 would otherwise be allowed be-
5 gins on or after January 1, 2012.]

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

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

12 “**SECTION 6.** ORS 469.195 is amended to read:

13 “469.195. (1) In determining the eligibility of [*facilities*] **any facility** for tax credits, preference
14 shall be given to those projects [*which*] **that:**

15 “[*1*] (a) Provide energy savings for real or personal property within the state inhabited as the
16 principal residence of a tenant, including:

17 “[*a*] (A) Nonowner occupied single family dwellings; and

18 “[*b*] (B) Multiple unit residential housing; or

19 “[*2*] (b) Provide long-term energy savings from the use of renewable resources or conservation
20 of energy resources.

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

30 “(a) **Technology-specific energy production standards;**

31 “(b) **Market sector;**

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

33 “(d) **Investment payback period;**

34 “(e) **Expected lifespan of the facility;**

35 “(f) **Potential for long-term viability;**

36 “(g) **Environmental standards established by the director;**

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

38 “(i) **Projected siting in a location that is geologically or socioeconomically advantageous;**

39 “(j) **Demonstrated readiness to begin implementation;**

40 “(k) **Amount and quality of energy generated;**

41 “(L) **Strength of business plan;**

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

44 “(n) **Connection to existing infrastructure;**

45 “(o) **Third-party review of the applicant’s business plan; and**

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

2 **“SECTION 7.** ORS 469.197 is amended to read:

3 “469.197. The State Department of Energy shall by rule establish all of the following criteria:

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

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

15 “(3) For a high-efficiency combined heat and power facility, the minimum performance and effi-
16 ciency standards that the facility must achieve to be considered a high-efficiency combined heat and
17 power facility.

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

19 “(a) Standards relating to the type of equipment, machinery or other products being manufac-
20 tured and related performance and efficiency standards applicable to the manufactured products;

21 “(b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a
22 single renewable energy resource equipment manufacturing facility and what constitutes property
23 that is not included within a renewable energy resource equipment manufacturing facility;

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

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

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

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

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

35 **“(6) Standards, consistent with the definitions in ORS 469.185, relating to what consti-**
36 **tutes a single facility.**

37 **“SECTION 8.** ORS 469.200 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 [or]

44 **“(c) Five percent of the total cost of the facility but no more than \$7 million, in the case**
45 **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; or**

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

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

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

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

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

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

17 “(e) The applicant lacks the minimum level of financial viability established in rules adopted
18 under ORS 469.197 (4); or

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

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

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

29 “469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
30 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

44 “(b) A quarterly economic and revenue forecast projects that revenues in the General Fund in
45 the current biennium will be at least two percent below what revenues were projected to be in the

1 revenue forecast on which the legislatively adopted budget, as defined in ORS 291.002, for the cur-
2 rent biennium was based;

3 “(c) The proposed facility, in the estimate of the director, does not possess the likelihood of
4 success established in criteria of success under ORS 469.197 (4);

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

7 “(e) The applicant lacks the minimum level of financial viability established in rules adopted
8 under ORS 469.197 (4); or

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

12 “(3) The director shall determine the dollar amount certified for any facility and the priority
13 between applications for certification based upon the criteria contained in ORS 469.185 to 469.225
14 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider
15 the status of a facility as a research, development or demonstration facility of new renewable re-
16 source generating and conservation technologies or a qualified transit pass contract in the deter-
17 mination.

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

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

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

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

25 “(c) Five percent of the total cost of the facility but no more than [*\$5 million*] **\$3 million**, in the
26 case of a facility that uses or produces renewable energy resources and is a wind facility with an
27 installed capacity of more than 10 megawatts; or

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

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

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

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

39 “(c) The proposed facility, in the estimate of the director, does not possess the likelihood of
40 success established in criteria of success under ORS 469.197 (4);

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

43 “(e) The applicant lacks the minimum level of financial viability established in rules adopted
44 under ORS 469.197 (4); or

45 “(f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or

1 expand a facility in Oregon on allowance of the tax credit, given the criteria established in rules
2 under ORS 469.197 (4).

3 “(3) The director shall determine the dollar amount certified for any facility and the priority
4 between applications for certification based upon the criteria contained in ORS 469.185 to 469.225
5 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider
6 the status of a facility as a research, development or demonstration facility of new renewable re-
7 source generating and conservation technologies or a qualified transit pass contract in the deter-
8 mination.

9 “**SECTION 10.** ORS 469.205 is amended to read:

10 “469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
11 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
12 if:

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

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

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

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

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

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

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

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

27 “(a) A statement that the applicant or the lessee of the applicant’s facility:

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

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

31 “(C) Plans to use a renewable energy resource in the generation of electricity for sale or to
32 replace an existing or proposed use of an existing source of electricity;

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

35 “(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185
36 (11);

37 “(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alter-
38 native fuel vehicle;

39 “(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehi-
40 cles;

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

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

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

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

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

1 “(M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;
2 “(N) Is a homebuilder and plans to construct a high-performance home; or
3 “(O) Plans to acquire, construct or install a renewable energy resource equipment manufactur-
4 ing facility.

5 “(b) A detailed description of the proposed facility and its operation and information showing
6 that the facility will operate as represented in the application **and remain in operation for at**
7 **least five years.**

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

12 “(d) The projected cost of the facility.

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

15 “(f) **Information on the amount and type of jobs that will be created, the number of jobs**
16 **sustained throughout the construction, installation and operation of the facility and benefits**
17 **for other economic activity in this state related to these jobs.**

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

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

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

24 “(3) An application for preliminary certification shall be accompanied by a fee established under
25 ORS 469.217. The director may refund **all or a portion of** the fee if the application for certification
26 is rejected.

27 “(4) The director may allow an applicant to file the preliminary application **or a reapplication**
28 **under ORS 469.210 (3)** after the start of erection, construction, installation or acquisition of the
29 facility if the director finds:

30 “(a) Filing the application before the start of erection, construction, installation or acquisition
31 is inappropriate because special circumstances render filing earlier unreasonable; and
32 “(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
33 469.225.

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

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

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

40 “469.210. (1) The Director of the State Department of Energy may require the submission of
41 plans, specifications and contract terms, and after examination thereof, may request corrections and
42 revisions of the plans, specifications and terms.

43 “(2) If the director determines that the proposed acquisition, erection, construction or installa-
44 tion is technically feasible and should operate in accordance with the representations made by the
45 applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable

1 rules or standards adopted by the director, the director shall issue a preliminary certificate ap-
2 proving the acquisition, erection, construction or installation of the facility. **The certificate shall**
3 **indicate the potential amount of tax credit allowable and shall list any conditions for claiming**
4 **the credit.**

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

9 **“(4) [If] The director may issue an order altering, conditioning, suspending or denying**
10 **preliminary certification if the director determines that:**

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

14 **“(b) The applicant has previously received preliminary or final certification for the same**
15 **costs;**

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

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

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

25 **“SECTION 12.** ORS 469.215 is amended to read:

26 **“469.215. (1) A final certification may not be issued by the Director of the State Department of**
27 **Energy under this section unless:**

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

30 **“(b) The applicant demonstrates the ability to provide the information required by ORS**
31 **469.205 (2) and does not violate any condition that may be imposed as described in ORS**
32 **469.210 (4); and**

33 **“(c) The facility was acquired, erected, constructed or installed in accordance with the**
34 **applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the**
35 **director.**

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

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

38 **“(b)(A) After completion of erection, construction, installation or acquisition of the proposed**
39 **facility or, if the facility is a qualified transit pass contract, after entering into the contract with**
40 **a transportation provider; or**

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

42 **“(3) An application for final certification shall be made in writing on a form prepared by the**
43 **department and shall contain:**

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

45 **“(b) The actual cost of the facility certified to by a certified public accountant who is not an**

1 employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts
2 for purchase and installation of the facility;

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

4 “(d) **The number and type of jobs created by the operation and maintenance of the facility**
5 **over the five-year period beginning with the year of preliminary certification under ORS**
6 **469.210 and information on benefits for other economic activity in this state related to these**
7 **jobs;**

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

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

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

15 “[c] *A statement that the facility is in operation or, if not in operation, that the applicant has made*
16 *every reasonable effort to make the facility operable; and]*

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

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

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

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

38 “**SECTION 13.** ORS 469.220 is amended to read:

39 469.220. (1) A certificate issued under ORS 469.215 is required for purposes of obtaining tax
40 credits in accordance with ORS 315.354. Such certification shall be granted for a period not to ex-
41 ceed five years. The five-year period shall begin with the tax year of the applicant during which *[a*
42 *certified facility is placed into operation, or the year]* the facility is certified under ORS 469.215*[, at*
43 *the election of the applicant].*

44 “(2) **Notwithstanding subsection (1) of this section, for a facility using or producing**
45 **renewable energy resources with a certified cost that exceeds \$10 million and that receives**

1 **final certification under ORS 469.215 after January 1, 2010, the five-year period shall begin**
2 **with the tax year immediately following the tax year during which the facility is certified**
3 **under ORS 469.215.**

4 “**SECTION 14.** ORS 469.225 is amended to read:

5 “469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
6 the State Department of Energy may order the **suspension or** revocation of the certificate issued
7 under ORS 469.215 if the director finds that:

8 “(a) The certification was obtained by fraud or misrepresentation; [or]

9 “(b) The holder of the certificate **or the operator of the facility** has failed to construct or
10 operate the facility in compliance with the plans, specifications and procedures in the certificate[.];
11 **or**

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

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

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

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

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

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

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

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

43 “(6) If the certificate is issued for a facility that is not a renewable energy resource equipment
44 manufacturing facility and is ordered revoked pursuant to subsection (1)(b) of this section, the cer-
45 tificate holder shall be denied any further relief under ORS 315.354 in connection with the facility

1 from and after the date that the order of revocation becomes final.

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

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

9 **“(2) The amendments to ORS 469.200 by section 8 of this 2010 Act apply to preliminary
10 certifications issued under ORS 469.210 on or after January 1, 2010, and before January 1,
11 2011.**

12 **“(3) The amendments to ORS 469.200 by section 9 of this 2010 Act apply to preliminary
13 certifications issued under ORS 469.210 on or after January 1, 2011, and before January 1,
14 2012.**

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

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

19 **“(6) The amendments to ORS 315.354 and 469.225 by sections 3 and 14 of this 2010 Act
20 apply to tax years beginning on or after January 1, 2009, and any tax year for which a tax-
21 payer may file an amended return or for which the Department of Revenue may issue a no-
22 tice of deficiency.”.**

23 In line 10, delete “7” and insert “16”.
24 _____