

House Bill 3680

Sponsored by COMMITTEE ON REVENUE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits State Department of Energy from issuing preliminary certification to applicant seeking tax credit for erection, construction, installation or acquisition of large facility unless applicant meets specified conditions. Authorizes Director of State Department of Energy to revoke certificate if holder of certificate fails to comply with conditions.

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

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

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

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits; creating new provisions; amending ORS 469.200, 469.215 and 469.225; pre-
3 scribing an effective date; and providing for revenue raising that requires approval by a three-
4 fifths majority.

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

6 **SECTION 1. Section 2 of this 2010 Act is added to and made a part of ORS 469.185 to**
7 **469.225.**

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

10 **(2) The State Department of Energy may not issue a preliminary certification to an ap-**
11 **plicant under ORS 469.210 for the erection, construction, installation or acquisition of a large**
12 **facility unless the applicant establishes that:**

13 **(a) The applicant has applied for all licenses and permits required by state or local law**
14 **for the facility;**

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

17 **(c) To the satisfaction of the department, the facility will be in continuous operation for**
18 **at least five years after the facility is placed in operation.**

19 **(3) In addition to the criteria established by the State Department of Energy under ORS**
20 **469.197, the department may consider issuing a preliminary certification to an applicant un-**
21 **der ORS 469.210 for the erection, construction, installation or acquisition of a large facility**
22 **based on the following criteria:**

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

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

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

8 (5) The State Department of Energy may not issue a certificate under ORS 469.215 for a
 9 large facility unless the applicant has been issued all permits and licenses required by state
 10 or local law for the facility. The department may condition the granting of a certificate under
 11 ORS 469.215 for a large facility on the applicant continuing to meet the requirements of
 12 subsection (2)(b) and (c) of this section during the period that the certificate is valid.

13 **SECTION 3.** ORS 469.200 is amended to read:

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

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

18 (b) **\$20 million, in the case of a facility that has an installed capacity of 20 megawatts or**
 19 **less and:**

20 (A) **That uses or produces renewable energy resources; or**

21 (B) **That is a high-efficiency combined heat and power facility;**

22 [(b)] (c) \$40 million, in the case of a renewable energy resource equipment manufacturing facil-
 23 ity; or

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

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

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

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

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

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

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

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

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

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

5 **(4) If more than one application for preliminary certification is made to the State De-**
 6 **partment of Energy for the same site or by the same applicant, the department may treat**
 7 **the applications as a single application for the purpose of the limitations imposed by this**
 8 **section, and for the purpose of determining whether the application is for a large facility as**
 9 **defined in section 2 of this 2010 Act, if the department finds that the applications are for**
 10 **facilities that are in such close proximity, or so closely related, as to constitute a single fa-**
 11 **cility.**

12 **SECTION 4.** ORS 469.215 is amended to read:

13 469.215. (1) A final certification may not be issued by the Director of the State Department of
 14 Energy under this section unless the facility was acquired, erected, constructed or installed under
 15 a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applica-
 16 ble provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the di-
 17 rector.

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

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

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

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

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

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

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

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

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

34 (4) The director shall act on an application for certification before the 60th day after the filing
 35 of the application under this section. The director may issue the certificate together with such
 36 conditions as the director determines are appropriate to promote the purposes of ORS 315.354,
 37 469.185 to 469.225 and 469.878. If the applicant is an entity subject to regulation by the Public
 38 Utility Commission, the director may consult with the commission prior to issuance of the certif-
 39 icate. The action of the director shall include certification of the actual cost of the facility. How-
 40 ever, the director may not certify an amount for tax credit purposes [*which*] **that** is more than [*10*
 41 *percent in excess of*] the amount approved in the preliminary certificate issued for the facility.

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

1 jection of the application.

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

6 **SECTION 5.** ORS 469.225 is amended to read:

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

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

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

13 **(c) The holder of the certificate has failed to comply with conditions imposed under sec-**
 14 **tion 2 (2) of this 2010 Act.**

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

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

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

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

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

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

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

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

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

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

7 **SECTION 6. Section 2 of this 2010 Act and the amendments to ORS 469.200, 469.215 and**
8 **469.225 by sections 3 to 5 of this 2010 Act apply to preliminary certifications issued on or**
9 **after the effective date of this 2010 Act.**

10 **SECTION 7. This 2010 Act takes effect on the 91st day after the date on which the special**
11 **session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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