

## SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3680

By COMMITTEE ON FINANCE AND REVENUE

February 19

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert “192.502, 285C.050, 285C.090,  
2 285C.115, 285C.245, 285C.255, 285C.300, 285C.309, 285C.320, 314.752.”.

3 In line 3, after “469.225” insert “and section 21, chapter 913, Oregon Laws 2009; repealing sec-  
4 tion 26, chapter 843, Oregon Laws 2007”.

5 Delete lines 6 through 13 and delete pages 2 through 15 and insert:

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

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

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

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

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

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

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

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

24 **“(4) The total amount of potential tax credits for all renewable energy resource equip-**  
25 **ment manufacturing facilities in this state may not, at the time of preliminary certification**  
26 **under ORS 469.210, exceed:**

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

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

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

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

31 **“315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if**  
32 **the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the**  
33 **facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit**  
34 **is allowed as follows:**

35 **“(a) Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in each of**

1 the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the  
2 facility, but may not exceed the tax liability of the taxpayer. The credit allowed in each of the  
3 succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability  
4 of the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 “(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new  
41 certificate under ORS 469.215[, *but*]. **The new lessor or owner must meet the requirements of**  
42 **ORS 469.185 to 469.225 and may claim a tax credit under this section only if all moneys owed**  
43 **to the State of Oregon have been paid, the facility continues to operate, unless continued**  
44 **operation is waived by the State Department of Energy, and all conditions in the final cer-**  
45 **tification are met.** The tax credit available to the new owner shall be limited to the amount of

1 credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the  
2 lessor under all previous leases.

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

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

9 “(6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in  
10 a particular year may be carried forward and offset against the taxpayer’s tax liability for the next  
11 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried  
12 forward and used in the second succeeding tax year, and likewise, any credit not used in that second  
13 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,  
14 any credit not used in that third succeeding tax year may be carried forward and used in the fourth  
15 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be  
16 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that  
17 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and  
18 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in  
19 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax  
20 year may be carried forward and used in the eighth succeeding tax year, but may not be carried  
21 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-  
22 yond the years specified in subsection (1) of this section only as provided in this subsection.

23 “(7) The credit provided by this section is not in lieu of any depreciation or amortization de-  
24 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter  
25 316, 317 or 318 for such year.

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

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

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

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

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

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

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

38 **“469.185.** As used in ORS 469.185 to 469.225 and 469.878:

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

44 “(2) ‘Car sharing facility’ means the expenses of operating a car sharing program, including but  
45 not limited to the fair market value of parking spaces used to store the fleet of cars available for

1 a car sharing program, but does not include the costs of the fleet of cars.

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

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

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

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

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

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

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

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

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

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

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

31 “(d) The replacement of an electric motor with another electric motor that substantially reduces  
32 the consumption of electricity.

33 “(6) ‘Facility’ means an energy facility, recycling facility, transportation facility, car sharing  
34 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-  
35 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling  
36 station, a high-efficiency combined heat and power facility, a high-performance home, a  
37 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-  
38 facturing facility.

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

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

43 “(a) Is designed and constructed to reduce net purchased energy through use of both energy  
44 efficiency and on-site renewable energy resources; and

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

1 “(9) ‘Homebuilder-installed renewable energy system’ means a renewable energy resource system  
2 that:

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

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

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

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

12 “(a) Including:

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

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

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

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

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

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

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

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

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

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

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

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

34 “(13) ‘Renewable energy resource equipment manufacturing facility’ means any structure, build-  
35 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-  
36 provement to land or an existing structure, building, installation, excavation, machinery, equipment  
37 or device, that is necessarily acquired, constructed or installed by a person in connection with the  
38 conduct of a trade or business, that is used primarily to manufacture *[equipment, machinery or other*  
39 *products designed to use a renewable energy resource and that meets the criteria established under*  
40 *ORS 469.197.]*:

41 “(a) **Equipment, machinery or other products designed to use a renewable energy re-**  
42 **source and that meets the criteria established under ORS 469.197.**

43 “(b) **Electric vehicles, including three-wheeled vehicles, that are designed for use as Class**  
44 **I or Class II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and**  
45 **that are used for agricultural, commercial, industrial or governmental purposes, or designed**

1 for use as modes of transportation on public roads and highways, or component parts of  
2 electric vehicles, but not including component parts that may be used in both electric and  
3 conventional vehicles. The director may further define ‘agricultural, commercial, industrial  
4 or governmental purposes’ of electric vehicles by rule. For purposes of this paragraph,  
5 ‘component parts’ does not include batteries.

6 **“(c) Renewable energy storage devices.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **“(2) The Director of the State Department of Energy shall establish by rule a tiered pri-**

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

9 “(a) Technology-specific energy production standards;

10 “(b) Market sector;

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

12 “(d) Investment payback period;

13 “(e) Expected lifespan of the facility;

14 “(f) Potential for long-term viability;

15 “(g) Environmental standards established by the director;

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

17 “(i) Projected siting in a location that is geographically or socioeconomically advanta-  
18 geous;

19 “(j) Demonstrated readiness to begin implementation;

20 “(k) Amount and quality of energy generated;

21 “(L) Strength of business plan;

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

24 “(n) Connection to existing infrastructure;

25 “(o) Third-party review of the applicant’s business plan; or

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

27 “SECTION 7. ORS 469.197 is amended to read:

28 “469.197. The State Department of Energy shall by rule establish all of the following criteria:

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

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

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

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

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

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

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

7 “(B) **The consideration of such factors as phases of development, expansion of or addi-**  
8 **tions to existing facilities or product lines, increased production and number of jobs created**  
9 **or maintained by an applicant;**

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

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

14 “(e) Standards relating to the likelihood of long-term **operation and** success of a renewable  
15 energy resource equipment manufacturing facility; and

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

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

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

23 “**SECTION 8.** ORS 469.200 is amended to read:

24 “469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-  
25 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

35 “[*c*] (e) \$10 million, in the case of any other facility.

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

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

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



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

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

5 “(e) The applicant lacks the minimum level of financial viability established in rules adopted  
6 under ORS 469.197 (4); [or]

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

10 **“(g) During a time period listed in section 2 (4) of this 2010 Act, the director receives**  
11 **applications for preliminary certification with a total amount of potential tax credits in ex-**  
12 **cess of the limitation for the time period.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(g) During a time period listed in section 2 (4) of this 2010 Act, the director receives applica-  
7 tions for preliminary certification with a total amount of potential tax credits in excess of the limi-  
8 tation for the time period.

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

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

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

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

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

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

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

28 “(e) \$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);

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); or

3 “(g) During a time period listed in section 2 (4) of this 2010 Act, the director receives applica-  
4 tions for preliminary certification with a total amount of potential tax credits in excess of the limi-  
5 tation for the time period.

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

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

13 “469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any  
14 person may apply to the State Department of Energy for preliminary certification under ORS 469.210  
15 if:

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

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

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

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

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

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

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

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

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

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

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

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

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

38 “(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185  
39 (11);

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

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

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

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

1 “(J) Plans to acquire a sustainable building practices facility;  
2 “(K) Plans to acquire a car sharing facility and operate a car sharing program;  
3 “(L) Plans to construct a high-efficiency combined heat and power facility;  
4 “(M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;  
5 “(N) Is a homebuilder and plans to construct a high-performance home; or  
6 “(O) Plans to acquire, construct or install a renewable energy resource equipment manufactur-  
7 ing facility.

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

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

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

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

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

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

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

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

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

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

33 “(a) Filing the application before the start of erection, construction, installation or acquisition  
34 is inappropriate because special circumstances render filing earlier unreasonable; and  
35 “(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to  
36 469.225.

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

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

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

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

4 “(2) If the director determines that the proposed acquisition, erection, construction or installa-  
5 tion is technically feasible and should operate in accordance with the representations made by the  
6 applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable  
7 rules or standards adopted by the director, the director shall issue a preliminary certificate ap-  
8 proving the acquisition, erection, construction or installation of the facility. **The certificate shall**  
9 **indicate the potential amount of tax credit allowable and shall list any conditions for claiming**  
10 **the credit.**

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

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

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

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

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

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

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

28 “469.215. (1) A final certification may not be issued by the Director of the State Department of  
29 Energy under this section unless:

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

32 “(b) **The applicant demonstrates the ability to provide the information required by ORS**  
33 **469.205 (2) and does not violate any condition that may be imposed as described in ORS**  
34 **469.210 (3); and**

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

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

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

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

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

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

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

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

3 employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts

4 for purchase and installation of the facility;

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

6           “(d) **The number and type of jobs created by the operation and maintenance of the facility**

7 **over the five-year period beginning with the year of preliminary certification under ORS**

8 **469.210 and information on the benefits of the facility with regard to overall economic activ-**

9 **ity in this state;**

10          “(e) **Information sufficient to demonstrate that the facility will remain in operation for**

11 **at least five years, unless the director by rule specifies a shorter period of operation;**

12          “(f) **Information sufficient to demonstrate, in the case of a research, development or**

13 **demonstration facility that is not in operation, that the applicant has made reasonable ef-**

14 **forts to make the facility operable and meet the requirements of the preliminary certificate;**

15          “(g) **Documentation of compliance with applicable state and local laws and regulations**

16 **and licensing and permitting requirements as defined by the director; and**

17          “[(c) *A statement that the facility is in operation or, if not in operation, that the applicant has made*

18 *every reasonable effort to make the facility operable; and]*

19          “[(d)] **(h) Any other information determined by the director to be necessary prior to issuance**

20 **of a final certificate, including inspection of the facility by the department.**

21          “(4) The director shall act on an application for certification before the 60th day after the filing

22 of the application under this section. The director may issue the certificate, **or certificates for**

23 **efficient truck technology within a transportation facility**, together with such conditions as the

24 director determines are appropriate to promote the purposes of ORS 315.354, 469.185 to 469.225 and

25 469.878. If the applicant is an entity subject to regulation by the Public Utility Commission, the di-

26 rector may consult with the commission prior to issuance of the certificate. The action of the di-

27 rector shall include certification of the actual cost of the facility. *[However, the director may not*

28 *certify an amount for tax credit purposes which is more than 10 percent in excess of the amount ap-*

29 *proved in the preliminary certificate issued for the facility.]* **However, the director may not certify**

30 **an amount for tax credit purposes that is more than the amount approved in the preliminary**

31 **certificate issued for the facility.**

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

33 of the facility than was claimed in the application, the director shall send to the applicant written

34 notice of the action, together with a statement of the findings and reasons therefor, by certified mail,

35 before the 60th day after the filing of the application. Failure of the director to act constitutes re-

36 jection of the application.

37          “(6) Upon approval of an application for final certification of a facility, the director shall certify

38 the facility. Each certificate shall bear a separate serial number for each device. Where one or

39 more devices constitute an operational unit, the director may certify the operational unit under one

40 certificate.

41          “(7) **The director may establish by rule timelines and intermediate deadlines for sub-**

42 **mission of application materials.**

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

44          “469.220. (1) A certificate issued under ORS 469.215 is required for purposes of obtaining tax

45 credits in accordance with ORS 315.354. Such certification shall be granted for a period not to ex-

1 ceed five years. The five-year period shall begin with the tax year of the applicant during which [*a*  
2 *certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the*  
3 *election of the applicant*] **the completed application for final certification of the facility under**  
4 **ORS 469.215 is received by the State Department of Energy.**

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

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

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

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

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

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

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

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

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

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

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

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

45 “(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires

1 an interest through bankruptcy or through foreclosure of a security interest is not considered to be  
2 a successor in interest to the business interests of the person that obtained certification from the  
3 State Department of Energy.

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

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

12 “**SECTION 15.** ORS 192.502 is amended to read:

13 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

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

27 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or  
28 volunteers who are elected officials, except that a judge or district attorney subject to election may  
29 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the  
30 terms of ORS 192.445;

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

34 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a  
35 professional education association of which the substitute teacher may be a member; and

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

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

41 “(5) Information or records of the Department of Corrections, including the State Board of  
42 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-  
43 tation of a person in custody of the department or substantially prejudice or prevent the carrying  
44 out of the functions of the department, if the public interest in confidentiality clearly outweighs the  
45 public interest in disclosure.



1       “(6) Records, reports and other information received or compiled by the Director of the De-  
2       partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not  
3       otherwise required by law to be made public, to the extent that the interests of lending institutions,  
4       their officers, employees and customers in preserving the confidentiality of such information out-  
5       weighs the public interest in disclosure.

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

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

9       “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-  
10      erwise made confidential or privileged under Oregon law.

11      “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-  
12      tion compiled in a public record when:

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

14      “(B) The factual information is not prohibited from disclosure under any applicable state or  
15      federal law, regulation or court order and is not otherwise exempt from disclosure under ORS  
16      192.410 to 192.505;

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

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

23      “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement  
24      characterizing or partially disclosing the factual information compiled by or at the attorney’s di-  
25      rection.

26      “(10) Public records or information described in this section, furnished by the public body ori-  
27      ginally compiling, preparing or receiving them to any other public officer or public body in con-  
28      nection with performance of the duties of the recipient, if the considerations originally giving rise  
29      to the confidential or exempt nature of the public records or information remain applicable.

30      “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-  
31      rity programs pursuant to ORS 469.530.

32      “(12) Employee and retiree address, telephone number and other nonfinancial membership re-  
33      cords and employee financial records maintained by the Public Employees Retirement System pur-  
34      suant to ORS chapters 238 and 238A.

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

39      “(a) The exemption does not apply to:

40      “(A) Information in investment records solely related to the amount paid directly into an in-  
41      vestment by, or returned from the investment directly to, the treasurer or council; or

42      “(B) The identity of the entity to which the amount was paid directly or from which the amount  
43      was received directly.

44      “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-  
45      change or liquidation of the investment has been concluded.

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

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

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

10 “(C) Meeting materials of an investment fund, an asset ownership or their respective investment  
11 vehicles.

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

14 “(E) Capital call and distribution notices of an investment fund, an asset ownership or their  
15 respective investment vehicles.

16 “(F) Investment agreements and related documents.

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

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

19 “(B) The dollar amount of the commitment made to each privately placed investment fund since  
20 inception of the fund.

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

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

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

29 “(F) The net internal rate of return of each privately placed investment fund since inception of  
30 the fund.

31 “(G) The investment multiple of each privately placed investment fund since inception of the  
32 fund.

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

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

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

40 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted  
41 by ORS 98.352.

42 “(17)(a) The following records, communications and information submitted to the Oregon Busi-  
43 ness Development Commission, the Oregon Business Development Department, the State Department  
44 of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined  
45 in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to,

1 those described in ORS 285A.224:

2 “[(a)] (A) Personal financial statements.

3 “[(b)] (B) Financial statements of applicants.

4 “[(c)] (C) Customer lists.

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

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

11 “[(f)] (F) Marketing strategy information that relates to applicant’s plan to address specific  
12 markets and applicant’s strategy regarding specific competitors.

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

15 **“(A) Personal financial statements.**

16 **“(B) Financial statements of applicants.**

17 **“(C) Customer lists.**

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

24 **“(E) Production, sales and cost data.**

25 **“(F) Marketing strategy information that relates to applicant’s plan to address specific  
26 markets and applicant’s strategy regarding specific competitors.**

27 “(18) Records, reports or returns submitted by private concerns or enterprises required by law  
28 to be submitted to or inspected by a governmental body to allow it to determine the amount of any  
29 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such  
30 information is in a form which would permit identification of the individual concern or enterprise.  
31 Nothing in this subsection shall limit the use which can be made of such information for regulatory  
32 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-  
33 payer of the delinquency immediately by certified mail. However, in the event that the payment or  
34 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the  
35 public body shall disclose, upon the request of any person, the following information:

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

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

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

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

43 “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-  
44 vices, except in accordance with rules adopted by the Director of the Department of Consumer and  
45 Business Services, in any of the following circumstances:

1           “(a) When necessary for insurers, self-insured employers and third party claim administrators to  
2 process workers’ compensation claims.

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

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

7           “(d) When a worker or the worker’s representative requests review of the worker’s claim record.

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

10          “(22) Records of Oregon Health and Science University regarding candidates for the position of  
11 president of the university.

12          “(23) The records of a library, including:

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

14           “(b) The name of a library patron together with the address or telephone number of the patron;  
15 and

16           “(c) The electronic mail address of a patron.

17          “(24) The following records, communications and information obtained by the Housing and  
18 Community Services Department in connection with the department’s monitoring or administration  
19 of financial assistance or of housing or other developments:

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

21           “(b) Credit reports.

22           “(c) Project appraisals.

23           “(d) Market studies and analyses.

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

25           “(f) Commitment letters.

26           “(g) Project pro forma statements.

27           “(h) Project cost certifications and cost data.

28           “(i) Audits.

29           “(j) Project tenant correspondence.

30           “(k) Personal information about a tenant.

31           “(L) Housing assistance payments.

32          “(25) Raster geographic information system (GIS) digital databases, provided by private  
33 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-  
34 partment, that is not otherwise required by law to be submitted.

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

42          “(27) Sensitive business, commercial or financial information furnished to or developed by the  
43 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath  
44 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085  
45 and disclosure of the information would cause a competitive disadvantage for the Klamath

1 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-  
2 ment or review of generally applicable rate schedules.

3 “(28) Personally identifiable information about customers of a municipal electric utility or a  
4 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,  
5 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
6 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
7 lease personally identifiable information about a customer, and a public body providing water, sewer  
8 or storm drain services may release the name, date of birth, driver license number, telephone num-  
9 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
10 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
11 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
12 disclosure is otherwise required by federal or state law. The utility, district or other public body  
13 may charge as appropriate for the costs of providing such information. The utility, district or other  
14 public body may make customer records available to third party credit agencies on a regular basis  
15 in connection with the establishment and management of customer accounts or in the event such  
16 accounts are delinquent.

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

19 “(30) Sensitive business records, capital development plans or financial or commercial informa-  
20 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.

21 “(31) Documents, materials or other information submitted to the Director of the Department  
22 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-  
23 latory or law enforcement agency or by the National Association of Insurance Commissioners, its  
24 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 86A.990, 86A.992, 697.005 to 697.095, 697.602  
25 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank  
26 Act or the Insurance Code when:

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

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

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

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

34 “(a) Generation, storage or conveyance of:

35 “(A) Electricity;

36 “(B) Gas in liquefied or gaseous form;

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

38 “(D) Petroleum products;

39 “(E) Sewage; or

40 “(F) Water.

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

42 “(c) Data transmissions by whatever means provided.

43 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court  
44 designates the information as confidential by rule under ORS 1.002.

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

1 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any  
2 form that are specifically related to the account of any employer insured, previously insured or un-  
3 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-  
4 mation obtained or developed by the corporation in connection with providing, offering to provide  
5 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but  
6 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,  
7 employee names and identification information, experience modification factors, loss experience and  
8 dividend payment history.

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

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

12 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held  
13 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all  
14 records pertaining to such a claim.

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

17 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-  
18 charge or other separation from military service.

19 “**SECTION 16. (1) Section 2 of this 2010 Act and the amendments to ORS 315.357, 469.185,  
20 469.195, 469.197, 469.205, 469.210 and 469.215 by sections 4 to 7 and 10 to 12 of this 2010 Act  
21 apply to preliminary certifications issued under ORS 469.210 on or after July 1, 2009.**

22 “**(2) The amendments to ORS 469.200 by section 8 of this 2010 Act apply to preliminary  
23 certifications issued under ORS 469.210 on or after January 1, 2010, and before January 1,  
24 2011.**

25 “**(3) The amendments to ORS 469.200 by section 9 of this 2010 Act apply to preliminary  
26 certifications issued under ORS 469.210 on or after January 1, 2011, and before January 1,  
27 2012.**

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

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

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

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

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

38 “285C.050. As used in ORS 285C.050 to 285C.250, unless the context requires otherwise:

39 “(1) ‘Assessment date’ and ‘assessment year’ have the meanings given those terms in ORS  
40 308.007.

41 “(2) ‘Authorized business firm’ means an eligible business firm that has been authorized under  
42 ORS 285C.140.

43 “(3) ‘Business firm’ means a person operating or conducting one or more trades or businesses,  
44 a people’s utility district organized under ORS chapter 261 or a joint operating agency formed under  
45 ORS chapter 262, but does not include any other governmental agency, municipal corporation or

1 nonprofit corporation.

2 “(4) ‘County average annual wage’ means:

3 “(a) The most recently available average annual covered payroll for the county in which the

4 enterprise zone is located, as determined by the Employment Department; or

5 “(b) If the enterprise zone is located in more than one county, the highest county average an-

6 nual wage as determined under paragraph (a) of this subsection.

7 “(5) ‘Electronic commerce’ means engaging in commercial or retail transactions predominantly

8 over the Internet or a computer network, utilizing the Internet as a platform for transacting busi-

9 ness, or facilitating the use of the Internet by other persons for business transactions, and may be

10 further defined by the Oregon Business Development Department by rule.

11 “(6) ‘Eligible business firm’ means a firm engaged in an activity described under ORS 285C.135

12 that may file an application for authorization under ORS 285C.140.

13 “(7) ‘Employee’ means a person who works more than 32 hours per week, but does not include

14 a person with a temporary or seasonal job or a person hired solely to construct qualified property.

15 “(8) ‘Enterprise zone’ means one of the 30 areas designated or terminated and redesignated by

16 order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, one of the

17 areas designated by the Director of the Oregon Business Development Department under ORS

18 285C.080, a federal enterprise zone area designated under ORS 285C.085, an area designated under

19 ORS 285C.250 or a reservation enterprise zone designated, **or a reservation partnership zone**

20 **cosponsored**, under ORS 285C.306.

21 “(9) ‘Federal enterprise zone’ means any discrete area wholly or partially within this state that

22 is designated as an empowerment zone, an enterprise community, a renewal community or some

23 similar designation for purposes of improving the economic and community development of the area.

24 “(10) ‘First-source hiring agreement’ means an agreement between an authorized business firm

25 and a publicly funded job training provider whereby the provider refers qualified candidates to the

26 firm for new jobs and job openings in the firm.

27 “(11) ‘In service’ means being used or occupied or fully ready for use or occupancy for com-

28 mercial purposes consistent with the intended operations of the business firm as described in the

29 application for authorization.

30 “(12) ‘Modification’ means modernization, renovation or remodeling of an existing building,

31 structure or real property machinery or equipment.

32 “(13) ‘New employees hired by the firm’:

33 “(a) Includes only those employees of an authorized business firm engaged for a majority of their

34 time in eligible operations.

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

36 “(A) Is created and first filled after December 31 of the first tax year in which qualified property

37 of the firm is exempt under ORS 285C.175;

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

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

40 “(14) ‘Publicly funded job training provider’ includes but is not limited to a community college,

41 a service provider under the federal Workforce Investment Act Title I-B (29 U.S.C. 2801 et seq.), or

42 a similar program.

43 “(15) ‘Qualified business firm’ means a business firm described in ORS 285C.200, the qualified

44 property of which is exempt from property tax under ORS 285C.175.

45 “(16) ‘Qualified property’ means property described under ORS 285C.180.

1 “(17) ‘Rural enterprise zone’ means:  
2 “(a) An enterprise zone located in an area of this state in which an urban enterprise zone could  
3 not be located; or  
4 “(b) A reservation enterprise zone designated, **or a reservation partnership zone**  
5 **cosponsored**, under ORS 285C.306.  
6 “(18) ‘Sparsely populated county’ means a county with a density of 100 or fewer persons per  
7 square mile, based on the most recently available population figure for the county from the Portland  
8 State University Population Research Center.  
9 “(19) ‘Sponsor’ means:  
10 “(a) The city, county or port, or any combination of cities, counties or ports, that received ap-  
11 proval of an enterprise zone under ORS 284.150 and 284.160 (1987 Replacement Part), under ORS  
12 285C.065 and 285C.075, under ORS 285C.085 or under ORS 285C.250;  
13 “(b) The tribal government, in the case of a reservation enterprise zone; [*or*]  
14 “(c) **The tribal government and the cosponsoring city, county or port, in the case of a**  
15 **reservation partnership zone; or**  
16 “[*c*] (d) A city, county or port that joined the enterprise zone through a boundary change under  
17 ORS 285C.115 (7) or a port that joined the enterprise zone under ORS 285C.068.  
18 “(20) ‘Tax year’ has the meaning given that term in ORS 308.007.  
19 “(21) ‘Urban enterprise zone’ means an enterprise zone in a metropolitan statistical area, as  
20 defined by the most recent federal decennial census, that is located inside a regional or metropolitan  
21 urban growth boundary.  
22 “(22) ‘Year’ has the meaning given that term in ORS 308.007.  
23 “**SECTION 19.** ORS 285C.090 is amended to read:  
24 “285C.090. (1) A proposed enterprise zone must be located in a local area in which:  
25 “(a) Fifty percent or more of the households have incomes below 80 percent of the median in-  
26 come of this state, as defined by the most recent federal decennial census;  
27 “(b) The unemployment rate is at least 2.0 percentage points greater than the comparable un-  
28 employment rate for this entire state, as defined by the most recently available data published or  
29 officially provided and verified by the United States Government, the Employment Department of  
30 this state, the Portland State University Population Research Center or special studies conducted  
31 under a contract with a regional academic institution; or  
32 “(c) The Oregon Business Development Department determines on a case-by-case basis using  
33 evidence provided by the cities, counties or ports applying for designation of the proposed enterprise  
34 zone that there exists a level of economic hardship at least as severe as that described in paragraph  
35 (a) or (b) of this subsection. The evidence shall be based on the most recently available data from  
36 official sources and may include, but is not limited to, a contemporary decline of the population in  
37 the proposed enterprise zone, the percentage of persons in the proposed enterprise zone below the  
38 poverty level relative to the percentage of the entire population of this state below the poverty level  
39 or the unemployment rate for the county or counties in which the proposed enterprise zone is lo-  
40 cated.  
41 “(2) An enterprise zone must consist of a total area of not more than 12 square miles in size.  
42 The area of the zone shall be calculated by excluding that portion of the zone that lies below the  
43 ordinary high water mark of a navigable body of water.  
44 “(3) Except as provided in subsection (4) of this section:  
45 “(a) An enterprise zone must have 12 miles or less as the greatest distance between any two



1 points within the zone; and

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

3 “(4) Unconnected areas of a rural enterprise zone may not be more than 15 miles apart when

4 an unconnected area is entirely within a sparsely populated county, and the zone:

5 “(a) Must have 20 miles or less as the greatest distance between any two points within the zone,

6 if only a portion of the zone is contained within a sparsely populated county; or

7 “(b) Must have 25 miles or less as the greatest distance between any two points within the zone,

8 if the zone is entirely contained within a sparsely populated county.

9 “(5) This section does not apply to the designation or redesignation of a reservation enterprise

10 zone **or a reservation partnership zone**.

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

12 “285C.115. (1) The sponsor of an enterprise zone may submit a request to the Oregon Business

13 Development Department to change the boundary of the enterprise zone. A request shall include:

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

15 “(b) If subsection (7) of this section applies, a copy of the resolution described in subsection (7)

16 of this section;

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

18 “(d) A legal description of each area to be withdrawn from or added to the existing enterprise

19 zone; and

20 “(e) Other information required by the department.

21 “(2) The amended enterprise zone shall:

22 “(a) Add land zoned for use by eligible business firms that has or will have infrastructure fa-

23 cilities, road access, on-site water, on-site sewage disposal and necessary utility services;

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

25 “(c) Add residential areas or nonresidential areas that are adjacent to residential areas only if

26 the level of economic hardship in the areas to be added is at least as severe as the conditions that

27 existed at the time the original enterprise zone was designated or that currently exist in the original

28 enterprise zone;

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

30 “(e) Meet the applicable total area and greatest distance requirements set forth in ORS

31 285C.090.

32 “(3) If the enterprise zone is a reservation enterprise zone **or a reservation partnership zone**

33 and the land to be added to the zone is not described in ORS 285C.306, the request for a boundary

34 change, and the resulting boundary of the zone, must fully satisfy the provisions of this section.

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

36 “(a) Remove only the land that is residential or not zoned or available for use by eligible busi-

37 ness firms; or

38 “(b) Change the name of the enterprise zone.

39 “(5) The boundary of an urban enterprise zone may not be modified to include land located

40 outside a regional or metropolitan urban growth boundary.

41 “(6) A request to modify the boundary of a rural enterprise zone to include land located outside

42 an urban growth boundary shall satisfy the requirements of subsections (1) and (2) of this section

43 and shall satisfy any other criteria that the department may adopt by rule.

44 “(7) If an area to be added to an enterprise zone is under the jurisdiction of a city, county or

45 port that is not a sponsor of the enterprise zone, the governing body of that city, county or port

1 shall submit a resolution requesting the change and requesting that the city, county or port become  
2 a sponsor, or shall submit a resolution consenting to the change, as provided under ORS 285C.065  
3 (1). The resolution of the joining city, county or port shall be submitted jointly with the resolution  
4 adopted by the governing body of the existing sponsor. The joining resolution of the city, county or  
5 port may:

6 “(a) Include a binding proposal for enhanced local public services, local incentives or local  
7 regulatory flexibility to be effective within the portion of the enterprise zone to be under the juris-  
8 diction of that city, county or port; or

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

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

19 “(9) A change in the boundary of an enterprise zone under this section does not change the  
20 termination date of the enterprise zone under ORS 285C.245 (2).

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

22 “285C.245. (1) When the termination of an enterprise zone occurs under this section:

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

24 “(A) The continuation of a qualified business firm’s property tax exemption first allowed before  
25 the effective date of the termination of the enterprise zone; or

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

27 “(i) The authorization application of the firm was filed with the sponsor before the effective date  
28 of the termination of the zone;

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

30 “(iii) The firm completes construction, addition, modification or installation of the qualified  
31 property within a reasonable time and without interruption of construction, addition, modification  
32 or installation activity; and

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

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

44 “(c) Disqualification under ORS 285C.240 of all exempt property of the business firm after the  
45 effective date of the termination of the enterprise zone shall prohibit and terminate all authori-

1 zations sought or obtained by the business firm that would not otherwise be allowed except for  
2 paragraph (b) of this subsection. Disqualification under ORS 285C.240 of all exempt property of the  
3 business firm on or after the effective date of the termination of the enterprise zone shall cause the  
4 assessor to deny any claim for exemption under ORS 285C.175 of qualified property of the business  
5 firm made in a subsequent tax year.

6 “(2) An enterprise zone designated by the Director of the Oregon Business Development De-  
7 partment under ORS 285C.080, 285C.085 or 285C.250 shall terminate when 10 years plus that number  
8 of days necessary to delay the date of termination to the June 30 next following have elapsed since  
9 the enterprise zone was originally designated.

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

13 “(4) The governing body of the sponsor may submit a resolution requesting termination of the  
14 enterprise zone to the Oregon Business Development Department. The sponsor shall provide copies  
15 of the resolution to the county assessor and the Department of Revenue. After receipt of the request,  
16 the director shall order termination of the enterprise zone and shall specify the effective date of the  
17 termination.

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

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

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

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

36 “285C.255. (1) Notwithstanding any other provision of ORS 285C.050 to 285C.250:

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

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

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

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

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

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

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

1 “(B) As allowed under ORS 285C.245 (1)(b).  
2 “**SECTION 23.** ORS 285C.300 is amended to read:  
3 “285C.300. As used in ORS 285C.300 to 285C.320:  
4 “(1) ‘Eligible business’ means a business that:  
5 “(a) Is engaged within a reservation enterprise zone **or a reservation partnership zone** in the  
6 manufacture or provision of goods, products or services to other businesses or to the general public,  
7 through activities including, but not limited to, manufacturing, assembly, fabrication, processing,  
8 shipping, storage, retail sales or services, child care, housing, retail food service, health care,  
9 tourism, entertainment, financial services, professional services, energy development, construction  
10 or similar activities; and  
11 “(b) Occupies or owns a new business facility within a reservation enterprise zone **or a reser-**  
12 **vation partnership zone.**  
13 “(2) ‘New business facility’:  
14 “(a) Means a physical asset within a reservation enterprise zone **or a reservation partnership**  
15 **zone** that satisfies the following requirements:  
16 “(A) The facility is used by a business in the operation of a revenue-producing enterprise, except  
17 that the revenue-producing enterprise must consist of activity other than leasing the facility to an-  
18 other person; and  
19 “(B) The facility is acquired by or leased to a business on or after January 1, 2002, including a  
20 facility, the title or possession of which is transferred to the business on or after January 1, 2002,  
21 or a facility, the construction, erection or installation of which is completed on or after January 1,  
22 2002;  
23 “(b) Subject to paragraph (c) of this subsection, includes a facility acquired or leased from a  
24 person that used the facility in a revenue-producing enterprise within the boundaries of the same  
25 Indian reservation immediately prior to the transfer of title or possession of the facility to the  
26 business; and  
27 “(c) Does not include:  
28 “(A) A facility that is used in a revenue-producing enterprise that is the same or substantially  
29 identical to the revenue-producing enterprise in which the facility was previously used within the  
30 boundaries of the same Indian reservation; or  
31 “(B) Any property that merely replaces existing property and that does not expand the capacity  
32 of the revenue-producing enterprise in which the facility is to be used.  
33 “(3) ‘Reservation enterprise zone’ means [a] **an enterprise zone** designated [by] **under** ORS  
34 285C.306.  
35 “(4) **‘Reservation partnership zone’ means an enterprise zone cosponsored under ORS**  
36 **285C.306.**  
37 “[~~(4)~~] (5) ‘Tribal government’ means the governing body of an Indian tribe, if the governing body  
38 has the authority to levy, impose and collect taxes within the boundaries of the reservation of the  
39 tribe.  
40 “[~~(5)~~] (6) ‘Tribal tax’ means any specific tax that is or may be levied or imposed by a tribal  
41 government upon a business and that is measured with reference to a specific level or quantity of  
42 that business’s income, operations, use or ownership of property. ‘Tribal tax’ includes, but is not  
43 limited to, an income or excise tax, an ad valorem property tax, a gross receipts tax or a sales and  
44 use tax.  
45 “**SECTION 24.** ORS 285C.309 is amended to read:

1 “285C.309. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if  
2 the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to an eligible business op-  
3 erating a new business facility in a reservation enterprise zone **or a reservation partnership**  
4 **zone**.

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

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

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

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

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

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

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

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

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

30 “(9) An eligible business claiming a credit under this section shall maintain records sufficient  
31 to authenticate the allowance of the credit claimed under this section and shall furnish the depart-  
32 ment with these records upon the request of the department.

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

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

37 “285C.320. (1) A reservation enterprise zone [*is a rural enterprise zone*] **and a reservation**  
38 **partnership zone are rural enterprise zones** for purposes of ORS 285C.050 to 285C.250. [*The tribal*  
39 *government of the reservation is the sponsor of the reservation enterprise zone.*]

40 “(2) Reservation enterprise zones **and reservation partnership zones** may not be taken into  
41 account in determining the number of rural enterprise zones allowable in this state under ORS  
42 285C.050 to 285C.250, and are not subject to numerical limitation under ORS 285C.050 to 285C.250.

43 “(3) Exemptions and tax credits available in connection with an enterprise zone are available  
44 in connection with a reservation enterprise zone **or a reservation partnership zone**. In order for  
45 property within a reservation enterprise zone **or a reservation partnership zone** to be exempt

1 under ORS 285C.175, the business firm and property must meet the requirements applicable to  
2 business firms and property in an enterprise zone.

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

4 “**SECTION 26.** ORS 314.752 is amended to read:

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

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

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

18 “(4) If the shareholder is a nonresident and there is a requirement applicable for the business  
19 tax credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
20 316.117, then that provision shall apply to the nonresident shareholder.

21 “(5) As used in this section, ‘business tax credit’ means a tax credit granted to personal income  
22 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
23 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
24 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
25 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
26 (tribal taxes on reservation enterprise zones **and reservation partnership zones**), ORS 315.104  
27 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening,  
28 by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker hous-  
29 ing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213  
30 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycl-  
31 ing), ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce),  
32 ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant ex-  
33 penses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS  
34 315.141 (biomass production for biofuel).

35 “**SECTION 27. The amendments to ORS 285C.050, 285C.090, 285C.115, 285C.245, 285C.255,**  
36 **285C.300, 285C.309, 285C.320 and 314.752 by sections 18 to 26 of this 2010 Act apply to reser-**  
37 **vation enterprise zones designated, and reservation partnership zones cosponsored, on or**  
38 **after January 1, 2010.**

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

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

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