

A-Engrossed House Bill 3681

Ordered by the House February 17
Including House Amendments dated February 17

Sponsored by COMMITTEE ON REVENUE

SUMMARY

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

[Extends to 2014 sunset provision for income tax credits available for renewable energy resource equipment manufacturing facilities. Modifies criteria for certification of facilities.]

[Establishes statutory framework consistent with current law for provision of credits for all other facilities that maintain existing 2012 sunset provision.]

[Applies to preliminary certifications issued on or after June 1, 2009.]

Directs Director of State Department of Energy and Director of Oregon Business Development Department to prepare plans for potential transfer of administration of tax credits available for renewable energy resource equipment manufacturing facilities. Requires submission of report on plans to Legislative Assembly no later than convening of next regular session.

Adds facilities that manufacture specified electric vehicles or component parts of those vehicles to definition of "renewable energy resource equipment manufacturing facility" for purposes relating to preliminary certification of those facilities. Allows tax credit for those facilities with maximum total cost of preliminary certification of \$2.5 million. Applies to preliminary certificates issued on or after July 1, 2009.

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

Clarifies that provisions relating to enterprise zones equally apply to reservation enterprise zones and reservation partnership zones. Applies to reservation enterprise zones designated, and reservation partnership zones cosponsored, on or after January 1, 2010.

Extends sunset on tax credit for eligible businesses that operate new business facilities in reservation enterprise zones or reservation partnership zones.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits; creating new provisions; amending ORS 285C.050, 285C.090, 285C.115,
3 285C.245, 285C.255, 285C.300, 285C.309, 285C.320, 314.752, 469.185, 469.197 and 469.200 and sec-
4 tion 21, chapter 913, Oregon Laws 2009; and prescribing an effective date.

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

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

8 **SECTION 2. (1) It is the intention of the Legislative Assembly to develop, for the con-**
9 **sideration of the Seventy-sixth Legislative Assembly, a timely and efficient process for the**
10 **future interdepartmental transfer of the administration of tax credits available for renewable**
11 **energy resource equipment manufacturing facilities.**

12 **(2) The Director of the State Department of Energy and the Director of the Oregon**
13 **Business Development Department shall prepare plans for a potential transfer of all duties,**
14 **functions and powers relating to the administration, under ORS 469.185 to 469.225, of tax**
15 **credits available for renewable energy resource equipment manufacturing facilities, from the**

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

1 **State Department of Energy to the Oregon Business Development Department.**

2 **(3) The State Department of Energy and the Oregon Business Development Department**
3 **shall collaborate to plan for a potential transfer as described in subsection (2) of this section.**
4 **To the extent possible under law, the State Department of Energy and the Oregon Business**
5 **Development Department shall exchange information necessary to facilitate this potential**
6 **transfer. The directors shall seek input on this potential transfer from representatives of**
7 **affected industries and other stakeholders.**

8 **(4) No later than the convening of the next regular session of the Legislative Assembly,**
9 **the State Department of Energy and the Oregon Business Development Department shall**
10 **jointly submit a progress report on the activities required under this section to the Legisla-**
11 **tive Assembly.**

12 **SECTION 3.** ORS 469.185 is amended to read:

13 469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

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

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

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

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

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

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

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

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

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

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

44 (b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing
45 structure, building, installation, excavation, machinery, equipment or device necessarily acquired,

1 erected, constructed or installed by any person in connection with the conduct of a trade or business
2 in order to substantially reduce the consumption of purchased energy.

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

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

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

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

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

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

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

21 (9) "Homebuilder-installed renewable energy system" means a renewable energy resource system
22 that:

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

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

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

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

32 (a) Including:

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

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

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

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

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

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

44 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant
45 or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal

1 energy; or

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

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

5 (ii) Qualifies as a research, development or demonstration facility.

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

8 (13) “Renewable energy resource equipment manufacturing facility” means any structure, build-
9 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-
10 provement to land or an existing structure, building, installation, excavation, machinery, equipment
11 or device, that is necessarily acquired, constructed or installed by a person in connection with the
12 conduct of a trade or business, that is used primarily to manufacture:

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

15 (b) **Electric vehicles, including three-wheeled vehicles, designed for use as modes of**
16 **transportation on public roads and highways or for use as Class I or Class II all-terrain ve-**
17 **hicles, as those terms are defined in ORS 801.190 and 801.193, or component parts of electric**
18 **vehicles, but not including component parts that may be used in both electric and conven-**
19 **tional vehicles. For purposes of this paragraph, “component parts” does not include bat-**
20 **teries.**

21 (14) “Sustainable building practices facility” means a commercial building in which building
22 practices that reduce the amount of energy, water or other resources needed for construction and
23 operation of the building are used. “Sustainable building practices facility” may be further defined
24 by the State Department of Energy by rule, including rules that establish traditional building prac-
25 tice baselines in energy, water or other resource usage for comparative purposes for use in deter-
26 mining whether a facility is a sustainable building practices facility.

27 (15) “Transportation facility” means a transportation project that reduces energy use during
28 commuting to and from work or school, during work-related travel, or during travel to obtain med-
29 ical or other services, and may be further defined by the department by rule. “Transportation facil-
30 ity” includes, but is not limited to, a qualified transit pass contract or a transportation services
31 contract.

32 (16) “Transportation provider” means a public, private or nonprofit entity that provides trans-
33 portation services to members of the public.

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

36 **SECTION 4.** ORS 469.200 is amended to read:

37 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
38 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **SECTION 5.** ORS 469.200, as amended by section 4 of this 2010 Act, is amended to read:

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

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

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

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

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

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

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

44 (a) The last quarterly economic and revenue forecast for a biennium indicates that moneys
45 available to the General Fund for the next biennium will be at least three percent less than appro-

1 priations from the General Fund for the current biennium;

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

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

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

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

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

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

20 **SECTION 6.** ORS 469.200, as amended by sections 4 and 5 of this 2010 Act, is amended to read:

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

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

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

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

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

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

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

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

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

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

45 (d) The proposed facility, in the estimate of the director, is not likely to increase employment

1 in Oregon to the minimum threshold level established in rules under ORS 469.197 (4);

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

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

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

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

13 469.197. The State Department of Energy shall by rule establish all of the following criteria:

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

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

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

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

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

31 (b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a
32 single renewable energy resource equipment manufacturing facility **that include:**

33 **(A) Standards establishing** [and] what constitutes property that is not included within a
34 renewable energy resource equipment manufacturing facility; **and**

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

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

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

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

44 (f) Standards relating to the likelihood that an applicant seeking preliminary certification of a
45 renewable energy resource equipment manufacturing facility will base decisions to locate or expand

1 a facility in Oregon on the allowance of a tax credit under ORS 315.354.

2 **SECTION 8. (1) The amendments to ORS 469.185 and 469.197 by sections 3 and 7 of this**
3 **2010 Act apply to preliminary certifications issued under ORS 469.210 on or after July 1, 2009.**

4 **(2) The amendments to ORS 469.200 by section 4 of this 2010 Act apply to preliminary**
5 **certifications issued under ORS 469.210 on or after January 1, 2010, and before January 1,**
6 **2011.**

7 **(3) The amendments to ORS 469.200 by section 5 of this 2010 Act apply to preliminary**
8 **certifications issued under ORS 469.210 on or after January 1, 2011, and before January 1,**
9 **2012.**

10 **(4) The amendments to ORS 469.200 by section 6 of this 2010 Act apply to preliminary**
11 **certifications issued under ORS 469.210 on or after January 1, 2012.**

12 **SECTION 9.** ORS 285C.050 is amended to read:

13 285C.050. As used in ORS 285C.050 to 285C.250, unless the context requires otherwise:

14 (1) "Assessment date" and "assessment year" have the meanings given those terms in ORS
15 308.007.

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

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

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

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

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

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

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

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

35 (8) "Enterprise zone" means one of the 30 areas designated or terminated and redesignated by
36 order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, one of the
37 areas designated by the Director of the Oregon Business Development Department under ORS
38 285C.080, a federal enterprise zone area designated under ORS 285C.085, an area designated under
39 ORS 285C.250 or a reservation enterprise zone designated, **or a reservation partnership zone**
40 **cosponsored**, under ORS 285C.306.

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

44 (10) "First-source hiring agreement" means an agreement between an authorized business firm
45 and a publicly funded job training provider whereby the provider refers qualified candidates to the

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

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

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

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

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

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

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

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

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

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

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

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

21 (17) "Rural enterprise zone" means:

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

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

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

29 (19) "Sponsor" means:

30 (a) The city, county or port, or any combination of cities, counties or ports, that received ap-
31 proval of an enterprise zone under ORS 284.150 and 284.160 (1987 Replacement Part), under ORS
32 285C.065 and 285C.075, under ORS 285C.085 or under ORS 285C.250;

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

34 (c) **Each of the tribal government and the cosponsoring city, county or port, in the case**
35 **of a reservation partnership zone; or**

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

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

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

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

43 **SECTION 10.** ORS 285C.090 is amended to read:

44 285C.090. (1) A proposed enterprise zone must be located in a local area in which:

45 (a) Fifty percent or more of the households have incomes below 80 percent of the median income

1 of this state, as defined by the most recent federal decennial census;

2 (b) The unemployment rate is at least 2.0 percentage points greater than the comparable unem-
3 ployment rate for this entire state, as defined by the most recently available data published or offi-
4 cially provided and verified by the United States Government, the Employment Department of this
5 state, the Portland State University Population Research Center or special studies conducted under
6 a contract with a regional academic institution; or

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

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

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

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

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

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

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

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

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

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

32 285C.115. (1) The sponsor of an enterprise zone may submit a request to the Oregon Business
33 Development Department to change the boundary of the enterprise zone. A request shall include:

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

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

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

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

40 (e) Other information required by the department.

41 (2) The amended enterprise zone shall:

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

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

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

1 the level of economic hardship in the areas to be added is at least as severe as the conditions that
2 existed at the time the original enterprise zone was designated or that currently exist in the original
3 enterprise zone;

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

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

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

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

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

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

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

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

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

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

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

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

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

40 **SECTION 12.** ORS 285C.245 is amended to read:

41 285C.245. (1) When the termination of an enterprise zone occurs under this section:

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

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

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

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

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

4 (iii) The firm completes construction, addition, modification or installation of the qualified
5 property within a reasonable time and without interruption of construction, addition, modification
6 or installation activity; and

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

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

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

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

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

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

37 (5) If a sponsor is unable or unwilling to carry out its responsibilities under ORS 285C.105, the
38 director shall order termination of the enterprise zone and shall specify the effective date of the
39 termination. However, in the case of failure to provide enhanced local public services, local incen-
40 tives or local regulatory flexibility included in the application for designation as an enterprise zone
41 or in the resolution under ORS 285C.115 (7), termination is not required if the sponsor provides to
42 authorized or qualified business firms new enhanced local public services, local incentives or local
43 regulatory flexibility that is of comparable value, or makes reasonable corrections of shortcomings
44 in existing local incentives. A sponsor may reduce the time within which it will provide enhanced
45 local public services, local incentives and local regulatory flexibility to a time period equal to the

1 amount of time allowed for an exemption under ORS 285C.175 without causing termination under
2 this section.

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

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

9 **SECTION 13.** ORS 285C.255 is amended to read:

10 285C.255. (1) Notwithstanding any other provision of ORS 285C.050 to 285C.250:

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

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

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

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

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

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

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

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

21 **SECTION 14.** ORS 285C.300 is amended to read:

22 285C.300. As used in ORS 285C.300 to 285C.320:

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

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

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

32 (2) "New business facility":

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

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

38 (B) The facility is acquired by or leased to a business on or after January 1, 2002, including a
39 facility, the title or possession of which is transferred to the business on or after January 1, 2002,
40 or a facility, the construction, erection or installation of which is completed on or after January 1,
41 2002;

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

1 (c) Does not include:

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

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

7 (3) "Reservation enterprise zone" means [a] **an enterprise** zone designated [by] **under** ORS
8 285C.306.

9 **(4) "Reservation partnership zone" means an enterprise zone cosponsored under ORS**
10 **285C.306.**

11 [(4)] **(5)** "Tribal government" means the governing body of an Indian tribe, if the governing body
12 has the authority to levy, impose and collect taxes within the boundaries of the reservation of the
13 tribe.

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

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

20 285C.309. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the
21 taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to an eligible business operating
22 a new business facility in a reservation enterprise zone **or a reservation partnership zone.**

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

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

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

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

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

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

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

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

45 (8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to

1 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
2 ORS 316.117.

3 (9) An eligible business claiming a credit under this section shall maintain records sufficient to
4 authenticate the allowance of the credit claimed under this section and shall furnish the department
5 with these records upon the request of the department.

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

9 **SECTION 16.** ORS 285C.320 is amended to read:

10 285C.320. (1) A reservation enterprise zone [*is a rural enterprise zone*] **and a reservation**
11 **partnership zone are rural enterprise zones** for purposes of ORS 285C.050 to 285C.250. [*The tribal*
12 *government of the reservation is the sponsor of the reservation enterprise zone.*]

13 (2) Reservation enterprise zones **and reservation partnership zones** may not be taken into
14 account in determining the number of rural enterprise zones allowable in this state under ORS
15 285C.050 to 285C.250, and are not subject to numerical limitation under ORS 285C.050 to 285C.250.

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

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

22 **SECTION 17.** ORS 314.752 is amended to read:

23 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
24 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
25 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
26 allowable to the shareholders of the S corporation.

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

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

36 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
37 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
38 316.117, then that provision shall apply to the nonresident shareholder.

39 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
40 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
41 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
42 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
43 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
44 (tribal taxes on reservation enterprise zones **and reservation partnership zones**), ORS 315.104
45 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening,

1 by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker hous-
2 ing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213
3 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycl-
4 ing), ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce),
5 ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant ex-
6 penses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS
7 315.141 (biomass production for biofuel).

8 **SECTION 18. The amendments to ORS 285C.050, 285C.090, 285C.115, 285C.245, 285C.255,**
9 **285C.300, 285C.309, 285C.320 and 314.752 by sections 9 to 17 of this 2010 Act apply to reserva-**
10 **tion enterprise zones designated, and reservation partnership zones cosponsored, on or after**
11 **January 1, 2010.**

12 **SECTION 19.** Section 21, chapter 913, Oregon Laws 2009, is amended to read:

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

15 **SECTION 20. This 2010 Act takes effect on the 91st day after the date on which the**
16 **special session of the Seventy-fifth Legislative Assembly adjourns sine die.**

17