

House Bill 3681

Sponsored by COMMITTEE ON REVENUE

SUMMARY

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

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.

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 314.752, 315.053, 315.324, 315.354,
3 315.357, 318.031, 469.185, 469.195, 469.197, 469.200, 469.205, 469.210, 469.215, 469.217, 469.220,
4 469.225 and 469.636; and prescribing an effective date.

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

6 **SECTION 1. Sections 2 and 3 of this 2010 Act are added to and made a part of ORS**
7 **chapter 315.**

8 **SECTION 2. (1) A credit is allowed against the taxes otherwise due under ORS chapter**
9 **316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the cer-**
10 **tified cost of a facility during the period for which the facility is certified under sections 5**
11 **to 13 of this 2010 Act. The credit is allowed as follows:**

12 (a) **Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in**
13 **each of the first two tax years in which the credit is claimed shall be 10 percent of the cer-**
14 **tified cost of the facility, but may not exceed the tax liability of the taxpayer. The credit al-**
15 **lowed in each of the succeeding three years shall be five percent of the certified cost, but**
16 **may not exceed the tax liability of the taxpayer.**

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

20 (c) **If the facility uses or produces renewable energy resources, the credit allowable under**
21 **this section in each of five succeeding tax years shall be 10 percent of the certified cost of**
22 **the facility, but may not exceed the tax liability of the taxpayer.**

23 (2) **Notwithstanding subsection (1) of this section:**

24 (a) **If the facility is one or more renewable energy resource systems installed in a**
25 **single-family dwelling, the amount of the credit for each system shall be determined as if the**
26 **facility were considered a residential alternative energy device under ORS 316.116, but sub-**
27 **ject to the maximum credit amount under subsection (4)(b) of this section;**

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

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

1 (c) If the facility is a high-performance home or a homebuilder-installed renewable en-
 2 ergy system, the total amount of the credit may be claimed in the first tax year for which
 3 the credit is claimed, but may not exceed the tax liability of the taxpayer.

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

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

6 (b) The facility must have received final certification from the Director of the State De-
 7 partment of Energy under sections 5 to 13 of this 2010 Act;

8 (c) The taxpayer must be an eligible applicant under section 6 of this 2010 Act; and

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

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

13 (a) Fifty percent of the certified cost of a renewable energy resources facility or a high-
 14 efficiency combined heat and power facility;

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

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

18 (d) Thirty-five percent of the certified cost of any other facility.

19 (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition
 20 of the facility, notice thereof shall be given to the director, who shall revoke the certificate
 21 covering the facility as of the date of such disposition. The new owner, or upon re-leasing
 22 of the facility, the new lessor, may apply for a new certificate under section 12 of this 2010
 23 Act, but the tax credit available to the new owner shall be limited to the amount of credit
 24 not claimed by the former owner or, for a new lessor, the amount of credit not claimed by
 25 the lessor under all previous leases.

26 (b) The State Department of Energy may not revoke the certificate covering a facility
 27 under paragraph (a) of this subsection if the tax credit associated with the facility has been
 28 transferred to a taxpayer who is an eligible applicant under section 9 (1)(c)(A) of this 2010
 29 Act.

30 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 31 in a particular year may be carried forward and offset against the taxpayer's tax liability for
 32 the next succeeding tax year. Any credit remaining unused in that next succeeding tax year
 33 may be carried forward and used in the second succeeding tax year, and likewise, any credit
 34 not used in that second succeeding tax year may be carried forward and used in the third
 35 succeeding tax year, and likewise, any credit not used in that third succeeding tax year may
 36 be carried forward and used in the fourth succeeding tax year, and likewise, any credit not
 37 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-
 38 ceeding tax year, and likewise, any credit not used in that fifth succeeding tax year may be
 39 carried forward and used in the sixth succeeding tax year, and likewise, any credit not used
 40 in that sixth succeeding tax year may be carried forward and used in the seventh succeeding
 41 tax year, and likewise, any credit not used in that seventh succeeding tax year may be car-
 42 ried forward and used in the eighth succeeding tax year, but may not be carried forward for
 43 any tax year thereafter. Credits may be carried forward to and used in a tax year beyond
 44 the years specified in subsection (1) of this section only as provided in this subsection.

45 (7) The credit allowed under this section is not in lieu of any depreciation or amortization

1 deduction for the facility to which the taxpayer otherwise may be entitled for purposes of
 2 ORS chapter 316, 317 or 318 for such year.

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

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

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

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

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

13 (10) The definitions in section 5 of this 2010 Act apply to this section.

14 **SECTION 3.** A taxpayer may not be allowed a credit under section 2 of this 2010 Act if
 15 the first tax year for which the credit with respect to a facility certified under section 12 of
 16 this 2010 Act would otherwise be allowed begins on or after January 1, 2012.

17 **SECTION 4.** Sections 5 to 13 of this 2010 Act are added to and made a part of ORS
 18 chapter 469.

19 **SECTION 5.** As used in sections 5 to 13 of this 2010 Act:

20 (1) “Alternative fuel vehicle” means a vehicle as defined by the Director of the State
 21 Department of Energy by rule that is used primarily in connection with the conduct of a
 22 trade or business and that is manufactured or modified to use an alternative fuel, including
 23 but not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, re-
 24 gardless of energy consumption savings.

25 (2) “Car sharing facility” means the expenses of operating a car sharing program, in-
 26 cluding but not limited to the fair market value of parking spaces used to store the fleet of
 27 cars available for a car sharing program, but does not include the costs of the fleet of cars.

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

31 (4) “Cost” means the capital costs and expenses necessarily incurred in the acquisition,
 32 erection, construction and installation of a facility, including site development costs and ex-
 33 penses for a sustainable building practices facility.

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

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

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

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

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

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

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

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

6 (b) Any acquisition of, addition to, reconstruction of or improvement of land or an ex-
7 isting structure, building, installation, excavation, machinery, equipment or device neces-
8 sarily acquired, erected, constructed or installed by any person in connection with the
9 conduct of a trade or business in order to substantially reduce the consumption of purchased
10 energy.

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

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

16 (6) "Facility" means an energy facility, recycling facility, transportation facility, car
17 sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities
18 necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel
19 vehicle refueling station, a high-efficiency combined heat and power facility, a high-
20 performance home or a homebuilder-installed renewable energy system.

21 (7) "High-efficiency combined heat and power facility" means a device or equipment that
22 simultaneously produces heat and electricity from a single source of fuel and that meets the
23 criteria established for a high-efficiency combined heat and power facility under section 7 of
24 this 2010 Act.

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

26 (a) Is designed and constructed to reduce net purchased energy through use of both en-
27 ergy efficiency and on-site renewable energy resources; and

28 (b) Meets the criteria established for a high-performance home under section 7 of this
29 2010 Act.

30 (9) "Homebuilder-installed renewable energy system" means a renewable energy resource
31 system that:

32 (a) Meets the criteria established for a renewable energy resource system under section
33 7 of this 2010 Act; and

34 (b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder
35 constructing the dwelling.

36 (10) "Qualified transit pass contract" means a purchase agreement entered into between
37 a transportation provider and a person, the terms of which obligate the person to purchase
38 transit passes on behalf or for the benefit of employees, students, patients or other individ-
39 uals over a specified period of time.

40 (11) "Recycling facility" means equipment used by a trade or business solely for recycl-
41 ing:

42 (a) Including:

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

44 (B) New vehicles or modifications to existing vehicles used solely to transport used
45 recyclable materials that cannot be used further in their present form or location, such as

1 glass, metal, paper, aluminum, rubber and plastic;

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

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

6 (b) But not including equipment used for transporting or processing scrap materials that
7 are recycled as a part of the normal operation of a trade or business as defined by the di-
8 rector.

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

10 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetro-
11 leum plant or animal based biomass, ocean wave energy, solar energy, wind power, water
12 power or geothermal energy; or

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

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

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

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

19 (13) "Sustainable building practices facility" means a commercial building in which
20 building practices that reduce the amount of energy, water or other resources needed for
21 construction and operation of the building are used. "Sustainable building practices facility"
22 may be further defined by the State Department of Energy by rule, including rules that es-
23 tablish traditional building practice baselines in energy, water or other resource usage for
24 comparative purposes for use in determining whether a facility is a sustainable building
25 practices facility.

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

31 (15) "Transportation provider" means a public, private or nonprofit entity that provides
32 transportation services to members of the public.

33 (16) "Transportation services contract" means a contract that is related to a transpor-
34 tation facility, and may be further defined by the department by rule.

35 **SECTION 6.** In determining the eligibility of facilities for tax credits, preference shall be
36 given to those projects which:

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

39 (a) Nonowner occupied single family dwellings; and

40 (b) Multiple unit residential housing; or

41 (2) Provide long-term energy savings from the use of renewable resources or conserva-
42 tion of energy resources.

43 **SECTION 7.** The State Department of Energy shall by rule establish all of the following
44 criteria:

45 (1) For a high-performance home, the minimum design and construction standards that

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

6 (2) For a homebuilder-installed renewable energy system, the minimum performance and
 7 efficiency standards that a solar electric system, solar domestic water heating system, pas-
 8 sive solar space heating system, wind power system, geothermal heating system, fuel cell
 9 system or other system utilizing renewable resources must achieve to be considered a
 10 homebuilder-installed renewable energy system.

11 (3) For a high-efficiency combined heat and power facility, the minimum performance and
 12 efficiency standards that the facility must achieve to be considered a high-efficiency com-
 13 bined heat and power facility.

14 **SECTION 8.** (1) For a facility, the total cost that receives a preliminary certification from
 15 the Director of the State Department of Energy for tax credits in any calendar year may not
 16 exceed:

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

19 (b) \$10 million, in the case of any other facility.

20 (2) The director shall determine the dollar amount certified for any facility and the pri-
 21 ority between applications for certification based upon the criteria contained in sections 5
 22 to 13 of this 2010 Act and applicable rules and standards adopted under sections 5 to 13 of
 23 this 2010 Act. The director may consider the status of a facility as a research, development
 24 or demonstration facility of new renewable resource generating and conservation technolo-
 25 gies or a qualified transit pass contract in the determination.

26 **SECTION 9.** (1) Prior to erection, construction, installation or acquisition of a proposed
 27 facility, any person may apply to the State Department of Energy for preliminary certifi-
 28 cation under section 11 of this 2010 Act if:

29 (a) The erection, construction, installation or acquisition of the facility was commenced
 30 on or after October 3, 1979;

31 (b) The facility complies with the standards or rules adopted by the Director of the State
 32 Department of Energy; and

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

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

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

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

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

42 (2) An application for preliminary certification shall be made in writing on a form pre-
 43 pared by the department and shall contain:

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

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

1 (B) Plans to acquire, construct or install a facility that will use a renewable energy re-
2 source or solid waste instead of electricity, petroleum or natural gas;

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

5 (D) Plans to acquire, construct or install a facility that substantially reduces the con-
6 sumption of purchased energy;

7 (E) Plans to acquire, construct or install equipment for a recycling facility as defined in
8 section 5 (11) of this 2010 Act;

9 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an
10 alternative fuel vehicle;

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

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

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

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

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

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

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

20 (N) Is a homebuilder and plans to construct a high-performance home.

21 (b) A detailed description of the proposed facility and its operation and information
22 showing that the facility will operate as represented in the application.

23 (c) Information on the amount by which consumption of electricity, petroleum or natural
24 gas by the applicant or the lessee of the applicant's facility will be reduced, and on the
25 amount of energy that will be produced for sale, as the result of using the facility or, if ap-
26 plicable, information about the expected level of sustainable building practices facility per-
27 formance.

28 (d) The projected cost of the facility.

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

31 (f) Any other information the director considers necessary to determine whether the
32 proposed facility is in accordance with the provisions of sections 5 to 13 of this 2010 Act, and
33 any applicable rules or standards adopted by the director.

34 (3) An application for preliminary certification shall be accompanied by a fee established
35 under ORS 469.217. The director may refund the fee if the application for certification is re-
36 jected.

37 (4) The director may allow an applicant to file the preliminary application after the start
38 of erection, construction, installation or acquisition of the facility if the director finds:

39 (a) Filing the application before the start of erection, construction, installation or ac-
40 quisition is inappropriate because special circumstances render filing earlier unreasonable;
41 and

42 (b) The facility would otherwise qualify for tax credit certification pursuant to sections
43 5 to 13 of this 2010 Act.

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

1 **SECTION 10.** (1) The owner of a facility may transfer a tax credit for the facility in ex-
 2 change for a cash payment equal to the present value of the tax credit.

3 (2) The State Department of Energy shall establish by rule a formula to be employed in
 4 the determination of prices of credits transferred under this section. In establishing the
 5 formula the department shall incorporate inflation projections and market real rate of re-
 6 turn.

7 (3) The department shall recalculate credit transfer prices quarterly, employing the for-
 8 mula established under subsection (2) of this section.

9 (4) Notwithstanding any other provision of law, a tax credit transferred pursuant to this
 10 section does not decrease the amount of taxes required to be reported by a public utility.

11 **SECTION 11.** (1) The Director of the State Department of Energy may require the sub-
 12 mission of plans, specifications and contract terms, and after examination thereof, may re-
 13 quest corrections and revisions of the plans, specifications and terms.

14 (2) If the director determines that the proposed acquisition, erection, construction or
 15 installation is technically feasible and should operate in accordance with the representations
 16 made by the applicant, and is in accordance with the provisions of sections 5 to 13 of this
 17 2010 Act and any applicable rules or standards adopted by the director, the director shall
 18 issue a preliminary certificate approving the acquisition, erection, construction or installa-
 19 tion of the facility. If the director determines that the acquisition, erection, construction or
 20 installation does not comply with the provisions of sections 5 to 13 of this 2010 Act and ap-
 21 plicable rules and standards, the director shall issue an order denying certification.

22 **SECTION 12.** (1) A final certification may not be issued by the Director of the State De-
 23 partment of Energy under this section unless the facility was acquired, erected, constructed
 24 or installed under a preliminary certificate of approval issued under section 11 of this 2010
 25 Act and in accordance with the applicable provisions of sections 5 to 13 of this 2010 Act and
 26 any applicable rules or standards adopted by the director.

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

29 (a) If the department issued preliminary certification for the facility under section 11 of
 30 this 2010 Act; and

31 (b)(A) After completion of erection, construction, installation or acquisition of the pro-
 32 posed facility or, if the facility is a qualified transit pass contract, after entering into the
 33 contract with a transportation provider; or

34 (B) After transfer of the facility, as provided in section 2 (5) of this 2010 Act.

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

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

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

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

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

1 (4) The director shall act on an application for certification before the 60th day after the
2 filing of the application under this section. The director may issue the certificate together
3 with such conditions as the director determines are appropriate to promote the purposes of
4 sections 2 and 5 to 13 of this 2010 Act. If the applicant is an entity subject to regulation by
5 the Public Utility Commission, the director may consult with the commission prior to issu-
6 ance of the certificate. The action of the director shall include certification of the actual cost
7 of the facility. However, the director may not certify an amount for tax credit purposes
8 which is more than 10 percent in excess of the amount approved in the preliminary certif-
9 icate issued for the facility.

10 (5) If the director rejects an application for final certification, or certifies a lesser actual
11 cost of the facility than was claimed in the application, the director shall send to the appli-
12 cant written notice of the action, together with a statement of the findings and reasons
13 therefor, by certified mail, before the 60th day after the filing of the application. Failure of
14 the director to act constitutes rejection of the application.

15 (6) Upon approval of an application for final certification of a facility, the director shall
16 certify the facility. Each certificate shall bear a separate serial number for each device.
17 Where one or more devices constitute an operational unit, the director may certify the op-
18 erational unit under one certificate.

19 **SECTION 13.** (1) Under the procedures for a contested case under ORS chapter 183, the
20 Director of the State Department of Energy may order the revocation of the certificate is-
21 sued under section 12 of this 2010 Act if the director finds that:

22 (a) The certification was obtained by fraud or misrepresentation; or

23 (b) The holder of the certificate has failed to construct or operate the facility in compli-
24 ance with the plans, specifications and procedures in the certificate.

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

27 (3) If the certificate is ordered revoked pursuant to subsection (1)(a) of this section, all
28 prior tax credits provided to the holder of the certificate by virtue of the certificate shall be
29 forfeited and upon notification under subsection (2) of this section the Department of Re-
30 venue immediately shall proceed to collect those taxes not paid by the certificate holder as
31 a result of the tax credits provided to the holder under section 2 of this 2010 Act.

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

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

42 (5) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the
43 certificate holder shall be denied any further relief under section 2 of this 2010 Act in con-
44 nection with the facility from the date that the order of revocation becomes final.

45 (6) Notwithstanding subsections (1) to (5) of this section, a certificate or portion of a

1 **certificate held by a transferee under section 10 of this 2010 Act may not be considered re-**
 2 **voked for purposes of the transferee, the tax credit allowable to the transferee under section**
 3 **2 of this 2010 Act may not be reduced and a transferee is not liable under subsections (3) and**
 4 **(4) of this section.**

5 **SECTION 14.** ORS 315.053 is amended to read:

6 315.053. An income tax credit allowed under ORS 315.141, 315.354 or 315.514 or section 47,
 7 chapter 843, Oregon Laws 2007, or section 12, chapter 855, Oregon Laws 2007, **or section 2 of this**
 8 **2010 Act** may be transferred or sold only to one or more of the following:

- 9 (1) A C corporation.
- 10 (2) An S corporation.
- 11 (3) A personal income taxpayer.

12 **SECTION 15.** ORS 315.354 is amended to read:

13 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
 14 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of [*the*]
 15 **a** facility during the period for which [*that*] **the** facility is certified under ORS 469.185 to 469.225.
 16 The credit [*is allowed as follows:*]

17 [*(a) Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in each of the*
 18 *first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility,*
 19 *but may not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three*
 20 *years shall be five percent of the certified cost, but may not exceed the tax liability of the taxpayer.]*

21 [*(b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit al-*
 22 *lowable under subsection (4) of this section may be claimed in the first tax year for which the credit*
 23 *may be claimed, but may not exceed the tax liability of the taxpayer.]*

24 [*(c) If the facility uses or produces renewable energy resources or is a renewable energy resource*
 25 *equipment manufacturing facility, the credit] allowed **under this section** in each of five succeeding*
 26 *tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability*
 27 *of the taxpayer.*

28 [(2) *Notwithstanding subsection (1) of this section:*]

29 [*(a) If the facility is one or more renewable energy resource systems installed in a single-family*
 30 *dwelling, the amount of the credit for each system shall be determined as if the facility was considered*
 31 *a residential alternative energy device under ORS 316.116, but subject to the maximum credit amount*
 32 *under subsection (4)(b) of this section;]*

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

35 [*(c) If the facility is a high-performance home or a homebuilder-installed renewable energy system,*
 36 *the total amount of the credit may be claimed in the first tax year for which the credit is claimed, but*
 37 *may not exceed the tax liability of the taxpayer.]*

38 [(3)] **(2)** In order for a tax credit to be allowable under this section:

- 39 (a) The facility must be located in Oregon;
- 40 (b) The facility must have received final certification from the Director of the State Department
 41 of Energy under ORS 469.185 to 469.225; **and**
- 42 (c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c).]; *and]*

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

45 [(4)] **(3)** The total amount of credit allowable to an eligible taxpayer under this section may not

1 exceed[:]

2 [(a)] 50 percent of the certified cost of a **facility**. [*renewable energy resources facility, a*
3 *renewable energy resource equipment manufacturing facility or a high-efficiency combined heat and*
4 *power facility;*]

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

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

8 [(d)] 35 percent of the certified cost of any other facility.]

9 [(5)(a)] **(4)(a)** Upon any sale, termination of the lease or contract, exchange or other disposition
10 of the facility, notice thereof shall be given to the Director of the State Department of Energy who
11 shall revoke the certificate covering the facility as of the date of such disposition. The new owner,
12 or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215,
13 but the tax credit available to the new owner shall be limited to the amount of credit not claimed
14 by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all
15 previous leases.

16 (b) The State Department of Energy may not revoke the certificate covering a facility under
17 paragraph (a) of this subsection if the tax credit associated with the facility has been transferred
18 to a taxpayer who is an eligible applicant under ORS 469.205 (1)(c)(A).

19 [(6)] **(5)** Any tax credit otherwise allowable under this section that is not used by the taxpayer
20 in a particular year may be carried forward and offset against the taxpayer's tax liability for the
21 next succeeding tax year. Any credit remaining unused in that next succeeding tax year may be
22 carried forward and used in the second succeeding tax year, and likewise, any credit not used in
23 that second succeeding tax year may be carried forward and used in the third succeeding tax year,
24 and likewise, any credit not used in that third succeeding tax year may be carried forward and used
25 in the fourth succeeding tax year, and likewise, any credit not used in that fourth succeeding tax
26 year may be carried forward and used in the fifth succeeding tax year, and likewise, any credit not
27 used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax
28 year, and likewise, any credit not used in that sixth succeeding tax year may be carried forward and
29 used in the seventh succeeding tax year, and likewise, any credit not used in that seventh succeed-
30 ing tax year may be carried forward and used in the eighth succeeding tax year, but may not be
31 carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax
32 year beyond the years specified in subsection (1) of this section only as provided in this subsection.

33 [(7)] **(6)** The credit [*provided by*] **allowed under** this section is not in lieu of any depreciation
34 or amortization deduction for the facility to which the taxpayer otherwise may be entitled for pur-
35 poses of ORS chapter 316, 317 or 318 for such year.

36 [(8)] **(7)** The taxpayer's adjusted basis for determining gain or loss may not be decreased by any
37 tax credits allowed under this section.

38 [(9)] *If a homebuilder claims a credit under this section with respect to a homebuilder-installed*
39 *renewable energy system or a high-performance home:*]

40 [(a)] *The homebuilder may not claim credits for both a homebuilder-installed renewable energy*
41 *system and a high-performance home with respect to the same dwelling;*]

42 [(b)] *The homebuilder must inform the buyer of the dwelling that the homebuilder is claiming a tax*
43 *credit under this section with respect to the dwelling; and]*

44 [(c)] *The buyer of the dwelling may not claim a credit under this section that is based on any fa-*
45 *cility for which the homebuilder has already claimed a credit.]*

1 [(10)] (8) The definitions in ORS 469.185 apply to this section.

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

3 469.185. As used in ORS 469.185 to 469.225 and 469.878:

4 [(1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State Department
5 of Energy by rule that is used primarily in connection with the conduct of a trade or business and that
6 is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol,
7 methanol, gasohol and propane or natural gas, regardless of energy consumption savings.]

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

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

14 [(4)] (1) "Cost" means the capital costs and expenses necessarily incurred in the acquisition,
15 erection, construction and installation of a facility[, including site development costs and expenses for
16 a sustainable building practices facility].

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

19 [(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any
20 addition to, reconstruction of or improvement of, land or an existing structure, building, installation,
21 excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by
22 any person in connection with the conduct of a trade or business and actually used in the processing
23 or utilization of renewable energy resources to:]

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

25 [(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been
26 used;]

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

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

31 [(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol,
32 methanol, gasohol or biodiesel.]

33 [(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing struc-
34 ture, building, installation, excavation, machinery, equipment or device necessarily acquired, erected,
35 constructed or installed by any person in connection with the conduct of a trade or business in order
36 to substantially reduce the consumption of purchased energy.]

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

40 [(d) The replacement of an electric motor with another electric motor that substantially reduces the
41 consumption of electricity.]

42 [(6)] (2) "Facility" means [an energy facility, recycling facility, transportation facility, car sharing
43 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate
44 alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a
45 high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed

1 *renewable energy system, or] a renewable energy resource equipment manufacturing facility.*

2 [(7) *“High-efficiency combined heat and power facility” means a device or equipment that simul-*
 3 *taneously produces heat and electricity from a single source of fuel and that meets the criteria estab-*
 4 *lished for a high-efficiency combined heat and power facility under ORS 469.197.]*

5 [(8) *“High-performance home” means a new single-family dwelling that:]*

6 [(a) *Is designed and constructed to reduce net purchased energy through use of both energy effi-*
 7 *ciency and on-site renewable energy resources; and]*

8 [(b) *Meets the criteria established for a high-performance home under ORS 469.197.]*

9 [(9) *“Homebuilder-installed renewable energy system” means a renewable energy resource system*
 10 *that:]*

11 [(a) *Meets the criteria established for a renewable energy resource system under ORS 469.197;*
 12 *and]*

13 [(b) *Is installed in a new single-family dwelling by, or at the direction of, the homebuilder con-*
 14 *structing the dwelling.]*

15 [(10) *“Qualified transit pass contract” means a purchase agreement entered into between a trans-*
 16 *portation provider and a person, the terms of which obligate the person to purchase transit passes on*
 17 *behalf or for the benefit of employees, students, patients or other individuals over a specified period of*
 18 *time.]*

19 [(11) *“Recycling facility” means equipment used by a trade or business solely for recycling:]*

20 [(a) *Including:]*

21 [(A) *Equipment used solely for hauling and refining used oil;]*

22 [(B) *New vehicles or modifications to existing vehicles used solely to transport used recyclable*
 23 *materials that cannot be used further in their present form or location such as glass, metal, paper,*
 24 *aluminum, rubber and plastic;]*

25 [(C) *Trailers, racks or bins that are used for hauling used recyclable materials and are added to*
 26 *or attached to existing waste collection vehicles; and]*

27 [(D) *Any equipment used solely for processing recyclable materials such as balers, flatteners,*
 28 *crushers, separators and scales.]*

29 [(b) *But not including equipment used for transporting or processing scrap materials that are re-*
 30 *cycled as a part of the normal operation of a trade or business as defined by the director.]*

31 [(12)(a)] **(3)(a)** *“Renewable energy resource” includes, but is not limited to:*

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

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

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

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

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

41 [(13)] **(4)** *“Renewable energy resource equipment manufacturing facility” means any structure,*
 42 *building, installation, excavation, machinery, equipment or device, or an addition, reconstruction or*
 43 *improvement to land or an existing structure, building, installation, excavation, machinery, equip-*
 44 *ment or device, that is necessarily acquired, constructed or installed by a person in connection with*
 45 *the conduct of a trade or business, that is used primarily to manufacture equipment, machinery or*

1 other products designed to use a renewable energy resource and that meets the criteria established
 2 under ORS 469.197.

3 [(14) “Sustainable building practices facility” means a commercial building in which building
 4 practices that reduce the amount of energy, water or other resources needed for construction and op-
 5 eration of the building are used. “Sustainable building practices facility” may be further defined by the
 6 State Department of Energy by rule, including rules that establish traditional building practice
 7 baselines in energy, water or other resource usage for comparative purposes for use in determining
 8 whether a facility is a sustainable building practices facility.]

9 [(15) “Transportation facility” means a transportation project that reduces energy use during com-
 10 muting to and from work or school, during work-related travel, or during travel to obtain medical or
 11 other services, and may be further defined by the department by rule. “Transportation facility” includes,
 12 but is not limited to, a qualified transit pass contract or a transportation services contract.]

13 [(16) “Transportation provider” means a public, private or nonprofit entity that provides transpor-
 14 tation services to members of the public.]

15 [(17) “Transportation services contract” means a contract that is related to a transportation facility,
 16 and may be further defined by the department by rule.]

17 **SECTION 17.** ORS 469.195 is amended to read:

18 469.195. In determining the eligibility of facilities for tax credits, preference [shall] **may** be given
 19 to those projects which:

20 **(1) Are consistent with the recommendations of the plan required under ORS 469.060;**

21 **(2) Comply with the applicability renewable portfolio standard described in ORS 469A.052**
 22 **or 469A.055;**

23 **(3) Are likely to create affordable and reliable renewable energy resources;**

24 **(4) Are consistent with the provisions of the Northwest Power and Conservation**
 25 **Council’s draft Sixth Power Plan;**

26 **(5) Are likely to create jobs or promote economic development in this state;**

27 **(6) Are likely to aid in transformation of the energy market to renewable energy sources;**

28 **(7) Encourage innovative technology advances;**

29 [(1)] **(8) Provide energy savings for real or personal property within the state inhabited as the**
 30 **principal residence of a tenant, including:**

31 (a) Nonowner occupied single family dwellings; and

32 (b) Multiple unit residential housing; or

33 [(2)] **(9) Provide long-term energy savings from the use of renewable resources or conservation**
 34 **of energy resources.**

35 **SECTION 18.** ORS 469.197 is amended to read:

36 469.197. The State Department of Energy shall by rule establish all of the following criteria:

37 [(1) For a high-performance home, the minimum design and construction standards that must be
 38 met or exceeded for a dwelling to be considered a high-performance home, including but not limited to
 39 standards for the building envelope, HVAC systems, lighting, appliances, water conservation measures,
 40 use of sustainable building materials and on-site renewable energy systems. The criteria must also es-
 41 tablish the minimum reduction in estimated net purchased energy that a dwelling must achieve to be
 42 considered a high-performance home.]

43 [(2) For a homebuilder-installed renewable energy system, the minimum performance and efficiency
 44 standards that a solar electric system, solar domestic water heating system, passive solar space heating
 45 system, wind power system, geothermal heating system, fuel cell system or other system utilizing

1 *renewable resources must achieve to be considered a homebuilder-installed renewable energy system.]*

2 [(3) *For a high-efficiency combined heat and power facility, the minimum performance and effi-*
 3 *ciency standards that the facility must achieve to be considered a high-efficiency combined heat and*
 4 *power facility.]*

5 [(4) *For a renewable energy resource equipment manufacturing facility:]*

6 [(a)] (1) Standards relating to the type of equipment, machinery or other products being manu-
 7 factured and related performance and efficiency standards applicable to the manufactured products;

8 [(b)] (2) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes
 9 a single [*renewable energy resource equipment manufacturing facility and what constitutes property*
 10 *that is not included within a renewable energy resource equipment manufacturing*] facility;

11 [(c)] (3) Standards relating to the minimum level of increased employment in Oregon for a
 12 [*renewable energy resource equipment manufacturing*] facility;

13 [(d)] (4) Standards relating to indicators of financial viability of an applicant for preliminary
 14 certification under ORS 469.205;

15 [(e)] (5) Standards relating to the likelihood of long-term **operation and** success of a [*renewable*
 16 *energy resource equipment manufacturing*] facility; and

17 [(f)] (6) Standards relating to the likelihood that an applicant seeking preliminary certification
 18 of a [*renewable energy resource equipment manufacturing*] facility will base decisions to locate or
 19 expand a facility in Oregon on the allowance of a tax credit under ORS 315.354.

20 **SECTION 19.** ORS 469.200 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 **\$40**
 23 **million.**[.]

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

26 [(b) *\$40 million, in the case of a renewable energy resource equipment manufacturing facility; or]*

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

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

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

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

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

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

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

44 (f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or
 45 expand a facility in Oregon on allowance of the tax credit, given the criteria established in rules

1 under ORS 469.197 [(4)].

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

7 **SECTION 20.** ORS 469.205 is amended to read:

8 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
 9 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
 10 if:

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

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

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

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

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

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

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

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

25 (a) A statement that the applicant or the lessee of the applicant's facility[:]

26 [*(A) Intends to convert from a purchased energy source to a renewable energy resource;*]

27 [*(B) Plans to acquire, construct or install a facility that will use a renewable energy resource or*
 28 *solid waste instead of electricity, petroleum or natural gas;*]

29 [*(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace*
 30 *an existing or proposed use of an existing source of electricity;*]

31 [*(D) Plans to acquire, construct or install a facility that substantially reduces the consumption of*
 32 *purchased energy;*]

33 [*(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185*
 34 *(11);*]

35 [*(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alternative*
 36 *fuel vehicle;*]

37 [*(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;*]

38 [*(H) Plans to acquire transit passes for use by individuals specified by the applicant;*]

39 [*(I) Plans to acquire, construct or install a transportation facility;*]

40 [*(J) Plans to acquire a sustainable building practices facility;*]

41 [*(K) Plans to acquire a car sharing facility and operate a car sharing program;*]

42 [*(L) Plans to construct a high-efficiency combined heat and power facility;*]

43 [*(M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;*]

44 [*(N) Is a homebuilder and plans to construct a high-performance home; or*]

45 [*(O) plans to acquire, construct or install a renewable energy resource equipment manufactur-*

1 ing facility.

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

5 (c) **Information on the amount and type of jobs that will be created and the number of**
 6 **jobs sustained throughout the construction, installation and operation of the facility.**

7 (d) **The projected cost of the facility.**

8 (e) **Information demonstrating that the proposed facility will comply with applicable state**
 9 **and local laws and regulations and obtain required licenses and permits.**

10 *[(c) Information on the amount by which consumption of electricity, petroleum or natural gas by*
 11 *the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy that*
 12 *will be produced for sale, as the result of using the facility or, if applicable, information about the ex-*
 13 *pected level of sustainable building practices facility performance.]*

14 *[(d) The projected cost of the facility.]*

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

17 (f) Any other information the director considers necessary to determine whether the proposed
 18 facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or
 19 standards adopted by the director.

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

23 (4) The director may allow an applicant to file the preliminary application after the start of
 24 erection, construction, installation or acquisition of the facility if the director finds:

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

27 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
 28 469.225.

29 *[(5) A preliminary certification of a sustainable building practices facility shall be applied for and*
 30 *issued as prescribed by the department by rule.]*

31 *[(6) A preliminary certification of a renewable energy resource equipment manufacturing facility*
 32 *shall remain valid for a period of five calendar years after the date the preliminary certification is is-*
 33 *sued by the director.]*

34 **SECTION 21.** ORS 469.210 is amended to read:

35 469.210. (1) The Director of the State Department of Energy may require the submission of plans,
 36 specifications and contract terms, and after examination thereof, may request corrections and re-
 37 visions of the plans, specifications and terms.

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

44 (3) **A preliminary certification shall remain valid for a period of three calendar years af-**
 45 **ter the date the preliminary certification is issued by the director. The director may extend**

1 **this period for two additional years upon reapplication and submission of the fee required by**
 2 **ORS 469.205.**

3 (4) *[If]* The director **may issue an order altering, conditioning, suspending or denying cer-**
 4 **tification if the director** determines that:

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

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

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

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

15 (e) **The applicant is in arrears for payments owed any government agency while in the**
 16 **capacity of principal, director, officer, owner, majority shareholder, member or manager of**
 17 **a limited liability company or in another capacity with direct or indirect control over a**
 18 **business.**

19 **SECTION 22.** ORS 469.215 is amended to read:

20 469.215. (1) A final certification may not be issued by the Director of the State Department of
 21 Energy under this section unless:

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

24 (b) **The applicant demonstrates the ability to provide the information required by ORS**
 25 **469.205 (2) and does not violate the conditions described in ORS 469.210 (4); and**

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

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

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

31 (b)(A) After completion of erection, construction, installation or acquisition of the proposed fa-
 32 cility *[or, if the facility is a qualified transit pass contract, after entering into the contract with a*
 33 *transportation provider]; or*

34 (B) After transfer of the facility, as provided in ORS 315.354 *[(5)] (4).*

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

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

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

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

42 (d) **The number and type of jobs created by the operation and maintenance of the facility**
 43 **over the five-year period beginning with the year of preliminary certification under ORS**
 44 **469.210;**

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

1 **at least five years;**

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

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

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

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

11 (4) The director shall act on an application for certification before the 60th day after the filing
 12 of the application under this section. The director may issue the certificate together with such
 13 conditions as the director determines are appropriate to promote the purposes of ORS 315.354,
 14 469.185 to 469.225 and 469.878. If the applicant is an entity subject to regulation by the Public
 15 Utility Commission, the director may consult with the commission prior to issuance of the certif-
 16 icate. The action of the director shall include certification of the actual cost of the facility. *[How-*
 17 *ever, the director may not certify an amount for tax credit purposes which is more than 10 percent in*
 18 *excess of the amount approved in the preliminary certificate issued for the facility.]*

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

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

28 **SECTION 23.** ORS 469.217 is amended to read:

29 469.217. By rule and after hearing, the Director of the State Department of Energy may adopt
 30 a schedule of reasonable fees which the State Department of Energy may require of applicants for
 31 preliminary or final certification under ORS 469.185 to 469.225 **or sections 5 to 13 of this 2010**
 32 **Act.** Before the adoption or revision of the fees, the department shall estimate the total cost of the
 33 program to the department. The fees shall be used to recover the anticipated cost of filing, investi-
 34 gating, granting and rejecting applications for certification and shall be designed not to exceed the
 35 total cost estimated by the department. Any excess fees shall be held by the department and shall
 36 be used by the department to reduce any future fee increases. The fee may vary according to the
 37 size and complexity of the facility. The fee shall not be considered as part of the cost of the facility
 38 to be certified.

39 **SECTION 24.** ORS 469.220 is amended to read:

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

45 **SECTION 25.** ORS 469.225 is amended to read:

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

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

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

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

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

12 *[(3) If the certificate is issued for a facility that is not a renewable energy resource equipment*
 13 *manufacturing facility and is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax*
 14 *credits provided to the holder of the certificate by virtue of the certificate shall be forfeited and upon*
 15 *notification under subsection (2) of this section the Department of Revenue immediately shall proceed*
 16 *to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the*
 17 *holder under ORS 315.354.]*

18 *[(4)]* **(3)** If the certificate is [*issued for a renewable energy resource equipment manufacturing fa-*
 19 *ility and is]* ordered **suspended or** revoked, upon notification under subsection (2) of this section
 20 the Department of Revenue immediately shall proceed to collect:

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

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

29 *[(5)(a)]* **(4)(a)** The Department of Revenue shall have the benefit of all laws of this state per-
 30 taining to the collection of income and excise taxes and may proceed to collect the amounts de-
 31 scribed in subsection (3) [*or (4)*] of this section from the person that obtained certification from the
 32 State Department of Energy or any successor in interest to the business interests of that person.
 33 No assessment of tax shall be necessary and no statute of limitation shall preclude the collection
 34 of taxes described in this subsection.

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

39 *[(6) If the certificate is issued for a facility that is not a renewable energy resource equipment*
 40 *manufacturing facility and is ordered revoked pursuant to subsection (1)(b) of this section, the certif-*
 41 *icate holder shall be denied any further relief under ORS 315.354 in connection with the facility from*
 42 *and after the date that the order of revocation becomes final.]*

43 *[(7)]* **(5)** Notwithstanding subsections (1) to *[(6)]* **(4)** of this section, [*a certificate or portion of a*
 44 *certificate held by a transferee under ORS 469.206 may not be considered revoked for purposes of the*
 45 *transferee,]* the tax credit allowable to the transferee under ORS 315.354 may not be [*reduced and*

1 a] **claimed by a transferee [is not] in the tax years during which the certificate is suspended**
 2 **or revoked. The transferee is otherwise not** liable under subsections (3) [to (5)] **and (4)** of this
 3 section.

4 **SECTION 26.** ORS 315.357 is amended to read:

5 315.357. A taxpayer may not be allowed a credit under ORS 315.354 if the first tax year for
 6 which the credit with respect to a facility certified under ORS 469.215 would otherwise be allowed
 7 begins on or after January 1, [2012] **2014**.

8 **SECTION 27.** ORS 469.636 is amended to read:

9 469.636. In addition to the residential energy conservation program approved under ORS 469.633,
 10 an investor-owned utility may offer an additional financing program for energy conservation meas-
 11 ures for a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy
 12 for space heating from the investor-owned utility. The financing program may consist, at a minimum,
 13 of either of the following:

14 (1) Offering low-interest loans to fund the entire cost of installed energy conservation measures
 15 up to \$5,000 per dwelling unit. In addition to the loan subsidy provided under ORS 469.633 (3), the
 16 loan shall be further subsidized by applying the present value to the public utility of the tax credit
 17 received under [ORS 469.185 to 469.225] **sections 5 to 13 of this 2010 Act**. Any portion of the
 18 present value of the tax credit shall accrue to the dwelling owner rather than to the investor-owned
 19 utility.

20 (2) Offering cash payments in addition to the cash payments required in ORS 469.633 (3). The
 21 additional cash payment shall be equal to the present value of the tax credit received under [ORS
 22 469.185 to 469.225] **sections 5 to 13 of this 2010 Act**.

23 **SECTION 28.** ORS 315.324 is amended to read:

24 315.324. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
 25 ration, under ORS chapter 317) for the investments certified under ORS 468.466 shall be allowed if
 26 the taxpayer qualifies under subsection (4) of this section.

27 (2) A taxpayer shall be allowed a tax credit under this section each year for five tax years be-
 28 ginning in the tax year the investment receives final certification under ORS 468.466. The maximum
 29 credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or 10 per-
 30 cent of the certified cost of the taxpayer's investment.

31 (3) To qualify for the credit the investment must be made in accordance with the provisions of
 32 ORS 468.461.

33 (4)(a) The taxpayer who is allowed the credit must be:

34 (A) The owner of the business that collects, transports or processes reclaimed plastic or manu-
 35 factures a reclaimed plastic product;

36 (B) A person who, as a lessee or pursuant to an agreement, conducts the business that collects,
 37 transports or processes reclaimed plastic or manufactures a reclaimed plastic product; or

38 (C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a ben-
 39 efiticial interest in a business that collects, transports or processes reclaimed plastic or manufactures
 40 a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that
 41 collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. If
 42 more than one person has an interest under this subparagraph in a qualifying business and one or
 43 more persons receive a certificate, such person or persons may allocate all or any part of the cer-
 44 tified investment cost among any persons and their successors or assigns having an interest under
 45 this subparagraph. Such allocation shall be evidenced by a written statement signed by the person

1 or persons receiving the certificate and designating the persons to whom the certified investment
2 costs have been allocated and the amount of certified investment cost allocated to each. This
3 statement shall be filed with the Department of Revenue not later than the final day of the first tax
4 year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate
5 certified investment costs allocated between or among more than one person exceed the amount of
6 the total certified cost of the investment. As used in this paragraph, "owner" includes a contract
7 purchaser;

8 (b) The business must be owned or leased during the tax year by the taxpayer claiming the
9 credit, except as otherwise provided in paragraph (a)(C) of this subsection, and must have been
10 collecting, transporting or processing reclaimed plastic or manufacturing a reclaimed plastic product
11 during the tax year for which the credit is claimed; and

12 (c) The reclaimed plastic collected, transported, processed or used to manufacture the reclaimed
13 plastic product must not be an industrial waste generated by the person claiming the tax credit, but
14 must be purchased from a plastic recycler other than the person claiming the tax credit.

15 (5) The credit provided by this section is not in lieu of any depreciation or amortization de-
16 duction for the investment to which the taxpayer otherwise may be entitled under ORS chapter 316
17 or 317 for such year.

18 (6) Upon any sale, exchange, or other disposition of a qualifying business, notice thereof shall
19 be given to the Environmental Quality Commission who shall revoke the certification covering the
20 investment of such business as of the date of such disposition. Notwithstanding ORS 468.461 (6), the
21 transferee may apply for a new certificate under ORS 468.466, but the tax credit available to such
22 transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange
23 or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue
24 Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other dis-
25 position of a business for purposes of this subsection.

26 (7) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
27 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
28 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
29 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
30 succeeding tax year may be carried forward and used in the third succeeding tax year and any
31 credit not used in that third succeeding tax year may be carried forward and used in the fourth
32 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
33 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
34 thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in
35 ORS 468.461.

36 (8) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by
37 any tax credits allowed under this section.

38 (9) A nonresident shall be allowed the credit under this section in the proportion provided in
39 ORS 316.117.

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

43 (11) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
44 department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this
45 section shall be prorated or computed in a manner consistent with ORS 314.085.

1 (12) No credit shall be allowed under this section and under ORS 468.451 to 468.491 for any
 2 portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS
 3 307.405, 315.304, 315.354, 315.356 and 469.185 to 469.225 or 316.116 **or sections 5 to 13 of this 2010**
 4 **Act.**

5 **SECTION 29.** ORS 314.752 is amended to read:

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

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

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

19 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 20 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 21 316.117, then that provision shall apply to the nonresident shareholder.

22 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 23 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 24 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 25 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 26 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 27 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
 28 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
 29 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 30 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 31 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and 469.207 (energy
 32 conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommuni-
 33 cations facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations
 34 necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel)
 35 **and section 2 of this 2010 Act (renewable energy resource equipment manufacturing facili-**
 36 **ties).**

37 **SECTION 30.** ORS 318.031 is amended to read:

38 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 39 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 40 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 41 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 42 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2010 Act** (all
 43 only to the extent applicable to a corporation) and ORS chapter 317.

44 **SECTION 31. Sections 2, 3 and 5 to 13 of this 2010 Act and the amendments to ORS**
 45 **314.752, 315.053, 315.324, 315.354, 315.357, 318.031, 469.185, 469.195, 469.197, 469.200, 469.205,**

1 469.210, 469.215, 469.217, 469.220, 469.225 and 469.636 by sections 14 to 30 of this 2010 Act apply
2 to preliminary certifications issued on or after June 1, 2009.

3 SECTION 32. This 2010 Act takes effect on the 91st day after the date on which the
4 special session of the Seventy-fifth Legislative Assembly adjourns sine die.

5
