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ICNU AFPA

From: Sen Burdick
To: LRO
Subject: FW: Amendment Suggestions to HB 3671 from ICNU/AFPA
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Attachments: ICNU AFPA HB 3671 Amendments.pdf

Kate Grosswiler
Legislative Assistant
State Senator Ginny Burdick
District 18
Office: 503-986-1718
sen.ginnyburdick@state.or.us

From: Public Affairs Counsel [mailto:pacounsel@pacounsel.org]
Sent: Friday, June 10, 2011 8:18 AM
To: Sen Burdick
Cc: 'Erica Hagedorn'
Subject: Amendment Suggestions to HB 3671 from ICNU/AFPA

Ginny,

Attached are some handwritten amendment suggestions from our clients at the Industrial Customers of NW Utilities and Cosgrove's clients at American Forest and Paper on the "Connie" section.

Reps. Berger and Bailey also have a copy.

Thanks for taking a look!

Mark

1 to the director, who shall revoke the certificate covering the project
2 as of the date of such disposition.

3 “(b) A new owner, or upon re-leasing of the project, a new lessor,
4 may apply for a new certificate under section 39 of this 2011 Act. The
5 new lessor or owner must meet the requirements of sections 33 to 44
6 of this 2011 Act and may claim a tax credit under this section only if
7 all moneys owed to the State of Oregon have been paid, if the project
8 continues to operate, unless continued operation is waived by the de-
9 partment, and if all conditions in the final certification are met. The
10 tax credit available to the new owner shall be limited to the amount
11 of credit not claimed by the former owner or, for a new lessor, the
12 amount of credit not claimed by the lessor under all previous leases.

13 “(c) The State Department of Energy may not revoke the certificate
14 covering a project under paragraph (a) of this subsection if the tax
15 credit associated with the project has been transferred to a taxpayer
16 who is an eligible applicant under section 37 of this 2011 Act.

17 “(d) A transferee holding a credit that has been transferred may
18 not claim the tax credit under this section for any tax year prior to
19 the tax year in which the transferee obtained the credit.

20 “(9) Any tax credit otherwise allowable under this section that is
21 not used by the taxpayer in a particular year may be carried forward
22 and offset against the taxpayer’s tax liability for the next succeeding
23 tax year. Any credit remaining unused in that next succeeding tax
24 year may be carried forward and used in the second succeeding tax
25 year, and likewise, any credit not used in that second succeeding tax
26 year may be carried forward and used in the third succeeding tax year,
27 and likewise, any credit not used in that third succeeding tax year
28 may be carried forward and used in the fourth succeeding tax year,
29 and likewise, any credit not used in that fourth succeeding tax year
30 may be carried forward and used in the fifth succeeding tax year, but

1 may not be carried forward for any tax year thereafter. Credits may
2 be carried forward to and used in a tax year beyond the years specified
3 in subsection (1) of this section only as provided in this subsection.

4 “(10) The credit allowed under this section is not in lieu of any de-
5preciation or amortization deduction for the project to which the tax-
6payer otherwise may be entitled for purposes of ORS chapter 316, 317
7or 318 for such year.

8 “(11) The taxpayer’s adjusted basis for determining gain or loss may
9not be decreased by any tax credits allowed under this section.

10 “(12) The definitions in section 20 of this 2011 Act apply to this
11section.

12 “SECTION 31. A taxpayer may not be allowed a credit under section
1332 of this 2011 Act if the first tax year for which the credit would
14otherwise be allowed, with respect to an energy conservation project
15certified under section 39 of this 2011 Act, begins on or after January
161, 2018.

17 “SECTION 32. Sections 33 to 44 of this 2011 Act are added to and
18made a part of ORS chapter 469.

19 “SECTION 33. As used in sections 33 to 44 of this 2011 Act:

20 “(1) ‘Cost’ means the capital costs and expenses necessarily in-
21curred in the acquisition, erection, construction and installation of an
22energy conservation project.

23 “(2) ‘Energy conservation project’ means any capital investment for
24~~which the first year energy savings yields a simple payback period of~~
25~~greater than two years.~~ ‘Energy conservation project’ does not include:

26 “(a) ~~Cogeneration facilities as that term is defined in ORS 758.505;~~

27 “(b) Lighting modification projects;

28 “(c) Recycling equipment;

29 “(d) Transportation projects;

30 “(e) ~~Energy recovery as that term is defined in ORS 459.005; or~~

which reduces energy use or uses energy more efficiently

projects with a payback period of less than one year;

with the highest energy savings over the five-year period per tax credit dollar invested.

1 "(f) Alternative fuel vehicles that are gasoline-electric hybrid vehi-
2 cles not designed for electric plug-in charging.

3 "(3)(a) 'LEED' means the Leadership in Energy and Environmental
4 Design rating system for certification of energy-efficient and environ-
5 mentally sustainable buildings established by the U.S. Green Building
6 Council.

7 "(b) 'LEED Platinum' means the highest of four tiers of standards
8 for certification in the LEED rating system.

9 "SECTION 34. (1) In determining the eligibility of any energy con-
10 servation project for tax credits, preference shall be given to those
11 projects that provide long-term energy savings from the conservation
12 of energy resources;

13 ~~"(2) The Director of the State Department of Energy shall establish~~
14 ~~by rule a tiered priority system to be used in evaluating applicants for~~
15 ~~certification of projects. The State Department of Energy shall rely~~
16 ~~on the criteria established under section 35 of this 2011 Act in deter-~~
17 ~~mining the eligibility for tax credits and in allocating the available~~
18 ~~certified cost pursuant to section 43 of this 2011 Act among projects.~~

19 ~~"(3) In implementing the system, the director shall compare~~
20 ~~projects of similar costs and technology type against each other, take~~
21 ~~into account the amount of energy saved over the life of the equip-~~
22 ~~ment, market or industry sector, expected lifespan of the facility~~
23 ~~compared to the simple payback period, and any other factors defined~~
24 ~~in department rule. The department may certify less than the total~~
25 ~~cost of any facility based on this evaluation.~~

26 "SECTION 35. The State Department of Energy shall by rule es-
27 tablish the following standards relating to energy conservation
28 projects:

29 "(1) Standards relating to energy savings in new construction.

30 "(2) Standards relating to what constitutes a replacement of ineffi-

1 cient functional equipment based on remaining service life, for
2 projects that are a retrofit of existing construction.

3 “(3) Standards for the determination of total project cost.

4 “(4) Standards for the application of third party review of research
5 and development projects, as required in section 32 of this 2011 Act.

6 “SECTION 36. For an energy conservation project, the total amount
7 of credit that receives a preliminary certification from the Director
8 of the State Department of Energy may not exceed \$10 million.

9 “SECTION 37. (1) Prior to the installation or construction of an
10 energy conservation project, any person may apply to the State De-
11 partment of Energy for preliminary certification under section 38 of
12 this 2011 Act if:

13 “(a) The project complies with the standards adopted by the Direc-
14 tor of the State Department of Energy; and

15 “(b) The applicant will be the owner, contract purchaser or lessee
16 of the project at the time of installation or construction of the project.

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

19 “(a) A statement that the applicant plans to acquire, construct or
20 install a project that substantially reduces the consumption of pur-
21 chased energy *or use energy more efficiently.*

22 “(b) A detailed description of the project and its operation and in-
23 formation showing that the project will operate as represented in the
24 application and remain in operation for at least five years, unless the
25 director by rule specifies a shorter period of operation.

26 “(c) Information on the amount by which consumption of purchased
27 energy by the applicant will be reduced, and, if applicable, information
28 about the expected level of sustainable building practices project per-
29 formance.

30 “(d) The anticipated total project cost.

1 “(e) Information on the number and type of jobs that will be created
2 by the project, the number of jobs sustained throughout the con-
3 struction, installation and operation of the project and the benefits of
4 the project with regard to overall economic activity in this state.

5 “(f) Information demonstrating that the project will comply with
6 applicable state and local laws and regulations and obtain required li-
7 censes and permits.

8 “(g) Information relating to the standards described in section^s 35
9 of this 2011 Act.

10 “(h) A recommendation for a project that demonstrates innovation,
11 if applicable, that has been made by the Oregon Innovation Council.

12 “(i) Any other information the director considers necessary to de-
13 termine whether the project is in accordance with the provisions of
14 sections 33 to 44 of this 2011 Act, and any applicable rules or standards
15 adopted by the director.


16 “(3) An application for preliminary certification shall be accompa-
17 nied by a fee established under section 40 of this 2011 Act. The director
18 may refund all or a portion of the fee if the application for certif-
19 ication is rejected.

20 “(4) The director may allow an applicant to file the application for
21 preliminary certification after the start of installation or construction
22 of the project if the director finds that:

23 “(a) Filing the application before the start of installation or con-
24 struction is inappropriate because special circumstances render filing
25 earlier unreasonable; and

26 “(b) The project would otherwise qualify for certification under
27 sections 33 to 44 of this 2011 Act.

28 “(5) A preliminary certification shall remain valid for a period of
29 five calendar years after the date on which the preliminary certif-
30 ication is issued by the director.

34
and 

1 **SECTION 38.** (1) The Director of the State Department of Energy
2 may require an applicant for certification of an energy conservation
3 project to submit plans, specifications and contract terms, and after
4 examination of the plans, specifications and terms, may request cor-
5 rections and revisions.

6 “(2) If the director determines that the project is technically feasi-
7 ble and should operate in accordance with the representations made
8 by the applicant, and is in accordance with the provisions of sections
9 33 to 44 of this 2011 Act and any applicable rules or standards adopted
10 by the director, the director shall issue a preliminary certificate ap-
11 proving the installation or construction of the project. The certificate
12 shall indicate the potential amount of tax credit allowable and shall
13 list any conditions for claiming the credit.

14 “(3) The director may issue an order altering, conditioning, sus-
15 pending or denying preliminary certification if the director determines
16 that:

17 “(a) The project does not comply with the provisions of sections 33
18 to 44 of this 2011 Act and applicable rules and standards;

19 “(b) The applicant has previously received preliminary or final cer-
20 tification for the project;

21 “(c) The applicant ~~is unable to~~ *does not* demonstrate that the project would
22 ~~be economically viable~~ without the allowance of a credit under section
23 30 of this 2011 Act.

24 “(d) The applicant was directly involved in an act for which the di-
25 rector has levied civil penalties or revoked, canceled or suspended any
26 certification under sections 33 to 44 of this 2011 Act; or

27 “(e) The applicant or the principal, director, officer, owner, major-
28 ity shareholder or member of the applicant, or the manager of the
29 applicant if the applicant is a limited liability company, is in arrears
30 for payments owed to any government agency while in any capacity

→ go forward, under
the internal criteria used
by the applicant in evaluating capital projects.