

**A-Engrossed**  
**House Bill 2208**

Ordered by the House April 26  
Including House Amendments dated April 26

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Sustainability and Economic Development)

**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.

*[Modifies provisions related to single energy facilities. Requires review of certain applications by Energy Facility Siting Council.]*

*[Declares emergency, effective on passage.]*

**Creates income and corporate excise tax credit for renewable energy production systems, defined as systems using biomass, solar, geothermal, hydroelectric or wave, tidal or ocean thermal energy technology to produce energy. Bases amount of tax credit on projected first year energy yield of system. Restricts availability of tax credits to projects with total system cost not in excess of \$20 million. Limits total tax credits available to all taxpayers to \$150 million for 12-month period beginning July 1, 2012. Reserves up to \$15 million of total tax credits for projects recommended by Oregon Innovation Council. Provides for certification of eligible systems by State Department of Energy. Directs department to establish eligibility standards and standards for allocating available credit amounts.**

**Applies to applications for preliminary certification submitted after July 1, 2012, and to tax years beginning on or after January 1, 2012.**

**Takes effect on 91st day following adjournment sine die.**

**A BILL FOR AN ACT**

1  
2 Relating to energy; creating new provisions; amending ORS 284.711; and prescribing an effective  
3 date.

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

5 **SECTION 1. Sections 2 to 4 of this 2011 Act are added to and made a part of ORS chapter**  
6 **315.**

7 **SECTION 2. (1) A credit is allowed against the taxes otherwise due under ORS chapter**  
8 **316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318) for a renewable en-**  
9 **ergy production system that is certified under sections 6 to 17 of this 2011 Act. The credit**  
10 **allowed under this section in each of five succeeding tax years shall be 20 percent of the total**  
11 **allowable credit, but may not exceed the tax liability of the taxpayer.**

12 **(2) In order for a tax credit to be allowable under this section:**

13 **(a) The system must be located in Oregon.**

14 **(b) The system must have received final certification from the Director of the State De-**  
15 **partment of Energy under sections 6 to 17 of this 2011 Act.**

16 **(c) The taxpayer must be an eligible applicant under section 10 (1)(b) of this 2011 Act.**

17 **(d) The total system cost may not exceed \$20 million.**

18 **(3)(a) The total amount of credit allowable shall be based upon the projected first year**  
19 **energy yield of the system and shall equal \$\_\_\_\_\_ per kilowatt-hour.**

20 **(b) Notwithstanding paragraph (a) of this subsection, if the system is an alternative fuel**

**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 vehicle, the credit shall be \_\_\_\_\_ percent of the certified cost.

2 (4) The State Department of Energy shall reduce the amount of credit allowable to a  
3 taxpayer if, when combined with other government incentives, loans or grants available to  
4 the taxpayer, the amount calculated under subsection (3) of this section exceeds 75 percent  
5 of the total system cost certified under section 12 of this 2011 Act.

6 (5)(a) The credit allowed in each of four succeeding tax years, beginning with the tax year  
7 that the system is placed in service, shall be 20 percent of the amount provided under sub-  
8 section (4) of this section, but may not exceed the tax liability of the taxpayer.

9 (b) If the taxpayer receives an additional certification under section 12 (5) of this 2011  
10 Act, the taxpayer may claim an additional credit of not more than 20 percent in the fifth  
11 succeeding tax year.

12 (6)(a) Upon any sale, termination of the lease or contract, exchange or other disposition  
13 of the system, notice thereof shall be given to the director, who shall revoke the certificate  
14 covering the system as of the date of such disposition.

15 (b) A new owner, or upon re-leasing of the system, a new lessor, may apply for a new  
16 certificate under section 12 of this 2011 Act. The new lessor or owner must meet the re-  
17 quirements of sections 6 to 17 of this 2011 Act and may claim a tax credit under this section  
18 only if all moneys owed to the State of Oregon have been paid, if the system continues to  
19 operate, unless continued operation is waived by the department, and if all conditions in the  
20 final certification are met. The tax credit available to the new owner shall be limited to the  
21 amount of credit not claimed by the former owner or, for a new lessor, the amount of credit  
22 not claimed by the lessor under all previous leases.

23 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer  
24 in a particular year may be carried forward and offset against the taxpayer's tax liability for  
25 the next succeeding tax year. Any credit remaining unused in that next succeeding tax year  
26 may be carried forward and used in the second succeeding tax year, and likewise, any credit  
27 not used in that second succeeding tax year may be carried forward and used in the third  
28 succeeding tax year, and likewise, any credit not used in that third succeeding tax year may  
29 be carried forward and used in the fourth succeeding tax year, and likewise, any credit not  
30 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-  
31 ceeding tax year, but may not be carried forward for any tax year thereafter. Credits may  
32 be carried forward to and used in a tax year beyond the years specified in subsection (1) of  
33 this section only as provided in this subsection.

34 (8) The credit allowed under this section is not in lieu of any depreciation or amortization  
35 deduction for the system to which the taxpayer otherwise may be entitled for purposes of  
36 ORS chapter 316, 317 or 318 for such year.

37 (9) The taxpayer's adjusted basis for determining gain or loss may not be decreased by  
38 any tax credits allowed under this section.

39 (10) The definitions in section 6 of this 2011 Act apply to this section.

40 **SECTION 3.** The credit allowed under section 2 of this 2011 Act may not be transferred  
41 or sold. An applicant may apply with a tax partner that is directly connected to the  
42 renewable energy production system.

43 **SECTION 4.** A taxpayer may not be allowed a credit under section 2 of this 2011 Act if  
44 the first tax year for which the credit would otherwise be allowed, with respect to a  
45 renewable energy production system certified under section 12 of this 2011 Act, begins on or

1 after January 1, 2018.

2 **SECTION 5.** Sections 6 to 17 of this 2011 Act are added to and made a part of ORS  
3 chapter 469.

4 **SECTION 6.** As used in sections 6 to 17 of this 2011 Act:

5 (1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State  
6 Department of Energy by rule that is:

7 (a) Used primarily in connection with the conduct of a trade or business;

8 (b) Registered under ORS chapter 803 as a commercial motor vehicle; and

9 (c) Manufactured or modified to use an alternative fuel, including but not limited to  
10 electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy  
11 consumption savings.

12 (2) "Biomass" has the meaning given that term in ORS 315.141.

13 (3)(a) "Cost" means the actual cost of the acquisition, construction and installation of  
14 the renewable energy production system paid by the taxpayer for the system.

15 (b) For an alternative fuel vehicle, "cost" means the difference between the cost of the  
16 alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to  
17 use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle,  
18 the cost of the modification. "Cost" does not include any amounts paid for remodification  
19 of the same vehicle.

20 (4) "First year energy yield" of an renewable energy production system is the usable en-  
21 ergy produced under average environmental conditions in one year.

22 (5) "Placed in service" means:

23 (a) The date an renewable energy production system is ready and available to produce  
24 usable energy.

25 (b) For an alternative fuel vehicle:

26 (A) In the case of purchase, the date that the alternative fuel vehicle is first purchased  
27 as an alternative fuel vehicle ready and available for use.

28 (B) In the case of modification, the date that the modification is completed and the ve-  
29 hicle is ready and available for use as an alternative fuel vehicle.

30 (c) For a fueling station necessary to operate an alternative fuel vehicle, the date that  
31 the fueling station is first operational.

32 (d) For related equipment, the date that the equipment is first operational.

33 (6) "Related equipment" means equipment necessary to convert a vehicle to use an al-  
34 ternative fuel.

35 (7) "Renewable energy production system" means a system that uses biomass, solar,  
36 geothermal, hydroelectric or wave, tidal or ocean thermal energy technology to produce en-  
37 ergy.

38 (8) "Solar technology" means any system, mechanism or series of mechanisms, including  
39 photovoltaic systems, that uses solar radiation to generate electrical energy.

40 **SECTION 7.** (1) In determining the eligibility of any renewable energy production system  
41 for tax credits, preference shall be given to those systems that provide long-term energy  
42 savings from the use of renewable energy resources.

43 (2) The Director of the State Department of Energy shall establish by rule a tiered pri-  
44 ority system to be used in evaluating applicants for certification of systems. The tier system  
45 shall be based upon the certified system cost of systems and shall require consideration of

1 diverse technologies as well as net-metered systems. The State Department of Energy shall  
2 rely on the criteria established under section 8 of this 2011 Act in determining the eligibility  
3 for tax credits and in allocating the available certified cost pursuant to section 16 of this 2011  
4 Act among systems. The department shall limit the number of certifications allowed for  
5 systems that are alternative fuel vehicles.

6 **SECTION 8.** The State Department of Energy shall by rule establish the following stan-  
7 dards relating to renewable energy production systems:

8 (1) Minimum performance and efficiency standards.

9 (2) Standards for the determination of total system cost, as required by sections 10 (2)  
10 and 12 (6) of this 2011 Act.

11 **SECTION 9.** For a renewable energy production system, the total amount of credit that  
12 receives a preliminary certification from the Director of the State Department of Energy  
13 may not exceed \$2 million.

14 **SECTION 10.** (1) Prior to the installation or construction of a renewable energy pro-  
15 duction system, any person may apply to the State Department of Energy for preliminary  
16 certification under section 11 of this 2011 Act if:

17 (a) The system complies with the standards or rules adopted by the Director of the State  
18 Department of Energy; and

19 (b) The applicant will be the owner, contract purchaser or lessee of the system at the  
20 time of installation or construction of the proposed system.

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

23 (a) A statement that the applicant plans to acquire, construct or install a system that  
24 substantially reduces the consumption of purchased energy.

25 (b) A detailed description of the system and its operation and information showing that  
26 the system will operate as represented in the application and remain in operation for at least  
27 five years, unless the director by rule specifies a shorter period of operation.

28 (c) The anticipated total system cost.

29 (d) Information on the number and type of jobs that will be created by the system, the  
30 number of jobs sustained throughout the construction, installation and operation of the  
31 system and the benefits of the system with regard to overall economic activity in this state.

32 (e) Information demonstrating that the system will comply with applicable state and local  
33 laws and regulations and obtain required licenses and permits.

34 (f) Information relating to the standards described in section 8 of this 2011 Act.

35 (g) A recommendation for a system that demonstrates innovation, if applicable, that has  
36 been made by the Oregon Innovation Council.

37 (h) Any other information the director considers necessary to determine whether the  
38 system is in accordance with the provisions of sections 6 to 17 of this 2011 Act, and any ap-  
39 plicable rules or standards adopted by the director.

40 (3) An application for preliminary certification shall be accompanied by a fee established  
41 under section 13 of this 2011 Act. The director may refund all or a portion of the fee if the  
42 application for certification is rejected.

43 (4) The director may allow an applicant to file the application for preliminary certif-  
44 ication after the start of installation or construction of the system if the director finds that:

45 (a) Filing the application before the start of installation or construction is inappropriate

1 because special circumstances render filing earlier unreasonable; and

2 (b) The system would otherwise qualify for certification under sections 6 to 17 of this 2011  
3 Act.

4 (5) A preliminary certification shall remain valid for a period of five calendar years after  
5 the date on which the preliminary certification is issued by the director.

6 **SECTION 11.** (1) The Director of the State Department of Energy may require an appli-  
7 cant for certification of a renewable energy production system to submit plans, specifications  
8 and contract terms, and after examination of the plans, specifications and terms, may re-  
9 quest corrections and revisions.

10 (2) If the director determines that the system is technically feasible and should operate  
11 in accordance with the representations made by the applicant, and is in accordance with the  
12 provisions of sections 6 to 17 of this 2011 Act and any applicable rules or standards adopted  
13 by the director, the director shall issue a preliminary certificate approving the installation  
14 or construction of the system. The certificate shall indicate the potential amount of tax  
15 credit allowable and shall list any conditions for claiming the credit.

16 (3) The director may issue an order altering, conditioning, suspending or denying pre-  
17 liminary certification if the director determines that:

18 (a) The system does not comply with the provisions of sections 6 to 17 of this 2011 Act  
19 and applicable rules and standards;

20 (b) The applicant has previously received preliminary or final certification for the system;

21 (c) The applicant is unable to demonstrate that the system would be economically viable  
22 without the allowance of a credit under section 2 of this 2011 Act;

23 (d) The applicant was directly involved in an act for which the director has levied civil  
24 penalties or revoked, canceled or suspended any certification under sections 6 to 17 of this  
25 2011 Act; or

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

30 **SECTION 12.** (1) A final certification for a renewable energy production system may not  
31 be issued by the Director of the State Department of Energy under this section unless:

32 (a) The system was installed or constructed under a preliminary certificate of approval  
33 issued under section 11 of this 2011 Act;

34 (b) The applicant demonstrates the ability to provide the information required by section  
35 10 (2) of this 2011 Act and does not violate any condition that may be imposed as described  
36 in subsection (3) of this section; and

37 (c) The system was installed or constructed in accordance with the applicable provisions  
38 of sections 6 to 17 of this 2011 Act and any applicable rules or standards adopted by the di-  
39 rector.

40 (2) Any person may apply to the State Department of Energy for final certification of a  
41 system:

42 (a) If the person received preliminary certification for the system under section 11 of this  
43 2011 Act; and

44 (b) After completion of the installation or construction of the system.

45 (3) An application for final certification shall be made in writing on a form prepared by

1 the department and shall contain:

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

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

7 (c) The amount of the credit under section 2 of this 2011 Act that is to be claimed;

8 (d) The number and type of jobs created by the operation and maintenance of the system  
9 over the five-year period beginning with the year of preliminary certification under section  
10 11 of this 2011 Act and information on the benefits of the system with regard to overall  
11 economic activity in this state;

12 (e) Information sufficient to demonstrate that the system will remain in operation for  
13 at least five years, unless the director by rule specifies a shorter period of operation;

14 (f) Documentation of compliance with applicable state and local laws and regulations and  
15 licensing and permitting requirements as defined by the director;

16 (g) Information, if applicable, pertaining to prior recommendation of the system by the  
17 Oregon Innovation Council; and

18 (h) Any other information determined by the director to be necessary prior to issuance  
19 of a final certificate, including inspection of the system by the department.

20 (4) The director shall act on an application for final certification before the 60th day after  
21 the filing of the application under this section. The director may issue the certificate to-  
22 gether with such conditions as the director determines are appropriate to promote the pur-  
23 poses of sections 2 and 6 to 17 of this 2011 Act. If the applicant is an entity subject to  
24 regulation by the Public Utility Commission, the director may consult with the commission  
25 prior to issuance of the certificate. The action of the director shall include certification of  
26 the actual cost of the system. However, the director may not certify an amount for tax  
27 credit purposes that is more than the amount approved in the preliminary certificate issued  
28 for the system.

29 (5)(a) The certificate initially granted under this section shall be for a maximum of 80  
30 percent of the allowable credit under section 2 of this 2011 Act.

31 (b) During the fourth succeeding tax year following the tax year in which the system is  
32 placed in service, a taxpayer may apply for, and be granted, a certificate allowing additional  
33 tax credit for the fifth and final consecutive tax year, of no more than 20 percent of the total  
34 allowable credit. The department shall grant this final certificate only if the taxpayer has  
35 met all of the requirements of sections 2 and 6 to 17 of this 2011 Act.

36 (6) If the director rejects an application for final certification, or certifies a lesser  
37 amount of credit than was claimed in the application, the director shall send to the applicant  
38 written notice of the action, together with a statement of the findings and reasons for the  
39 action, by certified mail, before the 60th day after the filing of the application. Failure of the  
40 director to act constitutes rejection of the application.

41 (7) Upon approval of an application for final certification of a system, the director shall  
42 certify the system. The final certification shall indicate the amount of projected energy  
43 savings attributable to the system and the total system cost.

44 (8) The director may establish by rule timelines and intermediate deadlines for sub-  
45 mission of application materials.

1       **SECTION 13.** By rule and after hearing, the Director of the State Department of Energy  
2 may adopt a schedule of reasonable fees that the State Department of Energy may require  
3 of applicants for preliminary or final certification of a renewable energy production system  
4 under sections 6 to 17 of this 2011 Act. Before the adoption or revision of the fees, the de-  
5 partment shall estimate the total cost of the program to the department. The fees shall be  
6 used to recover the anticipated cost of filing, investigating, granting and rejecting applica-  
7 tions for certification and shall be designed not to exceed the total cost estimated by the  
8 department. Any excess fees shall be held by the department and shall be used by the de-  
9 partment to reduce any future fee increases. The fee may vary according to the size and  
10 complexity of the system. The fee is not considered part of the cost of the system to be  
11 certified.

12       **SECTION 14.** A certificate issued under section 12 of this 2011 Act is required for pur-  
13 poses of obtaining tax credits in accordance with section 2 of this 2011 Act. Such certification  
14 shall be granted for a period not to exceed five years. The five-year period shall begin with  
15 the tax year of the applicant during which the completed application for final certification  
16 of the system under section 12 of this 2011 Act is received by the State Department of En-  
17 ergy.

18       **SECTION 15.** (1) Under the procedures for a contested case under ORS chapter 183, the  
19 Director of the State Department of Energy may order the suspension or revocation of a  
20 certificate issued under section 12 of this 2011 Act if the director finds that:

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

22       (b) The holder of the certificate or the operator of the system has failed to construct or  
23 operate the system in compliance with the plans, specifications and procedures in the cer-  
24 tificate; or

25       (c) The system is no longer in operation.

26       (2) As soon as an order of revocation under this section becomes final, the director shall  
27 notify the Department of Revenue and the system owner, contract purchaser or lessee of the  
28 order of revocation. Upon notification, the Department of Revenue immediately shall proceed  
29 to collect those taxes not paid by the certificate holder as a result of the tax credits provided  
30 to the certificate holder under section 2 of this 2011 Act, from the certificate holder or a  
31 successor in interest to the business interests of the certificate holder. All prior tax credits  
32 provided to the holder of the certificate by virtue of the certificate shall be forfeited.

33       (3)(a) The Department of Revenue shall have the benefit of all laws of this state per-  
34 taining to the collection of income and excise taxes and may proceed to collect the amounts  
35 described in subsection (2) of this section from the person that obtained certification from  
36 the State Department of Energy, or any successor in interest to the business interests of  
37 that person. An assessment of tax is not necessary and a statute of limitation does not  
38 preclude the collection of taxes described in this subsection.

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

43       **SECTION 16.** (1) The total amount of potential tax credits for all renewable energy pro-  
44 duction systems in this state may not, at the time of preliminary certification under section  
45 11 of this 2011 Act, exceed \$150 million for the 12 months beginning July 1, 2012, and ending

1 **July 1, 2013.**

2 (2) **Of the amount available under subsection (1) of this section, the State Department**  
3 **of Energy may dedicate up to \$15 million for systems that have a prior recommendation as**  
4 **demonstrative of innovation, as provided in ORS 284.711 (3).**

5 (3) **In the event that the Director of the State Department of Energy receives applica-**  
6 **tions for preliminary certification with a total amount of potential tax credits in excess of**  
7 **the limitations in subsections (1) and (2) of this section, the director shall allocate the issu-**  
8 **ance of preliminary certifications according to the standards required by section 8 of this**  
9 **2011 Act.**

10 (4) **The director shall review applications and make determinations whether to issue**  
11 **preliminary certifications for proposed systems:**

12 (a) **Within 90 days of the date on which the application is received, in the case of an ap-**  
13 **plication for certification of a system with a projected cost of less than \$200,000.**

14 (b) **Within six months of the date on which the application is received, in the case of an**  
15 **application for certification of a system with a cost of \$200,000 or more.**

16 **SECTION 17. Not later than February 1 of each odd-numbered year, the State Depart-**  
17 **ment of Energy shall report to the Legislative Assembly on utilization of the credit allowed**  
18 **under sections 2 and 6 to 17 of this 2011 Act of this 2011 Act. The report required under this**  
19 **section shall include data about the following:**

20 (1) **Applications for certification received.**

21 (2) **Total amounts of tax credits certified and claimed by tax year.**

22 (3) **Total energy produced by systems for which credits are allowed.**

23 (4) **Number of jobs created or retained by taxpayers in connection with systems receiving**  
24 **credits.**

25 **SECTION 18. The State Department of Energy shall by rule establish procedures for the**  
26 **administration of sections 2 to 4 and 6 to 17 of this 2011 Act.**

27 **SECTION 19. ORS 284.711 is amended to read:**

28 284.711. (1) **The Oregon Innovation Council shall provide advice to the Governor, the Legislative**  
29 **Assembly, public and private post-secondary educational institutions, public agencies that provide**  
30 **economic development and the private sector on issues related to:**

31 (a) **Promoting agreements between public and private post-secondary educational institutions**  
32 **and private industry that increase technology transfer and the commercialization of research;**

33 (b) **Promoting investment in specialized research facilities and signature research centers where**  
34 **Oregon has a distinct or emerging advantage for creating new products and businesses;**

35 (c) **Stimulating seed and start-up capital investment and entrepreneurial capacity that will pro-**  
36 **mote economic growth in Oregon traded sector industries;**

37 (d) **Developing the entrepreneurial and management capacity critical to the competitiveness of**  
38 **Oregon traded sector industries and rapidly growing global markets;**

39 (e) **Enhancing the international competitiveness of Oregon traded sector industries; and**

40 (f) **Identifying workforce issues for occupations critical to the competitiveness of Oregon traded**  
41 **sector industries, including but not limited to scientific, engineering, information technology and**  
42 **business management occupations.**

43 (2) **The Oregon Innovation Council shall advise the Engineering and Technology Industry**  
44 **Council established in ORS 351.663 on how to coordinate the Engineering and Technology Industry**  
45 **Council's goals and policies with the state plan developed under ORS 284.715.**



1       **(3) The council shall recommend to the State Department of Energy, for the purpose of**  
2 **certification by the department of tax credits under sections 2 to 4 and 6 to 17 of this 2011**  
3 **Act, renewable energy production systems that demonstrate innovation. These projects may**  
4 **not include research and development projects.**

5       [(3)] (4) The council, the Oregon Business Development Commission, the State Board of Higher  
6 Education and the office of the State Treasurer shall coordinate policies and programs related to  
7 the duties of the council.

8       [(4)] (5) Based on the state plan developed under ORS 284.715, the council may distribute moneys  
9 in the Oregon Innovation Fund by grant or pursuant to contracts with public and private post-  
10 secondary institutions, state agencies and private sector entities.

11       **SECTION 20. Sections 2 to 4 and 6 to 17 of this 2011 Act apply to applications for pre-**  
12 **liminary certification submitted under section 10 of this 2011 Act after July 1, 2012, and to**  
13 **tax years beginning on or after January 1, 2012.**

14       **SECTION 21. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
15 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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