

HOUSE AMENDMENTS TO HOUSE BILL 2208

By COMMITTEE ON TRANSPORTATION AND ECONOMIC DEVELOPMENT

April 26

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and line 3 and insert
2 “284.711; and prescribing an effective date.”.

3 Delete lines 5 through 30 and delete pages 2 through 8 and insert:

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

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

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

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

13 **“(b) The system must have received final certification from the Director of the State**
14 **Department of Energy under sections 6 to 17 of this 2011 Act.**

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

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

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

19 **“(b) Notwithstanding paragraph (a) of this subsection, if the system is an alternative fuel**
20 **vehicle, the credit shall be _____ percent of the certified cost.**

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

25 **“(5)(a) The credit allowed in each of four succeeding tax years, beginning with the tax**
26 **year that the system is placed in service, shall be 20 percent of the amount provided under**
27 **subsection (4) of this section, but may not exceed the tax liability of the taxpayer.**

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

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

34 **“(b) A new owner, or upon re-leasing of the system, a new lessor, may apply for a new**
35 **certificate under section 12 of this 2011 Act. The new lessor or owner must meet the re-**

1 requirements of sections 6 to 17 of this 2011 Act and may claim a tax credit under this section
2 only if all moneys owed to the State of Oregon have been paid, if the system continues to
3 operate, unless continued operation is waived by the department, and if all conditions in the
4 final certification are met. The tax credit available to the new owner shall be limited to the
5 amount of credit not claimed by the former owner or, for a new lessor, the amount of credit
6 not claimed by the lessor under all previous leases.

7 “(7) Any tax credit otherwise allowable under this section that is not used by the tax-
8 payer in a particular year may be carried forward and offset against the taxpayer’s tax li-
9 ability for the next succeeding tax year. Any credit remaining unused in that next succeeding
10 tax year may be carried forward and used in the second succeeding tax year, and likewise,
11 any credit not used in that second succeeding tax year may be carried forward and used in
12 the third succeeding tax year, and likewise, any credit not used in that third succeeding tax
13 year may be carried forward and used in the fourth succeeding tax year, and likewise, any
14 credit not used in that fourth succeeding tax year may be carried forward and used in the
15 fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits
16 may be carried forward to and used in a tax year beyond the years specified in subsection
17 (1) of this section only as provided in this subsection.

18 “(8) The credit allowed under this section is not in lieu of any depreciation or amorti-
19 zation deduction for the system to which the taxpayer otherwise may be entitled for pur-
20 poses of ORS chapter 316, 317 or 318 for such year.

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

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

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

27 “SECTION 4. A taxpayer may not be allowed a credit under section 2 of this 2011 Act if
28 the first tax year for which the credit would otherwise be allowed, with respect to a
29 renewable energy production system certified under section 12 of this 2011 Act, begins on or
30 after January 1, 2018.

31 “SECTION 5. Sections 6 to 17 of this 2011 Act are added to and made a part of ORS
32 chapter 469.

33 “SECTION 6. As used in sections 6 to 17 of this 2011 Act:

34 “(1) ‘Alternative fuel vehicle’ means a vehicle as defined by the Director of the State
35 Department of Energy by rule that is:

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

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

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

41 “(2) ‘Biomass’ has the meaning given that term in ORS 315.141.

42 “(3)(a) ‘Cost’ means the actual cost of the acquisition, construction and installation of
43 the renewable energy production system paid by the taxpayer for the system.

44 “(b) For an alternative fuel vehicle, ‘cost’ means the difference between the cost of the
45 alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to

1 use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle,
2 the cost of the modification. 'Cost' does not include any amounts paid for remodification of
3 the same vehicle.

4 "(4) 'First year energy yield' of an renewable energy production system is the usable
5 energy produced under average environmental conditions in one year.

6 "(5) 'Placed in service' means:

7 "(a) The date an renewable energy production system is ready and available to produce
8 usable energy.

9 "(b) For an alternative fuel vehicle:

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

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

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

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

17 "(6) 'Related equipment' means equipment necessary to convert a vehicle to use an al-
18 ternative fuel.

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

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

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

27 "(2) The Director of the State Department of Energy shall establish by rule a tiered pri-
28 ority system to be used in evaluating applicants for certification of systems. The tier system
29 shall be based upon the certified system cost of systems and shall require consideration of
30 diverse technologies as well as net-metered systems. The State Department of Energy shall
31 rely on the criteria established under section 8 of this 2011 Act in determining the eligibility
32 for tax credits and in allocating the available certified cost pursuant to section 16 of this 2011
33 Act among systems. The department shall limit the number of certifications allowed for
34 systems that are alternative fuel vehicles.

35 "SECTION 8. The State Department of Energy shall by rule establish the following
36 standards relating to renewable energy production systems:

37 "(1) Minimum performance and efficiency standards.

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

40 "SECTION 9. For a renewable energy production system, the total amount of credit that
41 receives a preliminary certification from the Director of the State Department of Energy
42 may not exceed \$2 million.

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

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

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

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

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

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

12 “(c) The anticipated total system cost.

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

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

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

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

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

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

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

29 “(a) Filing the application before the start of installation or construction is inappropriate
30 because special circumstances render filing earlier unreasonable; and

31 “(b) The system would otherwise qualify for certification under sections 6 to 17 of this
32 2011 Act.

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

35 “SECTION 11. (1) The Director of the State Department of Energy may require an ap-
36 plicant for certification of a renewable energy production system to submit plans, specifica-
37 tions and contract terms, and after examination of the plans, specifications and terms, may
38 request corrections and revisions.

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

45 “(3) The director may issue an order altering, conditioning, suspending or denying pre-

1 **liminary certification if the director determines that:**

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

4 **“(b) The applicant has previously received preliminary or final certification for the sys-**
5 **tem;**

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

8 **“(d) The applicant was directly involved in an act for which the director has levied civil**
9 **penalties or revoked, canceled or suspended any certification under sections 6 to 17 of this**
10 **2011 Act; or**

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

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

17 **“(a) The system was installed or constructed under a preliminary certificate of approval**
18 **issued under section 11 of this 2011 Act;**

19 **“(b) The applicant demonstrates the ability to provide the information required by section**
20 **10 (2) of this 2011 Act and does not violate any condition that may be imposed as described**
21 **in subsection (3) of this section; and**

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

25 **“(2) Any person may apply to the State Department of Energy for final certification of**
26 **a system:**

27 **“(a) If the person received preliminary certification for the system under section 11 of**
28 **this 2011 Act; and**

29 **“(b) After completion of the installation or construction of the system.**

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

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

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

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

38 **“(d) The number and type of jobs created by the operation and maintenance of the sys-**
39 **tem over the five-year period beginning with the year of preliminary certification under**
40 **section 11 of this 2011 Act and information on the benefits of the system with regard to**
41 **overall economic activity in this state;**

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

44 **“(f) Documentation of compliance with applicable state and local laws and regulations and**
45 **licensing and permitting requirements as defined by the director;**

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

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

5 “(4) The director shall act on an application for final certification before the 60th day
6 after the filing of the application under this section. The director may issue the certificate
7 together with such conditions as the director determines are appropriate to promote the
8 purposes of sections 2 and 6 to 17 of this 2011 Act. If the applicant is an entity subject to
9 regulation by the Public Utility Commission, the director may consult with the commission
10 prior to issuance of the certificate. The action of the director shall include certification of
11 the actual cost of the system. However, the director may not certify an amount for tax
12 credit purposes that is more than the amount approved in the preliminary certificate issued
13 for the system.

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

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

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

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

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

31 “SECTION 13. By rule and after hearing, the Director of the State Department of Energy
32 may adopt a schedule of reasonable fees that the State Department of Energy may require
33 of applicants for preliminary or final certification of a renewable energy production system
34 under sections 6 to 17 of this 2011 Act. Before the adoption or revision of the fees, the de-
35 partment shall estimate the total cost of the program to the department. The fees shall be
36 used to recover the anticipated cost of filing, investigating, granting and rejecting applica-
37 tions for certification and shall be designed not to exceed the total cost estimated by the
38 department. Any excess fees shall be held by the department and shall be used by the de-
39 partment to reduce any future fee increases. The fee may vary according to the size and
40 complexity of the system. The fee is not considered part of the cost of the system to be
41 certified.

42 “SECTION 14. A certificate issued under section 12 of this 2011 Act is required for pur-
43 poses of obtaining tax credits in accordance with section 2 of this 2011 Act. Such certification
44 shall be granted for a period not to exceed five years. The five-year period shall begin with
45 the tax year of the applicant during which the completed application for final certification

1 of the system under section 12 of this 2011 Act is received by the State Department of En-
2 ergy.

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

6 **“(a) The certification was obtained by fraud or misrepresentation;**

7 **“(b) The holder of the certificate or the operator of the system has failed to construct**
8 **or operate the system in compliance with the plans, specifications and procedures in the**
9 **certificate; or**

10 **“(c) The system is no longer in operation.**

11 **“(2) As soon as an order of revocation under this section becomes final, the director shall**
12 **notify the Department of Revenue and the system owner, contract purchaser or lessee of the**
13 **order of revocation. Upon notification, the Department of Revenue immediately shall proceed**
14 **to collect those taxes not paid by the certificate holder as a result of the tax credits provided**
15 **to the certificate holder under section 2 of this 2011 Act, from the certificate holder or a**
16 **successor in interest to the business interests of the certificate holder. All prior tax credits**
17 **provided to the holder of the certificate by virtue of the certificate shall be forfeited.**

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

24 **“(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that**
25 **acquires an interest through bankruptcy or through foreclosure of a security interest is not**
26 **considered to be a successor in interest to the business interests of the person that obtained**
27 **certification.**

28 **“SECTION 16. (1) The total amount of potential tax credits for all renewable energy**
29 **production systems in this state may not, at the time of preliminary certification under**
30 **section 11 of this 2011 Act, exceed \$150 million for the 12 months beginning July 1, 2012, and**
31 **ending July 1, 2013.**

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

35 **“(3) In the event that the Director of the State Department of Energy receives applica-**
36 **tions for preliminary certification with a total amount of potential tax credits in excess of**
37 **the limitations in subsections (1) and (2) of this section, the director shall allocate the issu-**
38 **ance of preliminary certifications according to the standards required by section 8 of this**
39 **2011 Act.**

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

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

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

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

5 “(1) Applications for certification received.

6 “(2) Total amounts of tax credits certified and claimed by tax year.

7 “(3) Total energy produced by systems for which credits are allowed.

8 “(4) Number of jobs created or retained by taxpayers in connection with systems receiv-
9 ing credits.

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

12 “**SECTION 19.** ORS 284.711 is amended to read:

13 “284.711. (1) The Oregon Innovation Council shall provide advice to the Governor, the Legisla-
14 tive Assembly, public and private post-secondary educational institutions, public agencies that pro-
15 vide economic development and the private sector on issues related to:

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

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

20 “(c) Stimulating seed and start-up capital investment and entrepreneurial capacity that will
21 promote economic growth in Oregon traded sector industries;

22 “(d) Developing the entrepreneurial and management capacity critical to the competitiveness of
23 Oregon traded sector industries and rapidly growing global markets;

24 “(e) Enhancing the international competitiveness of Oregon traded sector industries; and

25 “(f) Identifying workforce issues for occupations critical to the competitiveness of Oregon traded
26 sector industries, including but not limited to scientific, engineering, information technology and
27 business management occupations.

28 “(2) The Oregon Innovation Council shall advise the Engineering and Technology Industry
29 Council established in ORS 351.663 on how to coordinate the Engineering and Technology Industry
30 Council’s goals and policies with the state plan developed under ORS 284.715.

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

35 “[(3)] (4) The council, the Oregon Business Development Commission, the State Board of Higher
36 Education and the office of the State Treasurer shall coordinate policies and programs related to
37 the duties of the council.

38 “[(4)] (5) Based on the state plan developed under ORS 284.715, the council may distribute
39 moneys in the Oregon Innovation Fund by grant or pursuant to contracts with public and private
40 post-secondary institutions, state agencies and private sector entities.

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

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

