

A-Engrossed
House Bill 2414

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

Sponsored by Representative READ; Representative BAILEY (Pre-session filed.)

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.

[Transfers administration of income tax credit allowed for renewable energy resource equipment manufacturing facilities from State Department of Energy to Oregon Business Development Department.]

[Becomes operative January 1, 2012.]

Creates income and corporate excise tax credit for new and retrofitted energy conservation projects located in Oregon. Bases amount of tax credit on increased energy savings beyond prevailing recognized standards. Limits tax credits to \$1 million for commercial use projects and to \$500,000 for industrial use projects. Provides incentives for projects that are certified as energy-efficient and environmentally sustainable buildings through Leadership in Energy and Environmental Design (LEED) rating system of U.S. Green Building Council. Limits total tax credits available to all taxpayers to \$50 million for 12-month period beginning July 1, 2012. Reserves up to 10 percent of total tax credits to projects that have obtained LEED certification and up to 10 percent to projects recommended by Oregon Innovation Council. Provides for certification of eligible taxpayers by State Department of Energy. Directs department to establish eligibility standards.

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 an energy con-**
9 **servation project that is certified under sections 6 to 16 of this 2011 Act. The credit allowed**
10 **under this section in each of five succeeding tax years shall be 20 percent of the certified**
11 **cost of the project, 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 project must be located in Oregon.**

14 **(b) If the project is new construction, it must provide energy savings that exceed the**
15 **prevailing recognized standards by at least 10 percent.**

16 **(c) If the project is a retrofit of existing construction during remaining service life, it**
17 **must constitute a replacement of inefficient functional equipment based on remaining service**
18 **life. The State Department of Energy may deny certification under sections 6 to 16 of this**
19 **2011 Act to a project that is a retrofit of existing construction in an early stage of service**

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 life.

2 (d) The project must have a simple payback period of at least two years and not more
3 than 25 years.

4 (e) The project must have received final certification from the Director of the State De-
5 partment of Energy under sections 6 to 16 of this 2011 Act.

6 (f) The taxpayer must be an eligible applicant under section 10 (1)(b) of this 2011 Act.

7 (3) If the project is a retrofit of existing construction undertaken beyond service life, it
8 shall be eligible for a credit for new construction.

9 (4) A credit is not allowed under this section for an alternative fuel vehicle that is a
10 gasoline-electric hybrid vehicle not designed for electric plug-in charging.

11 (5) The total amount of credit allowable under this section shall be determined as follows:

12 (a) For a project other than a project described in paragraph (b) of this subsection, the
13 total amount of credit allowable shall equal \$_____ per kilowatt for the annual incremental
14 energy savings of the project beyond the prevailing recognized standard, not to exceed \$1
15 million for a project in a commercial use or \$500,000 for a project in an industrial use; or

16 (b) For a project that has obtained LEED certification:

17 (A) If the project is new construction, 50 percent of the LEED certification fee, not to
18 exceed \$50,000 per building, plus three percent of the total project cost, if LEED Gold, or six
19 percent of the total cost of the building, if LEED Platinum.

20 (B) If the project is a retrofit of existing construction, 25 percent of the LEED certif-
21 ication fee, not to exceed \$25,000 per building, plus three percent of the total project cost, if
22 LEED Gold, or six percent of the total project cost, if LEED Platinum.

23 (6) The department shall reduce the amount of credit allowable to a taxpayer if:

24 (a) When combined with other government incentives, loans or grants available to the
25 taxpayer, the amount calculated under subsection (5) of this section exceeds 75 percent of
26 the total project cost certified under section 12 of this 2011 Act; or

27 (b) The simple payback period exceeds 15 years.

28 (7) The credit allowed in each of five succeeding tax years shall be 20 percent of the
29 amount provided under subsection (5) of this section, but may not exceed the tax liability of
30 the taxpayer.

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

34 (b) A new owner, or upon re-leasing of the project, 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-
36 quirements of sections 6 to 16 of this 2011 Act and may claim a tax credit under this section
37 only if all moneys owed to the State of Oregon have been paid, if the project continues to
38 operate, unless continued operation is waived by the department, and if all conditions in the
39 final certification are met. The tax credit available to the new owner shall be limited to the
40 amount of credit not claimed by the former owner or, for a new lessor, the amount of credit
41 not claimed by the lessor under all previous leases.

42 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer
43 in a particular year may be carried forward and offset against the taxpayer's tax liability for
44 the next succeeding tax year. Any credit remaining unused in that next succeeding tax year
45 may be carried forward and used in the second succeeding tax year, and likewise, any credit

1 not used in that second succeeding tax year may be carried forward and used in the third
2 succeeding tax year, and likewise, any credit not used in that third succeeding tax year may
3 be carried forward and used in the fourth succeeding tax year, and likewise, any credit not
4 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-
5 ceeding tax year, but may not be carried forward for any tax year thereafter. Credits may
6 be carried forward to and used in a tax year beyond the years specified in subsection (1) of
7 this section only as provided in this subsection.

8 (10) The credit allowed under this section is not in lieu of any depreciation or amorti-
9 zation deduction for the project to which the taxpayer otherwise may be entitled for purposes
10 of ORS chapter 316, 317 or 318 for such year.

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

13 (12) The definitions in section 6 of this 2011 Act apply to this section.

14 **SECTION 3.** The credit allowed under section 2 of this 2011 Act may not be transferred
15 or sold. An applicant may apply with a tax partner that is directly connected to the energy
16 conservation project.

17 **SECTION 4.** A taxpayer may not be allowed a credit under section 2 of this 2011 Act if
18 the first tax year for which the credit would otherwise be allowed, with respect to an energy
19 conservation project certified under section 12 of this 2011 Act, begins on or after January
20 1, 2018.

21 **SECTION 5.** Sections 6 to 16 of this 2011 Act are added to and made a part of ORS
22 chapter 469.

23 **SECTION 6.** As used in sections 6 to 16 of this 2011 Act:

24 (1) "Energy conservation project" means any capital investment for which the first year
25 energy savings yields a simple payback period of greater than one year.

26 (2)(a) "LEED" means the Leadership in Energy and Environmental Design rating system
27 for certification of energy-efficient and environmentally sustainable buildings established by
28 the U.S. Green Building Council.

29 (b) "LEED Gold" means the third of four tiers of standards for certification in the LEED
30 rating system.

31 (c) "LEED Platinum" means the highest of four tiers of standards for certification in the
32 LEED rating system.

33 (3) "New construction" means construction that commences no earlier than January 1
34 of the year in which application for preliminary certification under section 10 of this 2011
35 Act is filed.

36 (4) "Project cost" means the capital costs and expenses necessarily incurred in the
37 erection, construction, installation and acquisition of an energy conservation project.

38 (5) "Project in an industrial use" means a facility whose energy use is predominantly
39 consumed by a process other than heating or cooling, as listed in the National American
40 Industry Classification System (NAICS) code 11-33.

41 (6) "Remaining service life" means _____.

42 (7) "Service life" means _____.

43 (8) "Simple payback period" means _____.

44 **SECTION 7.** (1) In determining the eligibility of any energy conservation project for tax
45 credits, preference shall be given to those projects that provide long-term energy savings

1 from the conservation of energy resources.

2 (2) The Director of the State Department of Energy shall establish by rule a tiered pri-
3 ority system to be used in evaluating applicants for certification of projects. The tier system
4 shall be based upon the projected first-year energy savings of projects. The State Department
5 of Energy shall rely on the criteria established under section 8 of this 2011 Act in determin-
6 ing the eligibility for tax credits and in allocating the available certified cost pursuant to
7 section 16 of this 2011 Act among projects.

8 **SECTION 8.** The State Department of Energy shall by rule establish the following stan-
9 dards relating to energy conservation projects:

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

11 (2) Standards relating to what constitutes a replacement of inefficient functional equip-
12 ment based on remaining service life, for projects that are a retrofit of existing construction.

13 (3) Standards for the determination of total project cost, as required by sections 10 (2)
14 and 12 (6) of this 2011 Act.

15 **SECTION 9.** For an energy conservation project, the total amount of credit that receives
16 a preliminary certification from the Director of the State Department of Energy may not
17 exceed:

18 (1) \$1 million for a project in an industrial use; and

19 (2) \$500,000 for all other projects.

20 **SECTION 10.** (1) Prior to the installation or construction of an energy conservation
21 project, any person may apply to the State Department of Energy for preliminary certif-
22 ication under section 11 of this 2011 Act if:

23 (a) The project complies with the standards adopted by the Director of the State De-
24 partment of Energy; and

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

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

29 (a) A statement that the applicant plans to acquire, construct or install a project that
30 substantially reduces the consumption of purchased energy.

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

34 (c) Information on the amount by which consumption of purchased energy by the appli-
35 cant will be reduced, and, if applicable, information about the expected level of sustainable
36 building practices project performance.

37 (d) The anticipated total project cost.

38 (e) Information on the number and type of jobs that will be created by the project, the
39 number of jobs sustained throughout the construction, installation and operation of the
40 project and the benefits of the project with regard to overall economic activity in this state.

41 (f) Information demonstrating that the project will comply with applicable state and local
42 laws and regulations and obtain required licenses and permits.

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

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

1 (i) Any other information the director considers necessary to determine whether the
2 project is in accordance with the provisions of sections 6 to 16 of this 2011 Act, and any ap-
3 plicable rules or standards adopted by the director.

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

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

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

11 (b) The project would otherwise qualify for certification under sections 6 to 16 of this 2011
12 Act.

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

15 **SECTION 11.** (1) The Director of the State Department of Energy may require an appli-
16 cant for certification of an energy conservation project to submit plans, specifications and
17 contract terms, and after examination of the plans, specifications and terms, may request
18 corrections and revisions.

19 (2) If the director determines that the project is technically feasible and should operate
20 in accordance with the representations made by the applicant, and is in accordance with the
21 provisions of sections 6 to 16 of this 2011 Act and any applicable rules or standards adopted
22 by the director, the director shall issue a preliminary certificate approving the installation
23 or construction of the project. The certificate shall indicate the potential amount of tax
24 credit allowable and shall list any conditions for claiming the credit.

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

27 (a) The project does not comply with the provisions of sections 6 to 16 of this 2011 Act
28 and applicable rules and standards;

29 (b) The applicant has previously received preliminary or final certification for the project;

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

32 (d) The applicant was directly involved in an act for which the director has levied civil
33 penalties or revoked, canceled or suspended any certification under sections 6 to 16 of this
34 2011 Act; or

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

39 **SECTION 12.** (1) A final certification for an energy conservation project may not be is-
40 sued by the Director of the State Department of Energy under this section unless:

41 (a) The project was installed or constructed under a preliminary certificate of approval
42 issued under section 11 of this 2011 Act;

43 (b) The applicant demonstrates the ability to provide the information required by section
44 10 (2) of this 2011 Act and does not violate any condition that may be imposed as described
45 in subsection (3) of this section; and

1 (c) The project was installed or constructed in accordance with the applicable provisions
2 of sections 6 to 16 of this 2011 Act and any applicable rules or standards adopted by the di-
3 rector.

4 (2) Any person may apply to the State Department of Energy for final certification of a
5 project:

6 (a) If the person received preliminary certification for the project under section 11 of this
7 2011 Act; and

8 (b) After completion of the installation or construction of the project.

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

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

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

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

17 (d) The number and type of jobs created by the operation and maintenance of the project
18 over the five-year period beginning with the year of preliminary certification under section
19 11 of this 2011 Act and information on the benefits of the project with regard to overall
20 economic activity in this state;

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

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

25 (g) Information, if applicable, pertaining to prior recommendation of the project by the
26 Oregon Innovation Council; and

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

29 (4) The director shall act on an application for final certification before the 60th day after
30 the filing of the application under this section. The director may issue the certificate to-
31 gether with such conditions as the director determines are appropriate to promote the pur-
32 poses of sections 2 and 6 to 16 of this 2011 Act. If the applicant is an entity subject to
33 regulation by the Public Utility Commission, the director may consult with the commission
34 prior to issuance of the certificate. The action of the director shall include certification of
35 the actual cost of the project. However, the director may not certify an amount for tax
36 credit purposes that is more than the amount approved in the preliminary certificate issued
37 for the project.

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

43 (6) Upon approval of an application for final certification of a project, the director shall
44 certify the project. The final certification shall indicate the amount of projected energy
45 savings attributable to the project and the total project cost.

1 (7) The director may establish by rule timelines and intermediate deadlines for sub-
2 mission of application materials.

3 **SECTION 13.** By rule and after hearing, the Director of the State Department of Energy
4 may adopt a schedule of reasonable fees that the State Department of Energy may require
5 of applicants for preliminary or final certification of an energy conservation project under
6 sections 6 to 16 of this 2011 Act. Before the adoption or revision of the fees, the department
7 shall estimate the total cost of the program to the department. The fees shall be used to
8 recover the anticipated cost of filing, investigating, granting and rejecting applications for
9 certification and shall be designed not to exceed the total cost estimated by the department.
10 Any excess fees shall be held by the department and shall be used by the department to re-
11 duce any future fee increases. The fee may vary according to the size and complexity of the
12 project. The fee is not considered part of the cost of the project to be certified.

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

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

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

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

26 (c) The project is no longer in operation.

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

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

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

44 **SECTION 16.** (1) The total amount of potential tax credits for all energy conservation
45 projects in this state may not, at the time of preliminary certification under section 11 of

1 this 2011 Act, exceed \$50 million for the 12 months beginning July 1, 2012, and ending July
2 1, 2013.

3 (2) Of the amount available under subsection (1) of this section, the State Department
4 of Energy may dedicate the following amounts:

5 (a) For projects that have obtained LEED certification, up to 10 percent of the total.

6 (b) For projects that have a prior recommendation as demonstrative of innovation, as
7 provided in ORS 284.711 (3), up to 10 percent of the total.

8 (3) In the event that the Director of the State Department of Energy receives applica-
9 tions for preliminary certification with a total amount of potential tax credits in excess of
10 the limitations in subsections (1) and (2) of this section, the director shall allocate the issu-
11 ance of preliminary certifications according to the standards required by section 8 of this
12 2011 Act.

13 (4) The director shall review applications and make determinations whether to issue
14 preliminary certifications for proposed projects:

15 (a) Within 90 days of the date on which the application is received, in the case of an ap-
16 plication for certification of a project with a projected first year energy savings of less
17 than _____ kilowatts.

18 (b) Within six months of the date on which the application is received, in the case of an
19 application for certification of a project with a cost of \$6 million or more.

20 **SECTION 17.** The State Department of Energy shall by rule establish procedures for the
21 administration of sections 2 to 4 and 6 to 16 of this 2011 Act.

22 **SECTION 18.** ORS 284.711 is amended to read:

23 284.711. (1) The Oregon Innovation Council shall provide advice to the Governor, the Legislative
24 Assembly, public and private post-secondary educational institutions, public agencies that provide
25 economic development and the private sector on issues related to:

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

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

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

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

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

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

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

41 (3) The council shall recommend to the State Department of Energy, for the purpose of
42 certification by the department of tax credits under sections 2 to 4 and 6 to 16 of this 2011
43 Act, energy conservation projects that demonstrate innovation. These projects may not in-
44 clude research and development projects.

45 [(3)] (4) The council, the Oregon Business Development Commission, the State Board of Higher

1 Education and the office of the State Treasurer shall coordinate policies and programs related to
2 the duties of the council.

3 [(4)] (5) Based on the state plan developed under ORS 284.715, the council may distribute moneys
4 in the Oregon Innovation Fund by grant or pursuant to contracts with public and private post-
5 secondary institutions, state agencies and private sector entities.

6 **SECTION 19. Sections 2 to 4 and 6 to 16 of this 2011 Act apply to applications for pre-**
7 **liminary certification submitted under section 10 of this 2011 Act after July 1, 2012, and to**
8 **tax years beginning on or after January 1, 2012.**

9 **SECTION 20. This 2011 Act takes effect on the 91st day after the date on which the 2011**
10 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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