

## HOUSE AMENDMENTS TO HOUSE BILL 2414

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 lines 3 and 4  
2 and insert “284.711; and prescribing an effective date.”

3 Delete lines 6 through 30 and delete pages 2 through 24 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 an energy con-**  
8 **servation project that is certified under sections 6 to 16 of this 2011 Act. The credit allowed**  
9 **under this section in each of five succeeding tax years shall be 20 percent of the certified**  
10 **cost of the project, 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 project must be located in Oregon.**

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

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

20 **“(d) The project must have a simple payback period of at least two years and not more**  
21 **than 25 years.**

22 **“(e) The project must have received final certification from the Director of the State**  
23 **Department of Energy under sections 6 to 16 of this 2011 Act.**

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

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

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

29 **“(5) The total amount of credit allowable under this section shall be determined as fol-**  
30 **lows:**

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

35 **“(b) For a project that has obtained LEED certification:**

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

4       “(B) If the project is a retrofit of existing construction, 25 percent of the LEED certifi-  
5 cation fee, not to exceed \$25,000 per building, plus three percent of the total project cost, if  
6 LEED Gold, or six percent of the total project cost, if LEED Platinum.

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

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

11       “(b) The simple payback period exceeds 15 years.

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

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

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

26       “(9) Any tax credit otherwise allowable under this section that is not used by the tax-  
27 payer in a particular year may be carried forward and offset against the taxpayer’s tax li-  
28 ability for the next succeeding tax year. Any credit remaining unused in that next succeeding  
29 tax year may be carried forward and used in the second succeeding tax year, and likewise,  
30 any credit not used in that second succeeding tax year may be carried forward and used in  
31 the third succeeding tax year, and likewise, any credit not used in that third succeeding tax  
32 year may be carried forward and used in the fourth succeeding tax year, and likewise, any  
33 credit not used in that fourth succeeding tax year may be carried forward and used in the  
34 fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits  
35 may be carried forward to and used in a tax year beyond the years specified in subsection  
36 (1) of this section only as provided in this subsection.

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

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

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

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

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

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

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

8       “(1) ‘Energy conservation project’ means any capital investment for which the first year  
9 energy savings yields a simple payback period of greater than one year.

10       “(2)(a) ‘LEED’ means the Leadership in Energy and Environmental Design rating system  
11 for certification of energy-efficient and environmentally sustainable buildings established by  
12 the U.S. Green Building Council.

13       “(b) ‘LEED Gold’ means the third of four tiers of standards for certification in the LEED  
14 rating system.

15       “(c) ‘LEED Platinum’ means the highest of four tiers of standards for certification in the  
16 LEED rating system.

17       “(3) ‘New construction’ means construction that commences no earlier than January 1  
18 of the year in which application for preliminary certification under section 10 of this 2011  
19 Act is filed.

20       “(4) ‘Project cost’ means the capital costs and expenses necessarily incurred in the  
21 erection, construction, installation and acquisition of an energy conservation project.

22       “(5) ‘Project in an industrial use’ means a facility whose energy use is predominantly  
23 consumed by a process other than heating or cooling, as listed in the National American  
24 Industry Classification System (NAICS) code 11-33.

25       “(6) ‘Remaining service life’ means \_\_\_\_\_.

26       “(7) ‘Service life’ means \_\_\_\_\_.

27       “(8) ‘Simple payback period’ means \_\_\_\_\_.

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

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

37       “**SECTION 8.** The State Department of Energy shall by rule establish the following  
38 standards relating to energy conservation projects:

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

40       “(2) Standards relating to what constitutes a replacement of inefficient functional  
41 equipment based on remaining service life, for projects that are a retrofit of existing con-  
42 struction.

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

45       “**SECTION 9.** For an energy conservation project, the total amount of credit that receives

1 a preliminary certification from the Director of the State Department of Energy may not  
2 exceed:

3 “(1) \$1 million for a project in an industrial use; and

4 “(2) \$500,000 for all other projects.

5 **“SECTION 10.** (1) Prior to the installation or construction of an energy conservation  
6 project, any person may apply to the State Department of Energy for preliminary certifi-  
7 cation under section 11 of this 2011 Act if:

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

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

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

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

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

19 “(c) Information on the amount by which consumption of purchased energy by the ap-  
20 plicant will be reduced, and, if applicable, information about the expected level of sustainable  
21 building practices project performance.

22 “(d) The anticipated total project cost.

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

26 “(f) Information demonstrating that the project will comply with applicable state and lo-  
27 cal laws and regulations and obtain required licenses and permits.

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

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

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

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

37 “(4) The director may allow an applicant to file the application for preliminary certifi-  
38 cation after the start of installation or construction of the project if the director finds that:

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

41 “(b) The project would otherwise qualify for certification under sections 6 to 16 of this  
42 2011 Act.

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

45 **“SECTION 11.** (1) The Director of the State Department of Energy may require an ap-

1 plicant for certification of an energy conservation project to submit plans, specifications and  
2 contract terms, and after examination of the plans, specifications and terms, may request  
3 corrections and revisions.

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

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

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

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

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

18 “(d) The applicant was directly involved in an act for which the director has levied civil  
19 penalties or revoked, canceled or suspended any certification under sections 6 to 16 of this  
20 2011 Act; or

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

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

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

29 “(b) The applicant demonstrates the ability to provide the information required by section  
30 10 (2) of this 2011 Act and does not violate any condition that may be imposed as described  
31 in subsection (3) of this section; and

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

35 “(2) Any person may apply to the State Department of Energy for final certification of  
36 a project:

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

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

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

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

44 “(b) The actual cost of the project certified to by a certified public accountant who is not  
45 an employee of the applicant or, if the actual cost of the project is less than \$50,000, copies

1 of receipts for purchase and installation of the project;

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

3 “(d) The number and type of jobs created by the operation and maintenance of the project  
4 over the five-year period beginning with the year of preliminary certification under section  
5 11 of this 2011 Act and information on the benefits of the project with regard to overall  
6 economic activity in this state;

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

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

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

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

15 “(4) The director shall act on an application for final certification before the 60th day  
16 after the filing of the application under this section. The director may issue the certificate  
17 together with such conditions as the director determines are appropriate to promote the  
18 purposes of sections 2 and 6 to 16 of this 2011 Act. If the applicant is an entity subject to  
19 regulation by the Public Utility Commission, the director may consult with the commission  
20 prior to issuance of the certificate. The action of the director shall include certification of  
21 the actual cost of the project. However, the director may not certify an amount for tax  
22 credit purposes that is more than the amount approved in the preliminary certificate issued  
23 for the project.

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

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

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

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

44 “**SECTION 14.** A certificate issued under section 12 of this 2011 Act is required for pur-  
45 poses of obtaining tax credits in accordance with section 2 of this 2011 Act. Such certification

1 shall be granted for a period not to exceed five years. The five-year period shall begin with  
2 the tax year of the applicant during which the completed application for final certification  
3 of the project under section 12 of this 2011 Act is received by the State Department of En-  
4 ergy.

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

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

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

12 **“(c)** The project is no longer in operation.

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

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

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

30 **“SECTION 16.** (1) The total amount of potential tax credits for all energy conservation  
31 projects in this state may not, at the time of preliminary certification under section 11 of  
32 this 2011 Act, exceed \$50 million for the 12 months beginning July 1, 2012, and ending July  
33 1, 2013.

34 **“(2)** Of the amount available under subsection (1) of this section, the State Department  
35 of Energy may dedicate the following amounts:

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

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

39 **“(3)** In the event that the Director of the State Department of Energy receives applica-  
40 tions for preliminary certification with a total amount of potential tax credits in excess of  
41 the limitations in subsections (1) and (2) of this section, the director shall allocate the issu-  
42 ance of preliminary certifications according to the standards required by section 8 of this  
43 2011 Act.

44 **“(4)** The director shall review applications and make determinations whether to issue  
45 preliminary certifications for proposed projects:

1       “(a) Within 90 days of the date on which the application is received, in the case of an  
2 application for certification of a project with a projected first year energy savings of less  
3 than \_\_\_\_\_ kilowatts.

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

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

8       “**SECTION 18.** ORS 284.711 is amended to read:

9       “284.711. (1) The Oregon Innovation Council shall provide advice to the Governor, the Legisla-  
10 tive Assembly, public and private post-secondary educational institutions, public agencies that pro-  
11 vide economic development and the private sector on issues related to:

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

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

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

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

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

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

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

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

31       “~~[(3)]~~ (4) The council, the Oregon Business Development Commission, the State Board of Higher  
32 Education and the office of the State Treasurer shall coordinate policies and programs related to  
33 the duties of the council.

34       “~~[(4)]~~ (5) Based on the state plan developed under ORS 284.715, the council may distribute  
35 moneys in the Oregon Innovation Fund by grant or pursuant to contracts with public and private  
36 post-secondary institutions, state agencies and private sector entities.

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

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