

B-Engrossed
House Bill 2523

Ordered by the House May 31
Including House Amendments dated April 26 and May 31

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

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.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to energy; creating new provisions; amending ORS 314.752, 315.053, 315.354, 315.356,
3 315.357, 469.185, 469.197, 469.200, 469.205 and 469.225 and section 2, chapter 76, Oregon Laws
4 2010; and prescribing an effective date.

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

6 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**
7 **chapter 315.**

8 **SECTION 2. (1) A credit is allowed against the taxes otherwise due under ORS chapter**
9 **316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the cer-**
10 **tified cost of a renewable energy resource equipment manufacturing facility during the pe-**
11 **riod for which the facility is certified under sections 5 to 15 of this 2011 Act. The credit**
12 **allowed under this section in each of five succeeding tax years shall be 10 percent of the**
13 **certified cost of the facility, but may not exceed the tax liability of the taxpayer.**

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

15 **(a) The facility must be located in Oregon;**

16 **(b) The facility must have received:**

17 **(A) Final certification from the Director of the Oregon Business Development Depart-**
18 **ment under sections 5 to 15 of this 2011 Act; or**

19 **(B) Final certification from the Director of the State Department of Energy under ORS**
20 **469.185 to 469.225, prior to the operative date of this section; and**

21 **(c) The taxpayer must be an eligible applicant under section 8 (1)(b) of this 2011 Act.**

22 **(3) The total amount of credit allowable to an eligible taxpayer under this section may**
23 **not exceed 50 percent of the certified cost of a facility.**

24 **(4)(a) Upon any sale, termination of the lease or contract, exchange or other disposition**
25 **of the facility, notice thereof shall be given to the Director of the Oregon Business Devel-**
26 **opment Department, who shall revoke the certificate covering the facility as of the date of**

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 such disposition.

2 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new
3 certificate under section 11 of this 2011 Act. The new lessor or owner must meet the re-
4 quirements of sections 5 to 15 of this 2011 Act and may claim a tax credit under this section
5 only if all moneys owed to the State of Oregon have been paid, the facility continues to op-
6 erate, unless continued operation is waived by the Oregon Business Development Depart-
7 ment, and all conditions in the final certification are met. The tax credit available to the
8 new owner shall be limited to the amount of credit not claimed by the former owner or, for
9 a new lessor, the amount of credit not claimed by the lessor under all previous leases.

10 (c) A transferee holding a credit that has been transferred under section 9 of this 2011
11 Act may not claim the tax credit under this section for any tax year prior to the tax year
12 in which the transferee obtained the credit.

13 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
14 in a particular year may be carried forward and offset against the taxpayer's tax liability for
15 the next succeeding tax year. Any credit remaining unused in that next succeeding tax year
16 may be carried forward and used in the second succeeding tax year, and likewise, any credit
17 not used in that second succeeding tax year may be carried forward and used in the third
18 succeeding tax year, and likewise, any credit not used in that third succeeding tax year may
19 be carried forward and used in the fourth succeeding tax year, and likewise, any credit not
20 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-
21 ceeding tax year, and likewise, any credit not used in that fifth succeeding tax year may be
22 carried forward and used in the sixth succeeding tax year, and likewise, any credit not used
23 in that sixth succeeding tax year may be carried forward and used in the seventh succeeding
24 tax year, and likewise, any credit not used in that seventh succeeding tax year may be car-
25 ried forward and used in the eighth succeeding tax year, but may not be carried forward for
26 any tax year thereafter. Credits may be carried forward to and used in a tax year beyond
27 the years specified in subsection (1) of this section only as provided in this subsection.

28 (6) The credit allowed under this section is not in lieu of any depreciation or amortization
29 deduction for the facility to which the taxpayer otherwise may be entitled for purposes of
30 ORS chapter 316, 317 or 318 for such year.

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

33 (8) The definitions in section 5 of this 2011 Act apply to this section.

34 **SECTION 3.** A taxpayer may not be allowed a credit under section 2 of this 2011 Act
35 unless the taxpayer receives preliminary certification under section 10 of this 2011 Act before
36 January 1, 2014.

37 **SECTION 4.** Sections 5 to 15 of this 2010 Act are added to and made a part of ORS
38 chapter 285C.

39 **SECTION 5.** As used in sections 5 to 15 of this 2011 Act:

40 (1) "Component parts of electric vehicles" does not include:

41 (a) Parts that may be used in both electric and conventional vehicles; or

42 (b) Batteries.

43 (2) "Cost" means the capital costs and expenses necessarily incurred in the erection,
44 construction, installation and acquisition of a facility.

45 (3) "Electric vehicles" means vehicles that are designed for use as Class I or Class II

1 all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used
2 for agricultural, commercial, industrial or governmental purposes, or vehicles that are de-
3 signed for use as modes of transportation on public roads and highways. The Director of the
4 Oregon Business Development Department may further define “agricultural, commercial,
5 industrial or governmental purposes” of electric vehicles by rule.

6 (4)(a) “Renewable energy resource” includes, but is not limited to:

7 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetro-
8 leum plant or animal based biomass, ocean wave energy, solar energy, wind power, water
9 power or geothermal energy;

10 (B) A hydroelectric generating facility that obtains all applicable permits and complies
11 with all state and federal statutory requirements for the protection of fish and wildlife and
12 that:

13 (i) Does not exceed 10 megawatts of installed capacity; or

14 (ii) Qualifies as a research, development or demonstration facility; or

15 (C) A renewable energy storage device as defined by the director by rule.

16 (b) “Renewable energy resource” does not include a hydroelectric generating facility that
17 is not described in paragraph (a) of this subsection.

18 (5) “Renewable energy resource equipment manufacturing facility” means any structure,
19 building, installation, excavation, device, machinery or equipment, or an addition, recon-
20 struction or improvement to land, to an existing structure, building, installation, excavation
21 or device or to existing machinery or equipment, that is necessarily acquired, constructed
22 or installed by a person in connection with the conduct of a trade or business and that is
23 used primarily to manufacture:

24 (a) Component parts of electric vehicles.

25 (b) Electric vehicles.

26 (c) Equipment, machinery or other products designed to use a renewable energy resource
27 and that meets the criteria established under section 6 of this 2011 Act.

28 (d) Renewable energy storage devices.

29 **SECTION 6.** The Oregon Business Development Department shall by rule establish all of
30 the following criteria:

31 (1) Standards relating to the type of equipment, machinery or other products being
32 manufactured and related performance and efficiency standards applicable to the manufac-
33 tured products;

34 (2) Standards, consistent with the definitions in section 5 of this 2011 Act and relating
35 to what constitutes a single renewable energy resource equipment manufacturing facility,
36 that include:

37 (a) Standards establishing what constitutes property that is not included within a facility;
38 and

39 (b) The consideration of such factors as phases of development, expansion of or additions
40 to existing facilities or product lines, increased production and number of jobs created or
41 maintained by an applicant;

42 (3) Standards requiring that the minimum levels of increased employment in Oregon for
43 a facility are proportionate to industry standards and to the amount of tax credit allowed;

44 (4) Standards requiring that the compensation paid and benefits provided to employees
45 of an applicant meet or exceed the national average in annual compensation for comparable

1 employment;

2 (5) Standards that can be independently reviewed by a third party:

3 (a) Relating to indicators of financial viability of an applicant for preliminary certification
4 under section 8 of this 2011 Act; and

5 (b) Relating to the likelihood of long-term operation and success of a facility; and

6 (6) Standards relating to the likelihood that an applicant seeking preliminary certification
7 of a facility will base decisions to locate or expand a facility in Oregon on the allowance of
8 a tax credit under section 2 of this 2011 Act.

9 **SECTION 7.** (1) For a renewable energy resource equipment manufacturing facility, the
10 total cost that receives a preliminary certification from the Director of the Oregon Business
11 Development Department for tax credits in any calendar year may not exceed:

12 (a) \$2.5 million in the case of a facility used to manufacture electric vehicles or compo-
13 nent parts of electric vehicles; or

14 (b) \$40 million, in the case of any other facility.

15 (2) Notwithstanding subsection (1) of this section, the director may certify a lesser
16 amount than the total cost of the facility, or need not certify any amount, if any of the fol-
17 lowing conditions exist at the time of preliminary certification:

18 (a) The last quarterly economic and revenue forecast for a biennium indicates that
19 moneys available to the General Fund for the next biennium will be at least three percent
20 less than appropriations from the General Fund for the current biennium;

21 (b) A quarterly economic and revenue forecast projects that revenues in the General
22 Fund in the current biennium will be at least two percent below what revenues were
23 projected to be in the revenue forecast on which the legislatively adopted budget, as defined
24 in ORS 291.002, for the current biennium was based;

25 (c) The proposed facility, in the estimate of the director, does not possess the likelihood
26 of success established in criteria of success under section 6 (5) of this 2011 Act;

27 (d) The proposed facility, in the estimate of the director, is not likely to increase em-
28 ployment in Oregon to the minimum levels required in rules adopted under section 6 (3) of
29 this 2011 Act;

30 (e) The applicant lacks the minimum level of financial viability established in rules
31 adopted under section 6 (5) of this 2011 Act;

32 (f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate
33 or expand a facility in Oregon on allowance of the tax credit, given the criteria established
34 in rules under section 6 (6) of this 2011 Act; or

35 (g) During a time period listed in section 15 of this 2011 Act, the director receives appli-
36 cations for preliminary certification with a total amount of potential tax credits in excess
37 of the limitation for the time period.

38 (3) The director shall determine the dollar amount certified for any facility and the pri-
39 ority between applications for certification based upon the criteria contained in sections 5
40 to 15 of this 2011 Act and applicable rules and standards adopted under sections 5 to 15 of
41 this 2011 Act. The director may consider the status of a facility as a research, development
42 or demonstration facility of new renewable resource generating and conservation technolo-
43 gies in the determination.

44 **SECTION 8.** (1) Prior to erection, construction, installation or acquisition of a proposed
45 renewable energy resource equipment manufacturing facility, any person may apply to the

1 Oregon Business Development Department for preliminary certification under section 10 of
2 this 2011 Act if:

3 (a) The facility complies with the standards or rules adopted by the Director of the
4 Oregon Business Development Department; and

5 (b) The applicant meets one of the following criteria:

6 (A) The applicant is a person to whom a tax credit for the facility has been transferred;
7 or

8 (B) The applicant will be the owner, contract purchaser or lessee of the facility at the
9 time of erection, construction, installation or acquisition of the proposed facility, and:

10 (i) The applicant is the owner, contract purchaser or lessee of a trade or business that
11 plans to utilize the facility in connection with Oregon property; or

12 (ii) The applicant is the owner, contract purchaser or lessee of a trade or business that
13 plans to lease the facility to a person that will utilize the facility in connection with Oregon
14 property.

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

17 (a) A statement that the applicant or the lessee of the applicant's facility plans to ac-
18 quire, construct or install a facility.

19 (b) A detailed description of the proposed facility and its operation and information
20 showing that the facility will operate as represented in the application and remain in opera-
21 tion for at least five years, unless the director by rule specifies a shorter period of operation.

22 (c) The projected cost of the facility.

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

26 (e) Information demonstrating that the proposed facility will comply with applicable state
27 and local laws and regulations and obtain required licenses and permits.

28 (f) Information relating to the criteria described in ORS 469.195.

29 (g) Any other information the director considers necessary to determine whether the
30 proposed facility is in accordance with the provisions of sections 5 to 15 of this 2011 Act, and
31 any applicable rules or standards adopted by the director.

32 (3) An application for preliminary certification shall be accompanied by a fee established
33 under section 12 of this 2011 Act. The director may refund all or a portion of the fee if the
34 application for certification is rejected.

35 (4) The director may allow an applicant to file the preliminary application after the start
36 of erection, construction, installation or acquisition of the facility if the director finds:

37 (a) Filing the application before the start of erection, construction, installation or ac-
38 quisition is inappropriate because special circumstances render filing earlier unreasonable;
39 and

40 (b) The facility would otherwise qualify for tax credit certification pursuant to sections
41 5 to 15 of this 2011 Act.

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

44 **SECTION 9.** (1) The owner, contract purchaser or lessee of a renewable energy resource
45 equipment manufacturing facility may transfer a tax credit for the facility in exchange for

1 a cash payment equal to the present value of the tax credit.

2 (2) The Director of the Oregon Business Development Department shall establish by rule
3 a formula to be employed in the determination of prices of credits transferred under this
4 section. In establishing the formula the department shall incorporate inflation projections
5 and market real rate of return.

6 (3) The director shall recalculate credit transfer prices quarterly, employing the formula
7 established under subsection (2) of this section.

8 **SECTION 10.** (1) The Director of the Oregon Business Development Department may re-
9 quire the submission of plans, specifications and contract terms and after examination of the
10 plans, specifications and terms, may request corrections and revisions.

11 (2) If the director determines that the proposed erection, construction, installation or
12 acquisition is technically feasible and should operate in accordance with the representations
13 made by the applicant, and is in accordance with the provisions of sections 5 to 15 of this
14 2011 Act and any applicable rules or standards adopted by the director, the director shall
15 issue a preliminary certificate approving the erection, construction, installation or acqui-
16 sition of the facility. The certificate shall indicate the potential amount of tax credit allowable
17 and shall list any conditions for claiming the credit.

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

20 (a) The erection, construction, installation or acquisition does not comply with the pro-
21 visions of sections 5 to 15 of this 2011 Act and applicable rules and standards;

22 (b) The applicant has previously received preliminary or final certification for the same
23 costs;

24 (c) The applicant is unable to demonstrate that the facility would be economically viable
25 without the allowance of additional credits under section 2 of this 2011 Act;

26 (d) The applicant was directly involved in an act for which the director has levied civil
27 penalties or revoked, canceled or suspended any certification under sections 5 to 15 of this
28 2011 Act; or

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

33 **SECTION 11.** (1) A final certification may not be issued by the Director of the Oregon
34 Business Development Department under this section unless:

35 (a) The renewable energy resource equipment manufacturing facility was erected, con-
36 structed, installed or acquired under a preliminary certificate of approval issued under sec-
37 tion 10 of this 2011 Act or ORS 469.210;

38 (b) The applicant demonstrates the ability to provide the information required by section
39 8 (2) of this 2011 Act and does not violate any condition that may be imposed as described in
40 section 10 (3) of this 2011 Act; and

41 (c) The facility was erected, constructed, installed or acquired in accordance with the
42 applicable provisions of sections 5 to 15 of this 2011 Act and any applicable rules or standards
43 adopted by the director.

44 (2) Any person may apply to the Oregon Business Development Department for final
45 certification of a facility:

1 (a) If the person received preliminary certification for the facility under section 10 of this
2 2011 Act or under ORS 469.210; and

3 (b)(A) After completion of erection, construction, installation or acquisition of the pro-
4 posed facility; or

5 (B) After transfer of the facility, as provided in section 2 (4) of this 2011 Act.

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

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

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

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

14 (d) The number and type of jobs created by the operation and maintenance of the facility
15 over the five-year period beginning with the year of preliminary certification under section
16 10 of this 2011 Act and information on the benefits of the facility with regard to overall
17 economic activity in this state;

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

20 (f) Information sufficient to demonstrate, in the case of a research, development or
21 demonstration facility that is not in operation, that the applicant has made reasonable ef-
22 forts to make the facility operable and to meet the requirements of the preliminary certif-
23 icate;

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

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

28 (4) The director shall act on an application for certification before the 60th day after the
29 filing of the application under this section. The director may issue the certificate together
30 with such conditions as the director determines are appropriate to promote the purposes of
31 sections 2 and 5 to 15 of this 2011 Act. If the applicant is an entity subject to regulation by
32 the Public Utility Commission, the director may consult with the commission prior to issu-
33 ance of the certificate. The action of the director shall include certification of the actual cost
34 of the facility. However, the director may not certify an amount for tax credit purposes that
35 is more than the amount approved in the preliminary certificate issued for the facility.

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

41 (6) Upon approval of an application for final certification of a facility, the director shall
42 certify the facility. Each certificate shall bear a separate serial number for each device.
43 Where one or more devices constitute an operational unit, the director may certify the op-
44 erational unit under one certificate.

45 (7) The director shall enter into a performance agreement with the applicant at the time

1 of certification under this section. The performance agreement shall include conditions with
2 which the applicant must comply in order to maintain certification, including a deadline by
3 which the applicant must comply with the employment and compensation standards of sec-
4 tion 6 (3) and (4) of this 2011 Act.

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

7 **SECTION 12.** By rule and after hearing, the Director of the Oregon Business Develop-
8 ment Department may adopt a schedule of reasonable fees that the Oregon Business Devel-
9 opment Department may require of applicants for preliminary or final certification under
10 sections 5 to 15 of this 2011 Act. Before the adoption or revision of the fees, the department
11 shall estimate the total cost of the program to the department. The fees shall be used to
12 recover the anticipated cost of filing, investigating, granting and rejecting applications for
13 certification and shall be designed not to exceed the total cost estimated by the department.
14 Any excess fees shall be held by the department and shall be used by the department to re-
15 duce any future fee increases. The fee may vary according to the size and complexity of the
16 facility. The fee is not considered part of the cost of the facility to be certified.

17 **SECTION 13.** A certificate issued under section 11 of this 2011 Act or ORS 469.215 is re-
18 quired for purposes of obtaining tax credits in accordance with section 2 of this 2011 Act.
19 Such certification shall be granted for a period not to exceed five years. The five-year period
20 shall begin with the tax year of the applicant during which the completed application for final
21 certification of the facility under section 11 of this 2011 Act is received by the State De-
22 partment of Energy.

23 **SECTION 14.** (1) Under the procedures for a contested case under ORS chapter 183, the
24 Director of the Oregon Business Development Department may order the suspension or re-
25 vocation of the certificate issued under section 11 of this 2011 Act or ORS 469.215 if the di-
26 rector finds that:

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

28 (b) The holder of the certificate or the operator of the facility has failed to construct or
29 operate the facility in compliance with the plans, specifications and procedures in the cer-
30 tificate or the performance agreement; or

31 (c) The facility is no longer in operation.

32 (2) As soon as the order of revocation under this section becomes final, the director shall
33 notify the Department of Revenue, the facility owner, contract purchaser or lessee and any
34 transferee under section 9 of this 2011 Act of the order of revocation. Upon notification, the
35 Department of Revenue immediately shall proceed to collect:

36 (a) In the case in which no portion of a certificate has been transferred under section 9
37 of this 2011 Act, those taxes not paid by the certificate holder as a result of the tax credits
38 provided to the certificate holder under section 2 of this 2011 Act, from the certificate holder
39 or a successor in interest to the business interests of the certificate holder. All prior tax
40 credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

41 (b) In the case in which all or a portion of a certificate has been transferred under sec-
42 tion 9 of this 2011 Act, the maximum theoretical amount of the tax credits allowable under
43 section 2 of this 2011 Act, from the transferor.

44 (3)(a) The Department of Revenue shall have the benefit of all laws of this state per-
45 taining to the collection of income and excise taxes and may proceed to collect the amounts

1 described in subsection (2) of this section from the person that obtained certification from
2 the State Department of Energy or from the Oregon Business Development Department, or
3 any successor in interest to the business interests of that person. No assessment of tax shall
4 be necessary and no statute of limitation shall preclude the collection of taxes described in
5 this subsection.

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

10 (4) Notwithstanding subsections (1) to (3) of this section, a certificate or portion of a
11 certificate held by a transferee under section 9 of this 2011 Act may not be considered re-
12 voked for purposes of the transferee, the tax credit allowable to the transferee under section
13 2 of this 2011 Act may not be reduced and a transferee is not liable under subsections (2) and
14 (3) of this section.

15 **SECTION 15.** The total amount of potential tax credits for all renewable energy resource
16 equipment manufacturing facilities under sections 5 to 15 of this 2011 Act, combined with the
17 total amount of potential tax credits for renewable energy resource equipment manufactur-
18 ing facilities allowed under ORS 469.205 (2)(a)(O) as in effect before the operative date of this
19 section, may not, at the time of preliminary certification under section 10 of this 2011 Act,
20 exceed:

21 (a) \$200 million for the biennium ending June 30, 2011.

22 (b) \$200 million for the biennium ending June 30, 2013.

23 (c) \$50 million for the six months beginning July 1, 2013, and ending December 31, 2013.

24 **SECTION 16.** The duties, functions and powers of the State Department of Energy re-
25 lating to the administration of income tax credits available under ORS 315.354 and 469.185 to
26 469.225 as applicable to renewable energy resource equipment manufacturing facilities are
27 imposed upon, transferred to and vested in the Oregon Business Development Department.

28 **SECTION 17.** (1) The Director of the State Department of Energy shall:

29 (a) Deliver to the Oregon Business Development Department all records and property
30 within the jurisdiction of the director that relate to the duties, functions and powers trans-
31 ferred by section 16 of this 2011 Act; and

32 (b) Transfer to the Oregon Business Development Department those employees engaged
33 primarily in the exercise of the duties, functions and powers transferred by section 16 of this
34 2011 Act.

35 (2) The Director of the Oregon Business Development Department shall take possession
36 of the records and property, and shall take charge of the employees and employ them in the
37 exercise of the duties, functions and powers transferred by section 16 of this 2011 Act,
38 without reduction of compensation but subject to change or termination of employment or
39 compensation as provided by law.

40 (3) The Governor shall resolve any dispute between the State Department of Energy and
41 the Oregon Business Development Department relating to transfers of records, property and
42 employees under this section, and the Governor's decision is final.

43 **SECTION 18.** (1) The unexpended balances of amounts authorized to be expended by the
44 State Department of Energy for the biennium beginning July 1, 2011, from revenues dedi-
45 cated, continuously appropriated, appropriated or otherwise made available for the purpose

1 of administering and enforcing the duties, functions and powers transferred by section 16 of
2 this 2011 Act are transferred to and are available for expenditure by the Oregon Business
3 Development Department for the biennium beginning July 1, 2011, for the purpose of admin-
4 istering and enforcing the duties, functions and powers transferred by section 16 of this 2011
5 Act.

6 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
7 expenditures by the State Department of Energy remain applicable to expenditures by the
8 Oregon Business Development Department under this section.

9 **SECTION 19.** The transfer of duties, functions and powers to the Oregon Business De-
10 velopment Department by section 16 of this 2011 Act does not affect any action, proceeding
11 or prosecution involving or with respect to such duties, functions and powers begun before
12 and pending at the time of the transfer, except that the Oregon Business Development De-
13 partment is substituted for the State Department of Energy in the action, proceeding or
14 prosecution.

15 **SECTION 20.** (1) Nothing in sections 16 to 19 of this 2011 Act relieves a person of a li-
16 ability, duty or obligation accruing under or with respect to the duties, functions and powers
17 transferred by section 16 of this 2011 Act. The Oregon Business Development Department
18 may undertake the collection or enforcement of any such liability, duty or obligation.

19 (2) The rights and obligations of the State Department of Energy legally incurred under
20 contracts, leases and business transactions executed, entered into or begun before the op-
21 erative date of section 16 of this 2011 Act accruing under or with respect to the duties,
22 functions and powers transferred by section 16 of this 2011 Act are transferred to the Oregon
23 Business Development Department. For the purpose of succession to these rights and obli-
24 gations, the Oregon Business Development Department is a continuation of the State De-
25 partment of Energy and not a new authority.

26 **SECTION 21.** Notwithstanding the transfer of duties, functions and powers by section 16
27 of this 2011 Act, the rules of the State Department of Energy with respect to such duties,
28 functions or powers that are in effect on the operative date of section 16 of this 2011 Act
29 continue in effect until superseded or repealed by rules of the Oregon Business Development
30 Department. References in such rules of the State Department of Energy to the State De-
31 partment of Energy or an officer or employee of the State Department of Energy are con-
32 sidered to be references to the Oregon Business Development Department or an officer or
33 employee of the Oregon Business Development Department.

34 **SECTION 22.** Whenever, in any uncodified law or resolution of the Legislative Assembly
35 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
36 the context of the duties, functions and powers transferred by section 16 of this 2011 Act,
37 reference is made to the State Department of Energy, or an officer or employee of the State
38 Department of Energy, whose duties, functions or powers are transferred by section 16 of
39 this 2011 Act, the reference is considered to be a reference to the Oregon Business Devel-
40 opment Department or an officer or employee of the Oregon Business Development Depart-
41 ment who by this 2011 Act is charged with carrying out such duties, functions and powers.

42 **SECTION 23.** ORS 315.354, as amended by section 3, chapter 76, Oregon Laws 2010, is amended
43 to read:

44 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
45 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the

1 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
2 is allowed as follows:

3 (a) Except as provided in paragraph (b) or (c) of this subsection, the credit allowed in each of
4 the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the
5 facility, but may not exceed the tax liability of the taxpayer. The credit allowed in each of the
6 succeeding three years shall be five percent of the certified cost, but may not exceed the tax liability
7 of the taxpayer.

8 (b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit
9 allowable under subsection (4) of this section may be claimed in the first tax year for which the
10 credit may be claimed, but may not exceed the tax liability of the taxpayer.

11 (c) If the facility uses or produces renewable energy resources [*or is a renewable energy resource*
12 *equipment manufacturing facility*], the credit allowed in each of five succeeding tax years shall be
13 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

14 (2) Notwithstanding subsection (1) of this section:

15 (a) If the facility is one or more renewable energy resource systems installed in a single-family
16 dwelling, the amount of the credit for each system shall be determined as if the facility was con-
17 sidered a residential alternative energy device under ORS 316.116, but subject to the maximum
18 credit amount under subsection (4)(b) of this section;

19 (b) If the facility is a high-performance home, the amount of the credit shall equal the amount
20 determined under paragraph (a) of this subsection plus \$3,000; and

21 (c) If the facility is a high-performance home or a homebuilder-installed renewable energy sys-
22 tem, the total amount of the credit may be claimed in the first tax year for which the credit is
23 claimed, but may not exceed the tax liability of the taxpayer.

24 (3) In order for a tax credit to be allowable under this section:

25 (a) The facility must be located in Oregon;

26 (b) The facility must have received final certification from the Director of the State Department
27 of Energy under ORS 469.185 to 469.225;

28 (c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c); and

29 (d) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not designed for electric
30 plug-in charging, it must be purchased before January 1, 2010.

31 (4) The total amount of credit allowable to an eligible taxpayer under this section may not ex-
32 ceed:

33 (a) 50 percent of the certified cost of a renewable energy resources facility[, *a renewable energy*
34 *resource equipment manufacturing facility*] or a high-efficiency combined heat and power facility;

35 (b) \$9,000 per single-family dwelling for homebuilder-installed renewable energy systems;

36 (c) \$12,000 per single-family dwelling for homebuilder-installed renewable energy systems, if the
37 dwelling also constitutes a high-performance home; or

38 (d) 35 percent of the certified cost of any other facility.

39 (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
40 facility, notice thereof shall be given to the Director of the State Department of Energy, who shall
41 revoke the certificate covering the facility as of the date of such disposition.

42 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new cer-
43 tificate under ORS 469.215. The new lessor or owner must meet the requirements of ORS 469.185 to
44 469.225 and may claim a tax credit under this section only if all moneys owed to the State of Oregon
45 have been paid, the facility continues to operate, unless continued operation is waived by the State

1 Department of Energy, and all conditions in the final certification are met. The tax credit available
2 to the new owner shall be limited to the amount of credit not claimed by the former owner or, for
3 a new lessor, the amount of credit not claimed by the lessor under all previous leases.

4 (c) The State Department of Energy may not revoke the certificate covering a facility under
5 paragraph (a) of this subsection if the tax credit associated with the facility has been transferred
6 to a taxpayer who is an eligible applicant under ORS 469.205 (1)(c)(A).

7 (d) A transferee holding a credit that has been transferred under ORS 469.206 or 469.208 may
8 not claim the tax credit under this section for any tax year prior to the tax year in which the
9 transferee obtained the credit.

10 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
11 particular year may be carried forward and offset against the taxpayer's tax liability for the next
12 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
13 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
14 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
15 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
16 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
17 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
18 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
19 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
20 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
21 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
22 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
23 yond the years specified in subsection (1) of this section only as provided in this subsection.

24 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
25 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
26 316, 317 or 318 for such year.

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

29 (9) If a homebuilder claims a credit under this section with respect to a homebuilder-installed
30 renewable energy system or a high-performance home:

31 (a) The homebuilder may not claim credits for both a homebuilder-installed renewable energy
32 system and a high-performance home with respect to the same dwelling;

33 (b) The homebuilder must inform the buyer of the dwelling that the homebuilder is claiming a
34 tax credit under this section with respect to the dwelling; and

35 (c) The buyer of the dwelling may not claim a credit under this section that is based on any
36 facility for which the homebuilder has already claimed a credit.

37 (10) The definitions in ORS 469.185 apply to this section.

38 **SECTION 24.** ORS 315.357, as amended by section 5, chapter 76, Oregon Laws 2010, is amended
39 to read:

40 315.357. *[(1) Except as provided in subsection (2) of this section,] A taxpayer may not be allowed*
41 *a credit under ORS 315.354 unless the taxpayer receives final certification under ORS 469.215 before*
42 *July 1, 2012.*

43 *[(2) A taxpayer may not be allowed a credit under ORS 315.354 for a renewable energy resource*
44 *equipment manufacturing facility unless the taxpayer receives preliminary certification under ORS*
45 *469.210 before January 1, 2014.]*

1 **SECTION 25.** ORS 469.185, as amended by section 4, chapter 76, Oregon Laws 2010, is amended
2 to read:

3 469.185. As used in ORS 469.185 to 469.225 and 469.878:

4 (1) “Alternative fuel vehicle” means a vehicle as defined by the Director of the State Depart-
5 ment of Energy by rule that is used primarily in connection with the conduct of a trade or business
6 and that is manufactured or modified to use an alternative fuel, including but not limited to elec-
7 tricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption
8 savings.

9 (2) “Car sharing facility” means the expenses of operating a car sharing program, including but
10 not limited to the fair market value of parking spaces used to store the fleet of cars available for
11 a car sharing program, but does not include the costs of the fleet of cars.

12 (3) “Car sharing program” means a program in which drivers pay to become members in order
13 to have joint access to a fleet of cars from a common parking area on an hourly basis. “Car sharing
14 program” does not include operations conducted by car rental agencies.

15 (4) “Cost” means the capital costs and expenses necessarily incurred in the [*acquisition,*]
16 erection, construction, [*and*] installation **and acquisition** of a facility, including site development
17 costs and expenses for a sustainable building practices facility.

18 (5) “Energy facility” means any capital investment for which the first year energy savings yields
19 a simple payback period of greater than one year. An energy facility includes:

20 (a) Any land, structure, building, installation, excavation, machinery, equipment or device, or
21 any addition to, reconstruction of or improvement of, land or an existing structure, building, instal-
22 lation, excavation, machinery, equipment or device necessarily [*acquired,*] erected, constructed, [*or*]
23 installed **or acquired** by any person in connection with the conduct of a trade or business and ac-
24 tually used in the processing or utilization of renewable energy resources to:

25 (A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

26 (B) Provide the initial use of energy where electricity, petroleum or natural gas would have been
27 used;

28 (C) Generate electricity to replace an existing source of electricity or to provide a new source
29 of electricity for sale by or use in the trade or business;

30 (D) Perform a process that obtains energy resources from material that would otherwise be solid
31 waste as defined in ORS 459.005; or

32 (E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol,
33 methanol, gasohol or biodiesel.

34 (b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing
35 structure, building, installation, excavation, machinery, equipment or device necessarily [*acquired,*]
36 erected, constructed, [*or*] installed **or acquired** by any person in connection with the conduct of a
37 trade or business in order to substantially reduce the consumption of purchased energy.

38 (c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is
39 defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance
40 standard in the state building code.

41 (d) The replacement of an electric motor with another electric motor that substantially reduces
42 the consumption of electricity.

43 (6) “Facility” means an energy facility, recycling facility, transportation facility, car sharing
44 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
45 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling

1 station, a high-efficiency combined heat and power facility, a high-performance home[,] **or** a
2 homebuilder-installed renewable energy system[, *or a renewable energy resource equipment manufac-*
3 *turing facility*].

4 (7) “High-efficiency combined heat and power facility” means a device or equipment that simul-
5 taneously produces heat and electricity from a single source of fuel and that meets the criteria es-
6 tablished for a high-efficiency combined heat and power facility under ORS 469.197.

7 (8) “High-performance home” means a new single-family dwelling that:

8 (a) Is designed and constructed to reduce net purchased energy through use of both energy ef-
9 ficiency and on-site renewable energy resources; and

10 (b) Meets the criteria established for a high-performance home under ORS 469.197.

11 (9) “Homebuilder-installed renewable energy system” means a renewable energy resource system
12 that:

13 (a) Meets the criteria established for a renewable energy resource system under ORS 469.197;
14 and

15 (b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder con-
16 structing the dwelling.

17 (10) “Qualified transit pass contract” means a purchase agreement entered into between a
18 transportation provider and a person, the terms of which obligate the person to purchase transit
19 passes on behalf or for the benefit of employees, students, patients or other individuals over a
20 specified period of time.

21 (11) “Recycling facility” means equipment used by a trade or business solely for recycling:

22 (a) Including:

23 (A) Equipment used solely for hauling and refining used oil;

24 (B) New vehicles or modifications to existing vehicles used solely to transport used recyclable
25 materials that cannot be used further in their present form or location such as glass, metal, paper,
26 aluminum, rubber and plastic;

27 (C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to
28 or attached to existing waste collection vehicles; and

29 (D) Any equipment used solely for processing recyclable materials such as balers, flatteners,
30 crushers, separators and scales.

31 (b) But not including equipment used for transporting or processing scrap materials that are
32 recycled as a part of the normal operation of a trade or business as defined by the director.

33 (12)(a) “Renewable energy resource” includes, but is not limited to:

34 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant
35 or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal
36 energy;

37 (B) A hydroelectric generating facility that obtains all applicable permits and complies with all
38 state and federal statutory requirements for the protection of fish and wildlife and **that**:

39 (i) [*That*] Does not exceed 10 megawatts of installed capacity; or

40 (ii) Qualifies as a research, development or demonstration facility; or

41 (C) A renewable energy storage device as defined by the director by rule.

42 (b) “Renewable energy resource” does not include a hydroelectric generating facility that is not
43 described in paragraph (a) of this subsection.

44 [(13) “Renewable energy resource equipment manufacturing facility” means any structure, building,
45 installation, excavation, machinery, equipment or device, or an addition, reconstruction or improvement

1 *to land or an existing structure, building, installation, excavation, machinery, equipment or device, that*
2 *is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade*
3 *or business, that is used primarily to manufacture:]*

4 *[(a) Equipment, machinery or other products designed to use a renewable energy resource and that*
5 *meets the criteria established under ORS 469.197.]*

6 *[(b) Electric vehicles, including three-wheeled vehicles, that are designed for use as Class I or Class*
7 *II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used for*
8 *agricultural, commercial, industrial or governmental purposes, or designed for use as modes of trans-*
9 *portation on public roads and highways, or component parts of electric vehicles, but not including*
10 *component parts that may be used in both electric and conventional vehicles. The director may further*
11 *define “agricultural, commercial, industrial or governmental purposes” of electric vehicles by rule. For*
12 *purposes of this paragraph, “component parts” does not include batteries.]*

13 *[(c) Renewable energy storage devices.]*

14 *[(14)] (13) “Sustainable building practices facility” means a commercial building in which build-*
15 *ing practices that reduce the amount of energy, water or other resources needed for construction*
16 *and operation of the building are used. “Sustainable building practices facility” may be further de-*
17 *finied by the State Department of Energy by rule, including rules that establish traditional building*
18 *practice baselines in energy, water or other resource usage for comparative purposes for use in*
19 *determining whether a facility is a sustainable building practices facility.*

20 *[(15)] (14) “Transportation facility” means a transportation project that reduces energy use*
21 *during commuting to and from work or school, during work-related travel, or during travel to obtain*
22 *medical or other services, and may be further defined by the department by rule. “Transportation*
23 *facility” includes, but is not limited to:*

24 *(a) A qualified transit pass contract or a transportation services contract; or*

25 *(b) The purchase of efficient truck technology and related truck trailers, as defined in ORS*
26 *801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS*
27 *803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or*
28 *826.011.*

29 *[(16)] (15) “Transportation provider” means a public, private or nonprofit entity that provides*
30 *transportation services to members of the public.*

31 *[(17)] (16) “Transportation services contract” means a contract that is related to a transporta-*
32 *tion facility, and may be further defined by the department by rule.*

33 **SECTION 26.** ORS 469.197, as amended by section 7, chapter 76, Oregon Laws 2010, is amended
34 to read:

35 469.197. The State Department of Energy shall by rule establish all of the following criteria:

36 (1) For a high-performance home, the minimum design and construction standards that must be
37 met or exceeded for a dwelling to be considered a high-performance home, including but not limited
38 to standards for the building envelope, HVAC systems, lighting, appliances, water conservation
39 measures, use of sustainable building materials and on-site renewable energy systems. The criteria
40 must also establish the minimum reduction in estimated net purchased energy that a dwelling must
41 achieve to be considered a high-performance home.

42 (2) For a homebuilder-installed renewable energy system, the minimum performance and effi-
43 ciency standards that a solar electric system, solar domestic water heating system, passive solar
44 space heating system, wind power system, geothermal heating system, fuel cell system or other sys-
45 tem utilizing renewable resources must achieve to be considered a homebuilder-installed renewable

1 energy system.

2 (3) For a high-efficiency combined heat and power facility, the minimum performance and effi-
3 ciency standards that the facility must achieve to be considered a high-efficiency combined heat and
4 power facility.

5 [(4) For a renewable energy resource equipment manufacturing facility:]

6 [(a) Standards relating to the type of equipment, machinery or other products being manufactured
7 and related performance and efficiency standards applicable to the manufactured products;]

8 [(b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a single
9 renewable energy resource equipment manufacturing facility that include:]

10 [(A) Standards establishing what constitutes property that is not included within a renewable en-
11 ergy resource equipment manufacturing facility; and]

12 [(B) The consideration of such factors as phases of development, expansion of or additions to ex-
13 isting facilities or product lines, increased production and number of jobs created or maintained by an
14 applicant;]

15 [(c) Standards relating to the minimum level of increased employment in Oregon for a renewable
16 energy resource equipment manufacturing facility;]

17 [(d) Standards relating to indicators of financial viability of an applicant for preliminary certif-
18 ication under ORS 469.205;]

19 [(e) Standards relating to the likelihood of long-term operation and success of a renewable energy
20 resource equipment manufacturing facility; and]

21 [(f) Standards relating to the likelihood that an applicant seeking preliminary certification of a
22 renewable energy resource equipment manufacturing facility will base decisions to locate or expand a
23 facility in Oregon on the allowance of a tax credit under ORS 315.354.]

24 [(5)] (4) For a facility using or producing renewable energy resources, standards relating to
25 criteria required under ORS 469.195 (2).

26 [(6)] (5) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes
27 a single facility.

28 **SECTION 27.** ORS 469.200, as amended by section 8, chapter 76, Oregon Laws 2010, is amended
29 to read:

30 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
31 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

32 (a) \$20 million, in the case of a facility using or producing renewable energy resources or a
33 high-efficiency combined heat and power facility;

34 [(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility other
35 than a facility used to manufacture electric vehicles;]

36 [(c)] (b) Five percent of the total cost of the facility but no more than \$7 million, in the case
37 of a facility that uses or produces renewable energy resources and is a wind facility with an in-
38 stalled capacity of more than 10 megawatts; **or**

39 [(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility used
40 to manufacture electric vehicles; or]

41 [(e)] (c) \$10 million, in the case of any other facility.

42 [(2) Notwithstanding subsection (1)(b) of this section, the director may certify a lesser amount than
43 the total cost of the renewable energy resource equipment manufacturing facility, or need not certify any
44 amount, if any of the following conditions exist at the time of preliminary certification:]

45 [(a) The last quarterly economic and revenue forecast for a biennium indicates that moneys avail-

1 *able to the General Fund for the next biennium will be at least three percent less than appropriations*
2 *from the General Fund for the current biennium;]*

3 *[(b) A quarterly economic and revenue forecast projects that revenues in the General Fund in the*
4 *current biennium will be at least two percent below what revenues were projected to be in the revenue*
5 *forecast on which the legislatively adopted budget, as defined in ORS 291.002, for the current biennium*
6 *was based;]*

7 *[(c) The proposed facility, in the estimate of the director, does not possess the likelihood of success*
8 *established in criteria of success under ORS 469.197 (4);]*

9 *[(d) The proposed facility, in the estimate of the director, is not likely to increase employment in*
10 *Oregon to the minimum threshold level established in rules under ORS 469.197 (4);]*

11 *[(e) The applicant lacks the minimum level of financial viability established in rules adopted under*
12 *ORS 469.197 (4);]*

13 *[(f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or ex-*
14 *pend a facility in Oregon on allowance of the tax credit, given the criteria established in rules under*
15 *ORS 469.197 (4); or]*

16 *[(g) During a time period listed in section 2 (4), chapter 76, Oregon Laws 2010, the director receives*
17 *applications for preliminary certification with a total amount of potential tax credits in excess of the*
18 *limitation for the time period.]*

19 **[(3)] (2)** The director shall determine the dollar amount certified for any facility and the priority
20 between applications for certification based upon the criteria contained in ORS 469.185 to 469.225
21 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider
22 the status of a facility as a research, development or demonstration facility of new renewable re-
23 source generating and conservation technologies or a qualified transit pass contract in the deter-
24 mination.

25 **SECTION 28.** ORS 469.200, as amended by sections 8 and 9, chapter 76, Oregon Laws 2010, is
26 amended to read:

27 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
28 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

29 (a) \$20 million, in the case of a facility using or producing renewable energy resources or a
30 high-efficiency combined heat and power facility;

31 *[(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility other*
32 *than a facility used to manufacture electric vehicles;]*

33 **[(c)] (b)** Five percent of the total cost of the facility but no more than \$5 million, in the case
34 of a facility that uses or produces renewable energy resources and is a wind facility with an in-
35 stalled capacity of more than 10 megawatts; **or**

36 *[(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility used*
37 *to manufacture electric vehicles; or]*

38 **[(e)] (c)** \$10 million, in the case of any other facility.

39 **[(2) Notwithstanding subsection (1)(b) of this section, the director may certify a lesser amount than**
40 **the total cost of the renewable energy resource equipment manufacturing facility, or need not certify any**
41 **amount, if any of the following conditions exist at the time of preliminary certification:]**

42 *[(a) The last quarterly economic and revenue forecast for a biennium indicates that moneys avail-*
43 *able to the General Fund for the next biennium will be at least three percent less than appropriations*
44 *from the General Fund for the current biennium;]*

45 *[(b) A quarterly economic and revenue forecast projects that revenues in the General Fund in the*

1 *current biennium will be at least two percent below what revenues were projected to be in the revenue*
2 *forecast on which the legislatively adopted budget, as defined in ORS 291.002, for the current biennium*
3 *was based;]*

4 *[(c) The proposed facility, in the estimate of the director, does not possess the likelihood of success*
5 *established in criteria of success under ORS 469.197 (4);]*

6 *[(d) The proposed facility, in the estimate of the director, is not likely to increase employment in*
7 *Oregon to the minimum threshold level established in rules under ORS 469.197 (4);]*

8 *[(e) The applicant lacks the minimum level of financial viability established in rules adopted under*
9 *ORS 469.197 (4);]*

10 *[(f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or ex-*
11 *pend a facility in Oregon on allowance of the tax credit, given the criteria established in rules under*
12 *ORS 469.197 (4); or]*

13 *[(g) During a time period listed in section 2 (4), chapter 76, Oregon Laws 2010, the director receives*
14 *applications for preliminary certification with a total amount of potential tax credits in excess of the*
15 *limitation for the time period.]*

16 *[(3)]* **(2)** The director shall determine the dollar amount certified for any facility and the priority
17 between applications for certification based upon the criteria contained in ORS 469.185 to 469.225
18 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider
19 the status of a facility as a research, development or demonstration facility of new renewable re-
20 source generating and conservation technologies or a qualified transit pass contract in the deter-
21 mination.

22 **SECTION 29.** ORS 469.200, as amended by sections 8, 9 and 9a, chapter 76, Oregon Laws 2010,
23 is amended to read:

24 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
25 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

26 (a) \$20 million, in the case of a facility using or producing renewable energy resources or a
27 high-efficiency combined heat and power facility;

28 *[(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility other*
29 *than a facility used to manufacture electric vehicles;]*

30 *[(c)]* **(b)** Five percent of the total cost of the facility but no more than \$3 million, in the case
31 of a facility that uses or produces renewable energy resources and is a wind facility with an in-
32 stalled capacity of more than 10 megawatts; **or**

33 *[(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility used*
34 *to manufacture electric vehicles; or]*

35 *[(e)]* **(c)** \$10 million, in the case of any other facility.

36 *[(2) Notwithstanding subsection (1)(b) of this section, the director may certify a lesser amount than*
37 *the total cost of the renewable energy resource equipment manufacturing facility, or need not certify any*
38 *amount, if any of the following conditions exist at the time of preliminary certification:]*

39 *[(a) The last quarterly economic and revenue forecast for a biennium indicates that moneys avail-*
40 *able to the General Fund for the next biennium will be at least three percent less than appropriations*
41 *from the General Fund for the current biennium;]*

42 *[(b) A quarterly economic and revenue forecast projects that revenues in the General Fund in the*
43 *current biennium will be at least two percent below what revenues were projected to be in the revenue*
44 *forecast on which the legislatively adopted budget, as defined in ORS 291.002, for the current biennium*
45 *was based;]*

1 *[(c) The proposed facility, in the estimate of the director, does not possess the likelihood of success*
2 *established in criteria of success under ORS 469.197 (4);]*

3 *[(d) The proposed facility, in the estimate of the director, is not likely to increase employment in*
4 *Oregon to the minimum threshold level established in rules under ORS 469.197 (4);]*

5 *[(e) The applicant lacks the minimum level of financial viability established in rules adopted under*
6 *ORS 469.197 (4);]*

7 *[(f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or ex-*
8 *pend a facility in Oregon on allowance of the tax credit, given the criteria established in rules under*
9 *ORS 469.197 (4); or]*

10 *[(g) During a time period listed in section 2 (4), chapter 76, Oregon Laws 2010, the director receives*
11 *applications for preliminary certification with a total amount of potential tax credits in excess of the*
12 *limitation for the time period.]*

13 [(3)] (2) The director shall determine the dollar amount certified for any facility and the priority
14 between applications for certification based upon the criteria contained in ORS 469.185 to 469.225
15 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider
16 the status of a facility as a research, development or demonstration facility of new renewable re-
17 source generating and conservation technologies or a qualified transit pass contract in the deter-
18 mination.

19 **SECTION 30.** ORS 469.205, as amended by section 10, chapter 76, Oregon Laws 2010, is
20 amended to read:

21 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
22 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
23 if:

24 (a) The erection, construction, installation or acquisition of the facility is to be commenced on
25 or after October 3, 1979;

26 (b) The facility complies with the standards or rules adopted by the Director of the State De-
27 partment of Energy; and

28 (c) The applicant meets one of the following criteria:

29 (A) The applicant is a person to whom a tax credit **for the facility** has been transferred; or

30 (B) The applicant will be the owner, [or] contract purchaser **or lessee** of the facility at the time
31 of erection, construction, installation or acquisition of the proposed facility, and:

32 (i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to
33 utilize the facility in connection with Oregon property; or

34 (ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans
35 to lease the facility to a person [who] **that** will utilize the facility in connection with Oregon prop-
36 erty.

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

39 (a) A statement that the applicant or the lessee of the applicant's facility:

40 (A) Intends to convert from a purchased energy source to a renewable energy resource;

41 (B) Plans to acquire, construct or install a facility that will use a renewable energy resource
42 or solid waste instead of electricity, petroleum or natural gas;

43 (C) Plans to use a renewable energy resource in the generation of electricity for sale or to re-
44 place an existing or proposed use of an existing source of electricity;

45 (D) Plans to acquire, construct or install a facility that substantially reduces the consumption

- 1 of purchased energy;
- 2 (E) Plans to acquire, construct or install equipment for recycling as *[defined]* **described** in ORS
3 469.185 (11);
- 4 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-
5 tive fuel vehicle;
- 6 (G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;
- 7 (H) Plans to acquire transit passes for use by individuals specified by the applicant;
- 8 (I) Plans to acquire, construct or install a transportation facility;
- 9 (J) Plans to acquire a sustainable building practices facility;
- 10 (K) Plans to acquire a car sharing facility and operate a car sharing program;
- 11 (L) Plans to construct a high-efficiency combined heat and power facility;
- 12 (M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;
- 13 **or**
- 14 (N) Is a homebuilder and plans to construct a high-performance home.[: or]
15 *[(O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing*
16 *facility.]*
- 17 (b) A detailed description of the proposed facility and its operation and information showing that
18 the facility will operate as represented in the application and remain in operation for at least five
19 years, unless the director by rule specifies a shorter period of operation.
- 20 (c) Information on the amount by which consumption of electricity, petroleum or natural gas by
21 the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy
22 that will be produced for sale, as the result of using the facility or, if applicable, information about
23 the expected level of sustainable building practices facility performance.
- 24 (d) The projected cost of the facility.
- 25 (e) If applicable, a copy of the proposed qualified transit pass contract, transportation services
26 contract or contract for lease of parking spaces for a car sharing facility.
- 27 (f) Information on the *[amount]* **number** and type of jobs that will be created, the number of jobs
28 sustained throughout the construction, installation and operation of the facility and the benefits of
29 the facility with regard to overall economic activity in this state.
- 30 (g) Information demonstrating that the proposed facility will comply with applicable state and
31 local laws and regulations and obtain required licenses and permits.
- 32 (h) Information relating to the criteria required under ORS 469.195.
- 33 (i) Any other information the director considers necessary to determine whether the proposed
34 facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or
35 standards adopted by the director.
- 36 (3) An application for preliminary certification shall be accompanied by a fee established under
37 ORS 469.217. The director may refund all or a portion of the fee if the application for certification
38 is rejected.
- 39 (4) The director may allow an applicant to file the preliminary application or a reapplication
40 under subsection (6) of this section after the start of erection, construction, installation or acquisi-
41 tion of the facility if the director finds:
- 42 (a) Filing the application before the start of erection, construction, installation or acquisition is
43 inappropriate because special circumstances render filing earlier unreasonable; and
- 44 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
45 469.225.

1 (5) A preliminary certification of a sustainable building practices facility shall be applied for and
2 issued as prescribed by the department by rule.

3 (6) [*A preliminary certification of a renewable energy resource equipment manufacturing facility*
4 *shall remain valid for a period of five calendar years after the date the preliminary certification is is-*
5 *ssued by the director. For all other facilities,]* A preliminary certification shall remain valid for a pe-
6 riod of three calendar years after the date the preliminary certification is issued by the director.
7 The director may extend the three-year period for two additional calendar years upon reapplication
8 and submission of the fee required by this section.

9 **SECTION 31.** ORS 469.225, as amended by section 14, chapter 76, Oregon Laws 2010, is
10 amended to read:

11 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
12 the State Department of Energy may order the suspension or revocation of the certificate issued
13 under ORS 469.215 if the director finds that:

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

15 (b) The holder of the certificate or the operator of the facility has failed to construct or operate
16 the facility in compliance with the plans, specifications and procedures in the certificate; or

17 (c) The facility is no longer in operation.

18 (2) As soon as the order of revocation under this section becomes final, the director shall notify
19 the Department of Revenue, the facility owner, **contract purchaser or lessee** and any transferee
20 under ORS 469.206 of the order of revocation.

21 (3) If the certificate is [*issued for a facility that is not a renewable energy resource equipment*
22 *manufacturing facility and is]* ordered revoked pursuant to subsection (1)(a) of this section, all prior
23 tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited and
24 upon notification under subsection (2) of this section the Department of Revenue immediately shall
25 proceed to collect those taxes not paid by the certificate holder as a result of the tax credits pro-
26 vided to the holder under ORS 315.354.

27 [(4) *If the certificate is issued for a renewable energy resource equipment manufacturing facility*
28 *and is ordered suspended or revoked, upon notification under subsection (2) of this section the De-*
29 *partment of Revenue immediately shall proceed to collect:]*

30 [(a) *In the case where no portion of a certificate has been transferred under ORS 469.206, those*
31 *taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder*
32 *under ORS 315.354, from the certificate holder or a successor in interest to the business interests of the*
33 *certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certifi-*
34 *cate shall be forfeited.]*

35 [(b) *In the case where all or a portion of a certificate has been transferred under ORS 469.206, the*
36 *maximum theoretical amount of the tax credits allowable under ORS 315.354, from the transferor.]*

37 [(5)(a)] (4)(a) The Department of Revenue shall have the benefit of all laws of this state per-
38 taining to the collection of income and excise taxes and may proceed to collect the amounts de-
39 scribed in subsection (3) [*or (4)*] of this section from the person that obtained certification from the
40 State Department of Energy or any successor in interest to the business interests of that person.
41 No assessment of tax shall be necessary and no statute of limitation shall preclude the collection
42 of taxes described in this subsection.

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

1 State Department of Energy.

2 [(6)] (5) If the certificate is *issued for a facility that is not a renewable energy resource equipment*
3 *manufacturing facility and is* ordered revoked pursuant to subsection (1)(b) of this section, the cer-
4 tificate holder shall be denied any further relief under ORS 315.354 in connection with the facility
5 from and after the date that the order of revocation becomes final.

6 [(7)] (6) Notwithstanding subsections (1) to [(6)] (5) of this section, a certificate or portion of a
7 certificate held by a transferee under ORS 469.206 may not be considered revoked for purposes of
8 the transferee, the tax credit allowable to the transferee under ORS 315.354 may not be reduced and
9 a transferee is not liable under subsections (3) *[to (5)]* **and (4)** of this section.

10 **SECTION 32.** ORS 314.752, as amended by section 26, chapter 76, Oregon Laws 2010, is
11 amended to read:

12 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
13 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
14 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
15 allowable to the shareholders of the S corporation.

16 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
17 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
18 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
19 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
20 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
21 manner prescribed under section 1377(a) of the Internal Revenue Code.

22 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
23 of this section shall be determined as if such item were realized directly from the source from which
24 realized by the corporation, or incurred in the same manner as incurred by the corporation.

25 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
26 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
27 316.117, then that provision shall apply to the nonresident shareholder.

28 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
29 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
30 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
31 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
32 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
33 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
34 station and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-
35 pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing),
36 ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
37 tributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling),
38 ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS
39 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses),
40 ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141
41 (biomass production for biofuel) **and section 2 of this 2011 Act (renewable energy resource**
42 **equipment manufacturing facilities).**

43 **SECTION 33.** ORS 315.053 is amended to read:

44 315.053. An income tax credit allowed under ORS 315.141, 315.354 or 315.514 or section 47,
45 chapter 843, Oregon Laws 2007, or section 12, chapter 855, Oregon Laws 2007, **or section 2 of this**

1 **2011 Act** may be transferred or sold only to one or more of the following:

- 2 (1) A C corporation.
- 3 (2) An S corporation.
- 4 (3) A personal income taxpayer.

5 **SECTION 34.** ORS 315.356 is amended to read:

6 315.356. (1) If a taxpayer obtains a grant from the federal government in connection with a fa-
7 cility that has been certified by the Director of the State Department of Energy, the certified cost
8 of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits that
9 the taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 **and sections 2 and 5**
10 **to 15 of this 2011 Act** after any reduction described in this subsection may not be reduced by the
11 federal grant. A taxpayer applying for a federal grant shall notify the Department of Revenue by
12 certified mail within 30 days after each application, and after the receipt of any grant.

13 (2) A taxpayer is eligible to participate in both this tax credit program and low interest,
14 government-sponsored loans.

15 (3) A taxpayer who receives a tax credit or property tax relief on a pollution control facility
16 or an alternative energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit
17 on the same facility or device under ORS 315.354 and 469.185 to 469.225 **and sections 2 and 5 to**
18 **15 of this 2011 Act.**

19 (4) A credit may not be allowed under ORS 315.354 if the taxpayer has received a tax credit on
20 the same facility or device under ORS 315.324.

21 **SECTION 35.** Section 2, chapter 76, Oregon Laws 2010, is amended to read:

22 **Sec. 2.** (1) The total amount of potential tax credits for all facilities using or producing
23 renewable energy resources in this state may not, at the time of preliminary certification under ORS
24 469.210, exceed:

- 25 (a) \$300 million for the biennium ending June 30, 2011.
- 26 (b) \$150 million for the year beginning July 1, 2011, and ending June 30, 2012.

27 (2) In the event that the Director of the State Department of Energy receives applications for
28 preliminary certification with a total amount of potential tax credits in excess of the limitations in
29 subsection (1) of this section, the director shall allocate the issuance of preliminary certifications
30 according to the criteria required by ORS 469.195.

31 (3) The director shall review applications and make determinations whether to issue preliminary
32 certifications for proposed facilities using or producing renewable energy resources:

33 (a) Within 90 days of the date on which the application is received, in the case of an application
34 for certification with a cost of less than \$6 million.

35 (b) Within six months of the date on which the application is received, in the case of an appli-
36 cation for certification with a cost of \$6 million or more.

37 *[(4) The total amount of potential tax credits for all renewable energy resource equipment manu-
38 facturing facilities in this state may not, at the time of preliminary certification under ORS 469.210,
39 exceed:]*

40 **(4) The total amount of potential tax credits for all renewable energy resource equipment**
41 **manufacturing facilities under sections 5 to 15 of this 2011 Act, combined with the total**
42 **amount of potential tax credits for renewable energy resource equipment manufacturing fa-**
43 **ilities allowed under ORS 469.205 (2)(a)(O) as in effect before the operative date specified in**
44 **section 36 of this 2011 Act, may not, at the time of preliminary certification under section**
45 **10 of this 2011 Act, exceed:**

1 (a) \$200 million for the biennium ending June 30, 2011.

2 (b) \$200 million for the biennium ending June 30, 2013.

3 *[(c) \$50 million for the six months beginning July 1, 2013, and ending December 31, 2013.]*

4 **SECTION 36.** Sections 2, 3 and 5 to 22 of this 2011 Act and the amendments to ORS
5 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205 and 469.225 and sec-
6 tion 2, chapter 76, Oregon Laws 2010, by sections 23 to 35 of this 2011 Act become operative
7 on January 1, 2012.

8 **SECTION 37.** The Director of the State Department of Energy and the Director of the
9 Oregon Business Development Department may take any action before the operative date
10 specified in section 36 of this 2011 Act that is necessary to enable the directors to exercise,
11 on and after the operative date specified in section 36 of this 2011 Act, the duties, functions
12 and powers conferred on the directors by sections 2, 3 and 5 to 22 of this 2011 Act and the
13 amendments to ORS 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205
14 and 469.225 and section 2, chapter 76, Oregon Laws 2010, by sections 23 to 35 of this 2011 Act.

15 **SECTION 38.** This 2011 Act takes effect on the 91st day after the date on which the 2011
16 session of the Seventy-sixth Legislative Assembly adjourns sine die.

17