

Senate Bill 687

Sponsored by COMMITTEE ON FINANCE AND 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 **as introduced**.

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
27 such disposition.

28 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new
29 certificate under section 11 of this 2011 Act. The new lessor or owner must meet the re-
30 quirements of sections 5 to 15 of this 2011 Act and may claim a tax credit under this section

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 only if all moneys owed to the State of Oregon have been paid, the facility continues to op-
2 erate, unless continued operation is waived by the Oregon Business Development Depart-
3 ment, and all conditions in the final certification are met. The tax credit available to the
4 new owner shall be limited to the amount of credit not claimed by the former owner or, for
5 a new lessor, the amount of credit not claimed by the lessor under all previous leases.

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

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

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

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

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

30 **SECTION 3.** A taxpayer may not be allowed a credit under section 2 of this 2011 Act if
31 the first tax year for which the credit with respect to a renewable energy resource equip-
32 ment manufacturing facility certified under section 10 of this 2011 Act would otherwise be
33 allowed begins on or after January 1, 2018.

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

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

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

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

39 (b) Batteries.

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

42 (3) "Electric vehicles" means vehicles that are designed for use as Class I or Class II
43 all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used
44 for agricultural, commercial, industrial or governmental purposes, or vehicles that are de-
45 signed for use as modes of transportation on public roads and highways. The Director of the

1 Oregon Business Development Department may further define “agricultural, commercial,
2 industrial or governmental purposes” of electric vehicles by rule.

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

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

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

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

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

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

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

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

21 (a) Component parts of electric vehicles.

22 (b) Electric vehicles.

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

25 (d) Renewable energy storage devices.

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

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

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

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

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

39 (3) Standards relating to the minimum level of increased employment in Oregon for a
40 facility;

41 (4) Standards relating to indicators of financial viability of an applicant for preliminary
42 certification under section 8 of this 2011 Act;

43 (5) Standards relating to the likelihood of long-term operation and success of a facility;
44 and

45 (6) Standards relating to the likelihood that an applicant seeking preliminary certification

1 of a facility will base decisions to locate or expand a facility in Oregon on the allowance of
2 a tax credit under section 2 of this 2011 Act.

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

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

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

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

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

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

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

21 (d) The proposed facility, in the estimate of the director, is not likely to increase em-
22 ployment in Oregon to the minimum threshold level established in rules under section 6 (3)
23 of this 2011 Act;

24 (e) The applicant lacks the minimum level of financial viability established in rules
25 adopted under section 6 (4) of this 2011 Act;

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

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

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

38 **SECTION 8.** (1) Prior to erection, construction, installation or acquisition of a proposed
39 renewable energy resource equipment manufacturing facility, any person may apply to the
40 Oregon Business Development Department for preliminary certification under section 10 of
41 this 2011 Act if:

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

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

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

1 or

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

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

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

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

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

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

16 (c) The projected cost of the facility.

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

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

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

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

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

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

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

34 (b) The facility would otherwise qualify for tax credit certification pursuant to sections
35 5 to 15 of this 2011 Act.

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

38 **SECTION 9.** (1) The owner, contract purchaser or lessee of a renewable energy resource
39 equipment manufacturing facility may transfer a tax credit for the facility in exchange for
40 a cash payment equal to the present value of the tax credit.

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

45 (3) The director shall recalculate credit transfer prices quarterly, employing the formula

1 established under subsection (2) of this section.

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

5 (2) If the director determines that the proposed erection, construction, installation or
6 acquisition is technically feasible and should operate in accordance with the representations
7 made by the applicant, and is in accordance with the provisions of sections 5 to 15 of this
8 2011 Act and any applicable rules or standards adopted by the director, the director shall
9 issue a preliminary certificate approving the erection, construction, installation or acqui-
10 sition of the facility. The certificate shall indicate the potential amount of tax credit allowable
11 and shall list any conditions for claiming the credit.

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

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

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

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

20 (d) The applicant was directly involved in an act for which the director has levied civil
21 penalties or revoked, canceled or suspended any certification under sections 5 to 15 of this
22 2011 Act; or

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

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

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

32 (b) The applicant demonstrates the ability to provide the information required by section
33 8 (2) of this 2011 Act and does not violate any condition that may be imposed as described in
34 section 10 (3) of this 2011 Act; and

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

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

40 (a) If the person received preliminary certification for the facility under section 10 of this
41 2011 Act or under ORS 469.210; and

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

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

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

1 the department and shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

41 **SECTION 12.** By rule and after hearing, the Director of the Oregon Business Develop-
42 ment Department may adopt a schedule of reasonable fees that the Oregon Business Develop-
43 ment Department may require of applicants for preliminary or final certification under
44 sections 5 to 15 of this 2011 Act. Before the adoption or revision of the fees, the department
45 shall estimate the total cost of the program to the department. The fees shall be used to

1 recover the anticipated cost of filing, investigating, granting and rejecting applications for
2 certification and shall be designed not to exceed the total cost estimated by the department.
3 Any excess fees shall be held by the department and shall be used by the department to re-
4 duce any future fee increases. The fee may vary according to the size and complexity of the
5 facility. The fee is not considered part of the cost of the facility to be certified.

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

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

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

17 (b) The holder of the certificate or the operator of the facility has failed to construct or
18 operate the facility in compliance with the plans, specifications and procedures in the cer-
19 tificate; or

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

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

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

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

33 (3)(a) The Department of Revenue shall have the benefit of all laws of this state per-
34 taining to the collection of income and excise taxes and may proceed to collect the amounts
35 described in subsection (2) of this section from the person that obtained certification from
36 the State Department of Energy or from the Oregon Business Development Department, or
37 any successor in interest to the business interests of that person. No assessment of tax shall
38 be necessary and no statute of limitation shall preclude the collection of taxes described in
39 this subsection.

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

44 (4) Notwithstanding subsections (1) to (3) of this section, a certificate or portion of a
45 certificate held by a transferee under section 9 of this 2011 Act may not be considered re-

1 voked for purposes of the transferee, the tax credit allowable to the transferee under section
2 2 of this 2011 Act may not be reduced and a transferee is not liable under subsections (2) and
3 (3) of this section.

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

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

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

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

13 **SECTION 16.** The duties, functions and powers of the State Department of Energy re-
14 lating to the administration of income tax credits available under ORS 315.354 and 469.185 to
15 469.225 as applicable to renewable energy resource equipment manufacturing facilities are
16 imposed upon, transferred to and vested in the Oregon Business Development Department.

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

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

21 (b) Transfer to the Oregon Business Development Department those employees engaged
22 primarily in the exercise of the duties, functions and powers transferred by section 16 of this
23 2011 Act.

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

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

32 **SECTION 18.** (1) The unexpended balances of amounts authorized to be expended by the
33 State Department of Energy for the biennium beginning July 1, 2011, from revenues dedi-
34 cated, continuously appropriated, appropriated or otherwise made available for the purpose
35 of administering and enforcing the duties, functions and powers transferred by section 16 of
36 this 2011 Act are transferred to and are available for expenditure by the Oregon Business
37 Development Department for the biennium beginning July 1, 2011, for the purpose of admin-
38 istering and enforcing the duties, functions and powers transferred by section 16 of this 2011
39 Act.

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

43 **SECTION 19.** The transfer of duties, functions and powers to the Oregon Business De-
44 velopment Department by section 16 of this 2011 Act does not affect any action, proceeding
45 or prosecution involving or with respect to such duties, functions and powers begun before

1 and pending at the time of the transfer, except that the Oregon Business Development De-
2 partment is substituted for the State Department of Energy in the action, proceeding or
3 prosecution.

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

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

15 **SECTION 21.** Notwithstanding the transfer of duties, functions and powers by section 16
16 of this 2011 Act, the rules of the State Department of Energy with respect to such duties,
17 functions or powers that are in effect on the operative date of section 16 of this 2011 Act
18 continue in effect until superseded or repealed by rules of the Oregon Business Development
19 Department. References in such rules of the State Department of Energy to the State De-
20 partment of Energy or an officer or employee of the State Department of Energy are con-
21 sidered to be references to the Oregon Business Development Department or an officer or
22 employee of the Oregon Business Development Department.

23 **SECTION 22.** Whenever, in any uncodified law or resolution of the Legislative Assembly
24 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
25 the context of the duties, functions and powers transferred by section 16 of this 2011 Act,
26 reference is made to the State Department of Energy, or an officer or employee of the State
27 Department of Energy, whose duties, functions or powers are transferred by section 16 of
28 this 2011 Act, the reference is considered to be a reference to the Oregon Business Devel-
29 opment Department or an officer or employee of the Oregon Business Development Depart-
30 ment who by this 2011 Act is charged with carrying out such duties, functions and powers.

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

33 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
34 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
35 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
36 is allowed as follows:

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

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

45 (c) If the facility uses or produces renewable energy resources [*or is a renewable energy resource*

1 *equipment manufacturing facility*], the credit allowed in each of five succeeding tax years shall be
2 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new cer-
32 tificate under ORS 469.215. The new lessor or owner must meet the requirements of ORS 469.185 to
33 469.225 and may claim a tax credit under this section only if all moneys owed to the State of Oregon
34 have been paid, the facility continues to operate, unless continued operation is waived by the State
35 Department of Energy, and all conditions in the final certification are met. The tax credit available
36 to the new owner shall be limited to the amount of credit not claimed by the former owner or, for
37 a new lessor, the amount of credit not claimed by the lessor under all previous leases.

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

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

44 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
45 particular year may be carried forward and offset against the taxpayer's tax liability for the next

1 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
2 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
3 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
4 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
5 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
6 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
7 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
8 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
9 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
10 year may be carried forward and used in the eighth succeeding tax year, but may not be carried
11 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
12 yond the years specified in subsection (1) of this section only as provided in this subsection.

13 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
14 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
15 316, 317 or 318 for such year.

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

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

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

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

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

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

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

29 315.357. *[(1) Except as provided in subsection (2) of this section,] A taxpayer may not be allowed*
30 *a credit under ORS 315.354 unless the taxpayer receives final certification under ORS 469.215 before*
31 *July 1, 2012.*

32 *[(2) A taxpayer may not be allowed a credit under ORS 315.354 for a renewable energy resource*
33 *equipment manufacturing facility unless the taxpayer receives preliminary certification under ORS*
34 *469.210 before January 1, 2014.]*

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

37 469.185. As used in ORS 469.185 to 469.225 and 469.878:

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

43 (2) "Car sharing facility" means the expenses of operating a car sharing program, including but
44 not limited to the fair market value of parking spaces used to store the fleet of cars available for
45 a car sharing program, but does not include the costs of the fleet of cars.

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

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

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

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

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

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

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

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

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

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

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

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

32 (6) “Facility” means an energy facility, recycling facility, transportation facility, car sharing
33 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
34 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling
35 station, a high-efficiency combined heat and power facility, a high-performance home[,] **or** a
36 homebuilder-installed renewable energy system[, *or a renewable energy resource equipment manufac-*
37 *turing facility*].

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

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

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

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

45 (9) “Homebuilder-installed renewable energy system” means a renewable energy resource system

1 that:

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

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

6 (10) "Qualified transit pass contract" means a purchase agreement entered into between a
7 transportation provider and a person, the terms of which obligate the person to purchase transit
8 passes on behalf or for the benefit of employees, students, patients or other individuals over a
9 specified period of time.

10 (11) "Recycling facility" means equipment used by a trade or business solely for recycling:

11 (a) Including:

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

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

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

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

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

22 (12)(a) "Renewable energy resource" includes, but is not limited to:

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

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

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

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

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

31 (b) "Renewable energy resource" does not include a hydroelectric generating facility that is not
32 described in paragraph (a) of this subsection.

33 [*(13) "Renewable energy resource equipment manufacturing facility" means any structure, building,
34 installation, excavation, machinery, equipment or device, or an addition, reconstruction or improvement
35 to land or an existing structure, building, installation, excavation, machinery, equipment or device, that
36 is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade
37 or business, that is used primarily to manufacture.*]

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

40 [*(b) Electric vehicles, including three-wheeled vehicles, that are designed for use as Class I or Class
41 II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used for
42 agricultural, commercial, industrial or governmental purposes, or designed for use as modes of trans-
43 portation on public roads and highways, or component parts of electric vehicles, but not including
44 component parts that may be used in both electric and conventional vehicles. The director may further
45 define "agricultural, commercial, industrial or governmental purposes" of electric vehicles by rule. For*

1 *purposes of this paragraph, “component parts” does not include batteries.]*

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

3 *[(14)] (13) “Sustainable building practices facility” means a commercial building in which build-*
 4 *ing practices that reduce the amount of energy, water or other resources needed for construction*
 5 *and operation of the building are used. “Sustainable building practices facility” may be further de-*
 6 *defined by the State Department of Energy by rule, including rules that establish traditional building*
 7 *practice baselines in energy, water or other resource usage for comparative purposes for use in*
 8 *determining whether a facility is a sustainable building practices facility.*

9 *[(15)] (14) “Transportation facility” means a transportation project that reduces energy use*
 10 *during commuting to and from work or school, during work-related travel, or during travel to obtain*
 11 *medical or other services, and may be further defined by the department by rule. “Transportation*
 12 *facility” includes, but is not limited to:*

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

14 *(b) The purchase of efficient truck technology and related truck trailers, as defined in ORS*
 15 *801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS*
 16 *803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or*
 17 *826.011.*

18 *[(16)] (15) “Transportation provider” means a public, private or nonprofit entity that provides*
 19 *transportation services to members of the public.*

20 *[(17)] (16) “Transportation services contract” means a contract that is related to a transporta-*
 21 *tion facility, and may be further defined by the department by rule.*

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

24 469.197. The State Department of Energy shall by rule establish all of the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

13 [(5)] (4) For a facility using or producing renewable energy resources, standards relating to
 14 criteria required under ORS 469.195 (2).

15 [(6)] (5) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes
 16 a single facility.

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

19 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
 20 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

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

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

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

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

45 *[(e) The applicant lacks the minimum level of financial viability established in rules adopted under*

1 ORS 469.197 (4);]

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

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

8 [(3)] (2) The director shall determine the dollar amount certified for any facility and the priority
9 between applications for certification based upon the criteria contained in ORS 469.185 to 469.225
10 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider
11 the status of a facility as a research, development or demonstration facility of new renewable re-
12 source generating and conservation technologies or a qualified transit pass contract in the deter-
13 mination.

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

16 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
17 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

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

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

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

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

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

44 [(f) *The applicant is unlikely, in the estimate of the director, to base a decision to relocate or ex-*
45 *pend a facility in Oregon on allowance of the tax credit, given the criteria established in rules under*

1 *ORS 469.197 (4); or]*

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

5 *[(3)] (2) The director shall determine the dollar amount certified for any facility and the priority*
6 *between applications for certification based upon the criteria contained in ORS 469.185 to 469.225*
7 *and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider*
8 *the status of a facility as a research, development or demonstration facility of new renewable re-*
9 *source generating and conservation technologies or a qualified transit pass contract in the deter-*
10 *mination.*

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

13 469.200. (1) For a facility, the total cost that receives a preliminary certification from the Di-
14 rector of the State Department of Energy for tax credits in any calendar year may not exceed:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *limitation for the time period.]*

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

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

10 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
11 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
12 if:

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

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

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

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

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

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

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

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

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

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

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

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

34 (D) Plans to acquire, construct or install a facility that substantially reduces the consumption
35 of purchased energy;

36 (E) Plans to acquire, construct or install equipment for recycling as [defined] **described** in ORS
37 469.185 (11);

38 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-
39 tive fuel vehicle;

40 (G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

41 (H) Plans to acquire transit passes for use by individuals specified by the applicant;

42 (I) Plans to acquire, construct or install a transportation facility;

43 (J) Plans to acquire a sustainable building practices facility;

44 (K) Plans to acquire a car sharing facility and operate a car sharing program;

45 (L) Plans to construct a high-efficiency combined heat and power facility;

1 (M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;

2 **or**

3 (N) Is a homebuilder and plans to construct a high-performance home.[: or]

4 [(O) *Plans to acquire, construct or install a renewable energy resource equipment manufacturing*
5 *facility.*]

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

9 (c) Information on the amount by which consumption of electricity, petroleum or natural gas by
10 the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy
11 that will be produced for sale, as the result of using the facility or, if applicable, information about
12 the expected level of sustainable building practices facility performance.

13 (d) The projected cost of the facility.

14 (e) If applicable, a copy of the proposed qualified transit pass contract, transportation services
15 contract or contract for lease of parking spaces for a car sharing facility.

16 (f) Information on the [*amount*] **number** and type of jobs that will be created, the number of jobs
17 sustained throughout the construction, installation and operation of the facility and the benefits of
18 the facility with regard to overall economic activity in this state.

19 (g) Information demonstrating that the proposed facility will comply with applicable state and
20 local laws and regulations and obtain required licenses and permits.

21 (h) Information relating to the criteria required under ORS 469.195.

22 (i) Any other information the director considers necessary to determine whether the proposed
23 facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or
24 standards adopted by the director.

25 (3) An application for preliminary certification shall be accompanied by a fee established under
26 ORS 469.217. The director may refund all or a portion of the fee if the application for certification
27 is rejected.

28 (4) The director may allow an applicant to file the preliminary application or a reapplication
29 under subsection (6) of this section after the start of erection, construction, installation or acqui-
30 sition of the facility if the director finds:

31 (a) Filing the application before the start of erection, construction, installation or acquisition is
32 inappropriate because special circumstances render filing earlier unreasonable; and

33 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
34 469.225.

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

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

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

45 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of

1 the State Department of Energy may order the suspension or revocation of the certificate issued
2 under ORS 469.215 if the director finds that:

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

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

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

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

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

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

19 [(a) *In the case where no portion of a certificate has been transferred under ORS 469.206, those*
20 *taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder*
21 *under ORS 315.354, from the certificate holder or a successor in interest to the business interests of the*
22 *certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certif-*
23 *icate shall be forfeited.]*

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

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

32 (b) For purposes of this subsection, a lender, bankruptcy trustee or other person that acquires
33 an interest through bankruptcy or through foreclosure of a security interest is not considered to be
34 a successor in interest to the business interests of the person that obtained certification from the
35 State Department of Energy.

36 [(6)] (5) If the certificate is [*issued for a facility that is not a renewable energy resource equipment*
37 *manufacturing facility and is*] ordered revoked pursuant to subsection (1)(b) of this section, the cer-
38 tificate holder shall be denied any further relief under ORS 315.354 in connection with the facility
39 from and after the date that the order of revocation becomes final.

40 [(7)] (6) Notwithstanding subsections (1) to [(6)] (5) of this section, a certificate or portion of a
41 certificate held by a transferee under ORS 469.206 may not be considered revoked for purposes of
42 the transferee, the tax credit allowable to the transferee under ORS 315.354 may not be reduced and
43 a transferee is not liable under subsections (3) [*to (5)*] **and (4)** of this section.

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

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

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

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

14 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 15 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 16 316.117, then that provision shall apply to the nonresident shareholder.

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

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

33 315.053. An income tax credit allowed under ORS 315.141, 315.354 or 315.514 or section 47,
 34 chapter 843, Oregon Laws 2007, or section 12, chapter 855, Oregon Laws 2007, **or section 2 of this
 35 2011 Act** may be transferred or sold only to one or more of the following:

- 36 (1) A C corporation.
- 37 (2) An S corporation.
- 38 (3) A personal income taxpayer.

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

40 315.356. (1) If a taxpayer obtains a grant from the federal government in connection with a fa-
 41 cility that has been certified by the Director of the State Department of Energy, the certified cost
 42 of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits that
 43 the taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 **and sections 2 and 5
 44 to 15 of this 2011 Act** after any reduction described in this subsection may not be reduced by the
 45 federal grant. A taxpayer applying for a federal grant shall notify the Department of Revenue by

1 certified mail within 30 days after each application, and after the receipt of any grant.

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

4 (3) A taxpayer who receives a tax credit or property tax relief on a pollution control facility
5 or an alternative energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit
6 on the same facility or device under ORS 315.354 and 469.185 to 469.225 **and sections 2 and 5 to**
7 **15 of this 2011 Act.**

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

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

11 **Sec. 2.** (1) The total amount of potential tax credits for all facilities using or producing
12 renewable energy resources in this state may not, at the time of preliminary certification under ORS
13 469.210, exceed:

14 (a) \$300 million for the biennium ending June 30, 2011.

15 (b) \$150 million for the year beginning July 1, 2011, and ending June 30, 2012.

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

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

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

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

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

29 **(4) The total amount of potential tax credits for all renewable energy resource equipment**
30 **manufacturing facilities under sections 5 to 15 of this 2011 Act, combined with the total**
31 **amount of potential tax credits for renewable energy resource equipment manufacturing fa-**
32 **ilities allowed under ORS 469.205 (2)(a)(O) as in effect before the operative date specified in**
33 **section 36 of this 2011 Act, may not, at the time of preliminary certification under section**
34 **10 of this 2011 Act, exceed:**

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

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

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

38 **SECTION 36.** Sections 2, 3 and 5 to 22 of this 2011 Act and the amendments to ORS
39 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205 and 469.225 and sec-
40 tion 2, chapter 76, Oregon Laws 2010, by sections 23 to 35 of this 2011 Act become operative
41 on January 1, 2012.

42 **SECTION 37.** The Director of the State Department of Energy and the Director of the
43 Oregon Business Development Department may take any action before the operative date
44 specified in section 36 of this 2011 Act that is necessary to enable the directors to exercise,
45 on and after the operative date specified in section 36 of this 2011 Act, the duties, functions

1 and powers conferred on the directors by sections 2, 3 and 5 to 22 of this 2011 Act and the
2 amendments to ORS 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205
3 and 469.225 and section 2, chapter 76, Oregon Laws 2010, by sections 23 to 35 of this 2011 Act.

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

6
