

**PROPOSED AMENDMENTS TO
HOUSE BILL 3672**

1 In line 2 of the printed bill, after the semicolon delete the rest of the line
2 and insert “creating new provisions; amending ORS 284.367, 285C.406, 314.752,
3 315.053, 315.357, 315.514, 316.116, 317.115, 317.152, 317.154, 318.031, 469.160,
4 469.165, 469.170, 469.172, 496.303 and 469.790 and section 6, chapter 911,
5 Oregon Laws 1989, section 77, chapter 736, Oregon Laws 2003, section 1a,
6 chapter 559, Oregon Laws 2005, sections 5a and 8a, chapter 832, Oregon Laws
7 2005, section 6, chapter 739, Oregon Laws 2007, and sections 3, 11 and 20,
8 chapter 913, Oregon Laws 2009; repealing sections 2a, 2b and 15, chapter 625,
9 Oregon Laws 2007; appropriating money; and prescribing an effective date.”.

10 Delete lines 4 through 10 and insert:
11

12 **“MODIFICATION OF TAX CREDIT PROVISIONS**
13

14 **“SECTION 1.** ORS 315.357, as amended by section 5, chapter 76, Oregon
15 Laws 2010, is amended to read:

16 “315.357. (1) [*Except as provided in subsection (2) of this section,*] **For a**
17 **facility other than a renewable energy resource equipment manufac-**
18 **turing facility,** a taxpayer may not be allowed a credit under ORS 315.354
19 unless the taxpayer:

20 **“(a) Files an application for preliminary certification under ORS**
21 **469.205 on or before April 15, 2011;**

22 **“(b) Receives preliminary certification under ORS 469.210 before**

1 **July 1, 2011; and**

2 **“(c)** Receives final certification under ORS 469.215 before [*July 1, 2012*]
3 **January 1, 2013.**

4 **“(2)** A taxpayer may not be allowed a credit under ORS 315.354 for a
5 renewable energy resource equipment manufacturing facility unless the tax-
6 payer receives preliminary certification under ORS 469.210 before January
7 1, 2014.

8 **“SECTION 2.** Section 6, chapter 739, Oregon Laws 2007, as amended by
9 section 5, chapter 590, Oregon Laws 2007, and section 18, chapter 913, Oregon
10 Laws 2009, is amended to read:

11 **“Sec. 6.** (1) ORS 315.141, 315.144 and 469.790 apply to tax credits for tax
12 years beginning on or after January 1, 2007, and before January 1, [*2012*]
13 **2018.**

14 **“(2)** Notwithstanding subsection (1) of this section, a tax credit is not
15 allowed for wheat grain (other than nongrain wheat material) [*before*] **for** tax
16 years beginning [*on or after*] **before** January 1, 2009, or on or after January
17 1, [*2012*] **2018.**

18 **“SECTION 3.** ORS 469.790 is amended to read:

19 **“469.790.** To be eligible for the tax credit under ORS 315.141, the biomass
20 must be produced or collected in Oregon as a feedstock for bioenergy or
21 biofuel production in Oregon. The credit rates for biomass are:

22 **“(1)** For oil seed crops, \$0.05 per pound.

23 **“(2)** For grain crops, including but not limited to wheat, barley and
24 triticale, \$0.90 per bushel.

25 **“(3)** For virgin oil or alcohol delivered for production in Oregon from
26 Oregon-based feedstock, \$0.10 per gallon.

27 **“(4)** For used cooking oil or waste grease, \$0.10 per gallon.

28 **“(5)** For wastewater biosolids, \$10.00 per wet ton.

29 **“(6)** For woody biomass collected from nursery, orchard, agricultural,
30 forest or rangeland property in Oregon, including but not limited to

1 prunings, thinning, plantation rotations, log landing or slash resulting from
2 harvest or forest health stewardship, \$10.00 per [green] **bone dry** ton.

3 “(7) For grass, wheat, straw or other vegetative biomass from agricultural
4 crops, \$10.00 per [green] **bone dry** ton.

5 “(8) For yard debris and municipally generated food waste, \$5.00 per wet
6 ton.

7 “(9) For animal manure or rendering offal, \$5.00 per wet ton.

8 “**SECTION 4.** Section 20, chapter 913, Oregon Laws 2009, is amended to
9 read:

10 “**Sec. 20.** A credit may not be claimed under ORS 317.122 (1) for tax years
11 beginning on or after January 1, [2012] **2018**.

12 “**SECTION 5.** Section 3, chapter 913, Oregon Laws 2009, is amended to
13 read:

14 “**Sec. 3.** Except as provided in ORS 315.507 (5), a credit may not be
15 claimed under ORS 315.507 for tax years beginning on or after January 1,
16 [2012] **2018**.

17 “**SECTION 6.** ORS 285C.406 is amended to read:

18 “285C.406. In order for a taxpayer to claim the property tax exemption
19 under ORS 285C.409 or a corporate excise or income tax credit under ORS
20 317.124:

21 “(1) The written agreement between the business firm and the rural en-
22 terprise zone sponsor that is required under ORS 285C.403 (3)(c) must be
23 entered into prior to the termination of the enterprise zone under ORS
24 285C.245; and

25 “(2)(a) For the purpose of the property tax exemption, the business firm
26 must obtain certification under ORS 285C.403 on or before June 30, [2013]
27 **2025**; or

28 “(b) For the purpose of the corporate excise or income tax credit, the
29 business firm must obtain certification under ORS 285C.403 on or before June
30 30, [2012] **2018**.

1 **“SECTION 7.** Section 6, chapter 911, Oregon Laws 1989, as amended by
2 section 14, chapter 746, Oregon Laws 1995, section 1, chapter 548, Oregon
3 Laws 2001, section 15, chapter 739, Oregon Laws 2003, and section 86, chapter
4 94, Oregon Laws 2005, is amended to read:

5 **“Sec. 6.** ORS 317.152 to 317.154 apply to amounts paid or incurred in tax
6 years beginning on or after January 1, 1989, and before January 1, [2012]
7 **2018.**

8 **“SECTION 8.** ORS 317.152 is amended to read:

9 “317.152. (1) A credit against taxes otherwise due under this chapter shall
10 be allowed to eligible taxpayers for increases in qualified research expenses
11 and basic research payments. The credit shall be determined in accordance
12 with section 41 of the Internal Revenue Code, except as follows:

13 “(a) The applicable percentage specified in section 41(a) of the Internal
14 Revenue Code shall be five percent.

15 “(b) ‘Qualified research’ and ‘basic research’ shall consist only of research
16 conducted in Oregon.

17 “(c) The following do not apply to the credit allowable under this section:

18 “(A) Section 41(c)(4) of the Internal Revenue Code (relating to the alter-
19 native incremental credit).

20 “(B) Section 41(h) of the Internal Revenue Code (relating to termination
21 of the federal credit).

22 “(2) For purposes of this section, ‘eligible taxpayer’ means a corporation,
23 other than a corporation excluded under Internal Revenue Code section
24 41(e)(7)(E).

25 “(3) The Income Tax Regulations as prescribed by the Secretary of the
26 Treasury under authority of section 41 of the Internal Revenue Code apply
27 for purposes of this section, except as modified by this section or as provided
28 in rules adopted by the Department of Revenue.

29 “(4) The maximum credit under this section may not exceed [*\$2 million*]
30 **\$1 million.**

1 “(5) A deduction may not be taken for the portion of expenses or
2 payments, otherwise allowable as a deduction, that is equal to the
3 amount of the credit claimed under this section.

4 “[(5)] (6) Any tax credit that is otherwise allowable under this section and
5 that is not used by the taxpayer in that year may be carried forward and
6 offset against the taxpayer’s tax liability for the next succeeding tax year.
7 Any credit remaining unused in such next succeeding tax year may be car-
8 ried forward and used in the second succeeding tax year, and likewise any
9 credit not used in that second succeeding tax year may be carried forward
10 and used in the third succeeding tax year, and any credit not used in that
11 third succeeding tax year may be carried forward and used in the fourth
12 succeeding tax year, and any credit not used in that fourth succeeding tax
13 year may be carried forward and used in the fifth succeeding tax year, but
14 may not be carried forward for any tax year thereafter.

15 “**SECTION 9.** ORS 317.154 is amended to read:

16 “317.154. (1) A credit against taxes otherwise due under this chapter shall
17 be allowed for qualified research expenses that exceed 10 percent of Oregon
18 sales.

19 “(2) For purposes of this section:

20 “(a) ‘Oregon sales’ shall be computed using the laws and administrative
21 rules for calculating the numerator of the Oregon sales factor under ORS
22 314.665.

23 “(b) ‘Qualified research’ has the meaning given the term under section
24 41(d) of the Internal Revenue Code and shall consist only of research con-
25 ducted in Oregon.

26 “(3) The credit under this section is equal to five percent of the amount
27 by which the qualified research expenses exceed 10 percent of Oregon sales.

28 “(4) The credit under this section shall not exceed \$10,000 times the
29 number of percentage points by which the qualifying research expenses ex-
30 ceed 10 percent of Oregon sales.

1 “(5) The maximum credit under this section may not exceed [*\$2 million*]
2 **\$1 million.**

3 “(6) Any tax credit that is otherwise allowable under this section and that
4 is not used by the taxpayer in that year may be carried forward and offset
5 against the taxpayer’s tax liability for the next succeeding tax year. Any
6 credit remaining unused in such next succeeding tax year may be carried
7 forward and used in the second succeeding tax year, and likewise any credit
8 not used in that second succeeding tax year may be carried forward and used
9 in the third succeeding tax year, and any credit not used in that third suc-
10 ceeding tax year may be carried forward and used in the fourth succeeding
11 tax year, and any credit not used in that fourth succeeding tax year may be
12 carried forward and used in the fifth succeeding tax year, but may not be
13 carried forward for any tax year thereafter.

14 **“SECTION 10. The amendments to ORS 317.152 and 317.154 by**
15 **sections 8 and 9 of this 2011 Act apply to tax years beginning on or**
16 **after January 1, 2012, and to any tax year for which a return is subject**
17 **to audit or adjustment by the Department of Revenue on or after the**
18 **effective date of this 2011 Act, any tax year for which a return is the**
19 **subject of an appeal on or after the effective date of this 2011 Act and**
20 **any tax year for which a claim for refund may be made on or after the**
21 **effective date of this 2011 Act.**

22 **“SECTION 11.** ORS 315.514 is amended to read:

23 “315.514. (1) A credit against the taxes that are otherwise due under ORS
24 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or
25 318, is allowed to a taxpayer for certified film production development con-
26 tributions made by the taxpayer during the tax year to the Oregon Pro-
27 duction Investment Fund established under ORS 284.367.

28 “(2)(a) The amount of the tax credit shall equal the amount certified for
29 credit by the Oregon Film and Video Office, except that a contribution must
30 equal at least 90 percent of the tax credit.

1 “(b) The Oregon Film and Video Office shall adopt rules for determining
2 the amount of tax credit to be certified by the office. The rules shall be
3 adopted in order to achieve the following goals:

4 “(A) Subject to paragraph (a) of this subsection, generate contributions
5 for which tax credits of [*\$7.5 million*] **\$6 million** are certified for each fiscal
6 year;

7 “(B) Maximize income and excise tax revenues that are retained by the
8 State of Oregon for state operations; and

9 “(C) Provide the necessary financial incentives for taxpayers to make
10 contributions, taking into consideration the impact of granting a credit upon
11 a taxpayer’s federal income tax liability.

12 “(3) A taxpayer seeking a tax credit under this section shall apply for tax
13 credit certification to the Oregon Film and Video Office on a form supplied
14 by the office. The taxpayer shall include payment of the contribution at the
15 time of application.

16 “(4) Contributions made under this section shall be deposited in the
17 Oregon Production Investment Fund.

18 “(5)(a) Upon receipt of a contribution, the Oregon Film and Video Office
19 shall issue to the taxpayer written certification of the amount certified for
20 tax credit under this section to the extent the amount certified for tax credit,
21 when added to all amounts previously certified for tax credit under this
22 section, does not exceed [*\$7.5 million*] **\$6 million** for the fiscal year in which
23 certification is made.

24 “(b) The Oregon Film and Video Office is not liable, and a refund of a
25 contributed amount need not be made, if a taxpayer who has received tax
26 credit certification is unable to use all or a portion of the tax credit to offset
27 the tax liability of the taxpayer.

28 “(6) To the extent the Oregon Film and Video Office does not certify
29 contributed amounts as eligible for a tax credit under this section, the tax-
30 payer may request a refund of the amount the taxpayer contributed, and the

1 office shall refund that amount.

2 “(7)(a) Except as provided in paragraph (b) of this subsection, a tax credit
3 claimed under this section may not exceed the tax liability of the taxpayer
4 and may not be carried over to another tax year.

5 “(b) Any tax credit otherwise allowable under this section that is not used
6 by the taxpayer in a particular tax year may be carried forward and offset
7 against the taxpayer’s tax liability for the next succeeding tax year. Any
8 credit remaining unused in the next succeeding tax year may be carried
9 forward and used in the second succeeding tax year, and likewise, any credit
10 not used in that second succeeding tax year may be carried forward and used
11 in the third succeeding tax year but may not be carried forward for any tax
12 year thereafter.

13 “(c) A taxpayer is not eligible for a tax credit under this section if the
14 first tax year for which the credit would otherwise be allowed begins on or
15 after January 1, 2012.

16 “(8) If a tax credit is claimed under this section by a nonresident or
17 part-year resident taxpayer, the amount shall be allowed without proration
18 under ORS 316.117.

19 “(9) A taxpayer who has received a tax credit certificate under this sec-
20 tion may sell the certificate to another taxpayer. The sale is effective only
21 if a notice of tax credit certificate sale is filed with the Department of Rev-
22 enue. The notice shall be filed on a form prescribed by the department on
23 or before the date on which the income or corporate excise tax return of the
24 buyer for the first year for which the credit could be claimed is filed or due,
25 whichever is earlier. The notice form shall include the following information:

26 “(a) The name and taxpayer identification number of the seller;

27 “(b) The name and taxpayer identification number of the buyer;

28 “(c) The amount of the tax credit certificate that is being sold to the
29 buyer;

30 “(d) The amount of the tax credit certificate that is being retained by the

1 seller; and

2 “(e) Any other information required by the department.

3 “(10) If requested by the Department of Revenue, the Oregon Film and
4 Video Office shall supply a list of taxpayers that have obtained tax credit
5 certification under this section, and for each listed taxpayer disclose:

6 “(a) The amount of contribution made by the taxpayer; and

7 “(b) The amount certified for tax credit under this section.

8 “(11) If the amount of contribution for which a tax credit certification is
9 made is allowed as a deduction for federal tax purposes, the amount of the
10 contribution shall be added to federal taxable income for Oregon tax pur-
11 poses.

12 **“SECTION 11a.** ORS 315.514, as amended by section 11 of this 2011 Act,
13 is amended to read:

14 “315.514. (1) A credit against the taxes that are otherwise due under ORS
15 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or
16 318, is allowed to a taxpayer for certified film production development con-
17 tributions made by the taxpayer during the tax year to the Oregon Pro-
18 duction Investment Fund established under ORS 284.367.

19 “(2)(a) [*The amount of the tax credit shall equal the amount certified for*
20 *credit by the Oregon Film and Video Office, except that a contribution must*
21 *equal at least 90 percent of the tax credit.*] **The Department of Revenue**
22 **shall, in cooperation with the Oregon Film and Video Office, conduct**
23 **an auction of tax credits under this section and issue tax credit cer-**
24 **tifications under this section. The department may conduct the auc-**
25 **tion in the manner that it determines is best suited to maximize the**
26 **return to the state on the sale of the certificates and shall announce**
27 **a reserve bid prior to conducting the auction. The reserve amount**
28 **shall be at least 95 percent of the total amount of the tax credit.**
29 **Moneys necessary to reimbursement the department for the actual**
30 **costs incurred by the department in administering an auction, not to**

1 **exceed 0.25 percent of auction proceeds, are continuously appropriated**
2 **to the department. The department shall deposit net receipts from the**
3 **auction required under this section in the Oregon Production Invest-**
4 **ment Fund.**

5 “(b) The Oregon Film and Video Office shall adopt rules [*for determining*
6 *the amount of tax credit to be certified by the office. The rules shall be*
7 *adopted*] in order to achieve the following goals:

8 “(A) Subject to paragraph (a) of this subsection, generate contributions
9 for which tax credits of \$6 million are certified for each fiscal year;

10 “(B) Maximize income and excise tax revenues that are retained by the
11 State of Oregon for state operations; and

12 “(C) Provide the necessary financial incentives for taxpayers to make
13 contributions, taking into consideration the impact of granting a credit upon
14 a taxpayer’s federal income tax liability.

15 “[~~(3)~~ *A taxpayer seeking a tax credit under this section shall apply for tax*
16 *credit certification to the Oregon Film and Video Office on a form supplied*
17 *by the office. The taxpayer shall include payment of the contribution at the*
18 *time of application.*]

19 “[~~(4)~~ **(3)** Contributions made under this section shall be deposited in the
20 Oregon Production Investment Fund.

21 “[~~(5)(a)~~ **(4)(a)** Upon receipt of a contribution, the Oregon Film and Video
22 Office shall, **except as provided in section 13 of this 2011 Act**, issue to
23 the taxpayer written certification of the amount certified for tax credit under
24 this section to the extent the amount certified for tax credit, when added to
25 all amounts previously certified for tax credit under this section, does not
26 exceed \$6 million for the fiscal year in which certification is made.

27 “(b) The Oregon Film and Video Office is not liable, and a refund of a
28 contributed amount need not be made, if a taxpayer who has received tax
29 credit certification is unable to use all or a portion of the tax credit to offset
30 the tax liability of the taxpayer.

1 “[6] (5) To the extent the Oregon Film and Video Office does not certify
2 contributed amounts as eligible for a tax credit under this section, the tax-
3 payer may request a refund of the amount the taxpayer contributed, and the
4 office shall refund that amount.

5 “[7(a)] (6)(a) Except as provided in paragraph (b) of this subsection, a
6 tax credit claimed under this section may not exceed the tax liability of the
7 taxpayer and may not be carried over to another tax year.

8 “(b) Any tax credit otherwise allowable under this section that is not used
9 by the taxpayer in a particular tax year may be carried forward and offset
10 against the taxpayer’s tax liability for the next succeeding tax year. Any
11 credit remaining unused in the next succeeding tax year may be carried
12 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
14 in the third succeeding tax year but may not be carried forward for any tax
15 year thereafter.

16 “(c) A taxpayer is not eligible for a tax credit under this section if the
17 first tax year for which the credit would otherwise be allowed begins on or
18 after January 1, [2012] **2018**.

19 “[8] (7) If a tax credit is claimed under this section by a nonresident or
20 part-year resident taxpayer, the amount shall be allowed without proration
21 under ORS 316.117.

22 “[9] *A taxpayer who has received a tax credit certificate under this section*
23 *may sell the certificate to another taxpayer. The sale is effective only if a*
24 *notice of tax credit certificate sale is filed with the Department of Revenue.*
25 *The notice shall be filed on a form prescribed by the department on or before*
26 *the date on which the income or corporate excise tax return of the buyer for*
27 *the first year for which the credit could be claimed is filed or due, whichever*
28 *is earlier. The notice form shall include the following information:]*

29 “[a] *The name and taxpayer identification number of the seller;]*

30 “[b] *The name and taxpayer identification number of the buyer;]*

1 “(c) *The amount of the tax credit certificate that is being sold to the*
2 *buyer;*]

3 “(d) *The amount of the tax credit certificate that is being retained by the*
4 *seller; and]*

5 “(e) *Any other information required by the department.*]

6 “(10) *If requested by the Department of Revenue, the Oregon Film and*
7 *Video Office shall supply a list of taxpayers that have obtained tax credit*
8 *certification under this section, and for each listed taxpayer disclose:]*

9 [“(a) *The amount of contribution made by the taxpayer; and]*

10 [“(b) *The amount certified for tax credit under this section.*]

11 “(11) (8) If the amount of contribution for which a tax credit certif-
12 ication is made is allowed as a deduction for federal tax purposes, the
13 amount of the contribution shall be added to federal taxable income for
14 Oregon tax purposes.

15 “**SECTION 12. The Oregon Film and Video Office and the Depart-**
16 **ment of Revenue shall report, not later than February 15, 2012, to the**
17 **Legislative Assembly on the operation of the auction process required**
18 **in ORS 315.514.**

19 “**SECTION 13. (1) In lieu of the issuance of certifications for tax**
20 **credit under ORS 315.514 by the Oregon Film and Video Office, the**
21 **Legislative Assembly may, no later than 30 days prior to the end of**
22 **each fiscal year, appropriate to the Oregon Business Development**
23 **Department for deposit into the Oregon Production Investment Fund**
24 **an amount equal to the total amount that would otherwise be certified**
25 **for tax credits during the current fiscal year, based on the amount of**
26 **contributions and accompanying applications for credit received by the**
27 **office during the fiscal year.**

28 “(2) If the Legislative Assembly makes the election allowed in sub-
29 section (1) of this section:

30 “(a) Any contributions to the Oregon Production Investment Fund

1 **made during the current fiscal year and for which an application for**
2 **a credit under ORS 315.514 is pending shall, at the request of the tax-**
3 **payer, be refunded by the Oregon Film and Video Office; and**

4 **“(b) A credit under ORS 315.514 may not be claimed for any contri-**
5 **bution made during the current fiscal year.**

6 **“SECTION 14.** ORS 284.367 is amended to read:

7 “284.367. (1) The Oregon Production Investment Fund is established in the
8 State Treasury, separate and distinct from the General Fund. Interest earned
9 by the Oregon Production Investment Fund shall be credited to the fund.

10 “(2) Moneys in the Oregon Production Investment Fund shall consist of:

11 “(a) Amounts donated to the fund;

12 “(b) Amounts appropriated or otherwise transferred to the fund by the
13 Legislative Assembly;

14 “(c) Other amounts deposited in the fund from any source; and

15 “(d) Interest earned by the fund.

16 “(3) Ninety-five percent of moneys in the fund are continuously appropri-
17 ated to the Oregon Business Development Department for the purposes of
18 making:

19 “(a) Reimbursements to filmmakers under ORS 284.368;

20 “(b) Payments to a tax credit marketer for marketing services provided
21 by the marketer as described in ORS 284.369; and

22 “(c) Refunds described in ORS 315.514 (6).

23 “(4) Five percent of moneys in the fund are continuously appropriated to
24 the department for the purpose of making reimbursements to local
25 filmmakers under ORS 284.368 (3). **Total reimbursements to local**
26 **filmmakers may not exceed \$250,000 in a fiscal year.**

27 “(5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

28 **“SECTION 15.** ORS 284.367, as amended by section 14 of this 2011 Act,
29 is amended to read:

30 “284.367. (1) The Oregon Production Investment Fund is established in the

1 State Treasury, separate and distinct from the General Fund. Interest earned
2 by the Oregon Production Investment Fund shall be credited to the fund.

3 “(2) Moneys in the Oregon Production Investment Fund shall consist of:

4 “(a) Amounts donated to the fund;

5 “(b) Amounts appropriated or otherwise transferred to the fund by the
6 Legislative Assembly;

7 “(c) Other amounts deposited in the fund from any source; and

8 “(d) Interest earned by the fund.

9 “(3) Ninety-five percent of moneys in the fund are continuously appropri-
10 ated to the Oregon Business Development Department for the purposes of
11 making:

12 “(a) Reimbursements to filmmakers under ORS 284.368;

13 “(b) Payments to a tax credit marketer for marketing services provided
14 by the marketer as described in ORS 284.369; and

15 “(c) Refunds described in ORS 315.514 (6).

16 “(4) Five percent of moneys in the fund are continuously appropriated to
17 the department for the purpose of making reimbursements to local
18 filmmakers under ORS 284.368 (3). [*Total reimbursements to local filmmakers*
19 *may not exceed \$250,000 in a fiscal year.*]

20 “(5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

21 “**SECTION 16.** Section 1a, chapter 559, Oregon Laws 2005, is amended to
22 read:

23 “**Sec. 1a.** The Oregon Film and Video Office may not issue a qualifying
24 film production labor rebate certificate under section 1 [*of this 2005 Act*],
25 **chapter 559, Oregon Laws 2005**, on or after January 1, [2012] **2018**.

26 “**SECTION 17.** Section 77, chapter 736, Oregon Laws 2003, as amended
27 by section 1, chapter 913, Oregon Laws 2009, is amended to read:

28 “**Sec. 77.** ORS 315.514 applies to tax years beginning on or after January
29 1, 2005, and before January 1, [2012] **2018**, and to tax credit certifications
30 issued by the Oregon Film and Video Office on or after July 1, 2005.

1 **“SECTION 18. (1) The amendments to ORS 315.514 by section 11 of**
2 **this 2011 Act apply to fiscal years beginning after June 30, 2011.**

3 **“(2) The amendments to ORS 315.514 by section 11a of this 2011 Act**
4 **apply to tax credit certifications issued by the Oregon Film and Video**
5 **Office on or after December 31, 2011.**

6 **“(3) The amendments to ORS 284.367 by section 14 of this 2011 Act**
7 **apply to fiscal years beginning after June 30, 2011, and before July 1,**
8 **2013.**

9 **“(4) The amendments to ORS 284.367 by section 15 of this 2011 Act**
10 **apply to fiscal years beginning after June 30, 2013.**

11 **“SECTION 18a.** Section 11, chapter 913, Oregon Laws 2009, is amended
12 to read:

13 **“Sec. 11.** The State Department of Fish and Wildlife may not issue a
14 preliminary certificate of approval under ORS 315.138 after January 1,
15 [2012] **2018.**

16 **“SECTION 18b.** ORS 496.303, as amended by section 14, chapter 625,
17 Oregon Laws 2007, is amended to read:

18 **“496.303. (1) The Fish and Wildlife Account is established in the State**
19 **Treasury, separate and distinct from the General Fund. All moneys in the**
20 **account are continuously appropriated to the State Fish and Wildlife Com-**
21 **mission. The Fish and Wildlife Account shall consist of the moneys in its**
22 **various subaccounts and any moneys transferred to the account by the Leg-**
23 **islative Assembly. Unless otherwise specified by law, interest earnings on**
24 **moneys in the account shall be paid into the State Treasury and credited to**
25 **the State Wildlife Fund.**

26 **“(2)(a) The Fish Screening Subaccount is established in the Fish and**
27 **Wildlife Account. The subaccount shall consist of:**

28 **“(A) All penalties recovered under ORS 536.900 to 536.920.**

29 **“(B) All moneys received pursuant to ORS 498.306.**

30 **“(C) All gifts, grants and other moneys from whatever source that may**

1 be used to carry out the provisions of ORS 498.306.

2 “(D) All moneys received from the surcharge on angling licenses imposed
3 by ORS 497.124.

4 “(b) All moneys in the subaccount shall be used to carry out the pro-
5 visions of ORS **315.138**, 498.306 and 509.620. However, moneys received from
6 the surcharge on angling licenses imposed by ORS 497.124 shall be expended
7 only to carry out the provisions of law relating to the screening of water
8 diversions.

9 “(3) The Fish Endowment Subaccount is established in the Fish and
10 Wildlife Account. The subaccount shall consist of transfers of moneys au-
11 thorized by the Legislative Assembly from the State Wildlife Fund and gifts
12 and grants of moneys from whatever source for the purpose of paying the
13 expense of maintaining fish hatcheries operated by the department.

14 “(4) The Migratory Waterfowl Subaccount is established in the Fish and
15 Wildlife Account. All moneys received by the commission from the sale of
16 art works and prints related to the migratory waterfowl stamp shall be de-
17 posited in the subaccount. Moneys in the subaccount may be expended only
18 for activities that promote the propagation, conservation and recreational
19 uses of migratory waterfowl and for activities related to the design, pro-
20 duction, issuance and arrangements for sale of the migratory waterfowl
21 stamps and related art works and prints. Expenditures of moneys in the
22 subaccount may be made within this state, in other states or in foreign
23 countries, in such amounts as the commission determines appropriate. Ex-
24 penditures in other states and foreign countries shall be on such terms and
25 conditions as the commission determines will benefit most directly the mi-
26 gratory waterfowl resources of this state.

27 “(5) The Halibut Research Subaccount is established in the Fish and
28 Wildlife Account. Based on the annual number of recreational halibut
29 anglers, a portion of the moneys derived from the sale of the salmon,
30 steelhead trout, sturgeon and halibut tag pursuant to ORS 497.121 shall be

1 credited to the subaccount. Moneys in the subaccount may be expended only
2 for halibut population studies and other research.

3 “(6) The Upland Bird Subaccount is established in the Fish and Wildlife
4 Account. All moneys received by the State Fish and Wildlife Commission
5 from the sale of upland bird stamps, from the sale of any art works and
6 prints related to the upland bird stamp and from private hunting preserve
7 permit fees shall be deposited in the subaccount. Moneys in the subaccount
8 may be expended only for promoting the propagation and conservation of
9 upland birds and the acquisition, development, management, enhancement,
10 sale or exchange of upland bird habitat, and for activities related to the de-
11 sign, production, issuance and arrangements for sale of the upland bird
12 stamps and related art works and prints. Expenditures of moneys in the
13 subaccount shall be made for the benefit of programs within this state in
14 such amounts and at such times as the commission determines appropriate
15 to most directly benefit the upland bird resources of the state.

16 “(7)(a) The Fish and Wildlife Deferred Maintenance Subaccount is estab-
17 lished in the Fish and Wildlife Account. Interest earnings on moneys in the
18 subaccount shall be credited to the subaccount. The subaccount shall consist
19 of moneys authorized by the Legislative Assembly from the State Wildlife
20 Fund and moneys obtained by gift, grant, bequest or donation from any other
21 public or private source.

22 “(b) The principal in the subaccount may be utilized only as provided in
23 paragraph (c) of this subsection. Interest earnings on the moneys in the
24 subaccount may be expended only for the maintenance of fish hatcheries and
25 State Department of Fish and Wildlife facilities other than administrative
26 facilities located in Salem.

27 “(c) The department may borrow funds from the principal of the subac-
28 count to maintain adequate cash flow requirements. However, moneys bor-
29 rowed from the principal must be repaid to the subaccount:

30 “(A) Within six months from the date on which the moneys were bor-

1 rowed.

2 “(B) With interest at the standard rate that the State Treasurer charges
3 to state agencies for other loans. Interest paid under this subparagraph shall
4 be paid to the subaccount.

5 “(d) For purposes of this subsection, ‘principal’ means moneys authorized
6 by the Legislative Assembly for transfer to the subaccount from the State
7 Wildlife Fund, including any assignment of earnings on moneys in the fund
8 and other moneys obtained by gift, grant, bequest or donation deposited into
9 the subaccount.

10 “(8) The Access and Habitat Board Subaccount is established in the Fish
11 and Wildlife Account. The subaccount shall consist of moneys transferred to
12 the subaccount pursuant to ORS 496.242. Moneys in the subaccount may be
13 used for the purposes specified in ORS 496.242.

14 “(9) The Marine Shellfish Subaccount is established in the Fish and
15 Wildlife Account. Interest earnings on moneys in the subaccount shall be
16 credited to the subaccount. All moneys received by the commission from the
17 sale of resident and nonresident shellfish licenses pursuant to ORS 497.121
18 shall be deposited in the subaccount. Moneys in the subaccount shall be used
19 for the protection and enhancement of shellfish for recreational purposes,
20 including shellfish sanitation costs and the cost of enforcement of wildlife
21 laws pertaining to the taking of shellfish. The State Fish and Wildlife Di-
22 rector, or a designee, the Director of Agriculture, or a designee, and the
23 Superintendent of State Police, or a designee, shall jointly make a recom-
24 mendation to the Governor for inclusion in the Governor’s budget beginning
25 July 1 of each odd-numbered year.

26 “(10)(a) The Mountain Sheep Subaccount is established in the Fish and
27 Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to
28 (c).

29 “(b) All moneys in the subaccount shall be used for the propagation and
30 conservation of mountain sheep, for research, development, management,

1 enhancement and sale or exchange of mountain sheep habitat and for pro-
2 grams within the state that in the discretion of the commission most directly
3 benefit mountain sheep resources of this state.

4 “(11)(a) The Antelope Subaccount is established in the Fish and Wildlife
5 Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

6 “(b) All moneys in the subaccount shall be used for the propagation and
7 conservation of antelope, for research, development, management, enhance-
8 ment and sale or exchange of antelope habitat and for programs within the
9 state that in the discretion of the commission most directly benefit antelope
10 resources of this state.

11 “(12)(a) The Mountain Goat Subaccount is established in the Fish and
12 Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to
13 (c).

14 “(b) All moneys in the subaccount shall be used for the propagation and
15 conservation of mountain goats for research, development, management, en-
16 hancement and sale or exchange of mountain goat habitat and for programs
17 within the state that in the discretion of the commission most directly ben-
18 efit mountain goat resources of this state.

19 “(13)(a) The commission shall keep a record of all moneys deposited in the
20 Fish and Wildlife Account. The record shall indicate by separate cumulative
21 accounts the sources from which the moneys are derived and the individual
22 activity or programs against which each withdrawal is charged.

23 “(b) Using the record created pursuant to paragraph (a) of this subsection,
24 the commission shall report, in the budget documents submitted to the Leg-
25 islative Assembly, on the application of investment and interest earnings to
26 the maintenance of fish hatcheries and other State Department of Fish and
27 Wildlife facilities.

28 **“SECTION 19.** ORS 314.752, as amended by section 26, chapter 76, Oregon
29 Laws 2010, is amended to read:

30 “314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits al-

1 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
2 318 shall not be allowed to an S corporation. The business tax credits al-
3 lowed 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
6 under ORS 314.734, on income of the shareholder of an S corporation, there
7 shall be taken into account the shareholder’s pro rata share of business tax
8 credit (or item thereof) that would be allowed to the corporation (but for
9 subsection (1) of this section) or recapture or recovery thereof. The credit (or
10 item thereof), recapture or recovery shall be passed through to shareholders
11 in pro rata shares as determined in the manner prescribed under section
12 1377(a) of the Internal Revenue Code.

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

17 “(4) If the shareholder is a nonresident and there is a requirement appli-
18 cable for the business tax credit that in the case of a nonresident the credit
19 be allowed in the proportion provided in ORS 316.117, then that provision
20 shall apply to the nonresident shareholder.

21 “(5) As used in this section, ‘business tax credit’ means a tax credit
22 granted to personal income taxpayers to encourage certain investment, to
23 create employment, economic opportunity or incentive or for charitable, ed-
24 ucational, scientific, literary or public purposes that is listed under this
25 subsection as a business tax credit or is designated as a business tax credit
26 by law or by the Department of Revenue by rule and includes but is not
27 limited to the following credits: ORS 285C.309 (tribal taxes on reservation
28 enterprise zones and reservation partnership zones), ORS 315.104 (forestation
29 and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish
30 screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS

1 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care as-
2 sistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions
3 for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics
4 recycling), ORS 315.354 and 469.207 (energy conservation facilities), ORS
5 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications
6 facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fu-
7 eling stations necessary to operate an alternative fuel vehicle) and ORS
8 315.141 (biomass production for biofuel) **and section 23 of this 2011 Act**
9 **(renewable energy development contributions), section 35 of this 2011**
10 **Act (energy conservation projects) and section 53 of this 2011 Act**
11 **(transportation projects).**

12 **“SECTION 20.** ORS 318.031 is amended to read:

13 “318.031. It being the intention of the Legislative Assembly that this
14 chapter and ORS chapter 317 shall be administered as uniformly as possible
15 (allowance being made for the difference in imposition of the taxes), ORS
16 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
17 porated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134,
18 315.141, 315.156, 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604
19 **and sections 23, 35 and 53 of this 2011 Act** (all only to the extent appli-
20 cable to a corporation) and ORS chapter 317.

21 **“SECTION 21.** ORS 315.053 is amended to read:

22 “315.053. An income tax credit allowed under ORS 315.141, 315.354 or
23 315.514 or section 47, chapter 843, Oregon Laws 2007, or section 12, chapter
24 855, Oregon Laws 2007, **or section 35 or 53 of this 2011 Act** may be trans-
25 ferred or sold only to one or more of the following:

26 “(1) A C corporation.

27 “(2) An S corporation.

28 “(3) A personal income taxpayer.

29

30 **“TAX CREDIT FOR RENEWABLE ENERGY**

1 **DEVELOPMENT CONTRIBUTIONS**

2
3 **“SECTION 22. Sections 23 and 24 of this 2011 Act are added to and**
4 **made a part of ORS chapter 315.**

5 **“SECTION 23. (1) A credit against the taxes that are otherwise due**
6 **under ORS chapter 316 or, if the taxpayer is a corporation, under ORS**
7 **chapter 317 or 318, is allowed to a taxpayer for certified renewable en-**
8 **ergy development contributions made by the taxpayer during the tax**
9 **year to the Clean Energy Deployment Fund established in section 1,**
10 **chapter ____, Oregon Laws 2011 (Enrolled House Bill 2960).**

11 **“(2)(a) The Department of Revenue shall, in cooperation with the**
12 **State Department of Energy, conduct an auction of tax credits under**
13 **this section and issue tax credit certifications under this section. The**
14 **department may conduct the auction in the manner that it determines**
15 **is best suited to maximize the return to the state on the sale of the**
16 **certificates and shall announce a reserve bid prior to conducting the**
17 **auction. The reserve amount shall be at least 95 percent of the total**
18 **amount of the tax credit. Moneys necessary to reimburse the Depart-**
19 **ment of Revenue for the actual costs incurred by the department in**
20 **administering an auction, not to exceed 0.25 percent of auction pro-**
21 **ceeds, are continuously appropriated to the department. The Depart-**
22 **ment of Revenue shall deposit net receipts from the auction required**
23 **under this section in the Clean Energy Deployment Fund established**
24 **in section 1, chapter ____, Oregon Laws 2011 (Enrolled House Bill 2960).**

25 **“(b) The State Department of Energy shall adopt rules in order to**
26 **achieve the following goals:**

27 **“(A) Subject to paragraph (a) of this subsection, generate contri-**
28 **butions for which tax credits of \$1.5 million are certified for each fiscal**
29 **year;**

30 **“(B) Maximize income and excise tax revenues that are retained by**

1 the State of Oregon for state operations; and

2 “(C) Provide the necessary financial incentives for taxpayers to
3 make contributions, taking into consideration the impact of granting
4 a credit upon a taxpayer’s federal income tax liability.

5 “(3) A taxpayer who has been selected through the auction process
6 required under subsection (2) of this section for receipt of a tax credit
7 under this section shall apply for tax credit certification to the State
8 Department of Energy on a form supplied by the department. The
9 taxpayer shall include payment of the contribution at the time of ap-
10 plication.

11 “(4) Contributions made under this section shall be deposited in the
12 Clean Energy Deployment Fund established in section 1, chapter ____,
13 Oregon Laws 2011 (Enrolled House Bill 2960).

14 “(5)(a) Upon receipt of a contribution, the State Department of
15 Energy shall, except as provided in section 24 of this 2011 Act, issue
16 to the taxpayer written certification of the amount certified for tax
17 credit under this section to the extent the amount certified for tax
18 credit, when added to all amounts previously certified for tax credit
19 under this section, does not exceed \$1.5 million for the fiscal year in
20 which certification is made.

21 “(b) The State Department of Energy and the Department of Reve-
22 nue are not liable, and a refund of a contributed amount need not be
23 made, if a taxpayer who has received tax credit certification is unable
24 to use all or a portion of the tax credit to offset the tax liability of the
25 taxpayer.

26 “(6)(a) Except as provided in paragraph (b) of this subsection, a tax
27 credit claimed under this section may not exceed the tax liability of
28 the taxpayer and may not be carried over to another tax year.

29 “(b) Any tax credit otherwise allowable under this section that is
30 not used by the taxpayer in a particular tax year may be carried for-

1 ward and offset against the taxpayer's tax liability for the next suc-
2 ceeding tax year. Any credit remaining unused in the next succeeding
3 tax year may be carried forward and used in the second succeeding tax
4 year, and likewise, any credit not used in that second succeeding tax
5 year may be carried forward and used in the third succeeding tax year
6 but may not be carried forward for any tax year thereafter.

7 “(7) If a tax credit is claimed under this section by a nonresident
8 or part-year resident taxpayer, the amount shall be allowed without
9 proration under ORS 316.117.

10 “(8) If the amount of contribution for which a tax credit certif-
11 ication is made is allowed as a deduction for federal tax purposes, the
12 amount of the contribution shall be added to federal taxable income
13 for Oregon tax purposes.

14 “SECTION 24. (1) In lieu of the issuance of certifications for tax
15 credit under section 23 of this 2011 Act by the State Department of
16 Energy, the Legislative Assembly may, no later than 30 days prior to
17 the end of each fiscal year, appropriate to the State Department of
18 Energy for deposit into the Clean Energy Deployment Fund established
19 in section 1, chapter —, Oregon Laws 2011 (Enrolled House Bill 2960),
20 an amount equal to the total amount that would otherwise be certified
21 for tax credits during the current fiscal year, based on the amount of
22 contributions and accompanying applications for credit received by the
23 office during the fiscal year.

24 “(2) If the Legislative Assembly makes the election allowed in sub-
25 section (1) of this section:

26 “(a) Any contributions made pursuant to section 23 of this 2011 Act
27 to the Clean Energy Deployment Fund established in section 1, chapter
28 —, Oregon Laws 2011 (Enrolled House Bill 2960), during the current
29 fiscal year and for which an application for a credit under section 23
30 of this 2011 Act is pending shall, at the request of the taxpayer, be

1 refunded by the State Department of Energy; and

2 “(b) A credit under section 23 of this 2011 Act may not be claimed
3 for any contribution made during the current fiscal year.

4 **“SECTION 25.** A taxpayer may not be allowed a credit under section
5 23 of this 2011 Act for any tax year that begins on or after January 1,
6 2018.

7 **“SECTION 26.** Sections 27 to 33 of this 2011 Act are added to and
8 made a part of ORS chapter 469.

9 **“SECTION 27.** As used in sections 27 to 33 of this 2011 Act:

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

11 “(2) ‘Cost’ means the actual cost of the acquisition, construction
12 and installation of the renewable energy production system paid by the
13 applicant for the system.

14 “(3) ‘Renewable energy production system’ means a system that
15 uses biomass, solar, geothermal, hydroelectric, wind, landfill gas or
16 wave, tidal or ocean thermal energy technology to produce energy.

17 “(4) ‘Solar technology’ means any system, mechanism or series of
18 mechanisms, including photovoltaic systems, that uses solar radiation
19 to generate electrical energy.

20 **“NOTE:** Section 28 was deleted by amendment. Subsequent sections were
21 not renumbered.

22 **“SECTION 29.** (1) Prior to the installation or construction of a
23 renewable energy production system, any person may apply to the
24 State Department of Energy for a grant under section 30 of this 2011
25 Act if:

26 “(a) The applicant will be the owner, contract purchaser or lessee
27 of the system at the time of installation or construction of the pro-
28 posed system;

29 “(b) The system does not exceed 35 megawatts of nameplate capac-
30 ity; and

1 **“(c) The system complies with the standards or rules adopted by the**
2 **Director of the State Department of Energy.**

3 **“(2) An application for a grant under section 30 of this 2011 Act shall**
4 **be made in writing on a form prepared by the department and shall**
5 **contain:**

6 **“(a) A detailed description of the system and its operation and in-**
7 **formation showing that the system will operate as represented in the**
8 **application and remain in operation for at least five years, unless the**
9 **director by rule specifies another period of operation.**

10 **“(b) The anticipated total system cost.**

11 **“(c) Information on the number and type of jobs that will be created**
12 **by the system, and the number of jobs sustained throughout the con-**
13 **struction, installation and operation of the system.**

14 **“(d) Information demonstrating that the system will comply with**
15 **applicable state and local laws and regulations and obtain required li-**
16 **censes and permits.**

17 **“(e) Any other information the director considers necessary to de-**
18 **termine whether the system is in accordance with the provisions of**
19 **sections 27 to 33 of this 2011 Act, and any applicable rules or standards**
20 **adopted by the director.**

21 **“(3) An application for a grant shall be accompanied by a fee es-**
22 **tablished under section 31 of this 2011 Act. The director may refund**
23 **all or a portion of the fee if the application for a grant is rejected.**

24 **“(4) The director may allow an applicant to file the application for**
25 **a grant after the start of installation or construction of the system if**
26 **the director finds that:**

27 **“(a) Filing the application before the start of installation or con-**
28 **struction is inappropriate because special circumstances render filing**
29 **earlier unreasonable; and**

30 **“(b) The system would otherwise qualify for a grant under sections**

1 27 to 33 of this 2011 Act.

2 **“SECTION 30. (1) The Director of the State Department of Energy**
3 **may require an applicant for a grant under this section for a**
4 **renewable energy production system to submit plans, specifications**
5 **and contract terms, and after examination of the plans, specifications**
6 **and terms may request corrections and revisions.**

7 **“(2) If the director determines that the system is technically feasi-**
8 **ble and should operate in accordance with the representations made**
9 **by the applicant, and is in accordance with the provisions of sections**
10 **27 to 33 of this 2011 Act and any applicable rules or standards adopted**
11 **by the director, the director may enter into a performance agreement**
12 **with the applicant in anticipation of awarding a grant under this sec-**
13 **tion. The grant provided for in the performance agreement may not**
14 **exceed 35 percent of the cost of the project and may not exceed \$250,000**
15 **per system. If construction does not begin within six months of an**
16 **award under this section, the performance agreement shall be void and**
17 **the State Department of Energy may not award the grant.**

18 **“(3) The director may, in accordance with ORS chapter 183, deny a**
19 **grant under this section if the director determines that:**

20 **“(a) The system does not comply with the provisions of sections 27**
21 **to 33 of this 2011 Act and applicable rules and standards;**

22 **“(b) The applicant was directly involved in an act for which the di-**
23 **rector has levied civil penalties or revoked, canceled or suspended any**
24 **certification under ORS 469.185 to 469.225 or section 23 of this 2011 Act,**
25 **or any grant under sections 27 to 33 of this 2011 Act; or**

26 **“(c) The applicant or the principal, director, officer, owner, major-**
27 **ity shareholder or member of the applicant, or the manager of the**
28 **applicant if the applicant is a limited liability company, is in arrears**
29 **for payments owed to any government agency while in any capacity**
30 **with direct or indirect control over a business.**

1 “(4) If the director determines that the applicant has complied with
2 all provisions of the performance agreement required under this sec-
3 tion and with the provisions of sections 27 to 33 of this 2011 Act, the
4 director shall award the grant provided in this section.

5 “SECTION 31. By rule and after hearing, the Director of the State
6 Department of Energy may adopt a schedule of reasonable fees that
7 the State Department of Energy may require of applicants for a grant
8 for a renewable energy production system under sections 27 to 33 of
9 this 2011 Act or for tax credit certification under section 23 of this 2011
10 Act. Before the adoption or revision of the fees, the department shall
11 estimate the total cost of the program to the department. The fees
12 shall be used to recover the anticipated cost of filing, investigating,
13 granting and rejecting applications for grant or tax credit certification
14 and ensuring compliance with sections 23, 24 and 27 to 33 of this 2011
15 Act and shall be designed not to exceed the total cost estimated by the
16 department. Any excess fees shall be held by the department and shall
17 be used by the department to reduce any future fee increases. The fee
18 may vary according to the size and complexity of the system. The fee
19 is not considered part of the cost of the system for which a grant is
20 being sought.

21 “SECTION 32. (1) The total amount of potential tax credits for
22 certified renewable energy development contributions in this state
23 may not, at the time of certification under section 23 of this 2011 Act,
24 exceed:

25 “(a) \$3 million for any biennium; or

26 “(b) \$750,000 for the six months beginning July 1, 2017, and ending
27 December 31, 2017.

28 “(2) In the event that the Director of the State Department of En-
29 ergy receives applications for grants under section 30 of this 2011 Act
30 in excess of the contributions received pursuant to section 23 of this

1 2011 Act, the director shall allocate the issuance of grants according
2 to standards established by rule by the director.

3 **“SECTION 33.** The State Department of Energy shall by rule es-
4 tablish policies and procedures for the administration and enforcement
5 of the provisions of sections 23, 24 and 27 to 33 of this 2011 Act.

6 **“SECTION 33a.** Sections 23, 24 and 27 to 33 of this 2011 Act apply to
7 applications for grants submitted under section 29 of this 2011 Act af-
8 ter July 1, 2011, and to tax years beginning on or after January 1, 2011.

9

10 **“TAX CREDIT FOR ENERGY CONSERVATION PROJECTS**

11

12 **“SECTION 34.** Sections 35 and 36 are added to and made a part of
13 ORS chapter 315.

14 **“SECTION 35.** (1) A credit is allowed against the taxes otherwise
15 due under ORS chapter 316 or, if the taxpayer is a corporation, under
16 ORS chapter 317 or 318, for an energy conservation project that is
17 certified under sections 38 to 50 of this 2011 Act. The credit is allowed
18 as follows:

19 **“(a)** Except as provided in paragraph (b) of this subsection, the
20 credit allowed in each of the first two tax years in which the credit is
21 claimed shall be 10 percent of the certified cost of the facility, but may
22 not exceed the tax liability of the taxpayer. The credit allowed in each
23 of the succeeding three years shall be five percent of the certified cost,
24 but may not exceed the tax liability of the taxpayer.

25 **“(b)** If the certified cost of the facility does not exceed \$20,000, the
26 total amount of the credit allowable under subsection (3) of this sec-
27 tion may be claimed in the first tax year for which the credit may be
28 claimed, but may not exceed the tax liability of the taxpayer.

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

30 **“(a)** The project must be located in Oregon.

1 **“(b) The project must have received final certification from the**
2 **Director of the State Department of Energy under sections 38 to 50 of**
3 **this 2011 Act.**

4 **“(c) If the project is a research and development project, it must**
5 **receive, prior to certification under section 44 of this 2011 Act, a rec-**
6 **ommendation from the Oregon Innovation Council or a comparable**
7 **third party selected by the director.**

8 **“(d) If the project is the construction, improvement, remodel,**
9 **equipment, maintenance or repair of a building, the building that is**
10 **constructed, improved, remodeled, equipped, maintained or repaired**
11 **must achieve, at a minimum, the energy efficiency standards required**
12 **for:**

13 **“(A) LEED Platinum certification;**

14 **“(B) A four globes rating from the Green Globes program;**

15 **“(C) A nationally or regionally recognized and appropriate**
16 **sustainable building program whose performance standards are equiv-**
17 **alent to the standards required for LEED Platinum certification or a**
18 **four globes rating from the Green Globes program, as determined by**
19 **the department; or**

20 **“(D) Verification under this section that the construction con-**
21 **formed to the standards of the Reach Code adopted pursuant to ORS**
22 **455.500.**

23 **“(3) The total amount of credit allowable to an eligible taxpayer**
24 **under this section may not exceed 35 percent of the certified cost of**
25 **the project.**

26 **“(4)(a) Upon any sale, termination of the lease or contract, ex-**
27 **change or other disposition of the project, notice thereof shall be given**
28 **to the director, who shall revoke the certificate covering the project**
29 **as of the date of such disposition.**

30 **“(b) A new owner, or, upon re-leasing of the project, a new lessee,**

1 may apply for a new certificate under section 45 of this 2011 Act. The
2 new lessee or owner must meet the requirements of sections 38 to 50
3 of this 2011 Act and may claim a tax credit under this section only if
4 all moneys owed by the new owner or lessee to the State of Oregon
5 have been paid, if the project continues to operate and if all conditions
6 in the final certification are met. The tax credit available to the new
7 owner shall be limited to the amount of credit not claimed by the
8 former owner or, for a new lessee, the amount of credit not claimed
9 by the lessee under all previous leases. The State Department of En-
10 ergy may waive the requirement that a new owner or lessee apply for
11 a new certificate under section 45 of this 2011 Act if the remaining
12 credit is less than \$20,000.

13 “(c) The department may not revoke the certificate covering a
14 project under paragraph (a) of this subsection if the tax credit associ-
15 ated with the project has been transferred to a taxpayer who is an el-
16 igible applicant under section 43 of this 2011 Act.

17 “(5) Any tax credit otherwise allowable under this section that is
18 not used by the taxpayer in a particular year may be carried forward
19 and offset against the taxpayer’s tax liability for the next succeeding
20 tax year. Any credit remaining unused in that next succeeding tax
21 year may be carried forward and used in the second succeeding tax
22 year, and likewise, any credit not used in that second succeeding tax
23 year may be carried forward and used in the third succeeding tax year,
24 and likewise, any credit not used in that third succeeding tax year
25 may be carried forward and used in the fourth succeeding tax year,
26 and likewise, any credit not used in that fourth succeeding tax year
27 may be carried forward and used in the fifth succeeding tax year, but
28 may not be carried forward for any tax year thereafter. Credits may
29 be carried forward to and used in a tax year beyond the years specified
30 in subsection (1) of this section only as provided in this subsection.

1 “(6) The credit allowed under this section is not in lieu of any de-
2 preciation or amortization deduction for the project to which the tax-
3 payer otherwise may be entitled for purposes of ORS chapter 316, 317
4 or 318 for such year.

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

7 “(8) The definitions in section 38 of this 2011 Act apply to this sec-
8 tion.

9 “SECTION 36. (1) A taxpayer may not be allowed a credit under
10 section 35 of this 2011 Act if the first tax year for which the credit
11 would otherwise be allowed, with respect to an energy conservation
12 project certified under section 45 of this 2011 Act, begins on or after
13 January 1, 2018.

14 “(2) A taxpayer may not be allowed a credit for an energy conser-
15 vation project that is a cogeneration facility as that term is defined
16 in ORS 758.505 for a tax year that begins before January 1, 2013.

17 “SECTION 37. Sections 38 to 50 of this 2011 Act are added to and
18 made a part of ORS chapter 469.

19 “SECTION 38. As used in sections 35 and 38 to 50 of this 2011 Act:

20 “(1) ‘Cost’ means the capital costs and expenses necessarily in-
21 curred in the acquisition, erection, construction and installation of an
22 energy conservation project.

23 “(2) ‘Energy conservation project’ means any capital investment for
24 which the first year energy savings yields a simple payback period of
25 greater than three years. ‘Energy conservation project’ does not in-
26 clude:

27 “(a) Recycling equipment;

28 “(b) Transportation projects;

29 “(c) Energy recovery as that term is defined in ORS 459.005; or

30 “(d) Alternative fuel vehicles.

1 **“(3) ‘Four globes’ means the highest of four tiers of ratings for**
2 **certification in the Green Globes program rating system.**

3 **“(4) ‘Green Globes program’ means a building guidance and assess-**
4 **ment program to advance overall environmental performance and**
5 **sustainability of commercial buildings established by the Green**
6 **Building Initiative.**

7 **“(5)(a) ‘LEED’ means the Leadership in Energy and Environmental**
8 **Design rating system for certification of energy-efficient and environ-**
9 **mentally sustainable buildings established by the U.S. Green Building**
10 **Council.**

11 **“(b) ‘LEED Platinum’ means the highest of four tiers of standards**
12 **for certification in the LEED rating system.**

13 **“SECTION 39. (1) In determining the priority of any energy con-**
14 **servation project for tax credits, preference shall be given to those**
15 **projects with the highest energy savings over the five-year credit al-**
16 **lowance period per tax credit dollar.**

17 **“(2) The Director of the State Department of Energy shall establish**
18 **by rule a tiered priority system to be used in evaluating applicants for**
19 **certification of projects. The State Department of Energy shall rely**
20 **on the standards established under section 41 of this 2011 Act in de-**
21 **termining the eligibility for tax credits and in allocating the available**
22 **certified cost pursuant to section 49 of this 2011 Act among projects.**

23 **“(3) In implementing the system, the director shall compare**
24 **projects of similar costs and technology types against each other, take**
25 **into account the amount of energy saved over the life of the equip-**
26 **ment, market or industry sector, expected lifespan of the facility**
27 **compared to the simple payback period, and any other factors defined**
28 **in department rule. The department may certify less than the total**
29 **cost of any project based on this evaluation.**

30 **“SECTION 40. (1) The owner of a project may transfer a tax credit**

1 for the project in exchange for a cash payment equal to the present
2 value of the tax credit.

3 “(2) The State Department of Energy shall establish by rule a for-
4 mula to be employed in the determination of prices of credits trans-
5 ferred under this section. In establishing the formula the department
6 shall incorporate inflation projections and market real rate of return.

7 “(3) The department shall recalculate credit transfer prices quar-
8 terly, employing the formula established under subsection (2) of this
9 section.

10 “(4) Notwithstanding any other provision of law, a tax credit
11 transferred pursuant to this section does not decrease the amount of
12 taxes required to be reported by a public utility.

13 **“SECTION 41.** The State Department of Energy shall by rule es-
14 tablish the following standards relating to energy conservation
15 projects:

16 “(1) In consultation with the Department of Consumer and Business
17 Services Building Codes Division, standards relating to energy savings
18 in new construction.

19 “(2) Standards relating to what constitutes a replacement of ineffi-
20 cient functional equipment based on remaining service life, for
21 projects that are a retrofit of existing construction.

22 “(3) Standards for the determination of total project cost.

23 “(4) Standards for the application of third party review of research
24 and development projects by the Oregon Innovation Council or a
25 comparable third party selected by the Director of the State Depart-
26 ment of Energy, as required in section 43 of this 2011 Act.

27 **“SECTION 42.** For an energy conservation project, the total amount
28 that receives a preliminary certification from the Director of the State
29 Department of Energy may not exceed \$10 million in certified cost.

30 **“SECTION 43.** (1) Prior to the installation or construction of an

1 energy conservation project, any person may apply to the State De-
2 partment of Energy for preliminary certification under section 44 of
3 this 2011 Act if:

4 “(a) The project complies with the standards adopted by the Direc-
5 tor of the State Department of Energy; and

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

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

10 “(a) A statement that the applicant plans to acquire, construct or
11 install a project that substantially reduces the consumption of pur-
12 chased energy or uses energy more efficiently.

13 “(b) A detailed description of the project and its operation and in-
14 formation showing that the project will operate as represented in the
15 application and remain in operation for at least five years, unless the
16 director by rule specifies another period of operation.

17 “(c) Information on the amount by which consumption of purchased
18 energy by the applicant will be reduced, and, if applicable, information
19 about the expected level of sustainable building practices project per-
20 formance.

21 “(d) The anticipated total project cost.

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

26 “(f) Information demonstrating that the project will comply with
27 applicable state and local laws and regulations and obtain required li-
28 censes and permits.

29 “(g) Information relating to the standards described in section 41
30 of this 2011 Act.

1 “(h) A recommendation for a research and development project as
2 demonstrative of innovation that has been made by the Oregon Inno-
3 vation Council or a comparable third party selected by the director.

4 “(i) Any other information the director considers necessary to de-
5 termine whether the project is in accordance with the provisions of
6 sections 38 to 50 of this 2011 Act, and any applicable rules or standards
7 adopted by the director.

8 “(3) An application for preliminary certification shall be accompa-
9 nied by a fee established under section 46 of this 2011 Act. The director
10 may refund all or a portion of the fee if the application for certifi-
11 cation is rejected.

12 “(4) The director may allow an applicant to file the application for
13 preliminary certification after the start of installation or construction
14 of the project if the director finds that:

15 “(a) Filing the application before the start of installation or con-
16 struction is inappropriate because special circumstances render filing
17 earlier unreasonable; and

18 “(b) The project would otherwise qualify for certification under
19 sections 38 to 50 of this 2011 Act.

20 “(5) A preliminary certification shall remain valid for a period of
21 three calendar years after the date on which the preliminary certifi-
22 cation is issued by the director, after which the certification becomes
23 invalid even if:

24 “(a) The applicant is awaiting identification of a pass-through
25 partner; or

26 “(b) The preliminary certification has been amended.

27 “SECTION 44. (1) The Director of the State Department of Energy
28 may require an applicant for certification of an energy conservation
29 project to submit plans, specifications and contract terms, and after
30 examination of the plans, specifications and terms may request cor-

1 rections and revisions.

2 “(2) If the director determines that the project is technically feasi-
3 ble and should operate in accordance with the representations made
4 by the applicant, and is in accordance with the provisions of sections
5 38 to 50 of this 2011 Act and any applicable rules or standards adopted
6 by the director, the director may issue a preliminary certificate ap-
7 proving the installation or construction of the project. The certificate
8 shall indicate the potential amount of tax credit allowable and shall
9 list any conditions for claiming the credit.

10 “(3) The director may issue an order altering, conditioning, sus-
11 pending or denying preliminary certification if the director determines
12 that:

13 “(a) The project does not comply with the provisions of sections 38
14 to 50 of this 2011 Act and applicable rules and standards;

15 “(b) The applicant has previously received preliminary or final cer-
16 tification for the project;

17 “(c) The applicant was directly involved in an act for which the di-
18 rector has levied civil penalties or revoked, canceled or suspended any
19 certification under ORS 469.185 to 469.225 or sections 38 to 50 of this
20 2011 Act; or

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

26 “SECTION 45. (1) A final certification for an energy conservation
27 project may not be issued by the Director of the State Department of
28 Energy under this section unless:

29 “(a) The project was installed or constructed under a preliminary
30 certificate of approval issued under section 44 of this 2011 Act;

1 **“(b) The applicant demonstrates the ability to provide the informa-**
2 **tion required by section 43 (2) of this 2011 Act and does not violate any**
3 **condition that may be imposed as described in subsection (4) of this**
4 **section; and**

5 **“(c) The project was installed or constructed in accordance with the**
6 **applicable provisions of sections 38 to 50 of this 2011 Act and any ap-**
7 **plicable rules or standards adopted by the director.**

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

10 **“(a) If the person received preliminary certification for the project**
11 **under section 44 of this 2011 Act; and**

12 **“(b) After completion of the installation or construction of the**
13 **project.**

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

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

18 **“(b) The actual cost of the project attested to by a certified public**
19 **accountant who is not an employee of the applicant or, if the actual**
20 **cost of the project is less than \$50,000, copies of receipts for purchase**
21 **and installation of the project;**

22 **“(c) The amount of the credit under section 35 of this 2011 Act that**
23 **is to be claimed;**

24 **“(d) The number and type of jobs created by the operation and**
25 **maintenance of the project over the five-year period beginning with**
26 **the year of preliminary certification under section 44 of this 2011 Act**
27 **and information on the benefits of the project with regard to overall**
28 **economic activity in this state;**

29 **“(e) Information sufficient to demonstrate that the project will re-**
30 **main in operation for at least five years, unless the director by rule**

1 specifies another period of operation;

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

5 “(g) Information, if applicable, pertaining to prior recommendation
6 of the project by the Oregon Innovation Council or a comparable third
7 party selected by the director; and

8 “(h) Any other information determined by the director to be nec-
9 essary prior to issuance of a final certificate, including inspection of
10 the project by the department.

11 “(4) After the filing of the application under this section, the di-
12 rector may issue the certificate together with any conditions that the
13 director determines are appropriate to promote the purposes of
14 sections 35 and 38 to 50 of this 2011 Act. If the applicant is an entity
15 subject to regulation by the Public Utility Commission, the director
16 may consult with the commission prior to issuance of the certificate.
17 The action of the director shall include certification of the actual cost
18 of the project. However, the director may not certify an amount for
19 tax credit purposes that is more than the amount approved in the
20 preliminary certificate issued for the project.

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

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

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

3 “SECTION 46. By rule and after hearing, the Director of the State
4 Department of Energy may adopt a schedule of reasonable fees that
5 the State Department of Energy may require of applicants for prelim-
6 inary or final certification of an energy conservation project under
7 sections 38 to 50 of this 2011 Act. Before the adoption or revision of the
8 fees, the department shall estimate the total cost of the program to
9 the department. The fees shall be used to recover the anticipated cost
10 of filing, investigating, granting and rejecting applications for certifi-
11 cation and ensuring compliance with sections 38 to 50 of this 2011 Act
12 and shall be designed not to exceed the total cost estimated by the
13 department. Any excess fees shall be held by the department and shall
14 be used by the department to reduce any future fee increases. The fee
15 may vary according to the size and complexity of the project. The fee
16 is not considered part of the cost of the project to be certified.

17 “SECTION 47. (1) A certificate issued under section 45 of this 2011
18 Act is required for purposes of obtaining tax credits in accordance
19 with section 35 of this 2011 Act. Such certification shall be granted for
20 a period not to exceed five years. The five-year period shall begin with
21 the tax year of the applicant during which the completed application
22 for final certification of the project under section 45 of this 2011 Act
23 is received by the State Department of Energy.

24 “(2) If the original owner of the certificate uses any portion of the
25 credit, the certificate becomes nontransferable.

26 “(3) For a transferee holding a credit that has been transferred
27 under section 40 of this 2011 Act, the five-year period shall begin with
28 the tax year in which the transferee pays for the credit.

29 “SECTION 48. (1) Under the procedures for a contested case under
30 ORS chapter 183, the Director of the State Department of Energy may

1 order the revocation of a certificate issued under section 45 of this 2011
2 Act 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 project has
5 failed to construct or operate the project in compliance with the plans,
6 specifications and procedures in the certificate; or

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

8 “(2) As soon as an order of revocation under this section becomes
9 final, the director shall notify the Department of Revenue and the
10 project owner, contract purchaser or lessee of the order of revocation.
11 Upon notification, the Department of Revenue immediately shall pro-
12 ceed to collect those taxes not paid by the certificate holder as a result
13 of the tax credits provided to the certificate holder under section 35
14 of this 2011 Act, from the certificate holder or a successor in interest
15 to the business interests of the certificate holder. All prior tax credits
16 provided to the holder of the certificate by virtue of the certificate
17 shall be forfeited.

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

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

1 “(4) If the certificate is ordered revoked pursuant to subsection
2 (1)(b) of this section, the certificate holder shall be denied any further
3 relief under section 35 of this 2011 Act in connection with the facility
4 from and after the date that the order of revocation becomes final.

5 “(5) Notwithstanding subsections (1) to (4) of this section, a certifi-
6 cate or portion of a certificate held by a transferee under section 40
7 of this 2011 Act may not be considered revoked for purposes of the
8 transferee, the tax credit allowable to the transferee under section 40
9 of this 2011 Act may not be reduced, and a transferee is not liable
10 under subsections (2) to (4) of this section.

11 “SECTION 49. (1) The total amount of certified costs for potential
12 tax credits for all energy conservation projects in this state may not,
13 at the time of preliminary certification under section 44 of this 2011
14 Act, exceed:

15 “(a) \$30 million for any biennium; or

16 “(b) \$7.5 million for the six months beginning July 1, 2017, and
17 ending December 31, 2017.

18 “(2) In the event that the Director of the State Department of En-
19 ergy receives applications for preliminary certification with a total
20 amount of certified costs for potential tax credits in excess of the
21 limitations in subsections (1) of this section, the director shall allocate
22 the issuance of preliminary certifications according to standards es-
23 tablished by rule by the director.

24 “SECTION 50. The State Department of Energy shall by rule es-
25 tablish policies and procedures for the administration and enforcement
26 of the provisions of sections 35, 36 and 38 to 50 of this 2011 Act.

27 “SECTION 51. Sections 35, 36 and 38 to 50 of this 2011 Act apply to
28 applications for preliminary certification submitted under section 43
29 of this 2011 Act after July 1, 2011, and to tax years beginning on or
30 after January 1, 2011.

1 **“TAX CREDIT FOR TRANSPORTATION PROJECTS**

2
3 **“SECTION 52. Sections 53 and 54 of this 2011 Act are added to and**
4 **made a part of ORS chapter 315.**

5 **“SECTION 53. (1) A credit is allowed against the taxes otherwise**
6 **due under ORS chapter 316 or, if the taxpayer is a corporation, under**
7 **ORS chapter 317 or 318, for a transportation project, based upon the**
8 **certified cost of the project, including core expenses such as vehicle**
9 **repair, fuel, personnel and administrative expenses, during the period**
10 **for which the project is certified under sections 56 to 65 of this 2011**
11 **Act.**

12 **“(2) The credit allowed for a project other than an alternative fuel**
13 **vehicle infrastructure project shall be as follows:**

14 **“(a) For tax years beginning on or after January 1, 2011, and before**
15 **January 1, 2012, the maximum allowed credit shall be:**

16 **“(A) 35 percent of certified cost, if a preliminary certification is is-**
17 **sued under section 59 of this 2011 Act prior to July 1, 2011; or**

18 **“(B) 25 percent of certified cost, if a preliminary certification is is-**
19 **sued under section 59 of this 2011 Act on or after July 1, 2011, and be-**
20 **fore January 1, 2012.**

21 **“(b) For tax years beginning on or after January 1, 2012, and before**
22 **January 1, 2013, the maximum allowed credit shall be 25 percent of**
23 **certified cost.**

24 **“(c) For tax years beginning on or after January 1, 2013, and before**
25 **January 1, 2014, the maximum allowed credit shall be 20 percent of**
26 **certified cost.**

27 **“(d) For tax years beginning on or after January 1, 2014, and before**
28 **January 1, 2015, the maximum allowed credit shall be 15 percent of**
29 **certified cost.**

30 **“(e) For tax years beginning on or after January 1, 2015, and before**

1 **January 1, 2016, the maximum allowed credit shall be 10 percent of**
2 **certified cost.**

3 **“(3) The total amount of the credit allowable for an alternative fuel**
4 **vehicle infrastructure project under this section may not exceed 35**
5 **percent of the certified cost of the project.**

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

7 **“(a) The project must be located in Oregon.**

8 **“(b) The project must have received final certification from the**
9 **Director of the State Department of Energy under sections 56 to 65 of**
10 **this 2011 Act.**

11 **“(5) Any tax credit otherwise allowable under this section that is**
12 **not used by the taxpayer in a particular year may be carried forward**
13 **and offset against the taxpayer’s tax liability for the next succeeding**
14 **tax year. Any credit remaining unused in that next succeeding tax**
15 **year may be carried forward and used in the second succeeding tax**
16 **year, and likewise, any credit not used in that second succeeding tax**
17 **year may be carried forward and used in the third succeeding tax year,**
18 **and likewise, any credit not used in that third succeeding tax year**
19 **may be carried forward and used in the fourth succeeding tax year,**
20 **and likewise, any credit not used in that fourth succeeding tax year**
21 **may be carried forward and used in the fifth succeeding tax year, but**
22 **may not be carried forward for any tax year thereafter. Credits may**
23 **be carried forward to and used in a tax year beyond the years specified**
24 **in subsection (2) of this section only as provided in this subsection.**

25 **“(6) The credit allowed under this section is not in lieu of any de-**
26 **preciation or amortization deduction for the transportation project to**
27 **which the taxpayer otherwise may be entitled for purposes of ORS**
28 **chapter 316, 317 or 318 for such year.**

29 **“(7) The taxpayer’s adjusted basis for determining gain or loss may**
30 **not be decreased by any tax credits allowed under this section.**

1 “(8) The definitions in section 56 of this 2011 Act apply to this sec-
2 tion.

3 “SECTION 54. (1) A taxpayer may not be allowed a credit for a
4 transportation project, other than an alternative fuel vehicle
5 infrastructure project, certified under section 60 of this 2011 Act if the
6 first tax year for which the credit would otherwise be allowed begins
7 on or after January 1, 2016.

8 “(2) A taxpayer may not be allowed a credit for an alternative fuel
9 vehicle infrastructure project certified under section 60 of this 2011
10 Act if the first tax year for which the credit would otherwise be al-
11 lowed begins on or after January 1, 2018.

12 “SECTION 55. Sections 56 to 65 of this 2011 Act are added to and
13 made a part of ORS chapter 469.

14 “SECTION 56. As used in sections 53 and 56 to 65 of this 2011 Act:

15 “(1) ‘Alternative fuel vehicle infrastructure project’ includes a fa-
16 cility for mixing, storing, compressing or dispensing fuels for alterna-
17 tive fuel vehicle fleets, and any other necessary and reasonable
18 equipment.

19 “(2) ‘Cost’ means the capital or operating costs and expenses nec-
20 essarily incurred in the acquisition and performance of a transporta-
21 tion project.

22 “(3) ‘Transportation project’ means a public, private or nonprofit
23 entity that provides transportation services to members of the public
24 or an alternative fuel vehicle infrastructure project.

25 “SECTION 57. (1) The owner of a transportation project may
26 transfer a tax credit for the project in exchange for a cash payment
27 equal to the present value of the tax credit.

28 “(2) The State Department of Energy shall establish by rule a for-
29 mula to be employed in the determination of prices of credits trans-
30 ferred under this section. In establishing the formula the department

1 shall incorporate inflation projections and market real rate of return.

2 “(3) The department shall recalculate credit transfer prices quar-
3 terly, employing the formula established under subsection (2) of this
4 section.

5 “(4) Notwithstanding any other provision of law, a tax credit
6 transferred pursuant to this section does not decrease the amount of
7 taxes required to be reported by a public utility.

8 **“SECTION 58. (1) Prior to the acquisition or performance of a
9 transportation project, a person may apply to the State Department
10 of Energy for preliminary certification for the project under section
11 59 of this 2011 Act if:**

12 **“(a) The project complies with the standards adopted by the Direc-
13 tor of the State Department of Energy; and**

14 **“(b) The applicant will be the owner, contract purchaser or lessee
15 of the project at the time of acquisition or performance of the project.**

16 **“(2) An application for preliminary certification shall be made in
17 writing on a form prepared by the department and shall contain:**

18 **“(a) A statement that the applicant plans to acquire or perform a
19 project that substantially reduces the consumption of purchased en-
20 ergy.**

21 **“(b) A detailed description of the project and its operation and in-
22 formation showing that the project will operate as represented in the
23 application and remain in operation for at least five years, unless the
24 director by rule specifies another period of operation.**

25 **“(c) Information on the amount by which consumption of purchased
26 energy by the applicant will be reduced, and, if applicable, information
27 about the expected level of project performance.**

28 **“(d) The anticipated total project cost.**

29 **“(e) Information on the number and types of jobs that will be cre-
30 ated by the project, the number of jobs sustained throughout the ac-**

1 **quisition and performance of the project.**

2 **“(f) Information demonstrating that the project will comply with**
3 **applicable state and local laws and regulations and obtain required li-**
4 **censes and permits.**

5 **“(g) Any other information the director considers necessary to de-**
6 **termine whether the project is in accordance with the provisions of**
7 **sections 56 to 65 of this 2011 Act, and any applicable rules or standards**
8 **adopted by the director.**

9 **“(3) An application for preliminary certification shall be accompa-**
10 **nied by a fee established under section 61 of this 2011 Act. The director**
11 **may refund all or a portion of the fee if the application for certif-**
12 **ication is rejected.**

13 **“(4) The director may allow an applicant to file the application for**
14 **preliminary certification after the start of acquisition or performance**
15 **of the project if the director finds that:**

16 **“(a) Filing the application before the start of acquisition or per-**
17 **formance is inappropriate because special circumstances render filing**
18 **earlier unreasonable; and**

19 **“(b) The project would otherwise qualify for certification under**
20 **sections 56 to 65 of this 2011 Act.**

21 **“(5) A preliminary certification shall remain valid for a period of**
22 **three calendar years after the date on which the preliminary certif-**
23 **ication is issued by the director, after which shall become invalid even**
24 **if:**

25 **“(a) The applicant is awaiting identification of a pass-through**
26 **partner; or**

27 **“(b) The preliminary certification has been amended.**

28 **“SECTION 59. (1) The Director of the State Department of Energy**
29 **may require an applicant for certification of a transportation project**
30 **to submit plans, specifications and contract terms, and after exam-**

1 ination of the plans, specifications and terms may request corrections
2 and revisions.

3 “(2) If the director determines that the project is technically feasi-
4 ble and should operate in accordance with the representations made
5 by the applicant, and is in accordance with the provisions of sections
6 56 to 65 of this 2011 Act and any applicable rules or standards adopted
7 by the director, the director may issue a preliminary certificate ap-
8 proving the acquisition or performance of the project. The certificate
9 shall indicate the potential amount of tax credit allowable and shall
10 list any conditions for claiming the credit.

11 “(3) The director may issue an order altering, conditioning, sus-
12 pending or denying preliminary certification if the director determines
13 that:

14 “(a) The project does not comply with the provisions of sections 56
15 to 65 of this 2011 Act and applicable rules and standards;

16 “(b) The applicant has previously received preliminary or final cer-
17 tification for the project;

18 “(c) The applicant was directly involved in an act for which the di-
19 rector has levied civil penalties or revoked, canceled or suspended any
20 certification under ORS 469.185 to 469.225 or sections 56 to 65 of this
21 2011 Act; or

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

27 “SECTION 60. (1) A final certification for a transportation project
28 may not be issued by the Director of the State Department of Energy
29 under this section unless:

30 “(a) The project was acquired or performed under a preliminary

1 certificate of approval issued under section 59 of this 2011 Act;

2 “(b) The applicant demonstrates the ability to provide the informa-
3 tion required by section 58 (2) of this 2011 Act and does not violate any
4 condition that may be imposed as described in subsection (4) of this
5 section; and

6 “(c) The project was acquired or performed in accordance with the
7 applicable provisions of sections 56 to 65 of this 2011 Act and any ap-
8 plicable rules or standards adopted by the director.

9 “(2) A person may apply to the State Department of Energy for final
10 certification of a project:

11 “(a) If the person received preliminary certification for the project
12 under section 59 of this 2011 Act; and

13 “(b) After completion of the acquisition or performance of the
14 project.

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

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

19 “(b) The actual cost of the project attested to by a certified public
20 accountant who is not an employee of the applicant or, if the actual
21 cost of the project is less than \$50,000, copies of receipts for acquisition
22 and performance of the project;

23 “(c) The amount of the credit under section 53 of this 2011 Act that
24 is to be claimed;

25 “(d) The number and types of jobs created by the acquisition and
26 performance of the project over the five-year period beginning on the
27 date of issuance of the preliminary certification under section 59 of
28 this 2011 Act;

29 “(e) Information sufficient to demonstrate that the project will re-
30 main in operation for at least five years, unless the director by rule

1 specifies another period of operation;

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

5 “(g) Any other information determined by the director to be neces-
6 sary prior to issuance of a final certificate, including inspection of the
7 project by the department.

8 “(4) After the filing of the application under this section, the di-
9 rector may issue the certificate together with any conditions that the
10 director determines are appropriate to promote the purposes of
11 sections 53 and 56 to 65 of this 2011 Act. If the applicant is an entity
12 subject to regulation by the Public Utility Commission, the director
13 may consult with the commission prior to issuance of the certificate.
14 The action of the director shall include certification of the actual cost
15 of the project. However, the director may not certify an amount for
16 tax credit purposes that is more than the amount of credit approved
17 in the preliminary certificate issued for the project.

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

24 “(6) Upon approval of an application for final certification of a
25 project, the director shall certify the project. The final certification
26 shall indicate the amount of projected energy savings attributable to
27 the project and the certified cost of the project.

28 “(7) The director may establish by rule timelines and intermediate
29 deadlines for submission of application materials.

30 **SECTION 61. By rule and after hearing, the Director of the State**

1 Department of Energy may adopt a schedule of reasonable fees that
2 the State Department of Energy may require of applicants for prelim-
3 inary or final certification of a transportation project under sections
4 56 to 65 of this 2011 Act. Before the adoption or revision of the fees,
5 the department shall estimate the total cost of the program to the
6 department. The fees shall be used to recover the anticipated cost of
7 filing, investigating, granting and rejecting applications for certif-
8 ication and ensuring compliance with sections 56 to 65 of this 2011 Act
9 and shall be designed not to exceed the total cost estimated by the
10 department. Any excess fees shall be held by the department and shall
11 be used by the department to reduce any future fee increases. The fee
12 may vary according to the size and complexity of the project. The fee
13 is not considered part of the cost of the project to be certified.

14 **“SECTION 62.** (1) A certificate issued under section 60 of this 2011
15 Act is required for purposes of obtaining tax credits in accordance
16 with section 53 of this 2011 Act. Such certification shall be granted for
17 a period not to exceed five years. The five-year period shall begin with
18 the tax year of the applicant during which the completed application
19 for final certification of the transportation project under section 60 of
20 this 2011 Act is received by the State Department of Energy.

21 **“(2)** For a transferee holding a credit that has been transferred
22 under section 57 of this 2011 Act, the five-year period shall begin with
23 the tax year in which the transferee pays for the credit.

24 **“SECTION 63.** (1) Under the procedures for a contested case under
25 ORS chapter 183, the Director of the State Department of Energy may
26 order the revocation of a certificate issued under section 60 of this 2011
27 Act if the director finds that:

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

29 **“(b)** The holder of the certificate or the operator of the transpor-
30 tation project has failed to acquire or perform the project in compli-

1 ance with the plans, specifications and contract terms in the
2 certificate; or

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

4 “(2) As soon as an order of revocation under this section becomes
5 final, the director shall notify the Department of Revenue and the
6 project owner, contract purchaser or lessee of the order of revocation.
7 Upon notification, the Department of Revenue immediately shall pro-
8 ceed to collect those taxes not paid by the certificate holder as a result
9 of the tax credits provided to the certificate holder under section 53
10 of this 2011 Act, from the certificate holder or a successor in interest
11 to the business interests of the certificate holder. All prior tax credits
12 provided to the holder of the certificate by virtue of the certificate
13 shall be forfeited.

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

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

27 “SECTION 64. The total amount of potential tax credits for all
28 transportation projects in this state may not, at the time of prelimi-
29 nary certification under section 59 of this 2011 Act, exceed \$20 million
30 for any biennium.

1 **“SECTION 65.** The State Department of Energy shall by rule es-
2 **tablish policies and procedures for the administration and enforcement**
3 **of the provisions of sections 53 and 56 to 65 of this 2011 Act.**

4 **“SECTION 66.** Sections 53 and 56 to 65 of this 2011 Act apply to ap-
5 **plications for preliminary certification submitted under section 58 of**
6 **this 2011 Act after July 1, 2011, and to tax years beginning on or after**
7 **January 1, 2011.**

8
9 **“TAX CREDIT FOR RESIDENTIAL ENERGY DEVICES**

10
11 **“SECTION 67.** Section 5a, chapter 832, Oregon Laws 2005, as amended
12 by section 35, chapter 843, Oregon Laws 2007, and section 12, chapter 913,
13 Oregon Laws 2009, is amended to read:

14 **“Sec. 5a. (1)** A taxpayer may not be allowed a credit under ORS 316.116
15 if the first tax year for which the credit would otherwise be allowed with
16 respect to an alternative energy device [*or alternative fuel vehicle or related*
17 *equipment is]* **begins** on or after January 1, [2012] **2018.**

18 **“(2)** A taxpayer may not be allowed a credit under ORS 316.116 if the
19 **first tax year for which the credit would otherwise be allowed with**
20 **respect to an alternative fuel vehicle or related equipment begins on**
21 **or after January 1, 2012.**

22 **“SECTION 68.** Section 8a, chapter 832, Oregon Laws 2005, as amended
23 by section 13, chapter 913, Oregon Laws 2009, is amended to read:

24 **“Sec. 8a. (1)** The State Department of Energy may not issue a
25 contractor’s certification certificate[,] **or an** alternative energy device system
26 certificate [*or alternative fuel vehicle or related equipment certificate]* under
27 ORS 469.170 after January 1, [2012] **2018.**

28 **“(2)** The State Department of Energy may not issue an alternative
29 **fuel vehicle or related equipment certificate under ORS 469.170 after**
30 **January 1, 2012.**

1 **“SECTION 69.** ORS 316.116 is amended to read:

2 “316.116. (1)(a) A resident individual shall be allowed a credit against the
3 taxes otherwise due under this chapter for costs paid or incurred for con-
4 struction or installation of each of one or more alternative energy devices
5 in a dwelling.

6 “(b) A resident individual shall be allowed a credit against the taxes
7 otherwise due under this chapter for costs paid or incurred to modify or
8 purchase an alternative fuel vehicle or related equipment.

9 **“(c) A credit against the taxes otherwise due under this chapter is**
10 **not allowed for an alternative energy device that does not meet or**
11 **exceed all applicable federal, state and local requirements for energy**
12 **efficiency, including the state building code and any specialty codes.**

13 “(2)(a) In the case of a category one alternative energy device that is not
14 an alternative fuel device, the credit shall be based upon the first year en-
15 ergy yield of the alternative energy device that qualifies under ORS 469.160
16 to 469.180. The amount of the credit shall be the same whether for collective
17 or noncollective investment.

18 “(b) The credit allowed under this section for each category one alterna-
19 tive energy device **that is not an alternative energy device described in**
20 **paragraph (c) of this subsection** for each dwelling may not exceed the
21 lesser of[:]

22 “[(A) \$1,500 or the first year energy yield in kilowatt hours per year
23 multiplied by 60 cents per dwelling utilizing the alternative energy device used
24 for space heating, cooling, electrical energy or domestic water heating for tax
25 years beginning on or after January 1, 1990, and before January 1, 1996.]

26 “[(B) \$1,200 or the first year energy yield in kilowatt hours per year
27 multiplied by 48 cents per dwelling utilizing the alternative energy device used
28 for space heating, cooling, electrical energy or domestic water heating for tax
29 years beginning on or after January 1, 1996, and before January 1, 1998.]

30 “[(C)] \$1,500 or the first year energy yield in kilowatt hours per year

1 multiplied by 60 cents per dwelling utilizing the alternative energy device
2 used for space heating, cooling, electrical energy or domestic water heating
3 for tax years beginning on or after January 1, 1998.

4 **“(c) For each category one alternative energy device that is a whole**
5 **house air-to-air heat pump or a hydronic air handler, the credit al-**
6 **lowed under this section may not exceed the lesser of \$750 or the first**
7 **year energy yield in kilowatt hours per year multiplied by 30 cents per**
8 **dwelling utilizing the alternative energy device.**

9 “[c] (d) For each category one alternative energy device used for swim-
10 ming pool, spa or hot tub heating, the credit allowed under this section shall
11 be based upon 50 percent of the cost of the device or the first year’s energy
12 yield in kilowatt hours per year multiplied by 15 cents, whichever is lower,
13 up to[:]

14 “[A] \$1,500 for tax years beginning on or after January 1, 1990, and before
15 January 1, 1996.]

16 “[B] \$1,200 for tax years beginning on or after January 1, 1996, and before
17 January 1, 1998.]

18 “[C] \$1,500 for tax years beginning on or after January 1, 1998.

19 “[d] (e) For each alternative fuel device, the credit allowed under this
20 section is 25 percent of the cost of the alternative fuel device but the total
21 credit shall not exceed \$750 if the device is placed in service on or after
22 January 1, 1998.

23 “[e](A) (f)(A) For each category two alternative energy device that is
24 a solar electric system or fuel cell system, the credit allowed under this
25 section [shall equal] **may not exceed the lesser of \$3 per watt of installed**
26 **output or \$6,000**, but the installed output that is used to determine the
27 amount of credit under this paragraph may not exceed 2,000 watts. **The**
28 **State Department of Energy may by rule provide for a lesser amount**
29 **of incentive as market conditions warrant, taking into consideration**
30 **factors including the availability of bulk purchasing of alternative**

1 **energy devices.**

2 “(B) For each category two alternative energy device that is a wind
3 electric system, the credit allowed under this section may not exceed the
4 lesser of \$6,000 or the first year energy yield in kilowatt hours per year
5 multiplied by \$2.

6 “(C) Notwithstanding subparagraph (A) or (B) of this paragraph, the total
7 amount of the credits allowed in any one tax year may not exceed the tax
8 liability of the taxpayer or \$1,500 for each alternative energy device, which-
9 ever is less. Unused credit amounts may be carried forward as provided in
10 subsection [(7)] **(6)** of this section, but may not be carried forward to a tax
11 year that is more than five tax years following the first tax year for which
12 any credit was allowed with respect to the category two alternative energy
13 device that is the basis for the credit.

14 “(D) Notwithstanding subparagraph (A) or (B) of this paragraph, the total
15 amount of the credit for each device allowed under this paragraph may not
16 exceed 50 percent of the total installed cost of the category two alternative
17 energy device.

18 “[*(3)(a) In the case of a credit for a category one alternative energy device*
19 *that is an energy efficient appliance, the credit allowed for each appliance to*
20 *a resident individual under this section shall equal:*]

21 “[*(A) 48 cents per first year kilowatt hour saved, or the equivalent for other*
22 *fuel saved, not to exceed \$1,200 for each tax year beginning on or after January*
23 *1, 1998, and before January 1, 1999; and]*

24 “[*(B) 40 cents per kilowatt hour saved, or the equivalent for other fuel*
25 *saved, not to exceed \$1,000 for each tax year beginning on or after January 1,*
26 *1999.]*

27 “[*(b) Notwithstanding paragraph (a) of this subsection, the credit allowed*
28 *for an energy efficient appliance may not exceed 25 percent of the cost of the*
29 *appliance.]*

30 “[*(4)*] **(3)** To qualify for a credit under this section, all of the following

1 are required:

2 “(a) The alternative energy device must be purchased, constructed, in-
3 stalled and operated in accordance with ORS 469.160 to 469.180 and a certif-
4 icate issued thereunder.

5 “(b) [*Except for credits claimed for alternative fuel devices,*] The taxpayer
6 who is allowed the credit must be the owner or contract purchaser of the
7 dwelling or dwellings served by the alternative energy device or the tenant
8 of the owner or of the contract purchaser and must:

9 “(A) Use the dwelling or dwellings served by the alternative energy device
10 as a principal or secondary residence; or

11 “(B) Rent or lease, under a residential rental agreement, the dwelling or
12 dwellings to a tenant who uses the dwelling or dwellings as a principal or
13 secondary residence[, *unless the basis for the credit is the installation of an*
14 *energy efficient appliance. If the basis for the credit is the installation of an*
15 *energy efficient appliance, the credit shall be allowed only to the taxpayer who*
16 *actually occupies the dwelling as a principal or secondary residence*].

17 “(c) In the case of an alternative fuel device, [*if the device is a fueling*
18 *station necessary to operate an alternative fuel vehicle,*] unless the verification
19 form and certificate are transferred as authorized under ORS 469.170 [(8)]
20 (9), the taxpayer who is allowed the credit must be the contractor who con-
21 structs the dwelling that incorporates the [*fueling station*] **alternative fuel**
22 **device** into the dwelling or installs the fueling station in the dwelling. [*If*
23 *the category one alternative energy device is an alternative fuel vehicle, the*
24 *credit must be claimed by the owner as defined under ORS 801.375 or contract*
25 *purchaser. If the category one alternative energy device is related equipment*
26 *for an alternative fuel vehicle, the credit may be claimed by the owner or*
27 *contract purchaser.*]

28 “(d) The credit must be claimed for the tax year in which the alternative
29 energy device was purchased if the device is operational by April 1 of the
30 next following tax year.

1 “(e) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not
2 designed for electric plug-in charging, it must be purchased before January
3 1, 2010.

4 “[(5)] (4) The credit provided by this section does not affect the compu-
5 tation of basis under this chapter.

6 “[(6)] (5) The total credits allowed under this section in any one year may
7 not exceed the tax liability of the taxpayer.

8 “[(7)] (6) Any tax credit otherwise allowable under this section that is
9 not used by the taxpayer in a particular year may be carried forward and
10 offset against the taxpayer’s tax liability for the next succeeding tax year.
11 Any credit remaining unused in the next succeeding tax year may be carried
12 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
14 in the third succeeding tax year, and any credit not used in that third suc-
15 ceeding tax year may be carried forward and used in the fourth succeeding
16 tax year, and any credit not used in that fourth succeeding tax year may be
17 carried forward and used in the fifth succeeding tax year, but may not be
18 carried forward for any tax year thereafter.

19 “[(8)] (7) A nonresident shall be allowed the credit under this section in
20 the proportion provided in ORS 316.117.

21 “[(9)] (8) If a change in the taxable year of a taxpayer occurs as described
22 in ORS 314.085, or if the Department of Revenue terminates the taxpayer’s
23 taxable year under ORS 314.440, the credit allowed by this section shall be
24 prorated or computed in a manner consistent with ORS 314.085.

25 “[(10)] (9) If a change in the status of a taxpayer from resident to non-
26 resident or from nonresident to resident occurs, the credit allowed by this
27 section shall be determined in a manner consistent with ORS 316.117.

28 “[(11)] (10) A husband and wife who file separate returns for a taxable
29 year may each claim a share of the tax credit that would have been allowed
30 on a joint return in proportion to the contribution of each. However, a hus-

1 band or wife living in a separate principal residence may claim the tax credit
2 in the same amount as permitted a single person.

3 “[~~(12)~~] (11) As used in this section, unless the context requires otherwise:

4 “(a) ‘Collective investment’ means an investment by two or more taxpay-
5 ers for the acquisition, construction and installation of an alternative energy
6 device for one or more dwellings.

7 “(b) ‘Noncollective investment’ means an investment by an individual
8 taxpayer for the acquisition, construction and installation of an alternative
9 energy device for one or more dwellings.

10 “(c) ‘Taxpayer’ includes a transferee of a verification form under ORS
11 469.170 [~~(8)~~] (9).

12 “[~~(13)~~] (12) Notwithstanding any provision of subsection (1) or (2) of this
13 section, the sum of the credit allowed under subsection (1) of this section
14 plus any similar credit allowed for federal income tax purposes may not ex-
15 ceed the cost to the taxpayer for the acquisition, construction and installa-
16 tion of the alternative energy device.

17 **“SECTION 70.** ORS 469.160 is amended to read:

18 “469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

19 “(1) ‘Alternative energy device’ means a category one alternative energy
20 device or a category two alternative energy device.

21 “(2) ‘Alternative fuel device’ [*means any of the following:*]

22 “[*(a) An alternative fuel vehicle;*]

23 “[*(b) Related equipment; or*]

24 “[*(c) A fueling station necessary to operate an alternative fuel vehicle.*] **in-**
25 **cludes a facility for mixing, storing, compressing or dispensing fuels**
26 **for alternative fuel vehicle fleets, and any other necessary and rea-**
27 **sonable equipment.**

28 “(3) ‘Alternative fuel vehicle’ means a motor vehicle as defined in ORS
29 801.360 that is:

30 “(a) Registered in this state; and

1 “(b) Manufactured or modified to use an alternative fuel, including but
2 not limited to electricity, natural gas, ethanol, methanol, propane and any
3 other fuel approved in rules adopted by the Director of the State Department
4 of Energy that produces less exhaust emissions than vehicles fueled by gas-
5 oline or diesel. Determination that a vehicle is an alternative fuel vehicle
6 shall be made without regard to energy consumption savings.

7 “(4) ‘Category one alternative energy device’ means:

8 “(a) Any system, mechanism or series of mechanisms that uses solar ra-
9 diation for space heating or cooling for one or more dwellings;

10 “(b) Any system that uses solar radiation for:

11 “(A) Domestic water heating; or

12 “(B) Swimming pool, spa or hot tub heating and that meets the require-
13 ments set forth in ORS 316.116;

14 “(c) A ground water heat pump and ground loop system;

15 “(d) Any wind powered device used to offset or supplement the use of
16 electricity by performing a specific task such as pumping water;

17 “(e) Equipment used in the production of alternative fuels;

18 “(f) A generator powered by alternative fuels and used to produce elec-
19 tricity;

20 “(g) An energy efficient appliance;

21 “(h) An alternative fuel device; or

22 “(i) A premium efficiency biomass combustion device that includes a
23 dedicated outside combustion air source and that meets minimum perform-
24 ance standards that are established by the State Department of Energy.

25 “(5) ‘Category two alternative energy device’ means a fuel cell system,
26 solar electric system or wind electric system.

27 “(6) ‘Coefficient of performance’ means the ratio calculated by dividing
28 the usable output energy by the electrical input energy. Both energy values
29 must be expressed in equivalent units.

30 “(7) ‘Contractor’ means a person whose trade or business consists of of-

1 fering for sale an alternative energy device, construction service, installation
2 service or design service.

3 “(8)(a) ‘Cost’ means the actual cost of the acquisition, construction and
4 installation of the alternative energy device paid by the taxpayer for the
5 alternative energy device.

6 “(b) For an alternative fuel vehicle, ‘cost’ means the difference between
7 the cost of the alternative fuel vehicle and the same vehicle or functionally
8 similar vehicle manufactured to use conventional gasoline or diesel fuel or,
9 in the case of modification of an existing vehicle, the cost of the modifica-
10 tion. ‘Cost’ does not include any amounts paid for remodification of the
11 same vehicle.

12 “(c) For a fueling station necessary to operate an alternative fuel vehicle,
13 ‘cost’ means the cost to the contractor of constructing or installing the fu-
14 eling station in a dwelling and of making the fuel station operational in
15 accordance with the specifications issued under ORS 469.160 to 469.180 and
16 any rules adopted by the Director of the State Department of Energy.

17 “(d) For related equipment, ‘cost’ means the cost of the related equipment
18 and any modifications or additions to the related equipment necessary to
19 prepare the related equipment for use in converting a vehicle to alternative
20 fuel use.

21 “(9) ‘Domestic water heating’ means the heating of water used in a
22 dwelling for bathing, clothes washing, dishwashing and other related func-
23 tions.

24 “(10) ‘Dwelling’ means real or personal property ordinarily inhabited as
25 a principal or secondary residence and located within this state. ‘Dwelling’
26 includes, but is not limited to, an individual unit within multiple unit resi-
27 dential housing.

28 “(11) ‘Energy efficient appliance’ [*means a clothes washer, clothes dryer,*
29 *water heater, refrigerator, freezer, dishwasher, appliance designed to heat or*
30 *cool a dwelling or other major household appliance that has been certified by*

1 *the State Department of Energy to have premium energy efficiency character-*
2 *istics.] includes emerging technology such as high-efficiency heat-pump*
3 **water heaters for domestic hot water that meet the Northern Tier**
4 **Specification established by the Northwest Energy Efficiency Alliance**
5 **for electricity or have 0.7 or greater efficiency for gas heat-pump water**
6 **heaters, ductless mini-splits, high-efficiency furnaces that are at least**
7 **95 percent efficient, on-demand water heaters and heat-pumps that**
8 **exceed code.**

9 “(12) ‘First year energy yield’ of an alternative energy device is the usable
10 energy produced under average environmental conditions in one year.

11 “(13) ‘Fuel cell system’ means any system, mechanism or series of mech-
12 anisms that uses fuel cells or fuel cell technology to generate electrical en-
13 ergy for a dwelling.

14 “(14) ‘Fueling station’ includes but is not limited to a compressed natural
15 gas compressor fueling system or an electric charging system for vehicle
16 power battery charging.

17 “(15) ‘Placed in service’ means[:]

18 “[*a*] the date an alternative energy device is ready and available to
19 produce usable energy or save energy.

20 “[*b*] *For an alternative fuel vehicle:*]

21 “[*A*] *In the case of purchase, the date that the alternative fuel vehicle is*
22 *first purchased as an alternative fuel vehicle ready and available for use.]*

23 “[*B*] *In the case of modification, the date that the modification is completed*
24 *and the vehicle is ready and available for use as an alternative fuel vehicle.]*

25 “[*c*] *For a fueling station necessary to operate an alternative fuel vehicle,*
26 *the date that the fueling station is first operational.]*

27 “[*d*] *For related equipment, the date that the equipment is first*
28 *operational.]*

29 “[*(16)* ‘*Related equipment*’ means equipment necessary to convert a vehicle
30 to use an alternative fuel.]

1 “[(17)] (16) ‘Solar electric system’ means any system, mechanism or series
2 of mechanisms, including photovoltaic systems, that uses solar radiation to
3 generate electrical energy for a dwelling.

4 “(17) **‘Third-party alternative energy device installation’ means an**
5 **alternative energy device that is installed in connection with residen-**
6 **tial property and owned by a person other than the residential prop-**
7 **erty owner in accordance with an agreement in effect for at least 10**
8 **years between the residential property owner and the alternative en-**
9 **ergy device owner. The agreement must cover maintenance and either**
10 **the use of or the power generated by the alternative energy device.**

11 “(18) ‘Wind electric system’ means any system, mechanism or series of
12 mechanisms that uses wind to generate electrical energy for a dwelling.

13 **“SECTION 70a.** ORS 469.165 is amended to read:

14 “469.165. (1) For the purposes of carrying out ORS 469.160 to 469.180, the
15 State Department of Energy may adopt rules prescribing minimum perform-
16 ance criteria for alternative energy devices for dwellings. **The department**
17 **may, in prescribing criteria, rely on applicable federal, state and local**
18 **requirements for energy efficiency, including the state building code**
19 **and any specialty codes.**

20 **“(2) The department shall take into consideration evolving market**
21 **conditions in prescribing minimum performance criteria for alterna-**
22 **tive energy devices and in determining credit amounts, consistent with**
23 **ORS 316.116.**

24 “[2)] (3) The department, in adopting rules under this section for solar
25 heating and cooling systems, shall take into consideration applicable stan-
26 dards of federal performance criteria prescribed pursuant to the provisions
27 of [*section 5506, title 42, United States Code* (] **the Solar Heating and Cooling**
28 **Demonstration Act of 1974**)], **42 U.S.C. 5506.**

29 “[3)] (4) The Director of the State Department of Energy shall adopt
30 rules governing the determination of eligibility, verification and certification

1 of an alternative fuel device for purposes of the tax credits granted under
2 ORS 316.116 and 317.115, including but not limited to rules that further de-
3 fine an alternative fuel vehicle, related equipment or fueling station neces-
4 sary to operate an alternative fuel vehicle, that govern the computation of
5 costs eligible for credit and that require equitable allocation of the tax credit
6 benefits between the lessor and the lessee of an alternative fuel vehicle as
7 a condition of tax credit eligibility.

8 **“SECTION 71.** ORS 469.170 is amended to read:

9 **“469.170. (1) Subject to the limitations in section 75 of this 2011 Act,**
10 any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the
11 person is a corporation) if the person:

12 “(a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applica-
13 ble);

14 “(b) Meets the requirements of ORS 469.160 to 469.180; and

15 “(c) Pays, subject to subsection (9) of this section, all or a portion of the
16 costs of an alternative energy device.

17 “(2) A credit under ORS 317.115 may be claimed only if the alternative
18 energy device is a fueling station necessary to operate an alternative fuel
19 vehicle.

20 “(3)(a) In order to be eligible for a tax credit under ORS 316.116 or
21 317.115, a person claiming a tax credit for construction or installation of an
22 alternative energy device (including a fueling station) shall have the device
23 certified by the State Department of Energy or constructed or installed by
24 a contractor certified by the department under subsection (5) of this section.
25 This paragraph does not apply to an alternative fuel vehicle or to related
26 equipment.

27 “(b) Certification of an alternative fuel vehicle or related equipment shall
28 be accomplished under rules that shall be adopted by the Director of the
29 State Department of Energy.

30 “(4) Verification of the purchase, construction or installation of an al-

1 alternative energy device shall be made in writing on a form provided by the
2 Department of Revenue and, if applicable, shall contain:

3 “(a) The location of the alternative energy device;

4 “(b) A description of the type of device;

5 “(c) If the device was constructed or installed by a contractor, evidence
6 that the contractor has any license, bond, insurance and permit required to
7 sell and construct or install the alternative energy device;

8 “(d) If the device was constructed or installed by a contractor, a state-
9 ment signed by the contractor that the applicant has received:

10 “(A) A statement of the reasonably expected energy savings of the device;

11 “(B) A copy of consumer information published by the State Department
12 of Energy;

13 “(C) An operating manual for the alternative energy device; and

14 “(D) A copy of the contractor’s certification certificate or alternative en-
15 ergy device system certificate for the alternative energy device, as appropri-
16 ate;

17 “(e) If the device was not constructed or installed by a contractor, evi-
18 dence that:

19 “(A) The State Department of Energy has issued an alternative energy
20 device system certificate for the alternative energy device; and

21 “(B) The taxpayer has obtained all building permits required for con-
22 struction or installation of the device;

23 “(f) A statement, signed by both the taxpayer claiming the credit and the
24 contractor if the device was constructed or installed by a contractor, that
25 the construction or installation meets all the requirements of ORS 469.160
26 to 469.180 or, if the device is a fueling station and the taxpayer is the con-
27 tractor, a statement signed by the contractor that the construction or in-
28 stallation meets all of the requirements of ORS 469.160 to 469.180;

29 “(g) The date the alternative energy device was purchased;

30 “(h) The date the alternative energy device was placed in service; and

1 “(i) Any other information that the Director of the State Department of
2 Energy or the Department of Revenue determines is necessary.

3 “(5)(a) When the State Department of Energy finds that an alternative
4 energy device can meet the standards adopted under ORS 469.165, the Di-
5 rector of the State Department of Energy may issue a contractor system
6 certification to the person selling and constructing or installing the alter-
7 native energy device.

8 “(b) Any person who sells or installs more than 12 alternative energy
9 devices in one year shall apply for a contractor system certification. An ap-
10 plication for a contractor system certification shall be made in writing on
11 a form provided by the State Department of Energy and shall contain:

12 “(A) A statement that the contractor has any license, bonding, insurance
13 and permit that is required for the sale and construction or installation of
14 the alternative energy device;

15 “(B) A specific description of the alternative energy device, including, but
16 not limited to, the material, equipment and mechanism used in the device,
17 operating procedure, sizing and siting method and construction or installa-
18 tion procedure;

19 “(C) The addresses of three installations of the device that are available
20 for inspection by the State Department of Energy;

21 “(D) The range of installed costs to purchasers of the device;

22 “(E) Any important construction, installation or operating instructions;
23 and

24 “(F) Any other information that the State Department of Energy deter-
25 mines is necessary.

26 “(c) A new application for contractor system approval shall be filed when
27 there is a change in the information supplied under paragraph (b) of this
28 subsection.

29 “(d) The State Department of Energy may issue contractor system certif-
30 icates to each contractor who on October 3, 1989, has a valid dealer system

1 certification, which shall authorize the sale and installation of the same
2 domestic water heating alternative energy devices authorized by the dealer
3 certification.

4 “(e) If the State Department of Energy finds that an alternative energy
5 device can meet the standards adopted under ORS 469.165, the Director of
6 the State Department of Energy may issue an alternative energy device sys-
7 tem certificate to the taxpayer constructing or installing or having an al-
8 ternative energy device constructed or installed.

9 “(f) An application for an alternative energy device system certificate
10 shall be made in writing on a form provided by the State Department of
11 Energy and shall contain:

12 “(A) A specific description of the alternative energy device, including, but
13 not limited to, the material, equipment and mechanism used in the device,
14 operating procedure, sizing, siting method and construction or installation
15 procedure;

16 “(B) The constructed or installed cost of the device; and

17 “(C) A statement that the taxpayer has all permits required for con-
18 struction or installation of the device.

19 “**(6) A third-party alternative energy device installation must obtain**
20 **certification from the State Department of Energy under subsection**
21 **(5) of this section prior to commencing installation of alternative en-**
22 **ergy devices. A certification may not be issued in any tax year to any**
23 **taxpayer for more than 25 devices in a third-party alternative energy**
24 **device installation.**

25 “[~~(6)~~] (7) To claim the tax credit, the verification form described in sub-
26 section (4) of this section shall be submitted with the taxpayer’s tax return
27 for the year the alternative energy device is placed in service or the imme-
28 diately succeeding tax year. A copy of the contractor’s certification certifi-
29 cate, alternative energy device system certificate or alternative fuel vehicle
30 or related equipment certificate also shall be submitted.

1 “[(7)] **(8)** The verification form and contractor’s certificate, alternative
2 energy device system certificate or alternative fuel vehicle or related equip-
3 ment certificate described under this section shall be effective for purposes
4 of tax relief allowed under ORS 316.116 or 317.115.

5 “[(8)] **(9)** The verification form and contractor’s certificate described un-
6 der this section may be transferred to the first purchaser of a dwelling or,
7 in the case of construction or installation of a fueling station in an existing
8 dwelling, the current owner, who intends to use or is using the dwelling as
9 a principal or secondary residence.

10 “[(9)] **(10)** Any person that pays the present value of the tax credit for
11 an alternative energy device provided under ORS 316.116 or 317.115 and
12 469.160 to 469.180 to the person who constructs or installs the alternative
13 energy device shall be entitled to claim the credit in the manner and subject
14 to rules adopted by the Department of Revenue to carry out the purposes of
15 this subsection. The State Department of Energy may establish by rule uni-
16 form discount rates to be used in calculating the present value of a tax credit
17 under this subsection.

18 “**SECTION 72.** ORS 469.172 is amended to read:

19 “469.172. The following devices are not eligible for the tax credit under
20 ORS 316.116:

21 “(1) Standard efficiency furnaces;

22 “**(2) Air conditioning systems;**

23 “**(3) Boilers;**

24 “[(2)] **(4)** Standard back-up heating systems;

25 “[(3)] **(5)** Woodstoves or wood furnaces, or any part of a heating system
26 that burns wood, unless the woodstove, furnace or system constitutes a pre-
27 mium efficiency biomass combustion device described in ORS 469.160 (4)(i);

28 “[(4)] **(6)** Heat pump water heaters that are part of a geothermal heat
29 pump space heating system;

30 “[(5)] **(7)** Structures that cover or enclose a swimming pool;

1 “[(6)] (8) Swimming pools, hot tubs or spas used to store heat;
2 “[(7)] (9) Above ground, uninsulated swimming pools, hot tubs or spas;
3 “[(8)] (10) Photovoltaic systems installed on recreational vehicles;
4 “[(9)] (11) Conversion of an existing alternative energy device to another
5 type of alternative energy device;
6 “[(10)] (12) Repair or replacement of an existing alternative energy device;
7 “[(11)] (13) A category two alternative energy device, if the equipment or
8 other property that comprises the category two alternative energy device is
9 the basis for an allowed credit for a category one alternative energy device
10 under ORS 316.116;
11 “[(12)] (14) A category one alternative energy device, if the equipment or
12 other property that comprises the category one alternative energy device is
13 also the basis for an allowed credit for a category two alternative energy
14 device under ORS 316.116; or
15 “[(13)] (15) Any other device identified by the State Department of En-
16 ergy. The department may adopt rules defining standards for eligible and
17 ineligible devices under this section.

18 “**SECTION 73.** ORS 317.115 is amended to read:

19 “317.115. (1) A business tax credit is allowed against the taxes otherwise
20 due under this chapter based upon costs paid or incurred for construction
21 or installation in a dwelling of a fueling station necessary to operate an al-
22 ternative fuel vehicle. The credit is allowed to the contractor who con-
23 structs the dwelling in which the fueling station is incorporated or installs
24 the fueling station in the dwelling but may be taken by any person under the
25 circumstances described in ORS 469.170 [(9)] (10) and the rules adopted
26 thereunder.

27 “(2) The credit is 25 percent of the cost of the fueling station but the total
28 credit shall not exceed \$750 if the fueling station is placed in service on or
29 after January 1, 1998.

30 “(3) To qualify for a credit under this section, all of the following are

1 required:

2 “(a) The fueling station must be constructed, installed and operated in
3 accordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

4 “(b) The contractor must present with the claim for credit a verification
5 form signed not only by the contractor but by the owner, contract purchaser
6 or tenant authorizing the contractor to claim the credit and indicating that
7 the owner, contract purchaser or tenant will not claim a credit based upon
8 the cost of the same fueling station under ORS 316.116 or this section.

9 “(c) The credit must be claimed for the tax year in which the fueling
10 station that has been certified under ORS 469.160 to 469.180 first is placed
11 in service or the immediately succeeding tax year.

12 “(4) The credit allowed under this section shall not affect the computation
13 of basis for purposes of this chapter, nor shall the credit affect the compu-
14 tation or be in lieu of any depreciation deduction for the fueling station.

15 “(5) The credit allowed under this section in any one year shall not ex-
16 ceed the tax liability of the taxpayer for that year.

17 “(6) Any tax credit otherwise allowable under this section that is not used
18 by the taxpayer in a particular year may be carried forward and offset
19 against the taxpayer’s tax liability for the next succeeding tax year. Any
20 credit remaining unused in such next succeeding tax year may be carried
21 forward and used in the second succeeding tax year, and likewise any credit
22 not used in that second succeeding tax year may be carried forward and used
23 in the third succeeding tax year, and any credit not used in that third suc-
24 ceeding tax year may be carried forward and used in the fourth succeeding
25 tax year, and any credit not used in that fourth succeeding tax year may be
26 carried forward and used in the fifth succeeding tax year, but may not be
27 carried forward for any tax year thereafter.

28 “(7) The certificate and verification form described under ORS 469.170
29 may be transferred by the contractor to the first purchaser of the dwelling
30 that incorporates the fueling station if the purchaser intends to use the

1 dwelling as a principal or secondary residence or, in the case of construction
2 or installation of a fueling station in an existing dwelling, the current
3 owner, if the current owner intends to use, or uses, the dwelling as a prin-
4 cipal or secondary residence. A certificate and verification form so trans-
5 ferred may be used by the purchaser to claim a credit under ORS 316.116.

6 **“SECTION 74. The amendments to ORS 316.116, 469.160, 469.165,
7 469.170 and 469.172 by sections 69 to 72 of this 2011 Act apply to alter-
8 native energy devices certified by the State Department of Energy on
9 or after January 1, 2012, and to tax years beginning on or after Janu-
10 ary 1, 2012.**

11 **“SECTION 75. The State Department of Energy may not issue cer-
12 tifications for more than \$10 million in potential tax credits for third-
13 party alternative energy device installations in any tax year.**

14 **“SECTION 76. The Public Utility Commission shall report to the
15 Legislative Assembly prior to February 15, 2012, on the effectiveness
16 of incentives provided by the Energy Trust of Oregon and shall provide
17 recommendations as to whether operation of these incentives could
18 replace, in whole or in part, the allowance of tax credits under ORS
19 316.116 and sections 23, 35 and 53 of this 2011 Act.**

20 **“SECTION 77. (1) Sections 2a and 2b, chapter 625, Oregon Laws 2007,
21 are repealed.**

22 **“(2) Section 15, chapter 625, Oregon Laws 2007, as amended by sec-
23 tion 35, chapter 33, Oregon Laws 2009, is repealed.**

24

25 **“CAPTIONS AND EFFECTIVE DATE**

26

27 **“SECTION 78. The unit captions used in this 2011 Act are provided
28 only for the convenience of the reader and do not become part of the
29 statutory law of this state or express any legislative intent in the
30 enactment of this 2011 Act.**

