

**A-Engrossed**  
**House Bill 2894**

Ordered by the House April 2  
Including House Amendments dated April 2

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

For purposes of tax credits for energy conservation projects, increases amount of eligible cost for which credit may be claimed using informational filing system in place of certification and for which entire credit may be claimed in first allowable tax year.

Allows entire tax credit for transportation project to be claimed in first allowable tax year.

*[Directs State Treasurer to establish terms for transfer of tax credits. Allows State Treasurer to consider discount rates of other transferable tax credits in establishing terms for transfers.]*

**For purposes of tax credits for facilities using or producing renewable energy resources having certified cost in excess of \$10 million, exempts research, development and demonstration facilities from provision that credit may first be claimed in tax year following final certification.**

Applies to tax years beginning on or after January 1, 2014.

Includes *[replacement ]* **acquisition** of alternative fuel vehicle fleet in definition of transportation project for which tax credit may be claimed. Applies to tax years beginning on or after January 1, 2015.

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to energy incentive programs; creating new provisions; amending ORS 315.331, 315.336,  
3 469B.167, 469B.285, 469B.320 and 469B.344; and prescribing an effective date.

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

5 **SECTION 1.** ORS 315.331 is amended to read:

6 315.331. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the  
7 taxpayer is a corporation, under ORS chapter 317 or 318, for an energy conservation project that  
8 is certified under ORS 469B.270 to 469B.306. The credit is allowed as follows:

9 (a) Except as provided in paragraph (b) of this subsection, the credit allowed in each of the first  
10 two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility,  
11 but may not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding  
12 three years shall be five percent of the certified cost, but may not exceed the tax liability of the  
13 taxpayer.

14 (b) If the certified cost of the facility does not exceed *[\$20,000]* **\$50,000**, the total amount of the  
15 credit allowable under subsection (3) of this section may be claimed in the first tax year for which  
16 the credit may be claimed, but may not exceed the tax liability of the taxpayer.

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

18 (a) The project must be located in Oregon.

19 (b) The project must have received final certification from the Director of the State Department  
20 of Energy under ORS 469B.270 to 469B.306.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) If the project is a research and development project, it must receive, prior to certification  
2 under ORS 469B.288, a recommendation from a qualified third party selected by the director.

3 (d) If the project is new construction or a total building retrofit, then the project must achieve,  
4 at a minimum, the energy efficiency standards required for:

5 (A) LEED Platinum certification;

6 (B) A four globes rating from the Green Globes program;

7 (C) A nationally or regionally recognized and appropriate sustainable building program whose  
8 performance standards are equivalent to the standards required for LEED Platinum certification or  
9 a four globes rating from the Green Globes program, as determined by the department; or

10 (D) Verification that the construction conformed to the standards of the Reach Code adopted  
11 pursuant to ORS 455.500.

12 (3) The total amount of credit allowable to an eligible taxpayer under this section may not ex-  
13 ceed 35 percent of the certified cost of the project.

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

17 (b) A new owner, or, upon re-leasing of the project, a new lessee, may apply for a new certificate  
18 under ORS 469B.291. The new lessee or owner must meet the requirements of ORS 469B.270 to  
19 469B.306 and may claim a tax credit under this section only if all moneys owed by the new owner  
20 or lessee to the State of Oregon have been paid, if the project continues to operate and if all con-  
21 ditions in the final certification are met. The tax credit available to the new owner shall be limited  
22 to the amount of credit not claimed by the former owner or, for a new lessee, the amount of credit  
23 not claimed by the lessee under all previous leases. The State Department of Energy may waive the  
24 requirement that a new owner or lessee apply for a new certificate under ORS 469B.291 if the re-  
25 maining credit is less than \$20,000.

26 (c) The department may not revoke the certificate covering a project under paragraph (a) of this  
27 subsection if the tax credit associated with the project has been transferred to a taxpayer who is  
28 an eligible applicant under ORS 469B.285.

29 (5) The tax credit allowed under this section for any one tax year may not exceed the tax li-  
30 ability of the taxpayer.

31 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a  
32 particular year may be carried forward and offset against the taxpayer's tax liability for the next  
33 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried  
34 forward and used in the second succeeding tax year, and likewise, any credit not used in that second  
35 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,  
36 any credit not used in that third succeeding tax year may be carried forward and used in the fourth  
37 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be  
38 carried forward and used in the fifth succeeding tax year, but may not be carried forward for any  
39 tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years  
40 specified in subsection (1) of this section only as provided in this subsection.

41 (7) The credit allowed under this section is not in lieu of any depreciation or amortization de-  
42 duction for the project to which the taxpayer otherwise may be entitled for purposes of ORS chapter  
43 316, 317 or 318 for such year.

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

1 (9) The definitions in ORS 469B.270 apply to this section.

2 **SECTION 2.** ORS 469B.285, as amended by section 21, chapter 45, Oregon Laws 2012, is  
3 amended to read:

4 469B.285. (1) Prior to the installation or construction of an energy conservation project, any  
5 person may apply to the State Department of Energy for preliminary certification under ORS  
6 469B.288 if:

7 (a) The project complies with the standards adopted by the Director of the State Department  
8 of Energy; and

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

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

13 (a) A statement that the applicant plans to acquire, construct or install a project that substan-  
14 tially reduces the consumption of purchased energy or uses energy more efficiently.

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

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

21 (d) The anticipated total project cost.

22 (e) Information on the number and type of jobs, directly connected to the allowance of the  
23 credit, that will be:

24 (A) Created by the project; and

25 (B) Sustained throughout the construction, installation and operation of the project.

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

28 (g) Information relating to the standards described in ORS 469B.279.

29 (h) A recommendation for a research and development project as demonstrative of innovation  
30 that has been made by a qualified third party selected by the director.

31 (i) Any other information the director considers necessary to determine whether the project is  
32 in accordance with the provisions of ORS 469B.270 to 469B.306, and any applicable rules or stan-  
33 dards adopted by the director.

34 (3) An application for preliminary certification shall be accompanied by a fee established under  
35 ORS 469B.294. The director may refund all or a portion of the fee if the application for certification  
36 is rejected.

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

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

41 (b) The project would otherwise qualify for certification under ORS 469B.270 to 469B.306.

42 (5) The director may, by rule, waive preliminary certification under ORS 469B.288, or may es-  
43 tablish an informational filing system in place of preliminary certification, for projects that:

44 (a) Have eligible costs of less than [~~\$20,000~~] **\$50,000**;

45 (b) Consist of measures that the director determines to be eligible for waiver of preliminary

1 certification; and

2 (c) Comply with any other requirements established by the director.

3 (6) A preliminary certification shall remain valid for a period of three calendar years after the  
4 date on which the preliminary certification is issued by the director, after which the certification  
5 becomes invalid even if:

6 (a) The applicant is awaiting identification of a pass-through partner; or

7 (b) The preliminary certification has been amended.

8 **SECTION 3.** ORS 315.336, as amended by section 6, chapter 45, Oregon Laws 2012, is amended  
9 to read:

10 315.336. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the  
11 taxpayer is a corporation, under ORS chapter 317 or 318, for a transportation project, based upon  
12 the certified cost of the project during the period for which the project is certified under ORS  
13 469B.320 to 469B.347.

14 (2) The credit allowed for a project other than an alternative fuel vehicle [*infrastructure*] project  
15 shall be as follows:

16 (a) For tax years beginning on or after January 1, 2011, and before January 1, 2012, the maxi-  
17 mum allowed credit shall be:

18 (A) 35 percent of certified cost, if a preliminary certification is issued under ORS 469B.329 prior  
19 to July 1, 2011; or

20 (B) 25 percent of certified cost, if a preliminary certification is issued under ORS 469B.329 on  
21 or after July 1, 2011, and before January 1, 2012.

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

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

26 (d) For tax years beginning on or after January 1, 2014, and before January 1, 2015, the maxi-  
27 mum allowed credit shall be 15 percent of certified cost.

28 (e) For tax years beginning on or after January 1, 2015, and before January 1, 2016, the maxi-  
29 mum allowed credit shall be 10 percent of certified cost.

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

32 (4)[(a) *Except as provided in paragraph (b) of this subsection, the credit allowed in each of the first*  
33 *two tax years in which the credit is claimed shall be 10 percent of the certified cost of the project, but*  
34 *may not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three*  
35 *years shall be five percent of the certified cost, but may not exceed the tax liability of the taxpayer.]*

36 [(b) *If the amount of the credit allowed under this section is less than 35 percent of the certified*  
37 *cost of the project, the credit allowed in any tax year may not exceed five percent of the certified cost*  
38 *of the project, and]*

39 **The total amount of the credit allowable under this section may be claimed**  
40 **in the first tax year for which the credit may be claimed, but** may not exceed the tax liability  
of the taxpayer.

41 (5) In order for a tax credit to be allowable under this section:

42 (a) The project must be located in Oregon.

43 (b) The project must have received final certification from the Director of the State Department  
44 of Energy under ORS 469B.320 to 469B.347.

45 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a

1 particular year may be carried forward and offset against the taxpayer's tax liability for the next  
2 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried  
3 forward and used in the second succeeding tax year, and likewise, any credit not used in that second  
4 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,  
5 any credit not used in that third succeeding tax year may be carried forward and used in the fourth  
6 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be  
7 carried forward and used in the fifth succeeding tax year, but may not be carried forward for any  
8 tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years  
9 specified in subsection (2) of this section only as provided in this subsection.

10 (7) The credit allowed under this section is not in lieu of any depreciation or amortization de-  
11 duction for the transportation project to which the taxpayer otherwise may be entitled for purposes  
12 of ORS chapter 316, 317 or 318 for such year.

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

15 (9) The definitions in ORS 469B.320 apply to this section.

16 **SECTION 4.** ORS 469B.167 is amended to read:

17 469B.167. (1)(a) A certificate issued under ORS 469B.161 is required for purposes of obtaining  
18 tax credits in accordance with ORS 315.354. Such certification shall be granted for a period not to  
19 exceed five years. The five-year period shall begin with the tax year of the applicant during which  
20 the completed application for final certification of the facility under ORS 469B.161 is received by the  
21 State Department of Energy.

22 (b) For a transferee holding a credit that has been transferred under ORS 469B.148 or 469B.154,  
23 the five-year period shall begin with the tax year in which the transferee pays for the credit.

24 (2) Notwithstanding subsection (1) of this section, for a facility using or producing renewable  
25 energy resources, **other than a research, development or demonstration facility**, with a certi-  
26 fied cost that exceeds \$10 million and that receives final certification under ORS 469B.161 after  
27 January 1, 2010:

28 (a) The five-year period prescribed in subsection (1)(a) of this section shall begin with the tax  
29 year immediately following the tax year during which the completed application for final certifi-  
30 cation of the facility under ORS 469B.161 is received by the department.

31 (b) If claimed by a transferee, the first of five tax years in which the transferee may claim the  
32 credit is the tax year in which the transferee paid for the credit or the tax year prescribed in par-  
33 agraph (a) of this subsection, whichever is later.

34 (c) An application shall be considered complete without the identification of a transferee for  
35 purposes of ORS 469B.148 or 469B.154.

36 (3) If the original owner of the certificate uses any portion of the credit, the certificate becomes  
37 nontransferable.

38 **SECTION 5.** ORS 469B.344, as amended by section 10, chapter 45, Oregon Laws 2012, is  
39 amended to read:

40 469B.344. (1)(a) The total amount of potential tax credits for all transportation projects in this  
41 state may not, at the time of preliminary certification under ORS 469B.329, exceed \$20 million for  
42 any biennium.

43 (b) For each tax year, the Director of the State Department of Energy may allocate a percentage  
44 of the amount allowed in paragraph (a) of this subsection to alternative fuel vehicle [*infrastructure*]  
45 projects and a percentage to transit services.

1 (2) Notwithstanding ORS 315.336, in the event that the director receives applications for pre-  
2 liminary certification with a total amount of potential tax credits in excess of the limits set by the  
3 director pursuant to subsection (1)(b) of this section, the director shall allocate the issuance of  
4 preliminary certifications among applicants as follows:

5 (a) If an excess of applications for credits for transit services is received, the director shall al-  
6 locate the issuance of preliminary certifications among applicants for credits for transit services and  
7 proportionately reduce the amount of allowed credit, with no applicant receiving more than 20 per-  
8 cent of the amount established under subsection (1)(b) of this section for transit services.

9 (b) The director may allocate the issuance of preliminary certifications among applicants for  
10 credits for alternative fuel vehicle [*infrastructure*] projects and may award credits for less than the  
11 amount otherwise allowed applicants.

12 (c) If, after making any reductions required under paragraph (a) of this subsection, an unallo-  
13 cated amount remains, the director shall allocate this additional amount among applicants affected  
14 by the percentage restriction in paragraph (a) of this subsection.

15 **SECTION 6.** ORS 469B.320, as amended by section 7, chapter 45, Oregon Laws 2012, is amended  
16 to read:

17 469B.320. As used in ORS 315.336 and 469B.320 to 469B.347:

18 (1) **“Acquisition of an alternative fuel vehicle fleet” includes the replacement of two or**  
19 **more vehicles that are not used primarily for personal, family or household purposes, that**  
20 **are modified or acquired directly from the factory and that:**

21 (a) **Use an alternative fuel, including electricity, biofuel, gasohol with at least 20 percent**  
22 **denatured alcohol content, hydrogen, Hythane, methane, methanol, natural gas, propane or**  
23 **any other fuel approved by the Director of the State Department of Energy as an alternative**  
24 **fuel; and**

25 (b) **Produce lower exhaust emissions, or are more energy efficient, than equivalent vehi-**  
26 **cles fueled by gasoline or diesel.**

27 [(1)] (2) “Alternative fuel vehicle infrastructure project” includes a facility for mixing, storing,  
28 compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reason-  
29 able equipment.

30 (3) **“Alternative fuel vehicle project” means:**

31 (a) **The acquisition of an alternative fuel vehicle fleet; or**

32 (b) **An alternative fuel vehicle infrastructure project.**

33 [(2)] (4) “Cost” includes capital expenditures and core expenses such as vehicle repair, fuel,  
34 personnel and administrative expenses.

35 [(3)] (5) “Transportation project” means:

36 (a) Transit services provided to members of the public by a public or nonprofit entity that re-  
37 ceives state or federal funding for those services, or is the direct recipient of funding from an entity  
38 that receives state or federal funding for the services; or

39 (b) An alternative fuel vehicle [*infrastructure*] project.

40 **SECTION 7. (1) The amendments to ORS 315.331, 315.336, 469B.167, 469B.285 and 469B.344**  
41 **by sections 1 to 5 of this 2013 Act apply to tax years beginning on or after January 1, 2014.**

42 (2) **The amendments to ORS 469B.320 by section 6 of this 2013 Act apply to tax years**  
43 **beginning on or after January 1, 2015.**

44 **SECTION 8. This 2013 Act takes effect on the 91st day after the date on which the 2013**  
45 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

