

**Enrolled**  
**Senate Bill 583**

Sponsored by Senator STARR; Senator THOMSEN

CHAPTER .....

AN ACT

Relating to alternative fuel vehicles; creating new provisions; amending ORS 315.336, 469B.320 and 469B.344 and section 54, chapter 730, Oregon Laws 2011; appropriating money; limiting expenditures; and prescribing an effective date.

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

**SECTION 1. As used in sections 1 to 7 of this 2013 Act:**

(1) "Alternative fuel vehicle" means a motor vehicle, as defined in ORS 801.360, that is manufactured or modified to use an alternative fuel, including but not limited to electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy, and that produces lower exhaust emissions or is more energy efficient than equivalent equipment fueled by gasoline or diesel.

(2) "Public body" has the meaning given that term in ORS 174.109.

(3) "Tribe" means a federally recognized Indian tribe in Oregon.

**SECTION 2. (1) The Alternative Fuel Vehicle Revolving Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Alternative Fuel Vehicle Revolving Fund shall be credited to the fund. The moneys in the Alternative Fuel Vehicle Revolving Fund are continuously appropriated to the State Department of Energy to be used for the purposes described in section 3 of this 2013 Act.**

(2) The State Treasurer may accept contributions, donations, bequests, gifts or grants from any source, whether public or private. Moneys received under this subsection shall be deposited into the Alternative Fuel Vehicle Revolving Fund.

(3) The Alternative Fuel Vehicle Revolving Fund shall consist of:

(a) Moneys appropriated by the Legislative Assembly;

(b) Any other revenues derived from contributions, donations, bequests, gifts or grants;

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

(d) All repayments of moneys borrowed from the fund; and

(e) All interest payments made by borrowers from the fund.

(4) The State Treasurer may invest and reinvest moneys in the Alternative Fuel Vehicle Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Alternative Fuel Vehicle Revolving Fund.

**SECTION 3. (1) The State Department of Energy shall use the moneys in the Alternative Fuel Vehicle Revolving Fund for a loan program to provide loans to public bodies and tribes to:**

(a) Assist in the purchase of new alternative fuel vehicles by providing funding for the additional cost of purchasing alternative fuel vehicles as compared to vehicles that are not alternative fuel vehicles; and

(b) Convert existing vehicles that use gasoline or diesel to alternative fuel vehicles.

(2) Funding priority under subsection (1) of this section must be given to vehicle conversions.

(3) The department may also use the moneys in the Alternative Fuel Vehicle Revolving Fund to pay the expenses of the department in administering the Alternative Fuel Vehicle Revolving Fund and the loan program and any other costs incurred by the department in carrying out the provisions of sections 1 to 7 of this 2013 Act.

**SECTION 4.** (1) In administering the Alternative Fuel Vehicle Revolving Fund, the State Department of Energy shall:

(a) Allocate funds for loans in accordance with procedures adopted by the department by rule.

(b) Use accounting, auditing and fiscal procedures that conform to generally accepted government accounting standards.

(c) Seek to maximize the ability of the Alternative Fuel Vehicle Revolving Fund to operate on a self-sustaining basis and to maintain a perpetual source of financing to provide loans as described in section 3 of this 2013 Act.

(2) In connection with the loan program, the department may:

(a) Establish requirements for loans made from the Alternative Fuel Vehicle Revolving Fund to ensure that adequate funds will be available in the fund to pay the costs of administering the fund and the loan program.

(b) Exercise any remedies available to the department in connection with defaults on loans of advanced funds made to public bodies and tribes.

**SECTION 5.** (1) Any public body or tribe desiring a loan from the Alternative Fuel Vehicle Revolving Fund shall submit an application to the State Department of Energy. The application shall be in such form as may be specified by the department.

(2) Any public body or tribe receiving a loan from the Alternative Fuel Vehicle Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

**SECTION 6.** Notwithstanding any limitation contained in any other provision of law or local charter, a public body or tribe may:

(1) Borrow money from the Alternative Fuel Vehicle Revolving Fund through the State Department of Energy; and

(2) Enter into loan agreements and make related agreements with the department, in which the public body or tribe agrees to repay the borrowed money in accordance with the terms of the loan agreement.

**SECTION 7.** (1) The State Department of Energy shall establish by rule policies for establishing loan terms and interest rates for loans made from the Alternative Fuel Vehicle Revolving Fund that ensure that the objectives of sections 1 to 7 of this 2013 Act are met and that adequate funds are maintained in the Alternative Fuel Vehicle Revolving Fund to meet future needs. In establishing the policy, the department shall take into consideration at least the following factors:

(a) The ability of a public body or tribe to repay a loan.

(b) Current market rates of interest.

(2) The department may establish an interest rate ranging from zero to the market rate. The department may establish the loan term, provided that the loan is fully amortized not later than six years after the purchase of a new alternative fuel vehicle or the conversion of a vehicle that uses gasoline or diesel to an alternative fuel vehicle.

(3) The department shall adopt by rule any procedures or standards necessary to carry out the provisions of sections 1 to 7 of this 2013 Act.

**SECTION 8.** Section 9 of this 2013 Act is added to and made a part of ORS chapter 315.

**SECTION 9.** (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified alternative fuel vehicle contributions made by the taxpayer during the tax year to the Alternative Fuel Vehicle Revolving Fund established under section 2 of this 2013 Act.

(2)(a) The Department of Revenue shall, in cooperation with the State Department of Energy, conduct an auction of tax credits under this section. The Department of Revenue may not auction more than \$3 million of tax credits under this section. The department may conduct the auction in the manner that the department determines is best suited to maximize the return to the state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit. Moneys necessary to reimburse the Department of Revenue for the actual costs incurred by the department in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department. The Department of Revenue shall deposit net receipts from the auction required under this section in the Alternative Fuel Vehicle Revolving Fund established under section 2 of this 2013 Act. Net receipts from the auction required under this section shall be used to provide loans as described in section 3 of this 2013 Act.

(b) The State Department of Energy shall adopt rules for the administration and implementation of this section.

(3) Contributions made under this section shall be deposited in the Alternative Fuel Vehicle Revolving Fund.

(4)(a) Upon receipt of a contribution, the State Department of Energy shall issue to the taxpayer written certification of the amount certified for tax credit under this section to the extent the amount certified for tax credit, when added to all amounts previously certified for tax credit under this section, does not exceed \$3 million for the tax year beginning January 1, 2013.

(b) The State Department of Energy and the Department of Revenue are not liable, and a refund of a contributed amount need not be made, if a taxpayer who has received tax credit certification is unable to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

(5) The tax credit allowed under this section for any one tax year may not exceed the tax liability of the taxpayer.

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

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

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

**SECTION 10.** During the biennium beginning July 1, 2013, the limit imposed under ORS 469B.344 (1)(a) on the total amount of potential tax credits for all transportation projects in this state shall be reduced by the total amount of potential tax credits auctioned under section 9 of this 2013 Act during the biennium beginning July 1, 2013.

**SECTION 11.** Section 9 of this 2013 Act applies to tax years beginning on or after January 1, 2013, and before January 1, 2015.

**SECTION 12.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1, chapter \_\_\_\_\_, Oregon Laws 2013 (Enrolled House Bill

5011), for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by State Department of Energy, is increased by \$3,000,000.

**SECTION 13.** ORS 469B.320, as amended by section 7, chapter 45, Oregon Laws 2012, is amended to read:

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

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

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

(b) **Produce lower exhaust emissions, or are more energy efficient, than equivalent vehicles fueled by gasoline or diesel.**

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

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

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

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

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

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

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

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

**SECTION 14.** ORS 315.336, as amended by section 6, chapter 45, Oregon Laws 2012, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(b) If the amount of the credit allowed under this section is less than 35 percent of the certified cost of the project, the credit allowed in any tax year may not exceed five percent of the certified cost of the project, and may not exceed the tax liability of the taxpayer.

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

(a) The project must be located in Oregon.

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

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

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

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

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

**SECTION 15.** ORS 469B.344, as amended by section 10, chapter 45, Oregon Laws 2012, is amended to read:

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

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

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

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

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

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

**SECTION 16.** Section 54, chapter 730, Oregon Laws 2011, is amended to read:

**Sec. 54.** (1) A taxpayer may not be allowed a credit for a transportation project, other than an alternative fuel vehicle [*infrastructure*] project, certified under [*section 60 of this 2011 Act*] **ORS 469B.332** if the first tax year for which the credit would otherwise be allowed begins on or after January 1, 2016.

(2) A taxpayer may not be allowed a credit for an alternative fuel vehicle [*infrastructure*] project certified under [*section 60 of this 2011 Act*] **ORS 469B.332** if the first tax year for which the credit would otherwise be allowed begins on or after January 1, 2018.

**SECTION 17.** The amendments to **ORS 315.336, 469B.320 and 469B.344** by sections 13 to 15 of this 2013 Act apply to tax years beginning on or after January 1, 2015.

**SECTION 18.** This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Passed by Senate July 7, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House July 7, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State