

B-Engrossed
House Bill 2447

Ordered by the House May 20
Including House Amendments dated March 20 and May 20

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for State Department of Energy)

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.

[Extends sunset for tax credit for alternative energy devices.] Modifies credit limits for each type of category one alternative energy device. Authorizes State Department of Energy to adopt rules that further limit amount of credit based upon market conditions. Removes obsolete provisions related to tax credits previously allowed for alternative fuel vehicles and related equipment and fueling stations.

Applies to alternative energy devices certified on or after January 1, 2016, and to tax years beginning on or after January 1, 2016.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to residential energy tax credits; creating new provisions; amending ORS 314.752, 316.116,
3 469B.100, 469B.103, 469B.106, 469B.112, 469B.115, 469B.118 and 469B.991; repealing ORS 317.115
4 and 469B.109; and prescribing an effective date.

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

6 **SECTION 1.** ORS 316.116 is amended to read:

7 316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due
8 under this chapter for costs paid or incurred for construction or installation of each of one or more
9 alternative energy devices in **or at** a dwelling.

10 *[(b) A resident individual shall be allowed a credit against the taxes otherwise due under this*
11 *chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related equip-*
12 *ment.]*

13 *[(c)]* **(b)** A credit against the taxes otherwise due under this chapter is not allowed for an al-
14 ternative energy device that does not meet or exceed all applicable federal, state and local re-
15 quirements for energy efficiency, including equipment codes, **state and federal appliance**
16 **standards**, the state building code, specialty codes and any other standards.

17 **(2)(a) For each category one alternative energy device other than an alternative fuel de-**
18 **vice, the credit allowed under this section may not exceed the lesser of 50 percent of the cost**
19 **of the alternative energy device or \$1,500, and shall be computed as follows:**

20 **(A)** *[In the case of]* **For** a category one alternative energy device that is not an alternative fuel
21 device, the credit shall be based upon the first year energy yield of the alternative energy device
22 that qualifies under ORS 469B.100 to 469B.118. The amount of the credit shall be the same whether
23 for collective or noncollective investment.

24 *[(b)]* **(B)** *[The credit allowed under this section]* **For** each category one alternative energy device

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 for *[each]* a dwelling *[may not exceed the lesser of \$1,500 or]*, **the credit shall be based upon** the
2 first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the
3 alternative energy device used for space heating, cooling, electrical energy or domestic water heat-
4 ing *[for tax years beginning on or after January 1, 1998]*.

5 *[(c)]* **(C)** For each category one alternative energy device used for swimming pool, spa or hot tub
6 heating, the credit *[allowed under this section]* shall be based upon *[50 percent of the cost of the device*
7 *or]* the first *[year's]* **year** energy yield in kilowatt hours per year multiplied by 15 cents*[, whichever*
8 *is lower, up to \$1,500 for tax years beginning on or after January 1, 1998]*.

9 *[(d)]* **(b)** For each alternative fuel device, the credit allowed under this section *[is 25 percent of*
10 *the cost of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed*
11 *in service on or after January 1, 1998.]* **may not exceed the lesser of 50 percent of the cost of**
12 **the alternative fuel device or \$750.**

13 *[(e)(A)]* **(c)(A)** For each category two alternative energy device that is a solar electric system
14 or fuel cell system, the credit allowed under this section may not exceed the lesser of \$3 per watt
15 of installed output or \$6,000. *[The State Department of Energy may by rule provide for a lesser amount*
16 *of incentive as market conditions warrant, taking into consideration factors including the availability*
17 *of bulk purchasing of alternative energy devices.]*

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

21 **(C)** Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credits
22 allowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500 for each al-
23 ternative energy device, whichever is less. Unused credit amounts may be carried forward as pro-
24 vided in subsection *[(6)]* **(7)** of this section, but may not be carried forward to a tax year that is more
25 than five tax years following the first tax year for which any credit was allowed with respect to the
26 category two alternative energy device that is the basis for the credit.

27 **(D)** Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credit
28 for each device allowed under this paragraph may not exceed 50 percent of the total installed cost
29 of the category two alternative energy device.

30 **(3) The State Department of Energy may by rule provide for a lesser amount of incentive**
31 **for each type of alternative energy device as market conditions warrant.**

32 *[(3)]* **(4)** To qualify for a credit under this section, all of the following are required:

33 (a) The alternative energy device must be purchased, constructed, installed and operated in ac-
34 cordance with ORS 469B.100 to 469B.118 and a certificate issued thereunder.

35 (b) The taxpayer who is allowed the credit must be the owner or contract purchaser of the
36 dwelling or dwellings served by the alternative energy device or the tenant of the owner or of the
37 contract purchaser and must:

38 (A) Use the dwelling or dwellings served by the alternative energy device as a principal or
39 secondary residence; or

40 (B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant
41 who uses the dwelling or dwellings as a principal or secondary residence.

42 *[(c)]* *In the case of an alternative fuel device, unless the verification form and certificate are trans-*
43 *ferred as authorized under ORS 469B.106 (9), the taxpayer who is allowed the credit must be the*
44 *contractor who constructs the dwelling that incorporates the alternative fuel device into the dwelling*
45 *or installs the fueling station in the dwelling.]*

1 [(d)] (c) The credit must be claimed for the tax year in which the alternative energy device was
2 purchased if the device is operational by April 1 of the next following tax year.

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

5 [(4)] (5) The credit provided by this section does not affect the computation of basis under this
6 chapter.

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

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

18 [(7)] (8) A nonresident shall be allowed the credit under this section in the proportion provided
19 in ORS 316.117.

20 [(8)] (9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if
21 the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit
22 allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

23 [(9)] (10) If a change in the status of a taxpayer from resident to nonresident or from nonresi-
24 dent to resident occurs, the credit allowed by this section shall be determined in a manner consist-
25 ent with ORS 316.117.

26 [(10)] (11) A husband and wife who file separate returns for a taxable year may each claim a
27 share of the tax credit that would have been allowed on a joint return in proportion to the contri-
28 bution of each. However, a husband or wife living in a separate principal residence may claim the
29 tax credit in the same amount as permitted a single person.

30 [(11)] (12) As used in this section, unless the context requires otherwise:

31 (a) "Collective investment" means an investment by two or more taxpayers for the acquisition,
32 construction and installation of an alternative energy device for one or more dwellings.

33 (b) "Noncollective investment" means an investment by an individual taxpayer for the acqui-
34 sition, construction and installation of an alternative energy device for one or more dwellings.

35 (c) "Taxpayer" includes a transferee of a verification form under ORS 469B.106 [(9)] (8).

36 [(12)] (13) Notwithstanding any provision of [subsection (1) or (2)] **subsections (1) to (3)** of this
37 section, the sum of the credit allowed under subsection (1) of this section plus any similar credit
38 allowed for federal income tax purposes may not exceed the cost for the acquisition, construction
39 and installation of the alternative energy device.

40 **SECTION 2.** ORS 469B.100 is amended to read:

41 469B.100. As used in ORS 316.116[317.115] and 469B.100 to 469B.118:

42 (1) "Alternative energy device" means a category one alternative energy device or a category
43 two alternative energy device.

44 (2) "Alternative fuel device" includes a facility for mixing, storing, compressing or dispensing
45 fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

1 [(3) “Alternative fuel vehicle” means a motor vehicle as defined in ORS 801.360 that is:]

2 [(a) Registered in this state; and]

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

8 [(4)] (3) “Category one alternative energy device” means:

9 (a) Any system, mechanism or series of mechanisms that uses solar radiation for space heating
10 or cooling for one or more dwellings;

11 (b) Any system that uses solar radiation for:

12 (A) Domestic water heating; or

13 (B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS
14 316.116;

15 (c) A ground [water] **source** heat pump and ground loop system;

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

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

19 (f) A generator powered by alternative fuels and used to produce electricity;

20 (g) An energy efficient appliance;

21 (h) An alternative fuel device; or

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

25 [(5)] (4) “Category two alternative energy device” means a fuel cell system, solar electric system
26 or wind electric system.

27 [(6)] (5) “Coefficient of performance” means the ratio calculated by dividing the usable output
28 energy by the electrical input energy. Both energy values must be expressed in equivalent units.

29 [(7)] (6) “Contractor” means a person whose trade or business consists of offering for sale an
30 alternative energy device, construction service, installation service or design service.

31 [(8)(a)] (7) “Cost” means the actual cost of the acquisition, construction and installation of the
32 alternative energy device.

33 [(b) For an alternative fuel vehicle, “cost” means the difference between the cost of the alternative
34 fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional
35 gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification.
36 “Cost” does not include any amounts paid for remodification of the same vehicle.]

37 [(c) For a fueling station necessary to operate an alternative fuel vehicle, “cost” means the cost to
38 the contractor of constructing or installing the fueling station in a dwelling and of making the fuel
39 station operational in accordance with the specifications issued under ORS 469B.100 to 469B.118 and
40 any rules adopted by the Director of the State Department of Energy.]

41 [(d) For related equipment, “cost” means the cost of the related equipment and any modifications
42 or additions to the related equipment necessary to prepare the related equipment for use in converting
43 a vehicle to alternative fuel use.]

44 [(9)] (8) “Domestic water heating” means the heating of water used in a dwelling for bathing,
45 clothes washing, dishwashing and other related functions.

1 [(10)] (9) “Dwelling” means real or personal property ordinarily inhabited as a principal or
 2 secondary residence and located within this state. “Dwelling” includes, but is not limited to, an in-
 3 dividual unit within multiple unit residential housing.

4 [(11)] (10) “Energy efficient appliance” includes emerging technologies **that exceed state and**
 5 **federal appliance standards**,*[such as high-efficiency heat-pump water heaters for domestic hot water*
 6 *that meet the Northern Tier Specification established by the Northwest Energy Efficiency Alliance for*
 7 *electricity or have 0.67 or greater energy factor for gas water heaters, ductless heat pumps, high-*
 8 *efficiency furnaces that are at least 95 percent efficient, on-demand gas water heaters and heat-pumps,*
 9 *that exceed code.]*

10 [(12)] (11) “First year energy yield” of an alternative energy device is the usable energy
 11 produced **or energy saved** under average environmental conditions in one year.

12 [(13)] (12) “Fuel cell system” means any system, mechanism or series of mechanisms that uses
 13 fuel cells or fuel cell technology to generate electrical energy for a dwelling.

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

16 [(15)] (13) “Placed in service” means the date an alternative energy device is ready and avail-
 17 able to produce usable energy or save energy.

18 [(16)] (14) “Solar electric system” means any system, mechanism or series of mechanisms, in-
 19 cluding photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

20 [(17)] (15) “Third-party alternative energy device installation” means an alternative energy de-
 21 vice that is installed in connection with residential property and owned by a person other than the
 22 residential property owner in accordance with an agreement in effect for at least 10 years between
 23 the residential property owner and the alternative energy device owner. The agreement must cover
 24 maintenance and either the use of or the power generated by the alternative energy device.

25 [(18)] (16) “Wind electric system” means any system, mechanism or series of mechanisms that
 26 uses wind to generate electrical energy for a dwelling.

27 **SECTION 3.** ORS 469B.103 is amended to read:

28 469B.103. (1) For the purposes of carrying out ORS 469B.100 to 469B.118, the State Department
 29 of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices
 30 for dwellings. The department may, in prescribing criteria, rely on applicable federal, state and local
 31 requirements for energy efficiency, including the state building code, **state and federal appliance**
 32 **standards** and any specialty codes and any code adopted by the Building Codes Division of the
 33 Department of Consumer and Business Services.

34 (2) The department shall take into consideration evolving market conditions in prescribing
 35 minimum performance criteria for alternative energy devices and in determining credit amounts,
 36 consistent with ORS 316.116.

37 (3) The department, in adopting rules under this section for solar heating and cooling systems,
 38 shall take into consideration applicable standards of federal performance criteria prescribed pursu-
 39 ant to the provisions of the Solar Heating and Cooling Demonstration Act of 1974, 42 U.S.C. 5506.

40 (4) The Director of the State Department of Energy shall adopt rules governing the determi-
 41 nation of eligibility, verification and certification of an alternative fuel device for purposes of the
 42 tax credits granted under ORS 316.116 [*and 317.115*], including but not limited to rules that further
 43 define an alternative fuel [*vehicle, related equipment or fueling station necessary to operate an alter-*
 44 *native fuel vehicle,*] **device and** that govern the computation of costs eligible for credit [*and that*
 45 *require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative*

1 *fuel vehicle as a condition of tax credit eligibility].*

2 **(5) The department shall by rule establish policies and procedures for the administration**
3 **and enforcement of the provisions of ORS 316.116 and 469B.100 to 469B.118.**

4 **SECTION 4.** ORS 469B.106 is amended to read:

5 469B.106. (1) Subject to the limitations in section 75, chapter 730, Oregon Laws 2011, any person
6 may claim a tax credit under ORS 316.116 [*or ORS 317.115, if the person is a corporation*] if the
7 person:

8 (a) Meets the requirements of ORS 316.116 [*or ORS 317.115, if applicable*];

9 (b) Meets the requirements of ORS 469B.100 to 469B.118; and

10 (c) Pays, subject to subsection [(10)] **(9)** of this section, all or a portion of the costs of an al-
11 ternative energy device.

12 [(2) *A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling*
13 *station necessary to operate an alternative fuel vehicle.*]

14 [(3)(a)] **(2)** In order to be eligible for a tax credit under ORS 316.116 [*or 317.115*], a person
15 claiming a tax credit for construction or installation of an alternative energy device [*(including a*
16 *fueling station)*] shall have the device certified by the State Department of Energy or constructed
17 or installed by a contractor certified by the department under subsection [(5)] **(4)** of this section.
18 [*This paragraph does not apply to an alternative fuel vehicle or to related equipment.*]

19 [(b) *Certification of an alternative fuel vehicle or related equipment shall be accomplished under*
20 *rules that shall be adopted by the Director of the State Department of Energy.*]

21 [(4)] **(3)** Verification of the purchase, construction or installation of an alternative energy device
22 shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall
23 contain:

24 (a) The location of the alternative energy device;

25 (b) A description of the type of device;

26 (c) If the device was constructed or installed by a contractor, evidence that the contractor has
27 any license, bond, insurance and permit required to sell and construct or install the alternative en-
28 ergy device;

29 (d) If the device was constructed or installed by a contractor, a statement signed by the con-
30 tractor that the applicant has received:

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

32 (B) A copy of consumer information published by the State Department of Energy;

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

34 (D) A copy of the contractor's certification certificate or alternative energy device system cer-
35 tificate for the alternative energy device, as appropriate;

36 (e) If the device was not constructed or installed by a contractor, evidence that:

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

39 (B) The taxpayer has obtained all building permits required for construction or installation of
40 the device;

41 (f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device
42 was constructed or installed by a contractor, that the construction or installation meets all the re-
43 quirements of ORS 469B.100 to 469B.118 [*or, if the device is a fueling station and the taxpayer is the*
44 *contractor, a statement signed by the contractor that the construction or installation meets all of the*
45 *requirements of ORS 469B.100 to 469B.118*];

1 (g) The date the alternative energy device was purchased by the residential property owner, or,
2 for a third-party alternative energy device installation, the date that the residential property owner
3 and the alternative energy device owner signed a contract;

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

5 (i) Any other information that the Director of the State Department of Energy or the Depart-
6 ment of Revenue determines is necessary.

7 [(5)(a)] **(4)(a)** When the State Department of Energy finds that an alternative energy device can
8 meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy
9 may issue a contractor system certification to the person selling and constructing or installing the
10 alternative energy device.

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

14 (A) A statement that the contractor has any license, bonding, insurance and permit that is re-
15 quired for the sale and construction or installation of the alternative energy device;

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

19 (C) The addresses of three installations of the device that are available for inspection by the
20 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; and

23 (F) Any other information that the State Department of Energy determines is necessary.

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

26 (d) The State Department of Energy may issue contractor system certificates to each contractor
27 who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and
28 installation of the same domestic water heating alternative energy devices authorized by the dealer
29 certification.

30 (e) If the State Department of Energy finds that an alternative energy device can meet the
31 standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue
32 an alternative energy device system certificate to the taxpayer constructing or installing or having
33 an alternative energy device constructed or installed.

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

36 (A) A specific description of the alternative energy device, including, but not limited to, the
37 material, equipment and mechanism used in the device, operating procedure, sizing, siting method
38 and construction or installation procedure;

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

40 (C) A statement that the taxpayer has all permits required for construction or installation of the
41 device.

42 [(6)] **(5)** Prior to commencing installation of alternative energy devices, installers of third-party
43 alternative energy device installations must apply to the State Department of Energy to reserve
44 credits on behalf of owners of residential property. Installers may reserve credit for no more than
45 25 installations under this subsection in one application.

1 [(7)] (6) To claim the tax credit, the verification form described in subsection [(4)] (3) of this
2 section shall be submitted with the taxpayer's tax return for the year the alternative energy device
3 is placed in service or the immediately succeeding tax year. A copy of the contractor's certification
4 certificate[,] **or** alternative energy device system certificate [*or alternative fuel vehicle or related*
5 *equipment certificate*] also shall be submitted.

6 [(8)] (7) The verification form and contractor's certificate[,] **or** alternative energy device system
7 certificate [*or alternative fuel vehicle or related equipment certificate*] described under this section
8 shall be effective for purposes of tax relief allowed under ORS 316.116 [*or 317.115*].

9 [(9)] (8) The verification form and contractor's certificate described under this section may be
10 transferred to the first purchaser of a dwelling [*or, in the case of construction or installation of a*
11 *fueling station in an existing dwelling, the current owner,*] who intends to use [*or is using*] the
12 dwelling as a principal or secondary residence.

13 [(10)] (9) Any person that pays the present value of the tax credit for an alternative energy
14 device provided under ORS 316.116 [*or 317.115*] and 469B.100 to 469B.118 to the person who con-
15 structs or installs the alternative energy device shall be entitled to claim the credit in the manner
16 and subject to rules adopted by the Department of Revenue to carry out the purposes of this sub-
17 section. The State Department of Energy may establish by rule uniform discount rates to be used
18 in calculating the present value of a tax credit under this subsection.

19 **SECTION 5.** ORS 469B.112 is amended to read:

20 469B.112. The following devices are not eligible for the tax credit under ORS 316.116:

21 (1) Standard efficiency furnaces;

22 (2) Air conditioning systems;

23 (3) Boilers;

24 (4) Standard back-up heating systems;

25 (5) Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the
26 woodstove, furnace or system constitutes a premium efficiency biomass combustion device described
27 in ORS 469B.100 [(4)(i)] (3)(i);

28 (6) Heat pump water heaters that are part of a geothermal heat pump space heating system;

29 (7) Structures that cover or enclose a swimming pool;

30 (8) Swimming pools, hot tubs or spas used to store heat;

31 (9) Above ground, uninsulated swimming pools, hot tubs or spas;

32 (10) Photovoltaic systems installed on recreational vehicles;

33 (11) Conversion of an existing alternative energy device to another type of alternative energy
34 device;

35 (12) Repair or replacement of an existing alternative energy device;

36 (13) A category two alternative energy device, if the equipment or other property that comprises
37 the category two alternative energy device is the basis for an allowed credit for a category one al-
38 ternative energy device under ORS 316.116;

39 (14) A category one alternative energy device, if the equipment or other property that comprises
40 the category one alternative energy device is also the basis for an allowed credit for a category two
41 alternative energy device under ORS 316.116; or

42 (15) Any other device identified by the State Department of Energy. The department may adopt
43 rules defining standards for eligible and ineligible devices under this section.

44 **SECTION 6.** ORS 469B.115 is amended to read:

45 469B.115. (1) [*Except for alternative fuel vehicles or related equipment,*] In order to carry out ORS

1 469B.100 to 469B.118, the State Department of Energy shall develop performance assumptions and
 2 prescriptive measures to determine the eligibility and tax credit amount for alternative energy de-
 3 vices constructed or installed in a dwelling.

4 (2) The department shall use the performance assumptions and prescriptive measures to develop
 5 information for the Department of Revenue to use to allow taxpayers to determine their eligibility
 6 and tax credit amount. The State Department of Energy may review this information on an annual
 7 basis to take into consideration new technology and performance assumption accuracy.

8 (3) For the purpose of determining the first year energy yield of an alternative energy device,
 9 the department shall use the following assumptions and test standards:

10 (a) Solar Rating and Certification Corporation [*standard*] **standards** SRCC 100, [200] **300**,
 11 American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the [*American*
 12 *Refrigeration Institute standard 325-85*] **Air-Conditioning, Heating, and Refrigeration Institute**
 13 **under ANSI/AHRI/ASHRAE/ISO Standard 13256-1** test at 50 degrees **Fahrenheit** entering water
 14 temperature, as appropriate. The testing requirements under this paragraph [*shall*] **do** not apply to
 15 an owner-built alternative energy device.

16 [(b) *For an alternative energy device used as a source for domestic water heating energy, a hot*
 17 *water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 de-*
 18 *grees Fahrenheit shall be achieved by including conservation measures in the construction or installa-*
 19 *tion of the alternative energy device.*]

20 [(c)] (b) For an alternative energy device used as a source for space heating or cooling, the
 21 heating or cooling energy load as determined by a heat loss or gain calculation performed in ac-
 22 cordance with the methods established by the American Society of Heating, Refrigerating and Air-
 23 Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device
 24 used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply
 25 with comparable requirements as determined by the department.

26 [(d)] (c) For an alternative energy device used as a source for electrical energy, the first year
 27 energy yield shall be based upon the electrical energy load of the dwelling as determined according
 28 to the procedure established by the department.

29 [(e)] (d) For an alternative energy device used as a source for swimming pool, spa or hot tub
 30 heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or
 31 hot tub as determined according to the procedure established by the department.

32 **SECTION 7.** ORS 469B.118 is amended to read:

33 469B.118. (1) Upon the Department of Revenue's own motion, or upon request of the State De-
 34 partment of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax
 35 credit allowed under ORS 316.116 [*or 317.115*] if:

36 (a) The verification was fraudulent because of a misrepresentation by the taxpayer [*or investor*
 37 *owned utility*];

38 (b) The verification was fraudulent because of a misrepresentation by the contractor;

39 (c) [*In the case of an alternative energy device other than an alternative fuel vehicle or related*
 40 *equipment,*] The alternative energy device has not been constructed, installed or operated in sub-
 41 stantial compliance with the requirements of ORS 469B.100 to 469B.118; or

42 (d) The taxpayer [*or investor owned utility*] failed to consent to an inspection of the constructed
 43 or installed alternative energy device by the State Department of Energy after a reasonable, written
 44 request for such an inspection by the State Department of Energy. [*This paragraph does not apply*
 45 *to an alternative fuel vehicle or to related equipment.*]

1 (2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the
2 State Department of Energy may order the revocation of a contractor certificate issued under ORS
3 469B.106 if the director finds that:

4 (a) The contractor certificate was obtained by fraud or misrepresentation by the contractor
5 certificate holder;

6 (b) The contractor's performance for the alternative energy device for which the contractor is
7 issued a certificate under ORS 469B.106 does not meet industry standards; or

8 (c) The contractor has misrepresented to the customer either the tax credit program or the na-
9 ture or quality of the alternative energy device.

10 (3) If the tax credit allowed under ORS 316.116 [or 317.115] for the purchase, construction or
11 installation of an alternative energy device is ordered forfeited due to an action of the taxpayer [or
12 investor owned utility] under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided
13 to the taxpayer [or investor owned utility] shall be forfeited and the Department of Revenue shall
14 proceed to collect those taxes not paid by the taxpayer [or utility] as a result of the tax credit relief
15 under ORS 316.116 [or 317.115].

16 (4) If the tax credit for the construction or installation of an alternative energy device is or-
17 dered forfeited due to an action of the contractor under subsection (1)(b) of this section, the De-
18 partment of Revenue shall proceed to collect, from the contractor, an amount equivalent to those
19 taxes not paid by the taxpayer [or investor owned utility] as a result of the tax credit relief under
20 ORS 316.116 [or 317.115]. As long as the forfeiture is due to an action of the contractor and not to
21 an action of the taxpayer [or utility], the assessment of such taxes shall be levied on the contractor
22 and not on the taxpayer [or utility]. Notwithstanding ORS 314.835, the Department of Revenue may
23 disclose information from income tax returns or reports to the extent such disclosure is necessary
24 to collect amounts from contractors under this subsection.

25 (5) In order to obtain information necessary to verify eligibility and amount of the tax credit,
26 the State Department of Energy or its representative may inspect an alternative energy device that
27 has been purchased, constructed or installed. The inspection shall be made only with the consent
28 of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of
29 any tax credit relief under ORS 316.116 [or 317.115]. The Department of Revenue shall proceed to
30 collect any taxes due according to subsection (4) of this section. For electrical generating alterna-
31 tive energy devices, the State Department of Energy may obtain energy consumption records for the
32 dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax
33 credit.

34 **SECTION 8.** ORS 469B.991 is amended to read:

35 469B.991. (1) The Director of the State Department of Energy may impose a civil penalty against
36 a contractor if a contractor certificate is revoked under ORS 469B.118. The amount of the penalty
37 shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116
38 [or 317.115] to the contractor or to purchasers of the system for which a contractor's certificate has
39 been revoked.

40 (2) The State Department of Energy may not collect any of the amount of a civil penalty imposed
41 under subsection (1) of this section from a purchaser of the system for which the final certificate
42 has been revoked. However, the Department of Revenue shall proceed under ORS 469B.118 (3) to
43 collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's
44 fraud or misrepresentation under ORS 469B.118 (1)(a).

45 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

1 (4) A penalty recovered under this section shall be paid into the State Treasury and credited to
2 the General Fund and is available for general governmental expenses.

3 **SECTION 9.** ORS 314.752 is amended to read:

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

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

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

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

20 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
21 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
22 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
23 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
24 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
25 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
26 station and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
27 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
28 workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facili-
29 ties), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326
30 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS
31 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing
32 facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic
33 commerce),] **and** ORS 315.533 (low income community jobs initiative) [*and ORS 317.115 (fueling*
34 *stations necessary to operate an alternative fuel vehicle)*].

35 **SECTION 10.** ORS 317.115 and 469B.109 are repealed.

36 **SECTION 11.** (1) **The amendments to ORS 316.116, 469B.100, 469B.103, 469B.106, 469B.112,**
37 **469B.115, 469B.118 and 469B.991 by sections 1 to 8 of this 2015 Act apply to alternative energy**
38 **devices certified under ORS 469B.106 on or after January 1, 2016, and to tax years beginning**
39 **on or after January 1, 2016.**

40 (2) **The repeal of ORS 317.115 and 469B.109 by section 10 of this 2015 Act applies to tax**
41 **years beginning on or after January 1, 2012.**

42 **SECTION 12.** **This 2015 Act takes effect on the 91st day after the date on which the 2015**
43 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**