

Enrolled
House Bill 2472

Sponsored by COMMITTEE ON REVENUE

CHAPTER

AN ACT

Relating to business energy tax credits; creating new provisions; amending ORS 315.354, 469.185, 469.200, 469.215 and 469.225; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 469.185 to 469.225.

SECTION 2. (1) As used in this section, "large facility" means a facility with a projected cost of \$5 million or more.

(2) The State Department of Energy may not issue a preliminary certification to an applicant under ORS 469.205 for the erection, construction, installation or acquisition of a large facility unless the applicant establishes that:

(a) The applicant has applied for all licenses and permits required by state or local law for the facility;

(b) The applicant is not in arrears on any tax owed to the state or to a local government; and

(c) To the satisfaction of the department, the facility will be in continuous operation for at least five years after the facility is placed in operation.

(3) In addition to the criteria established by the State Department of Energy under ORS 469.197, the department may consider issuing a preliminary certification to an applicant under ORS 469.205 for the erection, construction, installation or acquisition of a large facility based on the following criteria:

(a) The number of jobs that would be created if the facility was constructed;

(b) The economic benefits of constructing the facility for the state and for the area in which the facility would be constructed;

(c) The revenue impact of granting the certification, as compared with the projected benefits of the construction and operation of the facility; and

(d) Whether construction of the facility is dependent upon preliminary certification under ORS 469.185 to 469.225.

(4) If a certificate is issued under ORS 469.215 for the erection, construction, installation or acquisition of a large facility, and tax credit based on the certificate is transferred under ORS 469.206, the Department of Revenue may not pay any interest on amounts claimed by a transferee by reason of the application of the tax credit in an amended return filed by the transferee.

(5) The State Department of Energy may not issue a certificate under ORS 469.215 for a large facility unless the applicant has been issued all permits and licenses required by state or local law for the facility. The department may condition the granting of a certificate under ORS 469.215 for a large facility on the applicant continuing to meet the requirements of subsection (2)(b) and (c) of this section during the period that the certificate is valid.

SECTION 3. ORS 469.185 is amended to read:

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

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

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

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

(4) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a facility, including site development costs and expenses for a sustainable building practices facility.

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

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

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

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

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

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

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

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

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

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

(6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system, or a renewable energy resource equipment manufacturing facility.

(7) “High-efficiency combined heat and power facility” means a device or equipment that simultaneously produces heat and electricity from a single source of fuel and that meets the criteria established for a high-efficiency combined heat and power facility under ORS 469.197.

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

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

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

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

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

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

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

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

(a) Including:

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

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

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

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

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

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

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

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

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

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

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

(13) “Renewable energy resource equipment manufacturing facility” means any structure, building, installation, excavation, machinery, equipment or device, or an addition, reconstruction or improvement to land or an existing structure, building, installation, excavation, machinery, equipment or device, that is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used primarily to manufacture:

(a) Equipment, machinery or other products designed to use a renewable energy resource and that meets the criteria established under ORS 469.197; or

(b) Electric vehicles designed for use as modes of transportation on public roads and highways or component parts of electric vehicles, but not including component parts that may be used in both electric and conventional vehicles.

(14) “Sustainable building practices facility” means a commercial building in which building practices that reduce the amount of energy, water or other resources needed for construction and operation of the building are used. “Sustainable building practices facility” may be further defined

by the State Department of Energy by rule, including rules that establish traditional building practice baselines in energy, water or other resource usage for comparative purposes for use in determining whether a facility is a sustainable building practices facility.

(15) "Transportation facility" means a transportation project that reduces energy use during commuting to and from work or school, during work-related travel, or during travel to obtain medical or other services, and may be further defined by the department by rule. "Transportation facility" includes, but is not limited to, a qualified transit pass contract or a transportation services contract.

(16) "Transportation provider" means a public, private or nonprofit entity that provides transportation services to members of the public.

(17) "Transportation services contract" means a contract that is related to a transportation facility, and may be further defined by the department by rule.

SECTION 4. ORS 469.200, as amended by section 2, chapter 29, Oregon Laws 2008, is amended to read:

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

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

(a) \$20 million, in the case of a facility that has an installed capacity of 10 megawatts or less and:

(A) That uses or produces renewable energy resources; or

(B) That is a high-efficiency combined heat and power facility;

(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility; or

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

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

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

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

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

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

(e) The applicant lacks the minimum level of financial viability established in rules adopted under ORS 469.197 (4); or

(f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or expand a facility in Oregon on allowance of the tax credit, given the criteria established in rules under ORS 469.197 (4).

(3) The director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the determination.

(4) If more than one application for preliminary certification is made to the State Department of Energy for the same site or by the same applicant, the department may treat the applications as a single application for the purpose of the limitations imposed by this

section, and for the purpose of determining whether the application is for a large facility as defined in section 2 of this 2009 Act, if the department finds that the applications are for facilities that are in such close proximity, or so closely related, as to constitute a single facility.

SECTION 5. ORS 469.215, as amended by section 4, chapter 29, Oregon Laws 2008, is amended to read:

469.215. (1) A final certification may not be issued by the Director of the State Department of Energy under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the director.

(2) Any person may apply to the State Department of Energy for final certification of a facility:

(a) If the department issued preliminary certification for the facility under ORS 469.210; and

(b)(A) After completion of erection, construction, installation or acquisition of the proposed facility or, if the facility is a qualified transit pass contract, after entering into the contract with a transportation provider; or

(B) After transfer of the facility, as provided in ORS 315.354 (5).

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

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

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

(c) A statement that the facility is in operation or, if not in operation, that the applicant has made every reasonable effort to make the facility operable; and

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

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The director may issue the certificate together with such conditions as the director determines are appropriate to promote the purposes of ORS 315.354, 469.185 to 469.225 and 469.878. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the facility. However, the director may not certify an amount for tax credit purposes [*which*] **that** is more than [*10 percent in excess of*] the amount approved in the preliminary certificate issued for the facility.

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

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

SECTION 6. ORS 469.225, as amended by section 5, chapter 29, Oregon Laws 2008, is amended to read:

469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of the certificate issued under ORS 469.215 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation; [*or*]

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

(c) The holder of the certificate has failed to comply with conditions imposed under section 2 (2) of this 2009 Act.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue of the order of revocation.

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

(4) If the certificate is issued for a renewable energy resource equipment manufacturing facility and is ordered revoked, upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect:

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

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

(5)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (3) or (4) of this section from the person that obtained certification from the State Department of Energy or any successor in interest to the business interests of that person. No assessment of tax shall be necessary and no statute of limitation shall preclude the collection of taxes described in this subsection.

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

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

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

SECTION 7. ORS 315.354 is amended to read:

315.354. (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), based upon the certified cost of the facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit is allowed as follows:

(a) Except as provided in paragraph (b) [or (c)], (c) or (d) 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 facility, 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 certified cost of the facility does not exceed \$20,000, the total amount of the credit allowable under subsection (4) of this section may be claimed in the first tax year for which the credit may be claimed, but may not exceed the tax liability of the taxpayer.

(c) **The credit allowed in each of five succeeding tax years shall be seven percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer, if the [facility uses or produces renewable energy resources or] facility uses or produces renewable energy resources and has an installed capacity of more than 10 megawatts.**

(d) **If the facility is a [renewable energy resource equipment manufacturing] facility described in subsection (4)(a) of this section, the credit allowed in each of five succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.**

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

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

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

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

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

(a) The facility must be located in Oregon;

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

(c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c).

(4) The total amount of credit allowable to an eligible taxpayer under this section may not exceed:

(a) 50 percent of the certified cost of [a renewable energy resources facility];

(A) A renewable energy resource equipment manufacturing facility [or a high-efficiency combined heat and power facility]; or

(B) A facility that has an installed capacity of 10 megawatts or less and that:

(i) Uses or produces renewable energy resources; or

(ii) Is a high-efficiency combined heat and power facility;

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

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

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

(5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the facility, notice thereof shall be given to the Director of the State Department of Energy who shall revoke the certificate covering the facility as of the date of such disposition. The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215, but the tax credit available to the new owner shall be limited to the amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all previous leases.

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

(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, and likewise, any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth 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 (1) of this section only as provided in this subsection.

(7) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the facility 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) If a homebuilder claims a credit under this section with respect to a homebuilder-installed renewable energy system or a high-performance home:

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

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

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

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

SECTION 8. Section 2 of this 2009 Act, the amendments to ORS 469.185, 469.215 and 469.225 by sections 3, 5 and 6 of this 2009 Act and ORS 469.200 (4) apply to preliminary certifications issued under ORS 469.210 on or after June 1, 2009.

SECTION 9. The amendments to ORS 315.354 and 469.200 (1) by sections 4 and 7 of this 2009 Act apply to completed applications for preliminary certification received on or after July 1, 2009.

SECTION 10. This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by House May 11, 2009

Received by Governor:

Repassed by House June 25, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate June 22, 2009

Filed in Office of Secretary of State:

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.....M.,....., 2009

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President of Senate

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Secretary of State