

House Bill 2818

Sponsored by Representative THATCHER (Pre-session filed.)

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 **as introduced**.

Prohibits transfer of tax credits allowed for certain energy facilities. Applies to certification and revocation decisions after January 1, 2012, transfer of tax credits after January 1, 2012, and tax years beginning on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to transferability of energy tax credits; creating new provisions; amending ORS 315.053,
3 315.354, 469.205, 469.206, 469.215 and 469.225; and prescribing an effective date.

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

5 **SECTION 1.** ORS 315.354, as amended by section 3, chapter 76, Oregon Laws 2010, is amended
6 to read:

7 315.354. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if
8 the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of the
9 facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit
10 is allowed as follows:

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

16 (b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit
17 allowable under subsection (4) of this section may be claimed in the first tax year for which the
18 credit may be claimed, but may not exceed the tax liability of the taxpayer.

19 (c) If the facility uses or produces renewable energy resources or is a renewable energy re-
20 source equipment manufacturing facility, the credit allowed in each of five succeeding tax years
21 shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the
22 taxpayer.

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

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

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

30 (c) If the facility is a high-performance home or a homebuilder-installed renewable energy sys-

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 tem, the total amount of the credit may be claimed in the first tax year for which the credit is
2 claimed, but may not exceed the tax liability of the taxpayer.

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

4 (a) The facility must be located in Oregon;

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

7 (c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c); and

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

10 (4) The total amount of credit allowable to an eligible taxpayer under this section may not ex-
11 ceed:

12 (a) 50 percent of the certified cost of a renewable energy resources facility, a renewable energy
13 resource equipment manufacturing facility or a high-efficiency combined heat and power facility;

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

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

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

18 (5)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
19 facility, notice thereof shall be given to the Director of the State Department of Energy, who shall
20 revoke the certificate covering the facility as of the date of such disposition.

21 (b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new cer-
22 tificate under ORS 469.215. The new lessor or owner must meet the requirements of ORS 469.185 to
23 469.225 and may claim a tax credit under this section only if all moneys owed to the State of Oregon
24 have been paid, the facility continues to operate, unless continued operation is waived by the State
25 Department of Energy, and all conditions in the final certification are met. The tax credit available
26 to the new owner shall be limited to the amount of credit not claimed by the former owner or, for
27 a new lessor, the amount of credit not claimed by the lessor under all previous leases.

28 *[(c) The State Department of Energy may not revoke the certificate covering a facility under para-*
29 *graph (a) of this subsection if the tax credit associated with the facility has been transferred to a tax-*
30 *payer who is an eligible applicant under ORS 469.205 (1)(c)(A).]*

31 *[(d)]* (c) A transferee holding a credit that has been transferred under ORS *[469.206 or]* 469.208
32 may not claim the tax credit under this section for any tax year prior to the tax year in which the
33 transferee obtained the credit.

34 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
35 particular year may be carried forward and offset against the taxpayer's tax liability for the next
36 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
37 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
38 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
39 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
40 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
41 carried forward and used in the fifth succeeding tax year, and likewise, any credit not used in that
42 fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and
43 likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in
44 the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax
45 year may be carried forward and used in the eighth succeeding tax year, but may not be carried

1 forward for any tax year thereafter. Credits may be carried forward to and used in a tax year be-
 2 yond the years specified in subsection (1) of this section only as provided in this subsection.

3 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
 4 duction for the facility to which the taxpayer otherwise may be entitled for purposes of ORS chapter
 5 316, 317 or 318 for such year.

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

8 (9) If a homebuilder claims a credit under this section with respect to a homebuilder-installed
 9 renewable energy system or a high-performance home:

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

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

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

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

17 **SECTION 2.** ORS 469.205, as amended by section 10, chapter 76, Oregon Laws 2010, is amended
 18 to read:

19 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
 20 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
 21 if:

22 (a) The erection, construction, installation or acquisition of the facility is to be commenced on
 23 or after October 3, 1979;

24 (b) The facility complies with the standards or rules adopted by the Director of the State De-
 25 partment of Energy; and

26 *[(c) The applicant meets one of the following criteria:]*

27 *[(A) The applicant is a person to whom a tax credit has been transferred; or]*

28 *[(B)]* (c) The applicant will be the owner or contract purchaser of the facility at the time of
 29 erection, construction, installation or acquisition of the proposed facility, and:

30 *[(i)]* (A) The applicant is the owner, contract purchaser or lessee of a trade or business that
 31 plans to utilize the facility in connection with Oregon property; or

32 *[(ii)]* (B) The applicant is the owner, contract purchaser or lessee of a trade or business that
 33 plans to lease the facility to a person who will utilize the facility in connection with Oregon prop-
 34 erty.

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

37 (a) A statement that the applicant or the lessee of the applicant's facility:

38 (A) Intends to convert from a purchased energy source to a renewable energy resource;

39 (B) Plans to acquire, construct or install a facility that will use a renewable energy resource
 40 or solid waste instead of electricity, petroleum or natural gas;

41 (C) Plans to use a renewable energy resource in the generation of electricity for sale or to re-
 42 place an existing or proposed use of an existing source of electricity;

43 (D) Plans to acquire, construct or install a facility that substantially reduces the consumption
 44 of purchased energy;

45 (E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (11);

1 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-
2 tive fuel vehicle;

3 (G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

4 (H) Plans to acquire transit passes for use by individuals specified by the applicant;

5 (I) Plans to acquire, construct or install a transportation facility;

6 (J) Plans to acquire a sustainable building practices facility;

7 (K) Plans to acquire a car sharing facility and operate a car sharing program;

8 (L) Plans to construct a high-efficiency combined heat and power facility;

9 (M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;

10 (N) Is a homebuilder and plans to construct a high-performance home; or

11 (O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing
12 facility.

13 (b) A detailed description of the proposed facility and its operation and information showing that
14 the facility will operate as represented in the application and remain in operation for at least five
15 years, unless the director by rule specifies a shorter period of operation.

16 (c) Information on the amount by which consumption of electricity, petroleum or natural gas by
17 the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy
18 that will be produced for sale, as the result of using the facility or, if applicable, information about
19 the expected level of sustainable building practices facility performance.

20 (d) The projected cost of the facility.

21 (e) If applicable, a copy of the proposed qualified transit pass contract, transportation services
22 contract or contract for lease of parking spaces for a car sharing facility.

23 (f) Information on the amount and type of jobs that will be created, the number of jobs sustained
24 throughout the construction, installation and operation of the facility and the benefits of the facility
25 with regard to overall economic activity in this state.

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

28 (h) Information relating to the criteria required under ORS 469.195.

29 (i) Any other information the director considers necessary to determine whether the proposed
30 facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or
31 standards adopted by the director.

32 (3) An application for preliminary certification shall be accompanied by a fee established under
33 ORS 469.217. The director may refund all or a portion of the fee if the application for certification
34 is rejected.

35 (4) The director may allow an applicant to file the preliminary application or a reapplication
36 under subsection (6) of this section after the start of erection, construction, installation or acqui-
37 sition of the facility if the director finds:

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

40 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
41 469.225.

42 (5) A preliminary certification of a sustainable building practices facility shall be applied for and
43 issued as prescribed by the department by rule.

44 (6) A preliminary certification of a renewable energy resource equipment manufacturing facility
45 shall remain valid for a period of five calendar years after the date the preliminary certification is

1 issued by the director. For all other facilities, a preliminary certification shall remain valid for a
 2 period of three calendar years after the date the preliminary certification is issued by the director.
 3 The director may extend the three-year period for two additional calendar years upon reapplication
 4 and submission of the fee required by this section.

5 **SECTION 3.** ORS 469.206 is amended to read:

6 469.206. [(1)] The owner of a facility may **not** transfer a tax credit for the facility. [*in exchange*
 7 *for a cash payment equal to the present value of the tax credit.*]

8 [(2) *The State Department of Energy shall establish by rule a formula to be employed in the de-*
 9 *termination of prices of credits transferred under this section. In establishing the formula the depart-*
 10 *ment shall incorporate inflation projections and market real rate of return.*]

11 [(3) *The department shall recalculate credit transfer prices quarterly, employing the formula es-*
 12 *tablished under subsection (2) of this section.*]

13 [(4) *Notwithstanding any other provision of law, a tax credit transferred pursuant to this section*
 14 *does not decrease the amount of taxes required to be reported by a public utility.*]

15 **SECTION 4.** ORS 315.053 is amended to read:

16 315.053. An income tax credit allowed under ORS 315.141[, 315.354] or 315.514 or section 47,
 17 chapter 843, Oregon Laws 2007, or section 12, chapter 855, Oregon Laws 2007, may be transferred
 18 or sold only to one or more of the following:

- 19 (1) A C corporation.
- 20 (2) An S corporation.
- 21 (3) A personal income taxpayer.

22 **SECTION 5.** ORS 469.215, as amended by section 12, chapter 76, Oregon Laws 2010, is amended
 23 to read:

24 469.215. (1) A final certification may not be issued by the Director of the State Department of
 25 Energy under this section unless:

26 (a) The facility was acquired, erected, constructed or installed under a preliminary certificate
 27 of approval issued under ORS 469.210;

28 (b) The applicant demonstrates the ability to provide the information required by ORS 469.205
 29 (2) and does not violate any condition that may be imposed as described in ORS 469.210 (3); and

30 (c) The facility was acquired, erected, constructed or installed in accordance with the applicable
 31 provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the director.

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

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

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

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

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

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

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

44 (c) The amount of the credit under ORS 315.354 that is to be claimed;

45 (d) The number and type of jobs created by the operation and maintenance of the facility over

1 the five-year period beginning with the year of preliminary certification under ORS 469.210 and in-
2 formation on the benefits of the facility with regard to overall economic activity in this state;

3 (e) Information sufficient to demonstrate that the facility will remain in operation for at least
4 five years, unless the director by rule specifies a shorter period of operation;

5 (f) Information sufficient to demonstrate, in the case of a research, development or demon-
6 stration facility that is not in operation, that the applicant has made reasonable efforts to make the
7 facility operable and meet the requirements of the preliminary certificate;

8 (g) Documentation of compliance with applicable state and local laws and regulations and li-
9 censing and permitting requirements as defined by the director; and

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

12 (4) The director shall act on an application for certification before the 60th day after the filing
13 of the application under this section. The director may issue the certificate, or certificates for effi-
14 cient truck technology within a transportation facility, together with such conditions as the director
15 determines are appropriate to promote the purposes of ORS 315.354, 469.185 to 469.225 and 469.878.
16 If the applicant is an entity subject to regulation by the Public Utility Commission, the director may
17 consult with the commission prior to issuance of the certificate. The action of the director shall
18 include certification of the actual cost of the facility. However, the director may not certify an
19 amount for tax credit purposes that is more than the amount approved in the preliminary certificate
20 issued for the facility.

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

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

30 (7) The director may establish by rule timelines and intermediate deadlines for submission of
31 application materials.

32 **SECTION 6.** ORS 469.225, as amended by section 14, chapter 76, Oregon Laws 2010, is amended
33 to read:

34 469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of
35 the State Department of Energy may order the suspension or revocation of the certificate issued
36 under ORS 469.215 if the director finds that:

37 (a) The certification was obtained by fraud or misrepresentation;

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

40 (c) The facility is no longer in operation.

41 (2) As soon as the order of revocation under this section becomes final, the director shall notify
42 the Department of Revenue, the facility owner and any transferee [*under ORS 469.206*] of the order
43 of revocation.

44 (3) If the certificate is issued for a facility that is not a renewable energy resource equipment
45 manufacturing facility and is ordered revoked pursuant to subsection (1)(a) of this section, all prior

1 tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited and
 2 upon notification under subsection (2) of this section the Department of Revenue immediately shall
 3 proceed to collect those taxes not paid by the certificate holder as a result of the tax credits pro-
 4 vided to the holder under ORS 315.354.

5 (4) If the certificate is issued for a renewable energy resource equipment manufacturing facility
 6 and is ordered suspended or revoked, upon notification under subsection (2) of this section the De-
 7 partment of Revenue immediately shall proceed to collect:

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

13 (b) In the case where all or a portion of a certificate has been transferred [*under ORS*
 14 *469.206*], the maximum theoretical amount of the tax credits allowable under ORS 315.354, from the
 15 transferor.

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

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

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

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

34 **SECTION 7. (1) The amendments to ORS 315.354, 469.205, 469.215 and 469.225 by sections**
 35 **1, 2, 5 and 6 of this 2011 Act apply to certification and revocation decisions by the State De-**
 36 **partment of Energy after January 1, 2012, and to tax years beginning on or after January 1,**
 37 **2012.**

38 **(2) The amendments to ORS 469.206 and 315.053 by sections 3 and 4 of this 2011 Act apply**
 39 **to the transfer of tax credits after January 1, 2012, and to tax years beginning on or after**
 40 **January 1, 2012.**

41 **SECTION 8. This 2011 Act takes effect on the 91st day after the date on which the 2011**
 42 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**