Enrolled
House Bill 3672

Sponsored by JOINT COMMITTEE ON TAX CREDITS

CHAPTER .....

AN ACT

Relating to tax expenditures; creating new provisions; amending ORS 284.367, 285C.406, 285C.506, 314.752, 315.053, 315.141, 315.357, 315.514, 316.116, 317.115, 317.152, 317.154, 318.031, 469.160, 469.165, 469.170, 469.172, 469.790 and 496.303 and section 6, chapter 911, Oregon Laws 1989, section 77, chapter 736, Oregon Laws 2003, section 1a, chapter 559, Oregon Laws 2005, section 3, chapter 595, Oregon Laws 2005, sections 5a and 8a, chapter 832, Oregon Laws 2005, section 6, chapter 739, Oregon Laws 2007, and sections 3, 11 and 20, chapter 913, Oregon Laws 2009; repealing sections 2a, 2b and 15, chapter 625, Oregon Laws 2007; appropriating money; and prescribing an effective date.

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

MODIFICATION OF TAX CREDIT PROVISIONS

SECTION 1. ORS 315.357, as amended by section 5, chapter 76, Oregon Laws 2010, is amended to read:

315.357. (1) [*Except as provided in subsection (2) of this section,*] **For a facility other than a renewable energy resource equipment manufacturing facility,** a taxpayer may not be allowed a credit under ORS 315.354 unless the taxpayer**:**

(a) Files an application for preliminary certification under ORS 469.205 on or before April 15, 2011;

(b) Receives preliminary certification under ORS 469.210 before July 1, 2011; and

(c) Receives final certification under ORS 469.215 before [*July 1, 2012*] **January 1, 2013, or has demonstrated, to the State Department of Energy, evidence of beginning construction before April 15, 2011**.

(2) A taxpayer may not be allowed a credit under ORS 315.354 for a renewable energy resource equipment manufacturing facility unless the taxpayer receives preliminary certification under ORS 469.210 before January 1, 2014.

SECTION 2. Section 6, chapter 739, Oregon Laws 2007, as amended by section 5, chapter 590, Oregon Laws 2007, and section 18, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 6. (1) ORS 315.141, 315.144 and 469.790 apply to tax credits for tax years beginning on or after January 1, 2007, and before January 1, [*2012*] **2018**.

(2) Notwithstanding subsection (1) of this section, a tax credit is not allowed for wheat grain (other than nongrain wheat material) [*before*] **for** tax years beginning [*on or after*] **before** January 1, 2009, or on or after January 1, [*2012*] **2018**.

SECTION 2a. ORS 315.141 is amended to read:

315.141. (1) As used in this section:

(a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

(b) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been converted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct biomass energy use at the biofuel producer's site.

(c) "Biofuel producer" means a person that through activities in Oregon:

(A) Alters the physical makeup of biomass to convert it into biofuel;

(B) Changes one biofuel into another type of biofuel; or

(C) Uses biomass in Oregon to produce energy.

(d) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

(A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(B) Wood material from hardwood timber described in ORS 321.267 (3);

(C) Agricultural residues;

(D) Offal and tallow from animal rendering;

(E) Food wastes collected as provided under ORS chapter 459 or 459A;

(F) [*Yard or*] Wood debris collected as provided under ORS chapter 459 or 459A;

(G) Wastewater solids; or

(H) Crops grown solely to be used for energy.

(e) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic or other inorganic chemical compounds or waste, other than matter described in paragraph (d) of this subsection.

(f) "Biomass collector" means a person that collects biomass in Oregon to be used, in Oregon, as biofuel or to produce biofuel.

(g) "Oilseed processor" means a person that receives agricultural oilseeds and separates them into meal and oil by mechanical or chemical means.

(2) The Director of the State Department of Energy may adopt rules to define criteria, only as the criteria apply to organic biomass, to determine additional characteristics of biomass for purposes of this section.

(3)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 for:

(A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel; or

(B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

(b) A credit under this section may be claimed in the tax year in which the credit is certified under subsection (5) of this section.

(c) A taxpayer may be allowed a credit under this section for more than one of the roles defined in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or a biomass collector may not claim a credit under this section.

(d) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain corn, but a tax credit shall be allowed for other corn material.

(4) The amount of the credit shall equal the amount certified under subsection (5) of this section.

(5)(a) The State Department of Energy may establish by rule procedures and criteria for determining the amount of the tax credit to be certified under this section, consistent with ORS 469.790. The department shall provide written certification to taxpayers that are eligible to claim the credit under this section.

(b) The State Department of Energy may charge and collect a fee from taxpayers for certification of credits under this section. The fee may not exceed the cost to the department of determining the amount of certified cost.

(c) The State Department of Energy shall provide to the Department of Revenue a list, by tax year, of taxpayers for which a credit is certified under this section, upon request of the Department of Revenue.

(6) The amount of the credit claimed under this section for any tax year may not exceed the tax liability of the taxpayer.

(7) Each agricultural producer or biomass collector shall maintain the written documentation of the amount certified for tax credit under this section in its records for a period of at least five years after the tax year in which the credit is claimed and provide the written documentation to the Department of Revenue upon request.

(8) The credit shall be claimed on a form prescribed by the Department of Revenue that contains the information required by the department.

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

(10) In the case of a credit allowed under this section:

(a) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(b) If a change in the status of the taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

SECTION 3. ORS 469.790 is amended to read:

469.790. To be eligible for the tax credit under ORS 315.141, the biomass must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates for biomass are:

(1) For oilseed crops, $0.05 per pound.

(2) For grain crops, including but not limited to wheat, barley and triticale, $0.90 per bushel.

(3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, $0.10 per gallon.

(4) For used cooking oil or waste grease, $0.10 per gallon.

(5) For wastewater biosolids, $10.00 per wet ton.

(6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from harvest or forest health stewardship, $10.00 per [*green*] **bone dry** ton.

(7) For grass, wheat, straw or other vegetative biomass from agricultural crops, $10.00 per [*green*] **bone dry** ton.

[*(8) For yard debris and municipally generated food waste, $5.00 per wet ton.*]

[*(9)*] **(8)** For animal manure or rendering offal, $5.00 per wet ton.

SECTION 4. Section 20, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 20. A credit may not be claimed under ORS 317.122 **(1)** for tax years beginning on or after January 1, [*2012*] **2018**.

SECTION 5. Section 3, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 3. Except as provided in ORS 315.507 (5), a credit may not be claimed under ORS 315.507 for tax years beginning on or after January 1, [*2012*] **2018**.

SECTION 6. ORS 285C.406 is amended to read:

285C.406. In order for a taxpayer to claim the property tax exemption under ORS 285C.409 or a corporate excise or income tax credit under ORS 317.124:

(1) The written agreement between the business firm and the rural enterprise zone sponsor that is required under ORS 285C.403 (3)(c) must be entered into prior to the termination of the enterprise zone under ORS 285C.245; and

(2)(a) For the purpose of the property tax exemption, the business firm must obtain certification under ORS 285C.403 on or before June 30, [*2013*] **2025**; or

(b) For the purpose of the corporate excise or income tax credit, the business firm must obtain certification under ORS 285C.403 on or before June 30, [*2012*] **2018**.

SECTION 7. Section 6, chapter 911, Oregon Laws 1989, as amended by section 14, chapter 746, Oregon Laws 1995, section 1, chapter 548, Oregon Laws 2001, section 15, chapter 739, Oregon Laws 2003, and section 86, chapter 94, Oregon Laws 2005, is amended to read:

Sec. 6. ORS 317.152 to 317.154 apply to amounts paid or incurred in tax years beginning on or after January 1, 1989, and before January 1, [*2012*] **2018**.

SECTION 8. ORS 317.152 is amended to read:

317.152. (1) A credit against taxes otherwise due under this chapter shall be allowed to eligible taxpayers for increases in qualified research expenses and basic research payments. The credit shall be determined in accordance with section 41 of the Internal Revenue Code, except as follows:

(a) The applicable percentage specified in section 41(a) of the Internal Revenue Code shall be five percent.

(b) "Qualified research" and "basic research" shall consist only of research conducted in Oregon.

(c) The following do not apply to the credit allowable under this section:

(A) Section 41(c)(4) of the Internal Revenue Code (relating to the alternative incremental credit).

(B) Section 41(h) of the Internal Revenue Code (relating to termination of the federal credit).

(2) For purposes of this section, "eligible taxpayer" means a corporation, other than a corporation excluded under Internal Revenue Code section 41(e)(7)(E).

(3) The Income Tax Regulations as prescribed by the Secretary of the Treasury under authority of section 41 of the Internal Revenue Code apply for purposes of this section, except as modified by this section or as provided in rules adopted by the Department of Revenue.

(4) The maximum credit under this section may not exceed [*$2 million*] **$1 million**.

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

SECTION 8a. ORS 317.152, as amended by section 8 of this 2011 Act, is amended to read:

317.152. (1) A credit against taxes otherwise due under this chapter shall be allowed to eligible taxpayers for increases in qualified research expenses and basic research payments. The credit shall be determined in accordance with section 41 of the Internal Revenue Code, except as follows:

(a) The applicable percentage specified in section 41(a) of the Internal Revenue Code shall be five percent.

(b) "Qualified research" and "basic research" shall consist only of research conducted in Oregon.

(c) The following do not apply to the credit allowable under this section:

(A) Section 41(c)(4) of the Internal Revenue Code (relating to the alternative incremental credit).

(B) Section 41(h) of the Internal Revenue Code (relating to termination of the federal credit).

(2) For purposes of this section, "eligible taxpayer" means a corporation, other than a corporation excluded under Internal Revenue Code section 41(e)(7)(E).

(3) The Income Tax Regulations as prescribed by the Secretary of the Treasury under authority of section 41 of the Internal Revenue Code apply for purposes of this section, except as modified by this section or as provided in rules adopted by the Department of Revenue.

(4) The maximum credit under this section may not exceed $1 million.

(5) A deduction may not be taken for the portion of expenses or payments, otherwise allowable as a deduction, that is equal to the amount of the credit claimed under this section.

[*(5)*] **(6)** Any tax credit that is otherwise allowable under this section and that is not used by the taxpayer in that year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such 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 any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

SECTION 9. ORS 317.154 is amended to read:

317.154. (1) A credit against taxes otherwise due under this chapter shall be allowed for qualified research expenses that exceed 10 percent of Oregon sales.

(2) For purposes of this section:

(a) "Oregon sales" shall be computed using the laws and administrative rules for calculating the numerator of the Oregon sales factor under ORS 314.665.

(b) "Qualified research" has the meaning given the term under section 41(d) of the Internal Revenue Code and shall consist only of research conducted in Oregon.

(3) The credit under this section is equal to five percent of the amount by which the qualified research expenses exceed 10 percent of Oregon sales.

(4) The credit under this section shall not exceed $10,000 times the number of percentage points by which the qualifying research expenses exceed 10 percent of Oregon sales.

(5) The maximum credit under this section may not exceed [*$2 million*] **$1 million**.

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

SECTION 10. (1) The amendments to ORS 315.141, 317.152, 317.154 and 469.790 by sections 2a, 3, 8 and 9 of this 2011 Act apply to tax years beginning on or after January 1, 2012.

(2) The amendments to ORS 317.152 by section 8a of this 2011 Act apply to tax years beginning on or after January 1, 2012, and to any tax year for which a return is subject to audit or adjustment by the Department of Revenue on or after the effective date of this 2011 Act, any tax year for which a return is the subject of an appeal on or after the effective date of this 2011 Act and any tax year for which a claim for refund may be made on or after the effective date of this 2011 Act.

SECTION 11. ORS 315.514 is amended to read:

315.514. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified film production development contributions made by the taxpayer during the tax year to the Oregon Production Investment Fund established under ORS 284.367.

(2)(a) [*The amount of the tax credit shall equal the amount certified for credit by the Oregon Film and Video Office, except that a contribution must equal at least 90 percent of the tax credit.*] **The Department of Revenue shall, in cooperation with the Oregon Film and Video Office, conduct an auction of tax credits under this section. The department may conduct the auction in the manner that it determines is best suited to maximize the return to the state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit. Moneys necessary to reimburse the department for the actual costs incurred by the department in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department. The department shall deposit net receipts from the auction required under this section in the Oregon Production Investment Fund.**

(b) The Oregon Film and Video Office shall adopt rules [*for determining the amount of tax credit to be certified by the office. The rules shall be adopted*] in order to achieve the following goals:

(A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of [*$7.5 million*] **$6 million** are certified for each fiscal year;

(B) Maximize income and excise tax revenues that are retained by the State of Oregon for state operations; and

(C) Provide the necessary financial incentives for taxpayers to make contributions, taking into consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

[*(3) A taxpayer seeking a tax credit under this section shall apply for tax credit certification to the Oregon Film and Video Office on a form supplied by the office. The taxpayer shall include payment of the contribution at the time of application.*]

[*(4)*] **(3)** Contributions made under this section shall be deposited in the Oregon Production Investment Fund.

[*(5)(a)*] **(4)(a)** Upon receipt of a contribution, the Oregon Film and Video Office shall**, except as provided in section 13 of this 2011 Act,** issue to the taxpayer written certification of the amount certified for tax credit under this section to the extent the amount certified for tax credit, when added to all amounts previously certified for tax credit under this section, does not exceed [*$7.5 million*] **$6 million** for the fiscal year in which certification is made.

(b) The Oregon Film and Video Office [*is*] **and the department are** not liable, and a refund of a contributed amount need not be made, if a taxpayer who has received tax credit certification is unable to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

[*(6)*] **(5)** To the extent the Oregon Film and Video Office does not certify contributed amounts as eligible for a tax credit under this section, the taxpayer may request a refund of the amount the taxpayer contributed, and the office shall refund that amount.

[*(7)(a)*] **(6)(a)** Except as provided in paragraph (b) of this subsection, a tax credit claimed under this section may not exceed the tax liability of the taxpayer and may not be carried over to another tax year.

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

(c) A taxpayer is not eligible for a tax credit under this section if the first tax year for which the credit would otherwise be allowed begins on or after January 1, [*2012*] **2018**.

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

[*(9) A taxpayer who has received a tax credit certificate under this section may sell the certificate to another taxpayer. The sale is effective only if a notice of tax credit certificate sale is filed with the Department of Revenue. The notice shall be filed on a form prescribed by the department on or before the date on which the income or corporate excise tax return of the buyer for the first year for which*

the credit could be claimed is filed or due, whichever is earlier. The notice form shall include the following information:]

[*(a) The name and taxpayer identification number of the seller;*]

[*(b) The name and taxpayer identification number of the buyer;*]

[*(c) The amount of the tax credit certificate that is being sold to the buyer;*]

[*(d) The amount of the tax credit certificate that is being retained by the seller; and*]

[*(e) Any other information required by the department.*]

[*(10) If requested by the Department of Revenue, the Oregon Film and Video Office shall supply a list of taxpayers that have obtained tax credit certification under this section, and for each listed taxpayer disclose:*]

[*(a) The amount of contribution made by the taxpayer; and*]

[*(b) The amount certified for tax credit under this section.*]

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

SECTION 12. The Oregon Film and Video Office and the Department of Revenue shall report, not later than February 15, 2013, to the Legislative Assembly on the operation of the auction process required in ORS 315.514.

SECTION 13. (1) In lieu of the issuance of certifications for tax credit under ORS 315.514 by the Oregon Film and Video Office, the Legislative Assembly may, no later than 30 days prior to the end of each fiscal year, appropriate to the Oregon Business Development Department for deposit into the Oregon Production Investment Fund an amount equal to the total amount that would otherwise be certified for tax credits during the upcoming fiscal year, based on the amount of contributions and accompanying applications for credit received by the office during the fiscal year.

(2) If the Legislative Assembly makes the election allowed in subsection (1) of this section:

(a) Any contributions to the Oregon Production Investment Fund made for the upcoming fiscal year and for which an application for a credit under ORS 315.514 is pending shall, at the request of the taxpayer, be refunded by the Oregon Film and Video Office; and

(b) A credit under ORS 315.514 may not be claimed for any contribution made during the current fiscal year.

SECTION 14. ORS 284.367 is amended to read:

284.367. (1) The Oregon Production Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Production Investment Fund shall be credited to the fund.

(2) Moneys in the Oregon Production Investment Fund shall consist of:

(a) Amounts donated to the fund;

(b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

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

(d) Interest earned by the fund.

(3) Ninety-five percent of moneys in the fund are continuously appropriated to the Oregon Business Development Department for the purposes of making:

(a) Reimbursements to filmmakers under ORS 284.368;

(b) Payments to a tax credit marketer for marketing services provided by the marketer as described in ORS 284.369; and

(c) Refunds described in ORS 315.514 [*(6)*] **(5)**.

(4) Five percent of moneys in the fund are continuously appropriated to the department for the purpose of making reimbursements to local filmmakers under ORS 284.368 (3). **Total reimbursements to local filmmakers may not exceed $250,000 in a fiscal year.**

(5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

SECTION 15. ORS 284.367, as amended by section 14 of this 2011 Act, is amended to read:

284.367. (1) The Oregon Production Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Production Investment Fund shall be credited to the fund.

(2) Moneys in the Oregon Production Investment Fund shall consist of:

(a) Amounts donated to the fund;

(b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

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

(d) Interest earned by the fund.

(3) Ninety-five percent of moneys in the fund are continuously appropriated to the Oregon Business Development Department for the purposes of making:

(a) Reimbursements to filmmakers under ORS 284.368;

(b) Payments to a tax credit marketer for marketing services provided by the marketer as described in ORS 284.369; and

(c) Refunds described in ORS 315.514 (5).

(4) Five percent of moneys in the fund are continuously appropriated to the department for the purpose of making reimbursements to local filmmakers under ORS 284.368 (3). [*Total reimbursements to local filmmakers may not exceed $250,000 in a fiscal year.*]

(5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

SECTION 16. Section 1a, chapter 559, Oregon Laws 2005, is amended to read:

Sec. 1a. The Oregon Film and Video Office may not issue a qualifying film production labor rebate certificate under section 1 [*of this 2005 Act*]**, chapter 559, Oregon Laws 2005,** on or after January 1, [*2012*] **2018**.

SECTION 17. Section 77, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 77. ORS 315.514 applies to tax years beginning on or after January 1, 2005, and before January 1, [*2012*] **2018**, and to tax credit certifications issued by the Oregon Film and Video Office on or after July 1, 2005.

SECTION 18. (1) The amendments to ORS 315.514 by section 11 of this 2011 Act apply to tax credit certifications issued by the Oregon Film and Video Office on or after June 30, 2012.

(2) The amendments to ORS 284.367 by section 14 of this 2011 Act apply to fiscal years beginning after June 30, 2011, and before July 1, 2013.

(3) The amendments to ORS 284.367 by section 15 of this 2011 Act apply to fiscal years beginning after June 30, 2013.

SECTION 18a. Section 11, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 11. The State Department of Fish and Wildlife may not issue a preliminary certificate of approval under ORS 315.138 after January 1, [*2012*] **2018**.

SECTION 18b. ORS 496.303, as amended by section 14, chapter 625, Oregon Laws 2007, is amended to read:

496.303. (1) The Fish and Wildlife Account is established in the State Treasury, separate and distinct from the General Fund. All moneys in the account are continuously appropriated to the State Fish and Wildlife Commission. The Fish and Wildlife Account shall consist of the moneys in its various subaccounts and any moneys transferred to the account by the Legislative Assembly. Unless otherwise specified by law, interest earnings on moneys in the account shall be paid into the State Treasury and credited to the State Wildlife Fund.

(2)(a) The Fish Screening Subaccount is established in the Fish and Wildlife Account. The subaccount shall consist of:

(A) All penalties recovered under ORS 536.900 to 536.920.

(B) All moneys received pursuant to ORS 498.306.

(C) All gifts, grants and other moneys from whatever source that may be used to carry out the provisions of ORS 498.306.

(D) All moneys received from the surcharge on angling licenses imposed by ORS 497.124.

(b) All moneys in the subaccount shall be used to carry out the provisions of ORS **315.138,** 498.306 and 509.620. However, moneys received from the surcharge on angling licenses imposed by ORS 497.124 shall be expended only to carry out the provisions of law relating to the screening of water diversions.

(3) The Fish Endowment Subaccount is established in the Fish and Wildlife Account. The subaccount shall consist of transfers of moneys authorized by the Legislative Assembly from the State Wildlife Fund and gifts and grants of moneys from whatever source for the purpose of paying the expense of maintaining fish hatcheries operated by the department.

(4) The Migratory Waterfowl Subaccount is established in the Fish and Wildlife Account. All moneys received by the commission from the sale of art works and prints related to the migratory waterfowl stamp shall be deposited in the subaccount. Moneys in the subaccount may be expended only for activities that promote the propagation, conservation and recreational uses of migratory waterfowl and for activities related to the design, production, issuance and arrangements for sale of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the subaccount may be made within this state, in other states or in foreign countries, in such amounts as the commission determines appropriate. Expenditures in other states and foreign countries shall be on such terms and conditions as the commission determines will benefit most directly the migratory waterfowl resources of this state.

(5) The Halibut Research Subaccount is established in the Fish and Wildlife Account. Based on the annual number of recreational halibut anglers, a portion of the moneys derived from the sale of the salmon, steelhead trout, sturgeon and halibut tag pursuant to ORS 497.121 shall be credited to the subaccount. Moneys in the subaccount may be expended only for halibut population studies and other research.

(6) The Upland Bird Subaccount is established in the Fish and Wildlife Account. All moneys received by the State Fish and Wildlife Commission from the sale of upland bird stamps, from the sale of any art works and prints related to the upland bird stamp and from private hunting preserve permit fees shall be deposited in the subaccount. Moneys in the subaccount may be expended only for promoting the propagation and conservation of upland birds and the acquisition, development, management, enhancement, sale or exchange of upland bird habitat, and for activities related to the design, production, issuance and arrangements for sale of the upland bird stamps and related art works and prints. Expenditures of moneys in the subaccount shall be made for the benefit of programs within this state in such amounts and at such times as the commission determines appropriate to most directly benefit the upland bird resources of the state.

(7)(a) The Fish and Wildlife Deferred Maintenance Subaccount is established in the Fish and Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subaccount. The subaccount shall consist of moneys authorized by the Legislative Assembly from the State Wildlife Fund and moneys obtained by gift, grant, bequest or donation from any other public or private source.

(b) The principal in the subaccount may be utilized only as provided in paragraph (c) of this subsection. Interest earnings on the moneys in the subaccount may be expended only for the maintenance of fish hatcheries and State Department of Fish and Wildlife facilities other than administrative facilities located in Salem.

(c) The department may borrow funds from the principal of the subaccount to maintain adequate cash flow requirements. However, moneys borrowed from the principal must be repaid to the subaccount:

(A) Within six months from the date on which the moneys were borrowed.

(B) With interest at the standard rate that the State Treasurer charges to state agencies for other loans. Interest paid under this subparagraph shall be paid to the subaccount.

(d) For purposes of this subsection, "principal" means moneys authorized by the Legislative Assembly for transfer to the subaccount from the State Wildlife Fund, including any assignment of earnings on moneys in the fund and other moneys obtained by gift, grant, bequest or donation deposited into the subaccount.

(8) The Access and Habitat Board Subaccount is established in the Fish and Wildlife Account. The subaccount shall consist of moneys transferred to the subaccount pursuant to ORS 496.242. Moneys in the subaccount may be used for the purposes specified in ORS 496.242.

(9) The Marine Shellfish Subaccount is established in the Fish and Wildlife Account. Interest earnings on moneys in the subaccount shall be credited to the subaccount. All moneys received by the commission from the sale of resident and nonresident shellfish licenses pursuant to ORS 497.121 shall be deposited in the subaccount. Moneys in the subaccount shall be used for the protection and enhancement of shellfish for recreational purposes, including shellfish sanitation costs and the cost of enforcement of wildlife laws pertaining to the taking of shellfish. The State Fish and Wildlife Director, or a designee, the Director of Agriculture, or a designee, and the Superintendent of State Police, or a designee, shall jointly make a recommendation to the Governor for inclusion in the Governor's budget beginning July 1 of each odd-numbered year.

(10)(a) The Mountain Sheep Subaccount is established in the Fish and Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

(b) All moneys in the subaccount shall be used for the propagation and conservation of mountain sheep, for research, development, management, enhancement and sale or exchange of mountain sheep habitat and for programs within the state that in the discretion of the commission most directly benefit mountain sheep resources of this state.

(11)(a) The Antelope Subaccount is established in the Fish and Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

(b) All moneys in the subaccount shall be used for the propagation and conservation of antelope, for research, development, management, enhancement and sale or exchange of antelope habitat and for programs within the state that in the discretion of the commission most directly benefit antelope resources of this state.

(12)(a) The Mountain Goat Subaccount is established in the Fish and Wildlife Account, consisting of moneys collected under ORS 497.112 (2)(a) to (c).

(b) All moneys in the subaccount shall be used for the propagation and conservation of mountain goats for research, development, management, enhancement and sale or exchange of mountain goat habitat and for programs within the state that in the discretion of the commission most directly benefit mountain goat resources of this state.

(13)(a) The commission shall keep a record of all moneys deposited in the Fish and Wildlife Account. The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the individual activity or programs against which each withdrawal is charged.

(b) Using the record created pursuant to paragraph (a) of this subsection, the commission shall report, in the budget documents submitted to the Legislative Assembly, on the application of investment and interest earnings to the maintenance of fish hatcheries and other State Department of Fish and Wildlife facilities.

SECTION 19. ORS 314.752, as amended by section 26, chapter 76, Oregon Laws 2010, is amended to read:

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

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

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

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

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, bypass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141 (biomass production for biofuel) **and section 23 of this 2011 Act (renewable energy development contributions), section 35 of this 2011 Act (energy conservation projects) and section 53 of this 2011 Act (transportation projects)**.

SECTION 20. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156, 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and sections 23, 35 and 53 of this 2011 Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 21. ORS 315.053 is amended to read:

315.053. An income tax credit allowed under ORS 315.141[,] **or** 315.354 [*or 315.514*] or section 47, chapter 843, Oregon Laws 2007, or section 12, chapter 855, Oregon Laws 2007, **or section 35 or 53 of this 2011 Act** may be transferred or sold only to one or more of the following:

(1) A C corporation.

(2) An S corporation.

(3) A personal income taxpayer.

SECTION 21a. Section 3, chapter 595, Oregon Laws 2005, as amended by section 79, chapter 843, Oregon Laws 2007, is amended to read:

Sec. 3. Notwithstanding ORS 285C.500 (5), for purposes of preliminary certifications issued under ORS 285C.503 on or after January 1, 2006, [*and before January 1, 2011*] **based on applications for preliminary certification filed before July 1, 2016**, and annual certifications issued under ORS 285C.506 that are associated with preliminary certifications issued under ORS 285C.503 on or after January 1, 2006, [*and before January 1, 2011:*] **based on applications for preliminary certification filed before July 1, 2016,**

[*(1)*] "qualified location" means any area that is:

[*(a)*] **(1)** Within the urban growth boundary of a city that has 15,000 or fewer residents or is land zoned for industrial use; and

[*(b)*] **(2)** Located in a county that, during either of the two years preceding the date an application for preliminary certification is filed under ORS 285C.503 and this section, had:

[*(A)*] **(a)** A county unemployment rate that was in the highest third of county unemployment rates in this state; or

[*(B)*] **(b)** A county per capita personal income that was in the lowest third of county per capita personal incomes in this state.

[*(2) The minimum annual compensation requirements of ORS 285C.503 (5)(d) do not apply.*]

[*(3) In lieu of the requirements of ORS 285C.506 (5), the Oregon Business Development Department shall approve an application for annual certification if the business firm satisfies the requirements of ORS 285C.506 (5)(a) and (6)(c) and the business firm satisfies the employment requirements of ORS 285C.503 (5)(c).*]

SECTION 21b. ORS 285C.506 is amended to read:

285C.506. (1) Following completion of the construction, reconstruction, modification, acquisition, installation or lease of the facility, the hiring of employees to conduct business operations at the facility and the commencement of operations at the facility, a business firm that obtained preliminary certification under ORS 285C.503 may apply for annual certification under this section.

(2) The application shall be filed with the Oregon Business Development Department on or before 30 days after the end of the income or corporate excise tax year of the business firm.

(3) The application shall contain the following information:

(a) A description of the business operations conducted at the facility;

(b) The date business operations commenced at the facility;

(c) The number of full-time, year-round employees employed by the business firm at the facility;

(d) A schedule of the annual compensation paid to the employees; and

(e) Any other information required by the department.

(4) An application filed under this section must be accompanied by a fee in an amount prescribed by the department by rule. The fee required by the department may not exceed $100.

(5) The department shall review a business firm's application and approve the application if:

(a) The business operations of the firm at the facility commenced **at least 24 months before the date of application for annual certification but** within 10 years before the end of the tax year preceding the date of application for annual certification; and

(b) The business firm has satisfied the employment and minimum compensation requirements described in ORS 285C.503 (5)(c) and (d).

(6) In the case of the first application for annual certification filed by a business firm under this section, the department may approve the application only if, in addition to the requirements of subsection (5) of this section:

(a) Business operations commenced at the facility within a reasonable period of time, as determined by the department by rule, following the date of preliminary certification under ORS 285C.503;

(b) There has not been a significant interruption in construction, reconstruction, modification or installation activity at the location, as determined by the department by rule, following the date of preliminary certification under ORS 285C.503; and

(c) The facility and the business operations actually conducted at the facility are reasonably similar to the proposed facility and proposed operations described in the application for preliminary certification.

(7) After the first application for annual certification, the department may approve a subsequent application or certification filed under this section only if:

(a) The business firm meets the requirements of subsection (5) of this section; and

(b) The facility and the business operations actually conducted at the facility retain similar characteristics to the facility and the business operations actually conducted at the facility during the period of prior certification. This paragraph does not preclude an applicant from changing the location of the facility, the ownership or organization of the business firm or other aspects of the facility or business firm that are within the intent of ORS 285C.500 to 285C.506 if the change is made in accordance with rules adopted by the department.

(8) The department may consult with the city or county in determining whether to approve or disapprove an application under this section.

(9) If the department approves an application, it shall issue an annual certification to the business firm.

(10) If the department disapproves an application, the business firm or any owner of the business firm may not be allowed the exemption described in ORS 316.778 or 317.391 for the tax year for which the annual certification was sought or for any subsequent tax year.

(11) The decision of the department to disapprove an application under this section may be appealed in the manner of a contested case under ORS chapter 183.

(12) An annual certification may not be issued under this section for a tax year that is more than nine consecutive tax years following the first tax year an exemption is allowed under ORS 316.778 or 317.391 with respect to the facility.

(13) The department must approve or disapprove an application under this section within 30 days of the date the application is filed.

SECTION 21c. The amendments to ORS 285C.506 and section 3, chapter 595, Oregon Laws 2005, by sections 21a and 21b of this 2011 Act apply to applications for preliminary certification filed under ORS 285C.503 on or after July 1, 2011.

TAX CREDIT FOR RENEWABLE ENERGY DEVELOPMENT CONTRIBUTIONS

SECTION 22. Sections 23 and 24 of this 2011 Act are added to and made a part of ORS chapter 315.

SECTION 23. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified renewable energy development contributions made by the taxpayer during the tax year to the Renewable Energy Development Subaccount, established in section 24a of this 2011 Act, of the Clean Energy Deployment Fund established in section 1, chapter 467, Oregon Laws 2011 (Enrolled House Bill 2960).

(2)(a) The Department of Revenue shall, in cooperation with the State Department of Energy, conduct an auction of tax credits under this section. The department may conduct the auction in the manner that it determines is best suited to maximize the return to the state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit. Moneys necessary to reimburse the Department of Revenue for the actual costs incurred by the department in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department. The Department of Revenue shall deposit net receipts from the auction required under this section in the Renewable Energy Development Subaccount, established in section 24a of this 2011 Act, of the Clean Energy Deployment Fund established in section 1, chapter 467, Oregon Laws 2011 (Enrolled House Bill 2960). Net receipts from the auction required under this section shall be used only for purposes related to renewable energy development.

(b) The State Department of Energy shall adopt rules in order to achieve the following goals:

(A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of $1.5 million are certified for each fiscal year;

(B) Maximize income and excise tax revenues that are retained by the State of Oregon for state operations; and

(C) Provide the necessary financial incentives for taxpayers to make contributions, taking into consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

(3) Contributions made under this section shall be deposited in the Renewable Energy Development Subaccount, established in section 24a of this 2011 Act, of the Clean Energy Deployment Fund established in section 1, chapter 467, Oregon Laws 2011 (Enrolled House Bill 2960).

(4)(a) Upon receipt of a contribution, the State Department of Energy shall, except as provided in section 24 of this 2011 Act, issue to the taxpayer written certification of the amount certified for tax credit under this section to the extent the amount certified for tax credit, when added to all amounts previously certified for tax credit under this section, does not exceed $1.5 million for the fiscal year in which certification is made.

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

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

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

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

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

SECTION 24. (1) In lieu of the issuance of certifications for tax credit under section 23 of this 2011 Act by the State Department of Energy, the Legislative Assembly may, no later than 30 days prior to the end of each fiscal year, appropriate to the State Department of Energy for deposit into the Renewable Energy Development Subaccount, established in section 24a of this 2011 Act, of the Clean Energy Deployment Fund established in section 1, chapter 467, Oregon Laws 2011 (Enrolled House Bill 2960), an amount equal to the total amount that would otherwise be certified for tax credits during the current fiscal year, based on the amount of contributions and accompanying applications for credit received by the department during the fiscal year. Moneys deposited under this section are to be used only for purposes related to renewable energy development.

(2) If the Legislative Assembly makes the election allowed in subsection (1) of this section:

(a) Any contributions made pursuant to section 23 of this 2011 Act to the Renewable Energy Development Subaccount during the current fiscal year and for which an application for a credit under section 23 of this 2011 Act is pending shall, at the request of the taxpayer, be refunded by the State Department of Energy; and

(b) A credit under section 23 of this 2011 Act may not be claimed for any contribution made during the current fiscal year.

SECTION 24a. (1) The Renewable Energy Development Subaccount is established in the Clean Energy Deployment Fund established in section 1, chapter 467, Oregon Laws 2011 (Enrolled House Bill 2960). Interest earned by the Renewable Energy Development Subaccount shall be credited to the subaccount. Moneys in the fund are continuously appropriated to the State Department of Energy for purposes related to renewable energy development.

(2) The department may accept grants, donations, contributions or gifts from any source for deposit in the Renewable Energy Development Subaccount.

SECTION 25. A taxpayer may not be allowed a credit under section 23 of this 2011 Act for any tax year that begins on or after January 1, 2018.

SECTION 26. Sections 27 to 33 of this 2011 Act are added to and made a part of ORS chapter 469.

SECTION 27. As used in sections 27 to 33 of this 2011 Act:

(1) "Biomass" has the meaning given that term in ORS 315.141.

(2) "Cost" means the actual cost of the acquisition, construction and installation of the renewable energy production system paid by the applicant for the system, before considering utility incentives.

(3) "Renewable energy production system" means a system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy.

(4) "Solar technology" means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy.

NOTE: Section 28 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 29. (1) Prior to the installation or construction of a renewable energy production system, any person may apply to the State Department of Energy for a grant under section 30 of this 2011 Act if:

(a) The applicant will be the owner, contract purchaser or lessee of the system at the time of installation or construction of the proposed system;

(b) The system does not exceed 35 megawatts of nameplate capacity;

(c) The system is located in Oregon; and

(d) The system complies with the standards or rules adopted by the Director of the State Department of Energy.

(2) An application for a grant under section 30 of this 2011 Act shall be made in writing on a form prepared by the department and shall contain:

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

(b) The anticipated total system cost.

(c) Information on the number and type of jobs that will be created by the system, and the number of jobs sustained throughout the construction, installation and operation of the system.

(d) Information demonstrating that the system will comply with applicable state and local laws and regulations and obtain required licenses and permits.

(e) Any other information the director considers necessary to determine whether the system is in accordance with the provisions of sections 27 to 33 of this 2011 Act, and any applicable rules or standards adopted by the director.

(3) An application for a grant shall be accompanied by a fee established under section 31 of this 2011 Act. The director may refund all or a portion of the fee if the application for a grant is rejected.

(4) The director may allow an applicant to file the application for a grant after the start of installation or construction of the system if the director finds that:

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

(b) The system would otherwise qualify for a grant under sections 27 to 33 of this 2011 Act.

SECTION 30. (1) The Director of the State Department of Energy may require an applicant for a grant under this section for a renewable energy production system to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the system is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of sections 27 to 33 of this 2011 Act and any applicable rules or standards adopted by the director, the director may enter into a performance agreement with the applicant in anticipation of awarding a grant under this section. The grant provided for in the performance agreement may not exceed 35 percent of the cost of the project and may not exceed

$250,000 per system. If construction does not begin within 12 months of an award under this section, the performance agreement shall be void and the State Department of Energy may not award the grant.

(3) The director may, in accordance with ORS chapter 183, deny a grant under this section if the director determines that:

(a) The system does not comply with the provisions of sections 27 to 33 of this 2011 Act and applicable rules and standards;

(b) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469.185 to 469.225 or section 23 of this 2011 Act, or any grant under sections 27 to 33 of this 2011 Act; or

(c) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business.

(4) The department shall reduce the amount of grant allowable to an applicant if, when combined with other government incentives or grants available to the applicant, the amount calculated under subsection (2) of this section exceeds 75 percent of the total system cost calculated under this section.

(5) If the director determines that the applicant has complied with all provisions of the performance agreement required under this section and with the provisions of sections 27 to 33 of this 2011 Act, the director shall award the grant provided in this section.

(6) Upon determination by the director that the applicant has violated the provisions of the performance agreement or sections 27 to 33 of this 2011 Act, the applicant will be liable to the department for all grant moneys disbursed to the applicant.

SECTION 31. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for a grant for a renewable energy production system under sections 27 to 33 of this 2011 Act or for tax credit certification under section 23 of this 2011 Act. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of sections 27 to 33 of this 2011 Act, including filing, investigating, granting and rejecting applications for grant or tax credit certification and ensuring compliance with sections 23, 24 and 27 to 33 of this 2011 Act and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the system. The fee is not considered part of the cost of the system for which a grant is being sought.

SECTION 32. (1) The total amount of potential tax credits for certified renewable energy development contributions in this state may not, at the time of certification under section 23 of this 2011 Act, exceed:

(a) $3 million for any biennium; or

(b) $750,000 for the six months beginning July 1, 2017, and ending December 31, 2017.

(2) In the event that the Director of the State Department of Energy receives applications for grants under section 30 of this 2011 Act in excess of the contributions received pursuant to section 23 of this 2011 Act, the director shall allocate the issuance of grants according to standards and criteria established by rule by the director.

SECTION 32a. The State Department of Energy and the Department of Revenue shall report, not later than February 15, 2012, to the Legislative Assembly on the operation of the auction process required in section 23 of this 2011 Act.

SECTION 33. The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of sections 23, 24 and 27 to

33 of this 2011 Act, including standards for what constitutes a single renewable energy production system.

SECTION 33a. Sections 23, 24 and 27 to 33 of this 2011 Act apply to applications for grants submitted under section 29 of this 2011 Act after July 1, 2011, and to tax years beginning on or after January 1, 2011.

TAX CREDIT FOR ENERGY CONSERVATION PROJECTS

SECTION 34. Sections 35 and 36 are added to and made a part of ORS chapter 315.

SECTION 35. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for an energy conservation project that is certified under sections 38 to 50 of this 2011 Act. The credit is allowed as follows:

(a) Except as provided in paragraph (b) of this subsection, the credit allowed in each of the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the 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 (3) 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.

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

(a) The project must be located in Oregon.

(b) The project must have received final certification from the Director of the State Department of Energy under sections 38 to 50 of this 2011 Act.

(c) If the project is a research and development project, it must receive, prior to certification under section 44 of this 2011 Act, a recommendation from a qualified third party selected by the director.

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

(A) LEED Platinum certification;

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

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

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

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

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

(b) A new owner, or, upon re-leasing of the project, a new lessee, may apply for a new certificate under section 45 of this 2011 Act. The new lessee or owner must meet the requirements of sections 38 to 50 of this 2011 Act and may claim a tax credit under this section only if all moneys owed by the new owner or lessee to the State of Oregon have been paid, if the project continues to operate and if all conditions in the final certification are met. 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 lessee, the amount of credit not claimed by the lessee under all previous leases. The State Department of Energy may waive the requirement that

a new owner or lessee apply for a new certificate under section 45 of this 2011 Act if the remaining credit is less than $20,000.

(c) The department may not revoke the certificate covering a project under paragraph (a) of this subsection if the tax credit associated with the project has been transferred to a taxpayer who is an eligible applicant under section 43 of this 2011 Act.

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

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

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

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

(9) The definitions in section 38 of this 2011 Act apply to this section.

SECTION 36. (1) A taxpayer may not be allowed a credit under section 35 of this 2011 Act if the first tax year for which the credit would otherwise be allowed, with respect to an energy conservation project certified under section 45 of this 2011 Act, begins on or after January 1, 2018.

(2) A taxpayer may not be allowed a credit for an energy conservation project that is a cogeneration facility as that term is defined in ORS 758.505 for a tax year that begins before January 1, 2013.

SECTION 37. Sections 38 to 50 of this 2011 Act are added to and made a part of ORS chapter 469.

SECTION 38. As used in sections 35 and 38 to 50 of this 2011 Act:

(1) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation project.

(2) "Energy conservation project" means any capital investment for which the first year energy savings yields a simple payback period of greater than three years. "Energy conservation project" does not include:

(a) Recycling equipment, products and projects;

(b) Transportation projects;

(c) Energy recovery as that term is defined in ORS 459.005; or

(d) Alternative fuel vehicles.

(3) "Four globes" means the highest of four tiers of ratings for certification in the Green Globes program rating system.

(4) "Green Globes program" means a building guidance and assessment program to advance overall environmental performance and sustainability of commercial buildings established by the Green Building Initiative.

(5)(a) "LEED" means the Leadership in Energy and Environmental Design rating system for certification of energy-efficient and environmentally sustainable buildings established by the U.S. Green Building Council.

(b) "LEED Platinum" means the highest of four tiers of standards for certification in the LEED rating system.

SECTION 39. (1) In determining the priority of any energy conservation project for tax credits, preference shall be given to those projects that have the highest energy savings over the five-year credit allowance period per tax credit dollar.

(2) In administering this section, the Director of the State Department of Energy shall compare projects of similar technology types against each other, take into account the amount of energy saved over the life of the equipment, market or industry sector, expected lifespan of the project compared to the simple payback period, whether the energy savings of the project benefit a party other than the owner and any other factors defined in State Department of Energy rule. The department may certify less than the total cost of any project based on this evaluation.

SECTION 40. (1) The owner of a project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

SECTION 41. The State Department of Energy shall by rule establish the following standards relating to energy conservation projects:

(1) In consultation with the Department of Consumer and Business Services Building Codes Division, standards relating to energy savings in new construction.

(2) Standards relating to what constitutes a replacement of inefficient equipment.

(3) Standards for the determination of total project cost.

(4) Standards for the application of third party review of research and development projects by a qualified third party selected by the Director of the State Department of Energy, as required in section 43 of this 2011 Act.

SECTION 42. For an energy conservation project, the total amount that receives a preliminary certification from the Director of the State Department of Energy may not exceed $10 million in certified cost.

SECTION 43. (1) Prior to the installation or construction of an energy conservation project, any person may apply to the State Department of Energy for preliminary certification under section 44 of this 2011 Act if:

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

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

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

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

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

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

(d) The anticipated total project cost.

(e) Information on the number and type of jobs that will be created by the project, the number of jobs sustained throughout the construction, installation and operation of the project and the benefits of the project with regard to overall economic activity in this state.

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

(g) Information relating to the standards described in section 41 of this 2011 Act.

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

(i) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of sections 38 to 50 of this 2011 Act, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under section 46 of this 2011 Act. The director may refund all or a portion of the fee if the application for certification is rejected.

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

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

(b) The project would otherwise qualify for certification under sections 38 to 50 of this 2011 Act.

(5) The director may, by rule, waive preliminary certification under section 44 of this 2011 Act, or may establish an informational filing system in place of preliminary certification, for projects that:

(a) Have eligible costs of less than $20,000;

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

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

(6) Except as provided in subsection (7) of this section, a preliminary certification shall remain valid for a period of three calendar years after the date on which the preliminary certification is issued by the director, after which the certification becomes invalid even if:

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

(b) The preliminary certification has been amended.

(7) Any preliminary certification for a facility consistent with an energy conservation project, under ORS 469.210, that remains outstanding as of July 1, 2011, shall expire on July 1, 2014.

SECTION 44. (1) The Director of the State Department of Energy may require an applicant for certification of an energy conservation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of sections 38 to 50 of this 2011 Act and any applicable rules or standards adopted by the director, the director may issue a preliminary certificate approving the installation or construction of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) In accordance with ORS chapter 183, the director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The project does not comply with the provisions of sections 38 to 50 of this 2011 Act and applicable rules and standards;

(b) The applicant has previously received preliminary or final certification for the project;

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469.185 to 469.225 or sections 38 to 50 of this 2011 Act; or

(d) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business.

SECTION 45. (1) The Director of the State Department of Energy may issue a final certification for an energy conservation project under this section only if:

(a) The project was installed or constructed under a preliminary certificate of approval issued under section 44 of this 2011 Act, unless preliminary certification is waived under section 43 (5) of this 2011 Act;

(b) The applicant demonstrates the ability to provide the information required by section 43 (2) of this 2011 Act and does not violate any condition that may be imposed as described in subsection (4) of this section; and

(c) The project was installed or constructed in accordance with the applicable provisions of sections 38 to 50 of this 2011 Act 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 project:

(a) If the person received preliminary certification for the project under section 44 of this 2011 Act; and

(b) After completion of the installation or construction of the project.

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

(c) The amount of the credit under section 35 of this 2011 Act that is to be claimed;

(d) The number and type of jobs created by the operation and maintenance of the project over the five-year period beginning with the year of preliminary certification under section 44 of this 2011 Act and information on the benefits of the project with regard to overall economic activity in this state;

(e) Information sufficient to demonstrate that the project will remain in operation for at least five years, unless the director by rule specifies another period of operation;

(f) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director;

(g) Information, if applicable, pertaining to prior recommendation of the project by a qualified third party selected by the director; and

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

(4) After the filing of the application under this section, the director may issue the certificate together with any conditions that the director determines are appropriate to promote the purposes of sections 35 and 38 to 50 of this 2011 Act. 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 project. However, the director may not certify an amount for tax credit purposes that is more than the amount approved in the preliminary certificate issued for the project.

(5) If the director rejects an application for final certification, or certifies a lesser amount of credit 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 for the action, 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 project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the total project cost.

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

SECTION 46. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification of an energy conservation project under sections 38 to 50 of this 2011 Act. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of sections 38 to 50 of this 2011 Act, including filing, investigating, granting and rejecting applications for certification and ensuring compliance with sections 38 to 50 of this 2011 Act and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified.

SECTION 47. (1) A certificate issued under section 45 of this 2011 Act is required for purposes of obtaining tax credits in accordance with section 35 of this 2011 Act. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the project under section 45 of this 2011 Act is received by the State Department of Energy.

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

(3) For a transferee holding a credit that has been transferred under section 40 of this 2011 Act, the five-year period shall begin with the tax year in which the transferee pays for the credit.

SECTION 48. (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 a certificate issued under section 45 of this 2011 Act if the director finds that:

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

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

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, 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 certificate holder under section 35 of this 2011 Act, 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.

(3)(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 (2) 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. An assessment of tax is not necessary and a statute of limitation does not 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.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under section 35 of this 2011 Act in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under section 40 of this 2011 Act may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under section 40 of this 2011 Act may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section.

SECTION 49. (1) The total amount of potential tax credits for all energy conservation projects in this state may not, at the time of preliminary certification under section 44 of this 2011 Act, exceed:

(a) $28 million for any biennium; or

(b) $7.5 million for the six months beginning July 1, 2017, and ending December 31, 2017.

(2) In the event that the Director of the State Department of Energy receives applications for preliminary certification with a total amount of certified costs for potential tax credits in excess of the limitations in subsections (1) of this section, the director shall allocate the issuance of preliminary certifications according to standards and criteria established by rule by the director.

SECTION 50. The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of sections 35, 36 and 38 to 50 of this 2011 Act, including standards for what constitutes a single energy conservation project.

SECTION 51. Sections 35, 36 and 38 to 50 of this 2011 Act apply to applications for preliminary certification submitted under section 43 of this 2011 Act after July 1, 2011, and to tax years beginning on or after January 1, 2011.

TAX CREDIT FOR TRANSPORTATION PROJECTS

SECTION 52. Sections 53 and 54 of this 2011 Act are added to and made a part of ORS chapter 315.

SECTION 53. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for a transportation project, based upon the certified cost of the project during the period for which the project is certified under sections 56 to 65 of this 2011 Act.

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

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

(A) 35 percent of certified cost, if a preliminary certification is issued under section 59 of this 2011 Act prior to July 1, 2011; or

(B) 25 percent of certified cost, if a preliminary certification is issued under section 59 of this 2011 Act on or after July 1, 2011, and before January 1, 2012.

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

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

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

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

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

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

(a) The project must be located in Oregon.

(b) The project must have received final certification from the Director of the State Department of Energy under sections 56 to 65 of this 2011 Act.

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

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

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

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

(9) The definitions in section 56 of this 2011 Act apply to this section.

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

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

SECTION 55. Sections 56 to 65 of this 2011 Act are added to and made a part of ORS chapter 469.

SECTION 56. As used in sections 53 and 56 to 65 of this 2011 Act:

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

(2) "Cost" includes capital expenditures and core expenses such as vehicle repair, fuel, personnel and administrative expenses.

(3) "Transportation project" means a public or nonprofit entity that provides transit services to members of the public and that receives state or federal funding for those services, or an alternative fuel vehicle infrastructure project.

SECTION 57. (1) The owner of a transportation project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the

formula the department shall incorporate inflation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

SECTION 58. (1) Prior to the acquisition or performance of a transportation project, a person may apply to the State Department of Energy for preliminary certification for the project under section 59 of this 2011 Act if:

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

(b) The applicant will be the owner, contract purchaser or lessee of the project at the time of acquisition or performance of the project.

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

(a) A statement that the applicant plans to acquire or perform a project that substantially reduces the consumption of purchased energy.

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

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

(d) The anticipated total project cost.

(e) Information on the number and types of jobs that will be created by the project, the number of jobs sustained throughout the acquisition and performance of the project.

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

(g) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of sections 56 to 65 of this 2011 Act, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under section 61 of this 2011 Act. The director may refund all or a portion of the fee if the application for certification is rejected.

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

(a) Filing the application before the start of acquisition or performance is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The project would otherwise qualify for certification under sections 56 to 65 of this 2011 Act.

(5) Except as provided in subsection (6) of this section, a preliminary certification shall remain valid for a period of three calendar years after the date on which the preliminary certification is issued by the director, after which the certification becomes invalid even if:

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

(b) The preliminary certification has been amended.

(6) Any preliminary certification for a facility consistent with a transportation project, under ORS 469.210, that remains outstanding as of July 1, 2011, shall expire on July 1, 2014.

SECTION 59. (1) The Director of the State Department of Energy may require an applicant for certification of a transportation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of sections 56 to 65 of this 2011 Act and any applicable rules or standards adopted

by the director, the director may issue a preliminary certificate approving the acquisition or performance of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) In accordance with ORS chapter 183, the director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The project does not comply with the provisions of sections 56 to 65 of this 2011 Act and applicable rules and standards;

(b) The applicant has previously received preliminary or final certification for the project;

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469.185 to 469.225 or sections 56 to 65 of this 2011 Act; or

(d) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business.

SECTION 60. (1) A final certification for a transportation project may not be issued by the Director of the State Department of Energy under this section unless:

(a) The project was acquired or performed under a preliminary certificate of approval issued under section 59 of this 2011 Act;

(b) The applicant demonstrates the ability to provide the information required by section 58 (2) of this 2011 Act and does not violate any condition that may be imposed as described in subsection (4) of this section; and

(c) The project was acquired or performed in accordance with the applicable provisions of sections 56 to 65 of this 2011 Act and any applicable rules or standards adopted by the director.

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

(a) If the person received preliminary certification for the project under section 59 of this 2011 Act; and

(b) After completion of the acquisition or performance of the project.

(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 project attested to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the project is less than $50,000, copies of receipts for acquisition and performance of the project;

(c) The amount of the credit under section 53 of this 2011 Act that is to be claimed;

(d) The number and types of jobs created by the acquisition and performance of the project over the five-year period beginning on the date of issuance of the preliminary certification under section 59 of this 2011 Act;

(e) Information sufficient to demonstrate that the project will remain in operation for at least five years, unless the director by rule specifies another period of operation;

(f) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the director; and

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

(4) After the filing of the application under this section, the director may issue the certificate together with any conditions that the director determines are appropriate to promote the purposes of sections 53 and 56 to 65 of this 2011 Act. 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 project. However, the director may not certify an amount for tax credit purposes that is more than the amount of credit approved in the preliminary certificate issued for the project.

(5) If the director rejects an application for final certification, or certifies a lesser amount of credit 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 for the action, 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 project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the certified cost of the project.

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

SECTION 61. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification of a transportation project under sections 56 to 65 of this 2011 Act. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of sections 56 to 65 of this 2011 Act, including filing, investigating, granting and rejecting applications for certification and ensuring compliance with sections 56 to 65 of this 2011 Act and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified.

SECTION 62. (1) A certificate issued under section 60 of this 2011 Act is required for purposes of obtaining tax credits in accordance with section 53 of this 2011 Act. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the transportation project under section 60 of this 2011 Act is received by the State Department of Energy.

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

(3) For a transferee holding a credit that has been transferred under section 57 of this 2011 Act, the five-year period shall begin with the tax year in which the transferee pays for the credit.

SECTION 63. (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 a certificate issued under section 60 of this 2011 Act if the director finds that:

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

(b) The holder of the certificate or the operator of the transportation project has failed to acquire or perform the project in compliance with the plans, specifications and contract terms in the certificate; or

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, 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 certificate holder under section 53 of this 2011 Act, 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.

(3)(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 (2) 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. An assessment of tax is not necessary and a statute of limitation does not preclude the collection of taxes described in subsection (2) of this section.

(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.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under section 53 of this 2011 Act in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under section 57 of this 2011 Act may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under section 57 of this 2011 Act may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section.

SECTION 64. The total amount of potential tax credits for all transportation projects in this state may not, at the time of preliminary certification under section 59 of this 2011 Act, exceed $20 million for any biennium.

SECTION 65. The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of sections 53 and 56 to 65 of this 2011 Act, including standards for what constitutes a single transportation project.

SECTION 66. Sections 53 and 56 to 65 of this 2011 Act apply to applications for preliminary certification submitted under section 58 of this 2011 Act after July 1, 2011, and to tax years beginning on or after January 1, 2011.

TAX CREDIT FOR RESIDENTIAL ENERGY DEVICES

SECTION 67. Section 5a, chapter 832, Oregon Laws 2005, as amended by section 35, chapter 843, Oregon Laws 2007, and section 12, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 5a. (1) A taxpayer may not be allowed a credit under ORS 316.116 if the first tax year for which the credit would otherwise be allowed with respect to an alternative energy device [*or alternative fuel vehicle or related equipment is*] **begins** on or after January 1, [*2012*] **2018**.

(2) A taxpayer may not be allowed a credit under ORS 316.116 if the first tax year for which the credit would otherwise be allowed with respect to an alternative fuel vehicle or related equipment begins on or after January 1, 2012.

SECTION 68. Section 8a, chapter 832, Oregon Laws 2005, as amended by section 13, chapter 913, Oregon Laws 2009, is amended to read:

Sec. 8a. (1) The State Department of Energy may not issue a contractor's certification certificate[,] **or an** alternative energy device system certificate [*or alternative fuel vehicle or related equipment certificate*] under ORS 469.170 after January 1, [*2012*] **2018**.

(2) The State Department of Energy may not issue an alternative fuel vehicle or related equipment certificate under ORS 469.170 for a tax year beginning on or after January 1, 2012.

SECTION 69. ORS 316.116 is amended to read:

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

(b) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related equipment.

(c) A credit against the taxes otherwise due under this chapter is not allowed for an alternative energy device that does not meet or exceed all applicable federal, state and local requirements for energy efficiency, including equipment codes, the state building code, specialty codes and any other standards.

(2)(a) In the case of a category one alternative energy device that is not an alternative fuel device, the credit shall be based upon the first year energy yield of the alternative energy device that qualifies under ORS 469.160 to 469.180. The amount of the credit shall be the same whether for collective or noncollective investment.

(b) The credit allowed under this section for each category one alternative energy device for each dwelling may not exceed the lesser of[*:*]

[*(A) $1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1990, and before January 1, 1996.*]

[*(B) $1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1996, and before January 1, 1998.*]

[*(C)*] $1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1998.

(c) For each category one alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed under this section shall be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to[*:*]

[*(A) $1,500 for tax years beginning on or after January 1, 1990, and before January 1, 1996.*]

[*(B) $1,200 for tax years beginning on or after January 1, 1996, and before January 1, 1998.*]

[*(C)*] $1,500 for tax years beginning on or after January 1, 1998.

(d) For each alternative fuel device, the credit allowed under this section is 25 percent of the cost of the alternative fuel device but the total credit shall not exceed $750 if the device is placed in service on or after January 1, 1998.

(e)(A) For each category two alternative energy device that is a solar electric system or fuel cell system, the credit allowed under this section [*shall equal*] **may not exceed the lesser of** $3 per watt of installed output **or $6,000**[*, but the installed output that is used to determine the amount of credit under this paragraph may not exceed 2,000 watts*]. **The State Department of Energy may by rule provide for a lesser amount of incentive as market conditions warrant, taking into consideration factors including the availability of bulk purchasing of alternative energy devices.**

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

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

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

[*(3)(a) In the case of a credit for a category one alternative energy device that is an energy efficient appliance, the credit allowed for each appliance to a resident individual under this section shall equal:*]

[*(A) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to exceed $1,200 for each tax year beginning on or after January 1, 1998, and before January 1, 1999; and*]

[*(B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed $1,000 for each tax year beginning on or after January 1, 1999.*]

[*(b) Notwithstanding paragraph (a) of this subsection, the credit allowed for an energy efficient appliance may not exceed 25 percent of the cost of the appliance.*]

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

(a) The alternative energy device must be purchased, constructed, installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

(b) [*Except for credits claimed for alternative fuel devices,*] The taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling or dwellings served by the alternative energy device or the tenant of the owner or of the contract purchaser and must:

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

(B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant who uses the dwelling or dwellings as a principal or secondary residence[*, unless the basis for the credit is the installation of an energy efficient appliance. If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence*].

(c) In the case of an alternative fuel device, [*if the device is a fueling station necessary to operate an alternative fuel vehicle,*] unless the verification form and certificate are transferred as authorized under ORS 469.170 [*(8)*] **(9)**, the taxpayer who is allowed the credit must be the contractor who constructs the dwelling that incorporates the [*fueling station*] **alternative fuel device** into the dwelling or installs the fueling station in the dwelling. [*If the category one alternative energy device is an alternative fuel vehicle, the credit must be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the category one alternative energy device is related equipment for an alternative fuel vehicle, the credit may be claimed by the owner or contract purchaser.*]

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

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

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

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

[*(7)*] **(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 the 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 any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

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

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

[*(10)*] **(9)** If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

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

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

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

(c) "Taxpayer" includes a transferee of a verification form under ORS 469.170 [*(8)*] **(9)**.

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

SECTION 70. ORS 469.160 is amended to read:

469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

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

(2) "Alternative fuel device" [*means any of the following:*]

[*(a) An alternative fuel vehicle;*]

[*(b) Related equipment; or*]

[*(c) A fueling station necessary to operate an alternative fuel vehicle.*] **includes a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.**

(3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

(a) Registered in this state; and

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

(4) "Category one alternative energy device" means:

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

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

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

(c) A ground water heat pump and ground loop system;

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

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

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

(g) An energy efficient appliance;

(h) An alternative fuel device; or

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

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

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

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

(8)(a) “Cost” means the actual cost of the acquisition, construction and installation of the alternative energy device [*paid by the taxpayer for the alternative energy device*].

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

(c) For a fueling station necessary to operate an alternative fuel vehicle, “cost” means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180 and any rules adopted by the Director of the State Department of Energy.

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

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

(10) “Dwelling” means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. “Dwelling” includes, but is not limited to, an individual unit within multiple unit residential housing.

(11) “Energy efficient appliance” [*means a clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major household appliance that has been certified by the State Department of Energy to have premium energy efficiency characteristics.*] **includes emerging technologies, such as high-efficiency heat-pump water heaters for domestic hot water that meet the Northern Tier Specification established by the Northwest Energy Efficiency Alliance for electricity or have 0.67 or greater energy factor for gas water heaters, ductless heat pumps, high-efficiency furnaces that are at least 95 percent efficient, on-demand gas water heaters and heat-pumps, that exceed code.**

(12) “First year energy yield” of an alternative energy device is the usable energy produced under average environmental conditions in one year.

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

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

(15) “Placed in service” means[*:*]

[*(a)*] the date an alternative energy device is ready and available to produce usable energy or save energy.

[*(b) For an alternative fuel vehicle:*]

[*(A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an alternative fuel vehicle ready and available for use.*]

[*(B) In the case of modification, the date that the modification is completed and the vehicle is ready and available for use as an alternative fuel vehicle.*]

[*(c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fueling station is first operational.*]

[*(d) For related equipment, the date that the equipment is first operational.*]

[*(16) “Related equipment” means equipment necessary to convert a vehicle to use an alternative fuel.*]

[*(17)*] **(16)** "Solar electric system" means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

(17) "Third-party alternative energy device installation" means an alternative energy device that is installed in connection with residential property and owned by a person other than the residential property owner in accordance with an agreement in effect for at least 10 years between the residential property owner and the alternative energy device owner. The agreement must cover maintenance and either the use of or the power generated by the alternative energy device.

(18) "Wind electric system" means any system, mechanism or series of mechanisms that uses wind to generate electrical energy for a dwelling.

SECTION 70a. ORS 469.165 is amended to read:

469.165. (1) For the purposes of carrying out ORS 469.160 to 469.180, the State Department of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings. **The department may, in prescribing criteria, rely on applicable federal, state and local requirements for energy efficiency, including the state building code and any specialty codes and any code adopted by the Building Codes Division of the Department of Consumer and Business Services.**

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

[*(2)*] **(3)** The department, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of [*section 5506, title 42, United States Code (*] **the** Solar Heating and Cooling **Demonstration** Act of 1974[*)*]**, 42 U.S.C. 5506**.

[*(3)*] **(4)** The Director of the State Department of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further define an alternative fuel vehicle, related equipment or fueling station necessary to operate an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel vehicle as a condition of tax credit eligibility.

SECTION 71. ORS 469.170 is amended to read:

469.170. (1) **Subject to the limitations in section 75 of this 2011 Act,** any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the person:

(a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

(b) Meets the requirements of ORS 469.160 to 469.180; and

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

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

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

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

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

(a) The location of the alternative energy device;

(b) A description of the type of device;

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

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

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

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

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

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

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

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

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

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer is the contractor, a statement signed by the contractor that the construction or installation meets all of the requirements of ORS 469.160 to 469.180;

(g) The date the alternative energy device was purchased;

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

(i) Any other information that the Director of the State Department of Energy or the Department of Revenue determines is necessary.

(5)(a) When the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the Director of the State Department of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

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

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

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

(C) The addresses of three installations of the device that are available for inspection by the State Department of Energy;

(D) The range of installed costs to purchasers of the device;

(E) Any important construction, installation or operating instructions; and

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

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

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

(e) If the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the Director of the State Department of Energy may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device constructed or installed.

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

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

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

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

(6) An applicant seeking a credit for a third-party alternative energy device installation must obtain certification from the State Department of Energy under subsection (5) of this section prior to commencing installation of alternative energy devices. An applicant may receive certifications for no more than 25 devices under this subsection in one application.

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

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

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

[*(9)*] **(10)** Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 or 317.115 and 469.160 to 469.180 to the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection.

SECTION 72. ORS 469.172 is amended to read:

469.172. The following devices are not eligible for the tax credit under ORS 316.116:

(1) Standard efficiency furnaces;

(2) Air conditioning systems;

(3) Boilers;

[*(2)*] **(4)** Standard back-up heating systems;

[*(3)*] **(5)** Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the woodstove, furnace or system constitutes a premium efficiency biomass combustion device described in ORS 469.160 (4)(i);

[*(4)*] **(6)** Heat pump water heaters that are part of a geothermal heat pump space heating system;

[*(5)*] **(7)** Structures that cover or enclose a swimming pool;

[*(6)*] **(8)** Swimming pools, hot tubs or spas used to store heat;

[*(7)*] **(9)** Above ground, uninsulated swimming pools, hot tubs or spas;

[*(8)*] **(10)** Photovoltaic systems installed on recreational vehicles;

[*(9)*] **(11)** Conversion of an existing alternative energy device to another type of alternative energy device;

[*(10)*] **(12)** Repair or replacement of an existing alternative energy device;

[*(11)*] **(13)** A category two alternative energy device, if the equipment or other property that comprises the category two alternative energy device is the basis for an allowed credit for a category one alternative energy device under ORS 316.116;

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

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

SECTION 73. ORS 317.115 is amended to read:

317.115. (1) A business tax credit is allowed against the taxes otherwise due under this chapter based upon costs paid or incurred for construction or installation in a dwelling of a fueling station necessary to operate an alternative fuel vehicle. The credit is allowed to the contractor who constructs the dwelling in which the fueling station is incorporated or installs the fueling station in the dwelling but may be taken by any person under the circumstances described in ORS 469.170 [*(9)*] **(10)** and the rules adopted thereunder.

(2) The credit is 25 percent of the cost of the fueling station but the total credit shall not exceed $750 if the fueling station is placed in service on or after January 1, 1998.

(3) To qualify for a credit under this section, all of the following are required:

(a) The fueling station must be constructed, installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued thereunder.

(b) The contractor must present with the claim for credit a verification form signed not only by the contractor but by the owner, contract purchaser or tenant authorizing the contractor to claim the credit and indicating that the owner, contract purchaser or tenant will not claim a credit based upon the cost of the same fueling station under ORS 316.116 or this section.

(c) The credit must be claimed for the tax year in which the fueling station that has been certified under ORS 469.160 to 469.180 first is placed in service or the immediately succeeding tax year.

(4) The credit allowed under this section shall not affect the computation of basis for purposes of this chapter, nor shall the credit affect the computation or be in lieu of any depreciation deduction for the fueling station.

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

(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 such 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 any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(7) The certificate and verification form described under ORS 469.170 may be transferred by the contractor to the first purchaser of the dwelling that incorporates the fueling station if the purchaser intends to use the dwelling as a principal or secondary residence or, in the case of construction or installation of a fueling station in an existing dwelling, the current owner, if the current owner intends to use, or uses, the dwelling as a principal or secondary residence. A certificate and verification form so transferred may be used by the purchaser to claim a credit under ORS 316.116.

SECTION 74. The amendments to ORS 316.116, 469.160, 469.165, 469.170 and 469.172 by sections 69 to 72 of this 2011 Act apply to alternative energy devices certified by the State Department of Energy on or after January 1, 2012, and to tax years beginning on or after January 1, 2012.

SECTION 75. The State Department of Energy may not issue certifications for more than $10 million in potential tax credits for third-party alternative energy device installations in any tax year.

SECTION 76. The Public Utility Commission shall report to the Legislative Assembly prior to February 15, 2012, on the effectiveness of incentives provided by the Energy Trust

of Oregon and shall provide recommendations as to whether operation of these incentives could replace, in whole or in part, the allowance of tax credits under ORS 316.116 and sections 23, 35 and 53 of this 2011 Act.

SECTION 77. (1) Sections 2a and 2b, chapter 625, Oregon Laws 2007, are repealed.

(2) Section 15, chapter 625, Oregon Laws 2007, as amended by section 35, chapter 33, Oregon Laws 2009, is repealed.

CAPTIONS AND EFFECTIVE DATE

SECTION 78. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

SECTION 79. This 2011 Act takes effect on the 91st day after the date on which the 2011 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

Passed by House June 22, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Passed by Senate June 24, 2011

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State