To: House Committee on Energy and Environment

From: Anthony L. Buckley, Chief Financial Officer
Oregon Department of Energy

Date: February 10, 2015

Subject: HB 2448 – Energy Incentives Program

INTRODUCTION

The Oregon Department of Energy supports HB 2448. HB 2448 modifies the Energy Incentives Program (EIP) by extending the sunset date for conservation, alternative fuel vehicle infrastructure and fleets, and renewable energy development programs and provides that conservation projects with $1 million or more in project costs annually recertify the tax credit to ensure greater tax credit accountability. HB 2448 creates a new fee to cover the costs associated with tax credit recertification.

BACKGROUND

The Energy Incentives Program was created in 2011 to provide incentives to businesses, organizations, non-profits, tribes and public bodies that invest in energy conservation, renewable energy resources and cleaner transportation fuels. The program includes grants for renewable energy development projects and tax credits for energy conservation and transportation projects.

The Energy Incentives Program includes projects that:

- Purchase devices that are more energy-efficient or to improve structural and processing energy efficiency;
- Install and operate renewable energy production systems that use biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave technology to produce energy;
- Purchase infrastructure to support alternative fuel vehicles;
- Replace existing fleets of two or more vehicles with vehicles that use alternative fuel; and
- Provide transit services by public or nonprofit transit services providers (ending January 1, 2016).

EIP projects are eligible for a tax credit or grant of up to 35 percent of the eligible project costs. Renewable grants are limited to $250,000 for each project with a total biennial cap of $3 million. Conservation tax credits are limited to $3.5 million for each project with a total biennial cap of $28 million. Transportation projects have a total biennial cap of $20 million. Currently, a transit services tax credit is 10 percent of the eligible project costs. The transit services tax credit was designed as a glide path to phasing out the incentive between 2011 through 2015.

To apply for an incentive, projects submit an application for preliminary certification to the department prior to starting the project. The department performs a completeness review and moves complete projects into a competitive review process for conservation and renewable energy development projects. Alternative fuel projects do not compete, instead they are processed on a first come, first serve basis. In the last phase of the initial review, technical aspects of the application are reviewed. If successful, conservation projects are awarded a preliminary certificate or a performance agreement for renewable projects.

Qualifying conservation projects under $20,000, known as Small Premium Projects, are exempt from the preliminary certification process and only complete an informational filing to reserve the tax credit. Informational filings for this segment of projects are provided on a first come, first serve basis as funds are available.

Upon issuance of a preliminary certificate or performance agreement or the submittal of an informational filing, projects are completed as specified. Once complete, projects submit a final application which the department reviews and then issues either a tax credit or grant depending on the type of project.

All projects issued a tax credit or grant must remain in operation for at least five years. The department has statutory authority to inspect a project prior to issuing a final certificate. Additionally, by rule the department may create policies and procedures for the enforcement of the program such as inspecting a project through the required five year period of operation.

Conservation tax credits for projects with costs over $20,000 are issued a tax credit taken over five years. In the first two years, the tax credit is 10 percent of the eligible costs and 5 percent in the remaining three years, for a total of 35 percent.

Since the Energy Incentives Program began accepting applications in 2012, the department has received over 1,000 applications. About 200 applications have been denied or expired, there are currently over 800 active and complete projects throughout the program.

DISCUSSION

HB 2448 modifies the Energy Incentives Program by extending the program's sunset and provides that conservation projects with $1 million or more in eligible project costs must annually recertify their tax credit.

<u>Extending Sunset</u>

HB 2448 would extend the sunset providing incentives for investing in energy conservation, renewable energy resources and cleaner transportation fuels for an additional four years. The sunset extension would have a positive ripple effect for those contractors and other businesses selling, installing or offering services related to these energy projects. Extending the sunset date would also allow retention of department staff and expertise.

The transit services tax credit sunsets Jan. 1, 2016 and is not proposed to be extended under this bill.

<u>Recertification of Tax Credit</u>

To ensure greater tax credit accountability for larger projects, HB 2448 authorizes the department to tie the use of conservation tax credits to a performance agreement and create a process for annually recertifying tax credits with eligible project costs of at least $1 million.

HB 2448 authorizes the department to enter into a performance agreement with any conservation tax credit project owner as part of the final certification process. These performance agreements may contain project requirements for operations, energy savings and standard language relating to processes, timeframes and failure of performance.

Additionally, HB 2448 authorizes the department to withhold a tax credit for a conservation project with eligible costs of at least $1 million and require the project owner to recertify the tax credit each year for three years after final certification to receive the complete tax credit. The recertification requirement would tie the use of the conservation tax credit to project performance. A performance agreement would contain project specific operation and reporting requirements.

The attached chart describes the HB 2448 process to receive and recertify the tax credit:

- At final certification, the project owner would receive a one-year tax credit equal to 10 percent of the eligible costs to use or transfer.
- After the first year of operation, the project owner could submit a recertification application and upon approval receive another one-year tax credit equal to 10 percent of the eligible costs to use or transfer.
- After the second year of operation, the project owner could submit a recertification application and upon approval receive a one-year tax credit equal to 5 percent of the eligible costs to use or transfer.
- After the third year of operation, the project owner could submit a recertification application and upon approval receive two one-year tax credits each equal to 5 percent of the eligible costs to use or transfer.
- Combined the total tax credits received would equal up to 35 percent of the eligible costs of the project.

If a project owner is unable to recertify the tax credit, the project owner would lose that year's portion of the tax credit. The project owner may come back the following year and recertify the remaining tax credit portions, if the project is able to meet operating requirements. The data collected during recertification would be used for reporting, ensuring project operation and developing future incentive requirements.

The statutory mechanisms to revoke and recover a tax credit can be complex. As proposed in HB 2448, a method in which the tax credit is withheld annually until a project provides actual performance and operational data would ensure greater tax credit accountability for larger projects.

Since 2012, there have been about 14 conservation projects with total project costs of $1 million or more. All but two of these projects are still in the process of completing. Under HB 2448, projects over $1 million that submit a final application after September 2015, will be subject to the recertification and performance agreement requirements.

The Energy Incentives Program is funded through fees for initial applications, technical reviews and final reviews. HB 2448 allows the department to collect a $500 fee for each recertification application.

SUMMARY

HB 2448 extends the program's sunset to Jan. 1, 2022 for conservation, alternative fuel vehicle transportation, and renewable energy development programs. The bill also allows the department to require conservation projects with eligible costs of at least $1 million to annually recertify the tax credit to ensure greater tax credit accountability for larger projects. Lastly, HB 2448 creates a new fee to cover the costs associated with tax credit recertification. The Oregon Department of Energy asks for your support of HB 2448.

Energy Incentive Program: Conservation Tax Credit HB 2448 Recertification Process

The following table shows the recertification process provided in HB 2448. Tax credit projects subject to the recertification process:

- Energy conservation tax credits projects,
- With eligible costs of $1 million or more, and
- 5-year tax credits with 3 recertification periods.

Tax Credit Year	**Year 1 Tax Credit**	**Year 2 Tax Credit**	**Year 3 Tax Credit**	**Year 4 Tax Credit**	**Year 5 Tax Credit**
Certification Period	Final Application Period	Recertification Period 1	Recertification Period 2	Recertification Period 3	
Amount of Credit	10% of certified cost	10% of certified cost	5% of certified cost	5% of certified cost	5% of certified cost
Application Type	Final Application	Recertification Application	Recertification Application	Recertification Application	
Requirements	Applicant completes project as described in preliminary certificate. Project begins operating.	In first year of operation, project operates and performs as described in the performance agreement.	In second year of operation, project operates and performs as described in the performance agreement.	In third year of operation, project operates and performs as described in the performance agreement.	
Application Review	Project review and inspection to set the baseline for operations and reporting outlined in a performance agreement.	Compare operation and performance data to requirements of performance agreement, may inspect project.			
Tax credit certificate issued	One-year tax credit for 10% of certified costs.	One-year tax credit for 10% of certified costs.	One-year tax credit for 5% of certified costs.	Two one-year tax credits each for 5% of certified costs. This credit must be used in two increments representing the two years for which the credit was issued.	
Failure to Submit or Approve Application	No tax credits issued.	No tax credit certificate will be issued for this portion of the credit, this portion is deemed revoked. Applicant may submit a subsequent recertification applications if recertification periods remain.			
Transferability of Tax Credit	Each credit issued is a one-year tax credit transferable to a transferee through the EIP pass-through or transfer process.				