

Enrolled House Bill 2523

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

CHAPTER

AN ACT

Relating to energy; creating new provisions; amending ORS 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205 and 469.225 and section 2, chapter 76, Oregon Laws 2010; and prescribing an effective date.

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

SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS chapter 315.

SECTION 2. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or 318), based upon the certified cost of a renewable energy resource equipment manufacturing facility during the period for which the facility is certified under sections 5 to 15 of this 2011 Act. The credit allowed under this section in each of five succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

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

(a) The facility must be located in Oregon;

(b) The facility must have received:

(A) Final certification from the Director of the Oregon Business Development Department under sections 5 to 15 of this 2011 Act; or

(B) Final certification from the Director of the State Department of Energy under ORS 469.185 to 469.225, prior to the operative date of this section; and

(c) The taxpayer must be an eligible applicant under section 8 (1)(b) of this 2011 Act.

(3) The total amount of credit allowable to an eligible taxpayer under this section may not exceed 50 percent of the certified cost of a facility.

(4)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the facility, notice thereof shall be given to the Director of the Oregon Business Development Department, who shall revoke the certificate covering the facility as of the date of such disposition.

(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under section 11 of this 2011 Act. The new lessor or owner must meet the requirements of sections 5 to 15 of this 2011 Act and may claim a tax credit under this section only if all moneys owed to the State of Oregon have been paid, the facility continues to operate, unless continued operation is waived by the Oregon Business Development Department, and 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 lessor, the amount of credit not claimed by the lessor under all previous leases.

(c) A transferee holding a credit that has been transferred under section 9 of this 2011 Act may not claim the tax credit under this section for any tax year prior to the tax year in which the transferee obtained the credit.

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

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

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

(8) The definitions in section 5 of this 2011 Act apply to this section.

SECTION 3. A taxpayer may not be allowed a credit under section 2 of this 2011 Act unless the taxpayer receives preliminary certification under section 10 of this 2011 Act before January 1, 2014.

SECTION 4. Sections 5 to 15 of this 2010 Act are added to and made a part of ORS chapter 285C.

SECTION 5. As used in sections 5 to 15 of this 2011 Act:

(1) "Component parts of electric vehicles" does not include:

- (a) Parts that may be used in both electric and conventional vehicles; or
- (b) Batteries.

(2) "Cost" means the capital costs and expenses necessarily incurred in the erection, construction, installation and acquisition of a facility.

(3) "Electric vehicles" means vehicles that are designed for use as Class I or Class II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used for agricultural, commercial, industrial or governmental purposes, or vehicles that are designed for use as modes of transportation on public roads and highways. The Director of the Oregon Business Development Department may further define "agricultural, commercial, industrial or governmental purposes" of electric vehicles by rule.

(4)(a) "Renewable energy resource" includes, but is not limited to:

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

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

- (i) Does not exceed 10 megawatts of installed capacity; or
- (ii) Qualifies as a research, development or demonstration facility; or

(C) A renewable energy storage device as defined by the director by rule.

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

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

(a) Component parts of electric vehicles.

(b) Electric vehicles.

(c) Equipment, machinery or other products designed to use a renewable energy resource and that meets the criteria established under section 6 of this 2011 Act.

(d) Renewable energy storage devices.

SECTION 6. The Oregon Business Development Department shall by rule establish all of the following criteria:

(1) Standards relating to the type of equipment, machinery or other products being manufactured and related performance and efficiency standards applicable to the manufactured products;

(2) Standards, consistent with the definitions in section 5 of this 2011 Act and relating to what constitutes a single renewable energy resource equipment manufacturing facility, that include:

(a) Standards establishing what constitutes property that is not included within a facility; and

(b) The consideration of such factors as phases of development, expansion of or additions to existing facilities or product lines, increased production and number of jobs created or maintained by an applicant;

(3) Standards requiring that the minimum levels of increased employment in Oregon for a facility are proportionate to industry standards and to the amount of tax credit allowed;

(4) Standards requiring that the compensation paid and benefits provided to employees of an applicant meet or exceed the national average in annual compensation for comparable employment;

(5) Standards that can be independently reviewed by a third party:

(a) Relating to indicators of financial viability of an applicant for preliminary certification under section 8 of this 2011 Act; and

(b) Relating to the likelihood of long-term operation and success of a facility; and

(6) Standards relating to the likelihood that an applicant seeking preliminary certification of a facility will base decisions to locate or expand a facility in Oregon on the allowance of a tax credit under section 2 of this 2011 Act.

SECTION 7. (1) For a renewable energy resource equipment manufacturing facility, the total cost that receives a preliminary certification from the Director of the Oregon Business Development Department for tax credits in any calendar year may not exceed:

(a) \$2.5 million in the case of a facility used to manufacture electric vehicles or component parts of electric vehicles; or

(b) \$40 million, in the case of any other facility.

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

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

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

(c) The proposed facility, in the estimate of the director, does not possess the likelihood of success established in criteria of success under section 6 (5) of this 2011 Act;

(d) The proposed facility, in the estimate of the director, is not likely to increase employment in Oregon to the minimum levels required in rules adopted under section 6 (3) of this 2011 Act;

(e) The applicant lacks the minimum level of financial viability established in rules adopted under section 6 (5) of this 2011 Act;

(f) The applicant is unlikely, in the estimate of the director, to base a decision to relocate or expand a facility in Oregon on allowance of the tax credit, given the criteria established in rules under section 6 (6) of this 2011 Act; or

(g) During a time period listed in section 15 of this 2011 Act, the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitation for the time period.

(3) The director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in sections 5 to 15 of this 2011 Act and applicable rules and standards adopted under sections 5 to 15 of this 2011 Act. The director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies in the determination.

SECTION 8. (1) Prior to erection, construction, installation or acquisition of a proposed renewable energy resource equipment manufacturing facility, any person may apply to the Oregon Business Development Department for preliminary certification under section 10 of this 2011 Act if:

(a) The facility complies with the standards or rules adopted by the Director of the Oregon Business Development Department; and

(b) The applicant meets one of the following criteria:

(A) The applicant is a person to whom a tax credit for the facility has been transferred; or

(B) The applicant will be the owner, contract purchaser or lessee of the facility at the time of erection, construction, installation or acquisition of the proposed facility, and:

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

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person that will utilize the facility in connection with Oregon property.

(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 or the lessee of the applicant's facility plans to acquire, construct or install a facility.

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

(c) The projected cost of the facility.

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

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

(f) Information relating to the criteria described in ORS 469.195.

(g) Any other information the director considers necessary to determine whether the proposed facility is in accordance with the provisions of sections 5 to 15 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 12 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 preliminary application after the start of erection, construction, installation or acquisition of the facility if the director finds:

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

(b) The facility would otherwise qualify for tax credit certification pursuant to sections 5 to 15 of this 2011 Act.

(5) A preliminary certification shall remain valid for a period of five calendar years after the date the preliminary certification is issued by the director.

SECTION 9. (1) The owner, contract purchaser or lessee of a renewable energy resource equipment manufacturing facility may transfer a tax credit for the facility in exchange for a cash payment equal to the present value of the tax credit.

(2) The Director of the Oregon Business Development Department 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 director shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section.

SECTION 10. (1) The Director of the Oregon Business Development Department may require the submission of 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 proposed erection, construction, installation or acquisition is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of sections 5 to 15 of this 2011 Act and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the erection, construction, installation or acquisition of the facility. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

(3) The director may issue an order altering, conditioning, suspending or denying preliminary certification if the director determines that:

(a) The erection, construction, installation or acquisition does not comply with the provisions of sections 5 to 15 of this 2011 Act and applicable rules and standards;

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

(c) The applicant is unable to demonstrate that the facility would be economically viable without the allowance of additional credits under section 2 of this 2011 Act;

(d) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under sections 5 to 15 of this 2011 Act; or

(e) 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 11. (1) A final certification may not be issued by the Director of the Oregon Business Development Department under this section unless:

(a) The renewable energy resource equipment manufacturing facility was erected, constructed, installed or acquired under a preliminary certificate of approval issued under section 10 of this 2011 Act or ORS 469.210;

(b) The applicant demonstrates the ability to provide the information required by section 8 (2) of this 2011 Act and does not violate any condition that may be imposed as described in section 10 (3) of this 2011 Act; and

(c) The facility was erected, constructed, installed or acquired in accordance with the applicable provisions of sections 5 to 15 of this 2011 Act and any applicable rules or standards adopted by the director.

(2) Any person may apply to the Oregon Business Development Department for final certification of a facility:

(a) If the person received preliminary certification for the facility under section 10 of this 2011 Act or under ORS 469.210; and

(b)(A) After completion of erection, construction, installation or acquisition of the proposed facility; or

(B) After transfer of the facility, as provided in section 2 (4) of this 2011 Act.

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

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

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

(c) The amount of the credit under section 2 of this 2011 Act that is to be claimed;

(d) The number and type of jobs created by the operation and maintenance of the facility over the five-year period beginning with the year of preliminary certification under section 10 of this 2011 Act and information on the benefits of the facility with regard to overall economic activity in this state;

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

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

(g) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined 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 facility by the department.

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The director may issue the certificate together with such conditions as the director determines are appropriate to promote the purposes of sections 2 and 5 to 15 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 facility. 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 facility.

(5) If the director rejects an application for final certification, or certifies a lesser actual cost of the facility than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons 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 facility, the director shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the director may certify the operational unit under one certificate.

(7) The director shall enter into a performance agreement with the applicant at the time of certification under this section. The performance agreement shall include conditions with which the applicant must comply in order to maintain certification, including a deadline by which the applicant must comply with the employment and compensation standards of section 6 (3) and (4) of this 2011 Act.

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

SECTION 12. By rule and after hearing, the Director of the Oregon Business Development Department may adopt a schedule of reasonable fees that the Oregon Business Development Department may require of applicants for preliminary or final certification under sections 5 to 15 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 filing, investigating, granting and rejecting applications for certification 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 facility. The fee is not considered part of the cost of the facility to be certified.

SECTION 13. A certificate issued under section 11 of this 2011 Act or ORS 469.215 is required for purposes of obtaining tax credits in accordance with section 2 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 facility under section 11 of this 2011 Act is received by the State Department of Energy.

SECTION 14. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the Oregon Business Development Department may order the suspension or revocation of the certificate issued under section 11 of this 2011 Act or ORS 469.215 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 facility has failed to construct or operate the facility in compliance with the plans, specifications and procedures in the certificate or the performance agreement; or
- (c) The facility is no longer in operation.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue, the facility owner, contract purchaser or lessee and any transferee under section 9 of this 2011 Act of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect:

(a) In the case in which no portion of a certificate has been transferred under section 9 of this 2011 Act, those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under section 2 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.

(b) In the case in which all or a portion of a certificate has been transferred under section 9 of this 2011 Act, the maximum theoretical amount of the tax credits allowable under section 2 of this 2011 Act, from the transferor.

(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 from the Oregon Business Development Department, or

any successor in interest to the business interests of that person. No assessment of tax shall be necessary and no statute of limitation shall preclude the collection of taxes described in this subsection.

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

(4) Notwithstanding subsections (1) to (3) of this section, a certificate or portion of a certificate held by a transferee under section 9 of this 2011 Act may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under section 2 of this 2011 Act may not be reduced and a transferee is not liable under subsections (2) and (3) of this section.

SECTION 15. The total amount of potential tax credits for all renewable energy resource equipment manufacturing facilities under sections 5 to 15 of this 2011 Act, combined with the total amount of potential tax credits for renewable energy resource equipment manufacturing facilities allowed under ORS 469.205 (2)(a)(O) as in effect before the operative date of this section, may not, at the time of preliminary certification under section 10 of this 2011 Act, exceed:

(a) \$200 million for the biennium ending June 30, 2011.

(b) \$200 million for the biennium ending June 30, 2013.

(c) \$50 million for the six months beginning July 1, 2013, and ending December 31, 2013.

SECTION 16. The duties, functions and powers of the State Department of Energy relating to the administration of income tax credits available under ORS 315.354 and 469.185 to 469.225 as applicable to renewable energy resource equipment manufacturing facilities are imposed upon, transferred to and vested in the Oregon Business Development Department.

SECTION 17. (1) The Director of the State Department of Energy shall:

(a) Deliver to the Oregon Business Development Department all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 16 of this 2011 Act; and

(b) Transfer to the Oregon Business Development Department those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 16 of this 2011 Act.

(2) The Director of the Oregon Business Development Department shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 16 of this 2011 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the State Department of Energy and the Oregon Business Development Department relating to transfers of records, property and employees under this section, and the Governor's decision is final.

SECTION 18. (1) The unexpended balances of amounts authorized to be expended by the State Department of Energy for the biennium beginning July 1, 2011, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 16 of this 2011 Act are transferred to and are available for expenditure by the Oregon Business Development Department for the biennium beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions and powers transferred by section 16 of this 2011 Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the State Department of Energy remain applicable to expenditures by the Oregon Business Development Department under this section.

SECTION 19. The transfer of duties, functions and powers to the Oregon Business Development Department by section 16 of this 2011 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Oregon Business Development Department is substituted for the State Department of Energy in the action, proceeding or prosecution.

SECTION 20. (1) Nothing in sections 16 to 19 of this 2011 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 16 of this 2011 Act. The Oregon Business Development Department may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the State Department of Energy legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 16 of this 2011 Act accruing under or with respect to the duties, functions and powers transferred by section 16 of this 2011 Act are transferred to the Oregon Business Development Department. For the purpose of succession to these rights and obligations, the Oregon Business Development Department is a continuation of the State Department of Energy and not a new authority.

SECTION 21. Notwithstanding the transfer of duties, functions and powers by section 16 of this 2011 Act, the rules of the State Department of Energy with respect to such duties, functions or powers that are in effect on the operative date of section 16 of this 2011 Act continue in effect until superseded or repealed by rules of the Oregon Business Development Department. References in such rules of the State Department of Energy to the State Department of Energy or an officer or employee of the State Department of Energy are considered to be references to the Oregon Business Development Department or an officer or employee of the Oregon Business Development Department.

SECTION 22. Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 16 of this 2011 Act, reference is made to the State Department of Energy, or an officer or employee of the State Department of Energy, whose duties, functions or powers are transferred by section 16 of this 2011 Act, the reference is considered to be a reference to the Oregon Business Development Department or an officer or employee of the Oregon Business Development Department who by this 2011 Act is charged with carrying out such duties, functions and powers.

SECTION 23. ORS 315.354, as amended by section 3, chapter 76, Oregon Laws 2010, is amended to read:

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

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

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

(c) If the facility uses or produces renewable energy resources [*or is a renewable energy resource equipment manufacturing facility*], the credit allowed in each of five succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

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

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

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

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

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

(a) The facility must be located in Oregon;

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

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

(d) 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.

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

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

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

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

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

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

(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215. The new lessor or owner must meet the requirements of ORS 469.185 to 469.225 and may claim a tax credit under this section only if all moneys owed to the State of Oregon have been paid, the facility continues to operate, unless continued operation is waived by the State Department of Energy, and 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 lessor, the amount of credit not claimed by the lessor under all previous leases.

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

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

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

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

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

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

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

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

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

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

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

SECTION 24. 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,*] A taxpayer may not be allowed a credit under ORS 315.354 unless the taxpayer receives final certification under ORS 469.215 before July 1, 2012.

[(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 25. ORS 469.185, as amended by section 4, chapter 76, Oregon Laws 2010, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Including:

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

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

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

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

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

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

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

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

- (i) *[That]* Does not exceed 10 megawatts of installed capacity; or
- (ii) Qualifies as a research, development or demonstration facility; or

(C) A renewable energy storage device as defined by the director by rule.

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

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

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

[(b) Electric vehicles, including three-wheeled vehicles, that are designed for use as Class I or Class II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used for agricultural, commercial, industrial or governmental purposes, or designed for use as modes of transportation on public roads and highways, or component parts of electric vehicles, but not including component parts that may be used in both electric and conventional vehicles. The director may further define “agricultural, commercial, industrial or governmental purposes” of electric vehicles by rule. For purposes of this paragraph, “component parts” does not include batteries.]

[(c) Renewable energy storage devices.]

[(14) (13) “Sustainable building practices facility” means a commercial building in which building practices that reduce the amount of energy, water or other resources needed for construction and operation of the building are used. “Sustainable building practices facility” may be further defined by the State Department of Energy by rule, including rules that establish traditional building practice baselines in energy, water or other resource usage for comparative purposes for use in determining whether a facility is a sustainable building practices facility.

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

(a) A qualified transit pass contract or a transportation services contract; or

(b) The purchase of efficient truck technology and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011.

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

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

SECTION 26. ORS 469.197, as amended by section 7, chapter 76, Oregon Laws 2010, is amended to read:

469.197. The State Department of Energy shall by rule establish all of the following criteria:

(1) For a high-performance home, the minimum design and construction standards that must be met or exceeded for a dwelling to be considered a high-performance home, including but not limited to standards for the building envelope, HVAC systems, lighting, appliances, water conservation measures, use of sustainable building materials and on-site renewable energy systems. The criteria

must also establish the minimum reduction in estimated net purchased energy that a dwelling must achieve to be considered a high-performance home.

(2) For a homebuilder-installed renewable energy system, the minimum performance and efficiency standards that a solar electric system, solar domestic water heating system, passive solar space heating system, wind power system, geothermal heating system, fuel cell system or other system utilizing renewable resources must achieve to be considered a homebuilder-installed renewable energy system.

(3) For a high-efficiency combined heat and power facility, the minimum performance and efficiency standards that the facility must achieve to be considered a high-efficiency combined heat and power facility.

[(4) For a renewable energy resource equipment manufacturing facility:]

[(a) Standards relating to the type of equipment, machinery or other products being manufactured and related performance and efficiency standards applicable to the manufactured products;]

[(b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a single renewable energy resource equipment manufacturing facility that include:]

[(A) Standards establishing what constitutes property that is not included within a renewable energy resource equipment manufacturing facility; and]

[(B) The consideration of such factors as phases of development, expansion of or additions to existing facilities or product lines, increased production and number of jobs created or maintained by an applicant;]

[(c) Standards relating to the minimum level of increased employment in Oregon for a renewable energy resource equipment manufacturing facility;]

[(d) Standards relating to indicators of financial viability of an applicant for preliminary certification under ORS 469.205;]

[(e) Standards relating to the likelihood of long-term operation and success of a renewable energy resource equipment manufacturing facility; and]

[(f) Standards relating to the likelihood that an applicant seeking preliminary certification of a renewable energy resource equipment manufacturing facility will base decisions to locate or expand a facility in Oregon on the allowance of a tax credit under ORS 315.354.]

[(5)] (4) For a facility using or producing renewable energy resources, standards relating to criteria required under ORS 469.195 (2).

[(6)] (5) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a single facility.

SECTION 27. ORS 469.200, as amended by section 8, chapter 76, Oregon Laws 2010, is amended to read:

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

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

[(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility other than a facility used to manufacture electric vehicles;]

[(c)] (b) Five percent of the total cost of the facility but no more than \$7 million, in the case of a facility that uses or produces renewable energy resources and is a wind facility with an installed capacity of more than 10 megawatts; or

[(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility used to manufacture electric vehicles; or]

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

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

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

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

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

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

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

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

[(g) During a time period listed in section 2 (4), chapter 76, Oregon Laws 2010, the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitation for the time period.]

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

SECTION 28. ORS 469.200, as amended by sections 8 and 9, chapter 76, Oregon Laws 2010, is amended to read:

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

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

[(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility other than a facility used to manufacture electric vehicles;]

[(c)] (b) Five percent of the total cost of the facility but no more than \$5 million, in the case of a facility that uses or produces renewable energy resources and is a wind facility with an installed capacity of more than 10 megawatts; **or**

[(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility used to manufacture electric vehicles; or]

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

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

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

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

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

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

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

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

[(g) During a time period listed in section 2 (4), chapter 76, Oregon Laws 2010, the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitation for the time period.]

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

SECTION 29. ORS 469.200, as amended by sections 8, 9 and 9a, chapter 76, Oregon Laws 2010, is amended to read:

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

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

[(b) \$40 million, in the case of a renewable energy resource equipment manufacturing facility other than a facility used to manufacture electric vehicles;]

[(c)] (b) Five percent of the total cost of the facility but no more than \$3 million, in the case of a facility that uses or produces renewable energy resources and is a wind facility with an installed capacity of more than 10 megawatts; **or**

[(d) \$2.5 million in the case of a renewable energy resource equipment manufacturing facility used to manufacture electric vehicles; or]

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

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

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

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

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

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

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

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

[(g) During a time period listed in section 2 (4), chapter 76, Oregon Laws 2010, the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitation for the time period.]

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

SECTION 30. ORS 469.205, as amended by section 10, chapter 76, Oregon Laws 2010, is amended to read:

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

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

(b) The facility complies with the standards or rules adopted by the Director of the State Department of Energy; and

(c) The applicant meets one of the following criteria:

(A) The applicant is a person to whom a tax credit **for the facility** has been transferred; or

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

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

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

(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 or the lessee of the applicant's facility:

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

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

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

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

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

(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alternative fuel vehicle;

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

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

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

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

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

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

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

or

(N) Is a homebuilder and plans to construct a high-performance home.[: or]

[*(O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing facility.*]

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

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

(d) The projected cost of the facility.

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

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

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

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

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

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469.217. 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 preliminary application or a reapplication under subsection (6) of this section after the start of erection, construction, installation or acquisition of the facility if the director finds:

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

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

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

(6) *[A preliminary certification of a renewable energy resource equipment manufacturing facility shall remain valid for a period of five calendar years after the date the preliminary certification is issued by the director. For all other facilities,]* A preliminary certification shall remain valid for a period of three calendar years after the date the preliminary certification is issued by the director. The director may extend the three-year period for two additional calendar years upon reapplication and submission of the fee required by this section.

SECTION 31. ORS 469.225, as amended by section 14, chapter 76, Oregon Laws 2010, is amended to read:

469.225. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the suspension or revocation of the certificate issued under ORS 469.215 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 facility has failed to construct or operate the facility in compliance with the plans, specifications and procedures in the certificate; or

(c) The facility is no longer in operation.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue, the facility owner, **contract purchaser or lessee** and any transferee under ORS 469.206 of the order of revocation.

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

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

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

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

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

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

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

[(7)] (6) Notwithstanding subsections (1) to **[(6)] (5)** of this section, a certificate or portion of a certificate held by a transferee under ORS 469.206 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 315.354 may not be reduced and a transferee is not liable under subsections (3) *[to (5)]* **and (4)** of this section.

SECTION 32. 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 (fore-

station 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 2 of this 2011 Act (renewable energy resource equipment manufacturing facilities).**

SECTION 33. ORS 315.053 is amended to read:

315.053. An income tax credit allowed under ORS 315.141, 315.354 or 315.514 or section 47, chapter 843, Oregon Laws 2007, or section 12, chapter 855, Oregon Laws 2007, **or section 2 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 34. ORS 315.356 is amended to read:

315.356. (1) If a taxpayer obtains a grant from the federal government in connection with a facility that has been certified by the Director of the State Department of Energy, the certified cost of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits that the taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 **and sections 2 and 5 to 15 of this 2011 Act** after any reduction described in this subsection may not be reduced by the federal grant. A taxpayer applying for a federal grant shall notify the Department of Revenue by certified mail within 30 days after each application, and after the receipt of any grant.

(2) A taxpayer is eligible to participate in both this tax credit program and low interest, government-sponsored loans.

(3) A taxpayer who receives a tax credit or property tax relief on a pollution control facility or an alternative energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 315.354 and 469.185 to 469.225 **and sections 2 and 5 to 15 of this 2011 Act.**

(4) A credit may not be allowed under ORS 315.354 if the taxpayer has received a tax credit on the same facility or device under ORS 315.324.

SECTION 35. Section 2, chapter 76, Oregon Laws 2010, is amended to read:

Sec. 2. (1) The total amount of potential tax credits for all facilities using or producing renewable energy resources in this state may not, at the time of preliminary certification under ORS 469.210, exceed:

- (a) \$300 million for the biennium ending June 30, 2011.
- (b) \$150 million for the year beginning July 1, 2011, and ending June 30, 2012.

(2) In the event that the Director of the State Department of Energy receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitations in subsection (1) of this section, the director shall allocate the issuance of preliminary certifications according to the criteria required by ORS 469.195.

(3) The director shall review applications and make determinations whether to issue preliminary certifications for proposed facilities using or producing renewable energy resources:

(a) Within 90 days of the date on which the application is received, in the case of an application for certification with a cost of less than \$6 million.

(b) Within six months of the date on which the application is received, in the case of an application for certification with a cost of \$6 million or more.

[(4) The total amount of potential tax credits for all renewable energy resource equipment manufacturing facilities in this state may not, at the time of preliminary certification under ORS 469.210, exceed:]

(4) The total amount of potential tax credits for all renewable energy resource equipment manufacturing facilities under sections 5 to 15 of this 2011 Act, combined with the total amount of potential tax credits for renewable energy resource equipment manufacturing facilities allowed under ORS 469.205 (2)(a)(O) as in effect before the operative date specified in section 36 of this 2011 Act, may not, at the time of preliminary certification under section 10 of this 2011 Act, exceed:

(a) \$200 million for the biennium ending June 30, 2011.

(b) \$200 million for the biennium ending June 30, 2013.

[(c) \$50 million for the six months beginning July 1, 2013, and ending December 31, 2013.]

SECTION 36. Sections 2, 3 and 5 to 22 of this 2011 Act and the amendments to ORS 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205 and 469.225 and section 2, chapter 76, Oregon Laws 2010, by sections 23 to 35 of this 2011 Act become operative on January 1, 2012.

SECTION 37. The Director of the State Department of Energy and the Director of the Oregon Business Development Department may take any action before the operative date specified in section 36 of this 2011 Act that is necessary to enable the directors to exercise, on and after the operative date specified in section 36 of this 2011 Act, the duties, functions and powers conferred on the directors by sections 2, 3 and 5 to 22 of this 2011 Act and the amendments to ORS 314.752, 315.053, 315.354, 315.356, 315.357, 469.185, 469.197, 469.200, 469.205 and 469.225 and section 2, chapter 76, Oregon Laws 2010, by sections 23 to 35 of this 2011 Act.

SECTION 38. This 2011 Act takes effect on the 91st day after the date on which the 2011 session of the Seventy-sixth Legislative Assembly adjourns sine die.

Passed by House June 6, 2011

Received by Governor:

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

.....
Ramona Kenady Line, Chief Clerk of House

Approved:

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

.....
Bruce Hanna, Speaker of House

.....
John Kitzhaber, Governor

.....
Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

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

Passed by Senate June 9, 2011

.....
Peter Courtney, President of Senate

.....
Kate Brown, Secretary of State