

Chapter 469B

2011 EDITION

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ALTERNATIVE ENERGY DEVICES

469B.100 Definitions for ORS 469B.100 to 469B.118; rules. As used in ORS 316.116, 317.115 and 469B.100 to 469B.118:

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

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

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

(a) Registered in this state; and

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

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

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

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

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

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

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

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

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

(g) An energy efficient appliance;

(h) An alternative fuel device; or

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

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

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

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

(8)(a) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device.

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

(c) For a fueling station necessary to operate an alternative fuel vehicle, "cost" means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469B.100 to 469B.118 and any rules adopted by the Director of the State Department of Energy.

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

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

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

(11) "Energy efficient appliance" includes emerging technologies, such as high-efficiency heat-pump water heaters for domestic hot water that meet the Northern Tier Specification established by the Northwest Energy Efficiency Alliance for electricity or have 0.67 or greater energy factor for gas water heaters, ductless heat pumps, high-efficiency furnaces that are at least 95 percent efficient, on-demand gas water heaters and heat-pumps, that exceed code.

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

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

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

(15) "Placed in service" means the date an alternative energy device is ready and available to produce usable energy or save energy.

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

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

(18) "Wind electric system" means any system, mechanism or series of mechanisms that uses wind to generate electrical energy for a dwelling. [Formerly 469.160]

Note: 469B.100 to 469B.118 [formerly 469.160 to 469.180] were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 74, chapter 730, Oregon Laws 2011, provides:

Sec. 74. The amendments to ORS 316.116, 469.160 [renumbered 469B.100], 469.165 [renumbered 469B.103], 469.170 [renumbered 469B.106] and 469.172 [renumbered 469B.112] by sections 69 to 72 of this 2011 Act apply to alternative energy devices certified by the State Department of Energy on or after January 1, 2012, and to tax years beginning on or after January 1, 2012. [2011 c.730 §74]

469B.103 Criteria; federal standards; rules. (1) For the purposes of carrying out ORS 469B.100 to 469B.118, the State Department of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings. The department may, in prescribing criteria, rely on applicable federal, state and local requirements for energy efficiency, including the state building code and any specialty codes and any code adopted by the Building Codes Division of the Department of Consumer and Business Services.

(2) The department shall take into consideration evolving market conditions in pre-

scribing minimum performance criteria for alternative energy devices and in determining credit amounts, consistent with ORS 316.116.

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

(4) The Director of the State Department of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further define an alternative fuel vehicle, related equipment or fueling station necessary to operate an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel vehicle as a condition of tax credit eligibility. [Formerly 469.165]

Note: See notes under 469B.100.

469B.106 Claim for tax credits; eligibility; contents; contractor system certification; rules. (1) Subject to the limitations in section 75, chapter 730, Oregon Laws 2011, any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the person:

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

(b) Meets the requirements of ORS 469B.100 to 469B.118; and

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

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

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

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

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

(a) The location of the alternative energy device;

(b) A description of the type of device;

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

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

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

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

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

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

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

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

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

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469B.100 to 469B.118 or, if the device is a fueling station and the taxpayer is the contractor, a statement signed by the contractor that the construction or installation meets all of the requirements of ORS 469B.100 to 469B.118;

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

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

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

(5)(a) When the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department

of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

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

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

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

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

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

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

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

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

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

(e) If the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device constructed or installed.

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

(A) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, siz-

ing, siting method and construction or installation procedure;

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

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

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

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

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

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

(10) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 or 317.115 and 469B.100 to 469B.118 to the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection. [Formerly 469.170]

Note: Section 8a, chapter 832, Oregon Laws 2005, provides:

Sec. 8a. (1) The State Department of Energy may not issue a contractor's certification certificate or an alternative energy device system certificate under ORS 469.170 [renumbered 469B.106] after January 1, 2018.

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

after January 1, 2012. [2005 c.832 §8a; 2009 c.913 §13; 2011 c.730 §68]

Note: See notes under 469B.100.

469B.109 Transfer of tax credit for alternative fuel vehicle; rules. (1) The owner of an alternative fuel vehicle as defined in ORS 469B.100 may transfer a tax credit otherwise allowed under ORS 316.116 for cost of the vehicle in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [Formerly 469.171]

Note: See first note under 469B.100.

469B.112 Ineligible devices; rules. The following devices are not eligible for the tax credit under ORS 316.116:

(1) Standard efficiency furnaces;

(2) Air conditioning systems;

(3) Boilers;

(4) Standard back-up heating systems;

(5) Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the woodstove, furnace or system constitutes a premium efficiency biomass combustion device described in ORS 469B.100 (4)(i);

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

(7) Structures that cover or enclose a swimming pool;

(8) Swimming pools, hot tubs or spas used to store heat;

(9) Above ground, uninsulated swimming pools, hot tubs or spas;

(10) Photovoltaic systems installed on recreational vehicles;

(11) Conversion of an existing alternative energy device to another type of alternative energy device;

(12) Repair or replacement of an existing alternative energy device;

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

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

(15) Any other device identified by the State Department of Energy. The department

may adopt rules defining standards for eligible and ineligible devices under this section. [Formerly 469.172]

Note: See notes under 469B.100.

469B.115 Performance assumptions and prescriptive measures for tax credits.

(1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS 469B.100 to 469B.118, the State Department of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices constructed or installed in a dwelling.

(2) The department shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The State Department of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the department shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating energy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the construction or installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply with comparable requirements as determined by the department.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as de-

termined according to the procedure established by the department.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the department. [Formerly 469.176]

Note: See first note under 469B.100.

469B.118 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection.

(1) Upon the Department of Revenue's own motion, or upon request of the State Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) In the case of an alternative energy device other than an alternative fuel vehicle or related equipment, the alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469B.100 to 469B.118; or

(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device by the State Department of Energy after a reasonable, written request for such an inspection by the State Department of Energy. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a contractor certificate issued under ORS 469B.106 if the director finds that:

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;

(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469B.106 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, con-

struction or installation of an alternative energy device is ordered forfeited due to an action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a result of the tax credit relief under ORS 316.116 or 317.115.

(4) If the tax credit for the construction or installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. As long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the State Department of Energy or its representative may inspect an alternative energy device that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the State Department of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [Formerly 469.180]

Note: See first note under 469B.100.

RENEWABLE ENERGY RESOURCES

469B.130 Definitions for ORS 469B.130 to 469B.169 and 469B.171; rules. As used in ORS 469B.130 to 469B.169 and 469B.171:

(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 erection, construction, 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 erected, constructed, 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 erected, constructed, 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 469B.100, 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.

(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 469B.139.

(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 469B.139.

(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 469B.139; 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, non-petroleum 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.

(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.

(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.

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

(16) "Transportation services contract" means a contract that is related to a transportation facility, and may be further defined by the department by rule. [Formerly 469.185]

Note: 469B.130 to 469B.169 [formerly 469.185 to 469.225] were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469B.133 Policy. In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [Formerly 469.190]

Note: See note under 469B.130.

469B.136 Priority given to certain projects; criteria; rules. (1) In determining the eligibility of any facility for tax credits, preference shall be given to those projects that:

(a) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(A) Nonowner occupied single family dwellings; and

(B) Multiple unit residential housing; or

(b) Provide long-term energy savings from the use of renewable resources or conservation of energy resources.

(2) The Director of the State Department of Energy shall establish by rule a tiered priority system to be used in evaluating applicants for certification of facilities using or producing renewable energy resources. The tier system shall be based upon the projected costs of facilities. In determining the eligibility for tax credits and in allocating the available certified cost pursuant to section 2 (1), chapter 76, Oregon Laws 2010, among fa-

ilities, the director shall subject facilities with higher projected costs to closer scrutiny, shall compare projects of similar costs against each other and may certify less than the total cost of any facility based on this evaluation. The director may employ criteria including the following factors as defined by rule:

(a) Technology-specific energy production standards;

(b) Market sector;

(c) Delivery of energy into existing distribution and transmission network;

(d) Investment payback period;

(e) Expected lifespan of the facility;

(f) Potential for long-term viability;

(g) Environmental standards established by the director;

(h) Potential to create and sustain new jobs;

(i) Projected siting in a location that is geographically or socioeconomically advantageous;

(j) Demonstrated readiness to begin implementation;

(k) Amount and quality of energy generated;

(L) Strength of business plan;

(m) Provision of operations and maintenance data, with appropriate protections for trade secrets consistent with ORS chapter 192;

(n) Connection to existing infrastructure;

(o) Third-party review of the applicant's business plan; or

(p) Data related to projected return on investment. [Formerly 469.195]

Note: See note under 469B.130.

469B.139 Criteria for high-performance homes, renewable energy systems, combined heat and power facilities and facilities using or producing renewable energy resources; rules. 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 facility using or producing renewable energy resources, standards relating to criteria required under ORS 469B.136 (2).

(5) Standards, consistent with the definitions in ORS 469B.130, relating to what constitutes a single facility. [Formerly 469.197]

Note: See note under 469B.130.

469B.142 Annual limit to cost of facility eligible for tax credits; discretion of director. (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) 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

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

(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 469B.130 to 469B.169 and applicable rules and standards adopted under ORS 469B.130 to 469B.169. 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. [Formerly 469.200]

Note: See note under 469B.130.

469B.145 Application for preliminary certification; eligibility; contents of application; fees; rules. (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 469B.157 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, 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:

(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 described in ORS 469B.130 (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.

(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 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 469B.136.

(i) Any other information the director considers necessary to determine whether the proposed facility is in accordance with the provisions of ORS 469B.130 to 469B.169, 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 469B.164. 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 469B.130 to 469B.169.

(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 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. [Formerly 469.205]

Note: See note under 469B.130.

469B.148 Transferability of facility tax credit; effect on taxes reported by public utility; rules. (1) The owner of a 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 State Department of Energy shall establish by rule a formula to be employed in the determination of prices of credits transferred under this section. In establishing the formula the department shall incorporate inflation projections and market real rate of return.

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

(4) Notwithstanding any other provision of law, a tax credit transferred pursuant to this section does not decrease the amount of taxes required to be reported by a public utility. [Formerly 469.206]

Note: See note under 469B.130.

469B.151 Tax credit for rental housing units; eligibility. (1) Except as provided in subsection (3) of this section, an applicant under ORS 469B.145 (1)(c) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636. The tax credit shall apply to only the first \$5,000 of actually installed energy conservation measure costs per dwelling unit.

(2) An owner, contract purchaser or lessee of a rental housing unit for which energy conservation measures have been financed by an applicant under subsection (1)

of this section is ineligible for an energy conservation measure tax credit for such measures.

(3) No applicant under ORS 469B.145 (1)(c) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636 if the rental housing units are constructed on or after January 1, 1996. [Formerly 469.207]

Note: See note under 469B.130.

469B.154 Transferability of rental housing unit tax credit; rules. (1) The owner of a rental housing unit may transfer a tax credit for energy conservation measures installed in rental housing units under ORS 469B.151 in exchange for a cash payment equal to the present value of the tax credit. To be eligible for a transfer, the energy conservation measures must have been recommended in an energy audit as provided in ORS 469.633, 469.651 or 469.675.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [Formerly 469.208]

Note: See note under 469B.130.

469B.157 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification. (1) The Director of the State Department of Energy may require the submission of plans, specifications and contract terms, and after examination thereof, may request corrections and revisions of the plans, specifications and terms.

(2) If the director determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the acquisition, erection, construction or installation 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 acquisition, erection, construction or installation does not comply with the provisions of ORS 469B.130 to 469B.169 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 ORS 315.354;

(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 ORS 469B.130 to 469B.169; 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. [Formerly 469.210]

Note: See note under 469B.130.

469B.161 Final certification; eligibility; contents of application. (1) A final certification may not be issued by the Director of the State Department of Energy under this section unless:

(a) The facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469B.157;

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.145 (2) and does not violate any condition that may be imposed as described in ORS 469B.157 (3); and

(c) The facility was acquired, erected, constructed or installed in accordance with the applicable provisions of ORS 469B.130 to 469B.169 and any applicable rules or standards adopted by the director.

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

(a) If the department issued preliminary certification for the facility under ORS 469B.157; and

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

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

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

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

(b) The actual cost of the facility certified to by a certified public accountant who is not an employee of the applicant or, if the

actual cost of the facility is less than \$50,000, copies of receipts for purchase and installation of the facility;

(c) The amount of the credit under ORS 315.354 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 ORS 469B.157 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 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, or certificates for efficient truck technology within a transportation facility, together with such conditions as the director determines are appropriate to promote the purposes of ORS 315.354, 469B.130 to 469B.169 and 469B.171. 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 therefor, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

(6) Upon approval of an application for final certification of a facility, the director

shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the director may certify the operational unit under one certificate.

(7) The director may establish by rule timelines and intermediate deadlines for submission of application materials. [Formerly 469.215]

Note: See note under 469B.130.

469B.164 Fees for certification; rules.

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees which the State Department of Energy may require of applicants for preliminary or final certification under ORS 469B.130 to 469B.169. 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 shall not be considered as part of the cost of the facility to be certified. [Formerly 469.217]

Note: See note under 469B.130.

469B.167 Certificate required for tax credits; certification not to exceed five years.

(1)(a) A certificate issued under ORS 469B.161 is required for purposes of obtaining tax credits in accordance with ORS 315.354. 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 ORS 469B.161 is received by the State Department of Energy.

(b) For a transferee holding a credit that has been transferred under ORS 469B.148 or 469B.154, the five-year period shall begin with the tax year in which the transferee pays for the credit.

(2) Notwithstanding subsection (1) of this section, for a facility using or producing renewable energy resources with a certified cost that exceeds \$10 million and that receives final certification under ORS 469B.161 after January 1, 2010:

(a) The five-year period prescribed in subsection (1)(a) of this section shall begin with the tax year immediately following the tax year during which the completed application for final certification of the facility

under ORS 469B.161 is received by the department.

(b) If claimed by a transferee, the first of five tax years in which the transferee may claim the credit is the tax year in which the transferee paid for the credit or the tax year prescribed in paragraph (a) of this subsection, whichever is later.

(c) An application shall be considered complete without the identification of a transferee for purposes of ORS 469B.148 or 469B.154.

(3) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable. [Formerly 469.220]

Note: Section 4, chapter 693, Oregon Laws 2011, provides:

Sec. 4. (1) The amendments to ORS 315.354 and 315.356 by sections 1 and 2 of this 2011 Act apply to tax years beginning on or after January 1, 2009, and any tax year for which a taxpayer may file an amended return or for which the Department of Revenue may issue a notice of deficiency.

(2) The amendments to ORS 469.220 [renumbered 469B.167] by section 3 of this 2011 Act apply to final certifications issued under ORS 469.215 [renumbered 469B.161] on or after January 1, 2010.

(3) Notwithstanding the applicability dates in subsections (1) and (2) of this section, the amendments to ORS 315.354, 315.356 and 469.220 by sections 1 to 3 of this 2011 Act do not invalidate any action taken by the State Department of Energy prior to the effective date of this 2011 Act [September 29, 2011] and do not provide a basis for applicants to obtain amendments to certifications issued under ORS 469.210 [renumbered 469B.157] or 469.215 prior to the effective date of this 2011 Act. [2011 c.693 §4]

Note: See note under 469B.130.

469B.169 Suspension or revocation of certificate; forfeiture of tax credits; collection. (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 469B.161 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 469B.148 of the order of revocation.

(3) If the certificate 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)(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) 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.

(5) If the certificate 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.

(6) Notwithstanding subsections (1) to (5) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.148 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) and (4) of this section. [Formerly 469.225]

Note: See note under 469B.130.

Note: Section 2, chapter 76, Oregon Laws 2010, provides:

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 [renumbered 469B.157], 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 [renumbered 469B.136].

(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 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) [renumbered 469B.145 (2)(a)(O)] as in effect before the operative date specified in section 36 of this 2011 Act [January 1, 2012], may not, at the time of preliminary certification under section 10 of this 2011 Act [285C.551], exceed:

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

(b) \$200 million for the biennium ending June 30, 2013. [2010 c.76 §2; 2011 c.474 §35]

(Temporary provisions relating to transfer of administration of income tax credits for renewable energy resource equipment manufacturing facilities from State Department of Energy to Oregon Business Development Department)

Note: Sections 16 to 22, chapter 474, Oregon Laws 2011, provide:

Sec. 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 [renumbered 469B.130 to 469B.169] as applicable to renewable energy resource equipment manufacturing facilities are imposed upon, transferred to and vested in the Oregon Business Development Department. [2011 c.474 §16]

Sec. 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. [2011 c.474 §17]

Sec. 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. [2011 c.474 §18]

Sec. 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. [2011 c.474 §19]

Sec. 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 [January 1, 2012] 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. [2011 c.474 §20]

Sec. 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 [January 1, 2012] 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. [2011 c.474 §21]

Sec. 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. [2011 c.474 §22]

469B.171 Assistance with facility purchase for investor-owned utility customers. (1) An investor-owned utility may offer cash payments to assist the utility's commercial and industrial customers in purchasing a facility as defined in ORS 469B.130, including but not limited to an alternative fuel vehicle refueling station. The utility may pay the customer the present value to the utility of the tax credit to which the customer would be entitled under ORS 469B.130 to 469B.169.

(2) As used in this section, “cash payment” and “investor-owned utility” have the meanings given those terms in ORS 469.631. [Formerly 469.878]

Note: 469B.171 [formerly 469.878] was added to and made a part of ORS chapter 469 by legislative action but was not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

RENEWABLE ENERGY PRODUCTION SYSTEMS

469B.250 Definitions for ORS 469B.250 to 469B.265. As used in ORS 469B.250 to 469B.265:

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

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

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

(4) “Solar technology” means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy. [2011 c.730 §27]

Note: 469B.250 to 469B.265 were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469B.253 Application for grant; fees.

(1) Prior to the installation or construction of a renewable energy production system, any person may apply to the State Department of Energy for a grant under ORS 469B.256 if:

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

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

(c) The system is located in Oregon; and

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

(2) An application for a grant under ORS 469B.256 shall be made in writing on a form prepared by the department and shall contain:

(a) A detailed description of the system and its operation and information showing that the system will operate as represented in the application and remain in operation

for at least five years, unless the director by rule specifies another period of operation.

(b) The anticipated total system cost.

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

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

(e) Any other information the director considers necessary to determine whether the system is in accordance with the provisions of ORS 469B.250 to 469B.265, and any applicable rules or standards adopted by the director.

(3) An application for a grant shall be accompanied by a fee established under ORS 469B.259. The director may refund all or a portion of the fee if the application for a grant is rejected.

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

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

(b) The system would otherwise qualify for a grant under ORS 469B.250 to 469B.265. [2011 c.730 §29]

Note: See note under 469B.250.

469B.256 Grant award; performance agreement; denial; limitations; forfeiture.

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

(2) If the director determines that the system is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.250 to 469B.265 and any applicable rules or standards adopted by the director, the director may enter into a performance agreement with the applicant in anticipation of awarding a grant under this section. The grant provided for in the performance agreement may not exceed 35 percent of the cost of the project and may not exceed \$250,000 per system. If construction does not begin within 12 months of an award under this section, the performance agreement shall be void and the

State Department of Energy may not award the grant.

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

(a) The system does not comply with the provisions of ORS 469B.250 to 469B.265 and applicable rules and standards;

(b) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 315.326 or 469B.130 to 469B.169, or any grant under ORS 469B.250 to 469B.265; or

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

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

(5) If the director determines that the applicant has complied with all provisions of the performance agreement required under this section and with the provisions of ORS 469B.250 to 469B.265, the director shall award the grant provided in this section.

(6) Upon determination by the director that the applicant has violated the provisions of the performance agreement or ORS 469B.250 to 469B.265, the applicant will be liable to the department for all grant moneys disbursed to the applicant. [2011 c.730 §30]

Note: See note under 469B.250.

469B.259 Grant application fees; rules.

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for a grant for a renewable energy production system under ORS 469B.250 to 469B.265 or for tax credit certification under ORS 315.326. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of ORS 469B.250 to 469B.265, including filing, investigating, granting and rejecting applications for grant or tax credit certification and ensuring compliance with ORS 315.326, 315.329 and 469B.250 to 469B.265 and shall be designed not to exceed

the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the system. The fee is not considered part of the cost of the system for which a grant is being sought. [2011 c.730 §31]

Note: See note under 469B.250.

469B.262 Limitations on amount of potential tax credits for certified renewable energy development contributions; allocation. (1) The total amount of potential tax credits for certified renewable energy development contributions in this state may not, at the time of certification under ORS 315.326, exceed:

(a) \$3 million for any biennium; or

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

(2) In the event that the Director of the State Department of Energy receives applications for grants under ORS 469B.256 in excess of the contributions received pursuant to ORS 315.326, the director shall allocate the issuance of grants according to standards and criteria established by rule by the director. [2011 c.730 §32]

Note: See note under 469B.250.

469B.265 Policies and procedures; standards for single renewable energy production system; rules. The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 315.326, 315.329 and 469B.250 to 469B.265, including standards for what constitutes a single renewable energy production system. [2011 c.730 §33]

Note: Section 33a, chapter 730, Oregon Laws 2011, provides:

Sec. 33a. Sections 23, 24 and 27 to 33 of this 2011 Act [315.326, 315.329 and 469B.250 to 469B.265] apply to applications for grants submitted under section 29 of this 2011 Act [469B.253] after July 1, 2011, and to tax years beginning on or after January 1, 2011. [2011 c.730 §33a]

Note: See note under 469B.250.

ENERGY CONSERVATION PROJECTS

469B.270 Definitions for ORS 315.331 and 469B.270 to 469B.306. As used in ORS 315.331 and 469B.270 to 469B.306:

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

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

(a) Recycling equipment, products and projects;

(b) Transportation projects;

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

(d) Alternative fuel vehicles.

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

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

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

(b) "LEED Platinum" means the highest of four tiers of standards for certification in the LEED rating system. [2011 c.730 §38]

Note: 469B.270 to 469B.306 were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469B.273 Preference given to certain projects; criteria. (1) In determining the priority of any energy conservation project for tax credits, preference shall be given to those projects that have the highest energy savings over the five-year credit allowance period per tax credit dollar.

(2) In administering this section, the Director of the State Department of Energy shall compare projects of similar technology types against each other, take into account the amount of energy saved over the life of the equipment, market or industry sector, expected lifespan of the project compared to the simple payback period, whether the energy savings of the project benefit a party other than the owner and any other factors defined in State Department of Energy rule. The department may certify less than the total cost of any project based on this evaluation. [2011 c.730 §39]

Note: See note under 469B.270.

469B.276 Transferability of project tax credit; determination of prices; rules. (1) The owner of a project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

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

flation projections and market real rate of return.

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section. [2011 c.730 §40]

Note: See note under 469B.270.

469B.279 Standards for energy conservation projects; rules. The State Department of Energy shall by rule establish the following standards relating to energy conservation projects:

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

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

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

(4) Standards for the application of third party review of research and development projects by a qualified third party selected by the Director of the State Department of Energy, as required in ORS 469B.285. [2011 c.730 §41]

Note: See note under 469B.270.

469B.282 Limitation on amount receiving preliminary certification. For an energy conservation project, the total amount that receives a preliminary certification from the Director of the State Department of Energy may not exceed \$10 million in certified cost. [2011 c.730 §42]

Note: See note under 469B.270.

469B.285 Application for preliminary certification; eligibility; contents; fees; certification to remain valid for three years; rules. (1) Prior to the installation or construction of an energy conservation project, any person may apply to the State Department of Energy for preliminary certification under ORS 469B.288 if:

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

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

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

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

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

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

(d) The anticipated total project cost.

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

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

(g) Information relating to the standards described in ORS 469B.279.

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

(i) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of ORS 469B.270 to 469B.306, 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 469B.294. The director may refund all or a portion of the fee if the application for certification is rejected.

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

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

(b) The project would otherwise qualify for certification under ORS 469B.270 to 469B.306.

(5) The director may, by rule, waive preliminary certification under ORS 469B.288, or may establish an informational filing system in place of preliminary certification, for projects that:

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

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

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

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

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

(b) The preliminary certification has been amended.

(7) Any preliminary certification for a facility consistent with an energy conservation project, under ORS 469B.157, that remains outstanding as of July 1, 2011, shall expire on July 1, 2014. [2011 c.730 §43]

Note: See note under 469B.270.

469B.288 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification. (1) The Director of the State Department of Energy may require an applicant for certification of an energy conservation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.270 to 469B.306 and any applicable rules or standards adopted by the director, the director may issue a preliminary certificate approving the installation or construction of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

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

(a) The project does not comply with the provisions of ORS 469B.270 to 469B.306 and applicable rules and standards;

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

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended any certification under ORS 469B.130 to 469B.169 or 469B.270 to 469B.306; or

(d) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business. [2011 c.730 §44]

Note: See note under 469B.270.

469B.291 Final certification; eligibility; contents of application; rules. (1) The Director of the State Department of Energy may issue a final certification for an energy conservation project under this section only if:

(a) The project was installed or constructed under a preliminary certificate of approval issued under ORS 469B.288, unless preliminary certification is waived under ORS 469B.285 (5);

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.285 (2) and does not violate any condition that may be imposed as described in subsection (4) of this section; and

(c) The project was installed or constructed in accordance with the applicable provisions of ORS 469B.270 to 469B.306 and any applicable rules or standards adopted by the director.

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

(a) If the person received preliminary certification for the project under ORS 469B.288; and

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

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

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

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

(c) The amount of the credit under ORS 315.331 that is to be claimed;

(d) The number and type of jobs created by the operation and maintenance of the project over the five-year period beginning with the year of preliminary certification under ORS 469B.288 and information on the benefits of the project with regard to overall economic activity in this state;

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

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

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

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

(4) After the filing of the application under this section, the director may issue the certificate together with any conditions that the director determines are appropriate to promote the purposes of ORS 315.331 and 469B.270 to 469B.306. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the project. However, the director may not certify an amount for tax credit purposes that is more than the amount approved in the preliminary certificate issued for the project.

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

(6) Upon approval of an application for final certification of a project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the total project cost.

(7) The director may establish by rule timelines and intermediate deadlines for submission of application materials. [2011 c.730 §45]

Note: See note under 469B.270.

469B.294 Fees for certification; rules. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification of an energy conservation project under ORS 469B.270 to 469B.306. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover

the anticipated cost of administering and enforcing the provisions of ORS 469B.270 to 469B.306, including filing, investigating, granting and rejecting applications for certification and ensuring compliance with ORS 469B.270 to 469B.306 and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified. [2011 c.730 §46]

Note: See note under 469B.270.

469B.297 Certificate required for tax credits; certification not to exceed five years. (1) A certificate issued under ORS 469B.291 is required for purposes of obtaining tax credits in accordance with ORS 315.331. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the project under ORS 469B.291 is received by the State Department of Energy.

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

(3) For a transferee holding a credit that has been transferred under ORS 469B.276, the five-year period shall begin with the tax year in which the transferee pays for the credit. [2011 c.730 §47]

Note: See note under 469B.270.

469B.300 Revocation of certificate; forfeiture of tax credits; collection. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a certificate issued under ORS 469B.291 if the director finds that:

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

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

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under ORS 315.331, from the certifi-

cate holder or a successor in interest to the business interests of the certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

(3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or any successor in interest to the business interests of that person. An assessment of tax is not necessary and a statute of limitation does not preclude the collection of taxes described in this subsection.

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

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.331 in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.276 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 469B.276 may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section. [2011 c.730 §48]

Note: See note under 469B.270.

469B.303 Limitations on amount of potential tax credits for energy conservation projects; allocation. (1) The total amount of potential tax credits for all energy conservation projects in this state may not, at the time of preliminary certification under ORS 469B.288, exceed:

(a) \$28 million for any biennium; or

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

(2) In the event that the Director of the State Department of Energy receives applications for preliminary certification with a total amount of certified costs for potential tax credits in excess of the limitations in subsection (1) of this section, the director shall allocate the issuance of preliminary certifications according to standards and criteria established by rule by the director. [2011 c.730 §49]

Note: See note under 469B.270.

469B.306 Policies and procedures; standards for single energy conservation project; rules. The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 315.331 and 469B.270 to 469B.306 and section 36, chapter 730, Oregon Laws 2011, including standards for what constitutes a single energy conservation project. [2011 c.730 §50]

Note: Section 51, chapter 730, Oregon Laws 2011, provides:

Sec. 51. Sections 35 [315.331], 36 and 38 to 50 [469B.270 to 469B.306] of this 2011 Act apply to applications for preliminary certification submitted under section 43 of this 2011 Act [469B.285] after July 1, 2011, and to tax years beginning on or after January 1, 2011. [2011 c.730 §51]

Note: See note under 469B.270.

TRANSPORTATION PROJECTS

469B.320 Definitions for ORS 315.336 and 469B.320 to 469B.347. As used in ORS 315.336 and 469B.320 to 469B.347:

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

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

(3) "Transportation project" means a public or nonprofit entity that provides transit services to members of the public and that receives state or federal funding for those services, or an alternative fuel vehicle infrastructure project. [2011 c.730 §56]

Note: 469B.320 to 469B.347 were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469B.323 Transferability of project tax credit; determination of prices; rules. (1) The owner of a transportation project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the tax credit.

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

(3) The department shall recalculate credit transfer prices quarterly, employing the formula established under subsection (2) of this section. [2011 c.730 §57]

Note: See note under 469B.320.

469B.326 Application for preliminary certification; eligibility; contents; fees; certification to remain valid for three years; rules. (1) Prior to the acquisition or performance of a transportation project, a person may apply to the State Department of Energy for preliminary certification for the project under ORS 469B.329 if:

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

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

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

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

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

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

(d) The anticipated total project cost.

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

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

(g) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of ORS 469B.320 to 469B.347, 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 469B.335. The director may refund all or a portion of the fee if the application for certification is rejected.

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

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

(b) The project would otherwise qualify for certification under ORS 469B.320 to 469B.347.

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

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

(b) The preliminary certification has been amended.

(6) Any preliminary certification for a facility consistent with a transportation project, under ORS 469B.157, that remains outstanding as of July 1, 2011, shall expire on July 1, 2014. [2011 c.730 §58]

Note: See note under 469B.320.

469B.329 Submissions for preliminary certification; alteration, conditions, suspension or denial of preliminary certification. (1) The Director of the State Department of Energy may require an applicant for certification of a transportation project to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

(2) If the director determines that the project is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469B.320 to 469B.347 and any applicable rules or standards adopted by the director, the director may issue a preliminary certificate approving the acquisition or performance of the project. The certificate shall indicate the potential amount of tax credit allowable and shall list any conditions for claiming the credit.

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

(a) The project does not comply with the provisions of ORS 469B.320 to 469B.347 and applicable rules and standards;

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

(c) The applicant was directly involved in an act for which the director has levied civil penalties or revoked, canceled or suspended

any certification under ORS 469B.130 to 469B.169 or 469B.320 to 469B.347; or

(d) The applicant or the principal, director, officer, owner, majority shareholder or member of the applicant, or the manager of the applicant if the applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business. [2011 c.730 §59]

Note: See note under 469B.320.

469B.332 Final certification; eligibility; contents of application; rules. (1) A final certification for a transportation project may not be issued by the Director of the State Department of Energy under this section unless:

(a) The project was acquired or performed under a preliminary certificate of approval issued under ORS 469B.329;

(b) The applicant demonstrates the ability to provide the information required by ORS 469B.326 (2) and does not violate any condition that may be imposed as described in subsection (4) of this section; and

(c) The project was acquired or performed in accordance with the applicable provisions of ORS 469B.320 to 469B.347 and any applicable rules or standards adopted by the director.

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

(a) If the person received preliminary certification for the project under ORS 469B.329; and

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

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

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

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

(c) The amount of the credit under ORS 315.336 that is to be claimed;

(d) The number and types of jobs created by the acquisition and performance of the project over the five-year period beginning on the date of issuance of the preliminary certification under ORS 469B.329;

(e) Information sufficient to demonstrate that the project will remain in operation for

at least five years, unless the director by rule specifies another period of operation;

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

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

(4) After the filing of the application under this section, the director may issue the certificate together with any conditions that the director determines are appropriate to promote the purposes of ORS 315.336 and 469B.320 to 469B.347. If the applicant is an entity subject to regulation by the Public Utility Commission, the director may consult with the commission prior to issuance of the certificate. The action of the director shall include certification of the actual cost of the project. However, the director may not certify an amount for tax credit purposes that is more than the amount of credit approved in the preliminary certificate issued for the project.

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

(6) Upon approval of an application for final certification of a project, the director shall certify the project. The final certification shall indicate the amount of projected energy savings attributable to the project and the certified cost of the project.

(7) The director may establish by rule timelines and intermediate deadlines for submission of application materials. [2011 c.730 §60]

Note: See note under 469B.320.

469B.335 Fees for certification; rules.

By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees that the State Department of Energy may require of applicants for preliminary or final certification of a transportation project under ORS 469B.320 to 469B.347. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of administering and enforcing the provisions of ORS 469B.320 to 469B.347, including filing, investigating, granting and rejecting applications for certification and ensuring compliance with ORS 469B.320 to

469B.347 and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the project. The fee is not considered part of the cost of the project to be certified. [2011 c.730 §61]

Note: See note under 469B.320.

469B.338 Certificate required for tax credits; certification not to exceed five years. (1) A certificate issued under ORS 469B.332 is required for purposes of obtaining tax credits in accordance with ORS 315.336. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the transportation project under ORS 469B.332 is received by the State Department of Energy.

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

(3) For a transferee holding a credit that has been transferred under ORS 469B.323, the five-year period shall begin with the tax year in which the transferee pays for the credit. [2011 c.730 §62]

Note: See note under 469B.320.

469B.341 Revocation of certificate; forfeiture of tax credits; collection. (1) Under the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a certificate issued under ORS 469B.332 if the director finds that:

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

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

(c) The project is no longer in operation.

(2) As soon as an order of revocation under this section becomes final, the director shall notify the Department of Revenue and the project owner, contract purchaser or lessee of the order of revocation. Upon notification, the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the certificate holder under ORS 315.336, from the certificate holder or a successor in interest to the business interests of the certificate holder. All prior tax credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

(3)(a) The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in subsection (2) of this section from the person that obtained certification from the State Department of Energy, or any successor in interest to the business interests of that person. An assessment of tax is not necessary and a statute of limitation does not preclude the collection of taxes described in subsection (2) of this section.

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

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.336 in connection with the project from and after the date that the order of revocation becomes final.

(5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate held by a transferee under ORS 469B.323 may not be considered revoked for purposes of the transferee, the tax credit allowable to the transferee under ORS 469B.323 may not be reduced, and a transferee is not liable under subsections (2) to (4) of this section. [2011 c.730 §63]

Note: See note under 469B.320.

469B.344 Limitation on amount of potential tax credits for transportation projects. The total amount of potential tax credits for all transportation projects in this state may not, at the time of preliminary certification under ORS 469B.329, exceed \$20 million for any biennium. [2011 c.730 §64]

Note: See note under 469B.320.

469B.347 Policies and procedures; standards for single transportation project; rules. The State Department of Energy shall by rule establish policies and procedures for the administration and enforcement of the provisions of ORS 315.336 and 469B.320 to 469B.347, including standards for what constitutes a single transportation project. [2011 c.730 §65]

Note: Section 66, chapter 730, Oregon Laws 2011, provides:

Sec. 66. Sections 53 and 56 to 65 of this 2011 Act [315.336 and 469B.320 to 469B.347] apply to applications for preliminary certification submitted under section 58 of this 2011 Act [469B.326] after July 1, 2011, and to tax years beginning on or after January 1, 2011. [2011 c.730 §66]

Note: See note under 469B.320.

BIOFUELS AND BIOMASS

469B.400 Fuel blends and solid biofuels; qualification for tax credits; rules. The State Department of Energy shall by rule identify categories of fuel blend and solid biofuel that qualify for the personal income tax credit allowed under ORS 315.465. [Formerly 469.785]

Note: 469B.400 and 469B.403 [formerly 469.785 and 469.790] were added to and made a part of ORS chapter 469 by legislative action but were not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 8a and 8b (2), chapter 739, Oregon Laws 2007, provide:

Sec. 8a. The State Department of Energy shall periodically conduct an impact study of the biofuels program. The study will include but is not limited to the following criteria with respect to the biofuel sector in this state:

- (1) Jobs created;
- (2) Average wage rates for those jobs;
- (3) The provision of health care and other benefits;
- (4) The extent to which workforce training opportunities are being provided to employees;
- (5) The number of acres of biofuel feedstock planted;
- (6) The number of gallons of biofuel blended fuel produced and consumed in the state;
- (7) The cost of fuel with biofuel blends and how that compares with the cost of petroleum fuel;
- (8) Environmental impacts such as reductions in greenhouse gas emissions and other toxic air pollution;
- (9) The impact of biofuel feedstock production on the price of commodity crops and the cost of food staples; and
- (10) The extent to which Oregon producers import biofuel or biofuel feedstock from outside the state. [2007 c.739 §8a]

Sec. 8b. (2) Section 8a of this 2007 Act is repealed January 2, 2025. [2007 c.739 §8b(2)]

469B.403 Biomass; eligibility for tax credits. To be eligible for the tax credit under ORS 315.141, the biomass must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates for biomass are:

- (1) For oilseed crops, \$0.05 per pound.
- (2) For grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel.
- (3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.
- (4) For used cooking oil or waste grease, \$0.10 per gallon.
- (5) For wastewater biosolids, \$10.00 per wet ton.
- (6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from

harvest or forest health stewardship, \$10.00 per bone dry ton.

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

(8) For animal manure or rendering offal, \$5.00 per wet ton. [Formerly 469.790]

Note: Section 6, chapter 739, Oregon Laws 2007, provides:

Sec. 6. (1) ORS 315.141, 315.144 and 469.790 [renumbered 469B.403] apply to tax credits for tax years beginning on or after January 1, 2007, and before January 1, 2018.

(2) Notwithstanding subsection (1) of this section, a tax credit is not allowed for wheat grain (other than nongrain wheat material) for tax years beginning before January 1, 2009, or on or after January 1, 2018. [2007 c.739 §6; 2007 c.590 §5; 2009 c.913 §18; 2011 c.730 §2]

Note: Section 10, chapter 730, Oregon Laws 2011, provides:

Sec. 10. (1) The amendments to ORS 315.141, 317.152, 317.154 and 469.790 [renumbered 469B.403] by sections 2a, 3, 8 and 9 of this 2011 Act apply to tax years beginning on or after January 1, 2012.

(2) The amendments to ORS 317.152 by section 8a of this 2011 Act apply to tax years beginning on or after January 1, 2012, and to any tax year for which a return is subject to audit or adjustment by the Department of Revenue on or after the effective date of this 2011 Act [September 29, 2011], any tax year for which a return is the subject of an appeal on or after the effective date of this 2011 Act and any tax year for which a claim for refund may be made on or after the effective date of this 2011 Act. [2011 c.730 §10]

Note: See first note under 469B.400.

PENALTIES

469B.991 Civil penalty when contractor certificate revoked. (1) The Director of the State Department of Energy may impose a civil penalty against a contractor if a contractor certificate is revoked under ORS 469B.118. The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 or 317.115 to the contractor or to purchasers of the system for which a contractor's certificate has been revoked.

(2) The State Department of Energy may not collect any of the amount of a civil penalty imposed under subsection (1) of this section from a purchaser of the system for which the final certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469B.118 (3) to collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's fraud or misrepresentation under ORS 469B.118 (1)(a).

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) A penalty recovered under this section shall be paid into the State Treasury and credited to the General Fund and is available for general governmental expenses. [Formerly 469.994]

Note: 469B.991 [formerly 469.994] was added to and made a part of ORS chapter 469 by legislative action but was not added to ORS chapter 469B or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

