

**HOUSE MINORITY REPORT
AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3481**

June 23

Speaker Minnis:

A minority of your Committee on Revenue, to whom was referred A-engrossed House Bill 3481, having had the same under consideration, respectfully reports it back with the recommendation that it do pass with the following amendments:

1 On page 1 of the printed A-engrossed bill, line 3, delete “468.170,”.

2 In line 4, delete “468.183,”.

3 Delete lines 7 through 19 and delete pages 2 through 26 and insert:

4

5 **“BIOFUEL, ETHANOL AND VERIFIED FUEL ADDITIVE FACILITIES**

6

7 **“SECTION 1.** ORS 307.701 is amended to read:

8 **“307.701. (1)** As used in this section:

9 **“(a) ‘Biofuel’ means liquid or gaseous fuel produced from a biological source, including**
10 **but not limited to waste and residue from agriculture, forestry or related industries or other**
11 **industrial or municipal waste.**

12 **“(b) ‘Ethanol’** has the meaning given the term under ORS 646.905.

13 **“(c) ‘Production facility’ means a facility that is used to produce ethanol, biofuel or ver-**
14 **ified fuel additives.**

15 **“(d) ‘Verified fuel additive’ means a fuel additive that:**

16 **“(A) Has been verified under the United States Environmental Protection Agency’s En-**
17 **vironmental Technology Verification Protocol or the California Air Resources Board verifi-**
18 **cation programs; and**

19 **“(B) Is at least 90 percent renewable materials.**

20 **“(2)** Upon compliance with subsection (4) of this section, the real and personal property of [*an*
21 *ethanol*] a production facility that meets the requirements of subsection (3) of this section is exempt
22 from taxation. The exemption shall be 50 percent of the assessed value of the property determined
23 under ORS 308.146. The exemption under this section may be claimed for five assessment years.

24 **“(3)** [*An ethanol*] A production facility may qualify for exemption from taxation under this sec-
25 tion if the facility:

26 **“(a)** Is [*first*] in the process of construction, erection or installation as a new facility after July
27 1, 1993;

28 **“(b)** Is or will be placed in service to produce ethanol, **biofuel or verified fuel additives** within
29 [*four*] **five** years after January 1 of the first assessment year for which [*the*] **an** exemption [*under this*
30 *section*] is claimed **under this section or ORS 285C.170 or 285C.175;** [*and*]

31 **“(c) Consists of newly constructed, installed or acquired property, including property that**
32 **was previously owned by a different owner and used at a different location, that is first**

1 **placed in service during the calendar year preceding the assessment year for which an ex-**
2 **emption listed in paragraph (b) of this subsection is claimed; and**

3 “[*c*] (d) Within [*four*] **five** years after January 1 of the first assessment year for which [*the*]
4 **an exemption [under this section] listed in paragraph (b) of this subsection** is claimed, is or will
5 be certified by the State Department of Agriculture as a facility that produces:

6 **“(A) Ethanol capable of blending or mixing with gasoline. The blend or mixture shall meet the**
7 **specifications or registration requirements established by the United States Environmental Pro-**
8 **tection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. 7545 and 40 C.F.R. Part**
9 **79[.];**

10 **“(B) Biofuel; or**

11 **“(C) Verified fuel additives.**

12 **“(4)(a)(A) In order to claim an exemption from taxation under this section for any assessment**
13 **year, the owner of [*an ethanol*] a production facility shall file with the county assessor, on or before**
14 **April 1 of the year for which exemption is claimed, a statement verified by the oath or affirmation**
15 **of the owner listing all real and personal property claimed to be exempt and showing the purpose**
16 **for which the property will be or is used.**

17 **“(B) In the case of a biofuel production facility or a verified fuel additive production fa-**
18 **ility, in addition to the requirements of subparagraph (A) of this paragraph, the application**
19 **for exemption must include all of the following:**

20 **“(i) A list of the taxing districts in which the property is located; and**

21 **“(ii) A copy of a written notice mailed to each taxing district. The notice must:**

22 **“(I) State that the applicant is seeking a property tax exemption under this section;**

23 **“(II) State that a taxing district may elect not to participate in the exemption, in which**
24 **case taxes of the district will continue to be imposed on the property of the applicant; and**

25 **“(III) Comply with any other requirements established by the Department of Revenue.**

26 **“(b) If the ownership and use of the production facility property included in the statement**
27 **described in paragraph (a)(A) of this subsection and filed for a prior year remain the same, a**
28 **new statement [*shall not be*] is not required. However, if the ownership or use changes, or if the**
29 **facility property is added to or retired, a new statement is required and the property [*shall*] may**
30 **not be exempt under this section if the statement is not filed. The new statement [*shall*] must be**
31 **filed no later than December 31 of the year to which the statement pertains.**

32 **“(5) If the production facility property is not placed in service within the time required under**
33 **subsection (3) of this section, or if the certification required under subsection (3) of this section is**
34 **not obtained within the required time, then the facility property [*shall*] may not be exempt for any**
35 **year under this section. For any year for which the property has been granted exemption under this**
36 **section, the county assessor shall add the property to the assessment and tax roll as omitted prop-**
37 **erty in the manner provided under ORS 311.216 to 311.232.**

38 **“SECTION 2. (1) A city, county or other local taxing district with property tax authority**
39 **may elect not to participate in an exemption for a biofuel production facility or a verified fuel**
40 **additive production facility granted under ORS 307.701.**

41 **“(2) A taxing district may make the election by filing written notification of the election**
42 **with the county assessor of the county in which the taxing district is located before July 1**
43 **of the first tax year for which the election is to be effective.**

44 **“(3) An election made under this section shall be valid for all tax years following the year**
45 **for which the election is first made, until the election is revoked by the taxing district.**

1 “(4) A taxing district may revoke an election made under this section by filing written
2 notification of the revocation with the county assessor of the county in which the taxing
3 district is located before July 1 of the first tax year for which the revocation is to be effec-
4 tive.

5 “(5) The written notifications of election and revocation described in this section shall
6 contain the information and be in the form prescribed by the Department of Revenue.

7 “(6) An election or revocation made under this section applies to all biofuel production
8 facility property or verified fuel additive production facility property within the taxing dis-
9 trict:

10 “(a) For which an application has been filed under ORS 307.701; and

11 “(b) That qualifies for exemption under ORS 307.701.

12 “**SECTION 3.** The amendments to ORS 307.701 by section 1 of this 2005 Act apply to pro-
13 duction facilities for which an application for exemption under ORS 307.701 is first filed on
14 or after January 1, 2006, for tax years beginning on or after July 1, 2006.

15 “**SECTION 4.** Section 4, chapter 475, Oregon Laws 1993, is amended to read:

16 “**Sec. 4.** [(1) *An ad valorem property tax exemption provided by section 2 of this Act is first ap-
17 plicable to the tax year beginning July 1, 1994.*]

18 “[2) *Section 2 of this Act is repealed on July 1, 2008. The repeal applies to tax years beginning
19 on or after July 1, 2008. Notwithstanding that an ethanol production facility has not received five
20 years of exemption under section 2 of this Act, no exemption for the facility shall be granted under
21 section 2 of this Act for a tax year beginning on or after July 1, 2008.*] **An exemption for a pro-
22 duction facility may not be granted under ORS 307.701 for any production facility that has
23 not qualified for at least one year of exemption as of July 1, 2012.**

24 25 “POLLUTION CONTROL FACILITIES

26
27 “**SECTION 5.** ORS 468.155 is amended to read:

28 “468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, ‘pol-
29 lution control facility’ or ‘facility’ means any land, structure, building, installation, excavation, ma-
30 chinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an
31 existing structure, building, installation, excavation, machinery, equipment or device reasonably
32 used, erected, constructed or installed by any person if:

33 “(A) The principal purpose of such use, erection, construction or installation is to comply with
34 a requirement imposed by the Department of Environmental Quality, the federal Environmental
35 Protection Agency or regional air pollution authority to prevent, control or reduce air, water or
36 noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of
37 used oil; or

38 “(B) The sole purpose of such use, erection, construction or installation is to prevent, control
39 or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to
40 recycle or provide for the appropriate disposal of used oil.

41 “(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

42 “(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of
43 treatment works for industrial waste as defined in ORS 468B.005;

44 “(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution
45 or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

1 “(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise
2 emission sources as defined by rule of the Environmental Quality Commission;

3 “(D) The use of a material recovery process which obtains useful material from material that
4 would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS
5 466.005, or used oil as defined in ORS 459A.555; or

6 “(E) The treatment, substantial reduction or elimination of or redesign to treat, substantially
7 reduce or eliminate hazardous waste as defined in ORS 466.005.

8 “(2)(a) As used in ORS 468.155 to 468.190, ‘pollution control facility’ or ‘facility’ includes a
9 nonpoint source pollution control facility **that meets the requirements of subsection (1)(a) of**
10 **this section.**

11 “(b) As used in this subsection, ‘nonpoint source pollution control facility’ means a facility that
12 the Environmental Quality Commission has identified by rule as reducing or controlling significant
13 amounts of nonpoint source pollution.

14 “(3)(a) As used in ORS 468.155 to 468.190, ‘pollution control facility’ or ‘facility’ includes
15 **any of the following that meet the requirements of subsection (1)(a) of this section:**

16 “(A) A biofuel processing plant;

17 “(B) A biofuel production plant;

18 “(C) A farm storage facility that is used exclusively for storing crops used to produce
19 biofuel and that was not used for any other purpose prior to the date on which an application
20 for certification under ORS 468.165 is filed;

21 “(D) A biomass conversion plant that uses forest materials, thinnings, slash, brush,
22 waste or by-products from manufacturing activities to produce electric energy, direct appli-
23 cation heat, transportation fuel or a substitute for a petroleum-based product;

24 “(E) Equipment used in biofuel processing or biofuel production; or

25 “(F) Equipment used for growing crops that are harvested for biofuel purposes.

26 “(b) As used in this subsection, ‘biofuel’ means liquid or gaseous fuel produced from a
27 biological source, including but not limited to waste and residue from agriculture, forestry
28 or related industries or other industrial or municipal waste.

29 “[3] (4) As used in ORS 468.155 to 468.190, ‘pollution control facility’ or ‘facility’ does not in-
30 clude:

31 “(a) Air conditioners;

32 “(b) Septic tanks or other facilities for human waste;

33 “(c) Property installed, constructed or used for moving sewage to the collecting facilities of a
34 public or quasi-public sewerage system;

35 “(d) Any distinct portion of a pollution control facility that makes an insignificant contribution
36 to the principal or sole purpose of the facility including the following specific items:

37 “(A) Office buildings and furnishings;

38 “(B) Parking lots and road improvements;

39 “(C) Landscaping;

40 “(D) External lighting;

41 “(E) Company or related signs; and

42 “(F) Automobiles;

43 “(e) Replacement or reconstruction of all or a part of any facility for which a pollution control
44 facility certificate has previously been issued under ORS 468.170, except:

45 “(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement

1 cost of the original facility due to a requirement imposed by the department, the federal Environ-
2 mental Protection Agency or a regional air pollution authority, then the facility may be eligible for
3 tax credit certification up to an amount equal to the difference between the cost of the new facility
4 and the like-for-like replacement cost of the original facility; or

5 “(B) If a facility is replaced or reconstructed before the end of its useful life then the facility
6 may be eligible for the remainder of the tax credit certified to the original facility;

7 “(f) Asbestos abatement; or

8 “(g) Property installed, constructed or used for cleanup of emergency spills or unauthorized re-
9 leases, as defined by the commission.

10 “**SECTION 6.** ORS 468.165 is amended to read:

11 “468.165. (1) Any person may apply to the Environmental Quality Commission for certification
12 under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed
13 by the person in Oregon if:

14 “(a) The air or water pollution control facility was erected, constructed or installed on or after
15 January 1, 1967.

16 “(b) The noise pollution control facility was erected, constructed or installed on or after January
17 1, 1977.

18 “(c) The solid waste facility was under construction on or after January 1, 1973, the hazardous
19 waste or used oil facility was under construction on or after October 3, 1979, and if:

20 “(A) The facility’s principal or sole purpose conforms to the requirements of ORS 468.155 (1) and
21 (2);

22 “(B) The facility will utilize material that would otherwise be solid waste as defined in ORS
23 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by me-
24 chanical process or chemical process or through the production, processing including presegrega-
25 tion, or use of, materials which have useful chemical or physical properties and which may be
26 used for the same or other purposes, or materials which may be used in the same kind of application
27 as its prior use without change in identity;

28 “(C) The end product of the utilization is an item of real economic value;

29 “(D) The end product of the utilization, other than a usable source of power, is competitive with
30 an end product produced in another state; and

31 “(E) The Oregon law regulating solid waste imposes standards at least substantially equivalent
32 to the federal law.

33 “(d) The hazardous waste control facility was erected, constructed or installed on or after Jan-
34 uary 1, 1984, and if:

35 “(A) The facility’s principal or sole purpose conforms to the requirements of ORS 468.155 (1) and
36 (2); and

37 “(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as de-
38 fined in ORS 466.005.

39 “(e) **The biofuel production facility was erected, constructed or installed on or after**
40 **January 1, 2006, and the facility’s purpose conforms to the requirements of ORS 468.155 (1)(a)**
41 **and (3).**

42 “(2) The application shall be made in writing in a form prescribed by the Department of Envi-
43 ronmental Quality and shall contain information on the actual cost of the facility, a description of
44 the materials incorporated therein, all machinery and equipment made a part thereof, the existing
45 or proposed operational procedure thereof, and a statement of the purpose of prevention, control or

1 reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate
2 disposal of used oil served or to be served by the facility and the portion of the actual cost properly
3 allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazard-
4 ous waste or to recycling or appropriately disposing of used oil.

5 “(3) The Director of the Department of Environmental Quality may require any further infor-
6 mation the director considers necessary before a certificate is issued.

7 “(4) The application shall be accompanied by a fee established under subsection (5) of this sec-
8 tion. The fee may be refunded if the application for certification is rejected.

9 “(5) By rule and after hearing the commission may adopt a schedule of reasonable fees which
10 the department may require of applicants for certificates issued under ORS 468.167 and 468.170.
11 Before the adoption or revision of any such fees the commission shall estimate the total cost of the
12 program to the department. The fees shall be based on the anticipated cost of filing, investigating,
13 granting and rejecting the applications and shall be designed not to exceed the total cost estimated
14 by the commission. Any excess fees shall be held by the department and shall be used by the com-
15 mission to reduce any future fee increases. The fee may vary according to the size and complexity
16 of the facility. The fees may not be considered by the commission as part of the cost of the facility
17 to be certified.

18 “(6) The application shall be submitted after construction of the facility is substantially com-
19 pleted and the facility is placed in service and within one year after construction of the facility is
20 substantially completed. Failure to file a timely application shall make the facility ineligible for tax
21 credit certification. An application may not be considered filed until it is complete and ready for
22 processing. The commission may grant an extension of time to file an application for circumstances
23 beyond the control of the applicant that would make a timely filing unreasonable. However, the
24 period for filing an application may not be extended to a date beyond December 31, 2008.

25 “**NOTE:** Section 7 was deleted by amendment. Subsequent sections were not renumbered.

26 “**SECTION 8.** ORS 468.173 is amended to read:

27 “468.173. For purposes of ORS 315.304, the applicable percentage of the certified cost of a fa-
28 cility shall be one of the following:

29 “(1) If the facility is certified under ORS 468.155 to 468.190 (1999 Edition) or if construction or
30 installation of the facility is commenced prior to January 1, 2001, and completed prior to January
31 1, 2004, 50 percent.

32 “(2) Except as provided in subsection (1) or (3) of this section, if the facility is certified pursuant
33 to application for certification filed on or after January 1, 2002, and:

34 “(a) Construction or installation of the facility is commenced on or after January 1, 2001, and
35 on or before December 31, 2003, 25 percent; or

36 “(b) Construction or installation of the facility is commenced after December 31, 2003, and on
37 or before December 31, 2005, 15 percent.

38 “(3) If certified pursuant to application for certification filed on or after January 1, 2002, 35
39 percent if:

40 “(a) The applicant is certified under International Organization for Standardization standard ISO
41 14001;

42 “(b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;

43 “(c) The facility is a nonpoint source or is regulated as a confined animal feeding operation
44 under ORS 468B.200 to 468B.230;

45 “(d) The facility is used for material recovery or recycling, as those terms are defined in ORS

1 459.005;

2 “(e) The facility is used in an agricultural or forest products operation and is used for energy
3 recovery, as defined in ORS 459.005;

4 “(f) The certified cost of the facility does not exceed \$200,000;

5 “(g) Construction or installation of the facility is entirely voluntary and no portion of it is re-
6 quired in order to comply with a federal law administered by the United States Environmental
7 Protection Agency, a state law administered by the Department of Environmental Quality or a law
8 administered by a regional air pollution authority;

9 “(h) The facility is, at the time of certification, located within an enterprise zone established
10 under ORS 285C.050 to 285C.250 or within an area that has been designated a distressed area, as
11 defined in ORS 285A.010, by the Economic and Community Development Department; [or]

12 “(i) **The facility is a facility described in ORS 468.155 (3); or**

13 “[i] (j) The applicant demonstrates to the Department of Environmental Quality that the ap-
14 plicant uses an environmental management system at the facility. In order for the department to
15 determine that the applicant uses an environmental management system at the facility:

16 “(A) The applicant must have the environmental management system used at the facility re-
17 viewed by an independent third party familiar with environmental management systems and submit
18 a report to the department stating that the provisions of this paragraph have been met. The report
19 shall be accompanied by supporting materials that document compliance with the provisions of this
20 paragraph. The report shall include certification from a registered or certified environmental man-
21 agement auditor employed by, or under contract with, the independent third party that reviewed the
22 environmental management system; or

23 “(B) The department shall contract with an independent third party familiar with environmental
24 management systems to review the environmental management system employed at the facility. The
25 third party shall review the environmental management system, and, if the third party determines
26 that the environmental management system meets the provisions of this paragraph, a registered or
27 certified environmental management system auditor employed by, or contracted with, the third party
28 shall certify that determination to the department. The department shall recover from the applicant
29 the costs incurred by the department as prescribed in ORS 468.073. An applicant shall be liable for
30 the costs of the department under this subparagraph without regard to whether the department
31 certifies the facility as a pollution control facility. The department may not certify a facility to
32 which this subparagraph applies until the department has received full payment from the applicant.

33 “**NOTE:** Section 9 was deleted by amendment. Subsequent sections were not renumbered.

34 “**SECTION 10. The amendments to ORS 468.155, 468.165 and 468.173 by sections 5, 6 and**
35 **8 of this 2005 Act apply to applications for pollution control facility certification issued on**
36 **or after January 1, 2006.**

37
38 “**PRODUCERS OF BIOFUEL RAW MATERIALS**

39
40 “**SECTION 11. Section 12 of this 2005 Act is added to and made a part of ORS chapter 315.**

41 “**SECTION 12. (1) As used in this section:**

42 “(a) ‘**Agricultural producer**’ means a person engaged in farming or livestock operations
43 that produce the plant or animal matter that is used by a biodiesel or ethanol producer to
44 produce biodiesel or ethanol, or a person engaged in farming or forestry operations that
45 produce the green biomass used to produce electric energy, direct application heat, trans-

1 portation fuel or a substitute for a petroleum-based product.

2 “(b) ‘Biodiesel’ means the monoalkyl esters of long-chain fatty acids derived from plant
3 or animal matter that meet the registration requirements for fuels and fuel additives es-
4 tablished under 42 U.S.C. 7545, as amended and in effect on the effective date of this 2005
5 Act, and regulations adopted thereunder.

6 “(c) ‘Biomass’ means any organic matter that is available on a renewable or recurring
7 basis, including agricultural crops and trees, wood and wood wastes and residues, plants
8 (including aquatic plants), grasses, residues, fibers, animal wastes, municipal wastes and
9 other waste materials.

10 “(d) ‘Ethanol’ has the meaning given that term in ORS 646.905.

11 “(2) An agricultural producer shall be allowed a credit against the taxes that would oth-
12 erwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter
13 317 or 318, for the production in this state of plant or animal matter that is used to produce
14 biodiesel or ethanol in this state.

15 “(3) The amount of the credit shall equal:

16 “(a) Five cents per gallon of biodiesel produced in this state from plant or animal matter
17 produced in this state;

18 “(b) Four cents per gallon of ethanol produced in this state from plant or animal matter
19 produced in this state; and

20 “(c) Ten dollars per green ton of forest or rangeland vegetative biomass that is delivered
21 to a purchaser to produce, or is used to produce, electric energy, direct application heat,
22 transportation fuel or a substitute for a petroleum-based product.

23 “(4)(a) Each biodiesel producer or ethanol producer shall report to an agricultural pro-
24 ducer the quantity, in gallons, of biodiesel or ethanol produced from plant or animal matter
25 sold to the producer by the agricultural producer. The report shall be made in writing within
26 30 days of the date of sale of the plant or animal matter to the biodiesel or ethanol producer.

27 “(b) Each producer that uses biomass to produce electric energy, direct application heat,
28 transportation fuel or a substitute for a petroleum-based product shall maintain records of
29 the quantity of biomass obtained and the identity of the agricultural producer from whom
30 the biomass was obtained. The producer shall maintain the records for the length of time
31 prescribed by the Department of Revenue.

32 “(5) Except as provided in subsection (7) of this section, the amount of the credit may
33 not exceed the tax liability of the taxpayer.

34 “(6) The credit shall be claimed on a form prescribed by the department that contains
35 the information required by the department.

36 “(7) Any tax credit otherwise allowable under this section that is not used by the tax-
37 payer in a particular tax year may be carried forward and offset against the taxpayer’s tax
38 liability for the next succeeding tax year. Any credit remaining unused in the next succeed-
39 ing tax year may be carried forward and used in the second succeeding tax year, and likewise
40 any credit not used in that second succeeding tax year may be carried forward and used in
41 the third succeeding tax year, and any credit not used in that third succeeding tax year may
42 be carried forward and used in the fourth succeeding tax year, but may not be carried for-
43 ward for any tax year thereafter.

44 “(8) In the case of a credit allowed under this section:

45 “(a) A nonresident shall be allowed the credit under this section in the proportion pro-

1 **vided in ORS 316.117.**

2 **“(b) If a change in the status of the taxpayer from resident to nonresident or from non-**
3 **resident to resident occurs, the credit allowed by this section shall be determined in a man-**
4 **ner consistent with ORS 316.117.**

5 **“(c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,**
6 **or if the department terminates the taxpayer’s taxable year under ORS 314.440, the credit**
7 **allowed under this section shall be prorated or computed in a manner consistent with ORS**
8 **314.085.**

9 **“NOTE:** Section 13 was deleted by amendment. Subsequent sections were not renumbered.

10 **“SECTION 14.** ORS 314.752 is amended to read:

11 **“314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to**
12 **a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation.**
13 **The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or**
14 **are allowable to the shareholders of the S corporation.**

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

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

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

27 **“(5) As used in this section, ‘business tax credit’ means a tax credit granted to personal income**
28 **taxpayers to encourage certain investment, to create employment, economic opportunity or incentive**
29 **or for charitable, educational, scientific, literary or public purposes that is listed under this sub-**
30 **section as a business tax credit or is designated as a business tax credit by law or by the Depart-**
31 **ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309**
32 **(tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS**
33 **315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS**
34 **315.156 (crop gleanings), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care**
35 **assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS**
36 **315.234 (child development program contributions), ORS 315.254 (youth apprenticeship sponsorship),**
37 **ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS**
38 **469.207 (energy conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.507**
39 **(electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone**
40 **marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative**
41 **fuel vehicle) and section 12 of this 2005 Act (production for biodiesel and ethanol, biomass**
42 **usage).**

43 **“SECTION 15.** ORS 318.031 is amended to read:

44 **“318.031. It being the intention of the Legislative Assembly that this chapter and the Corpo-**
45 **ration Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made**

1 for the difference in imposition of the taxes and the operative date of this chapter), ORS 305.140 and
2 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this
3 chapter: ORS 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.234, 315.254, 315.304, 315.504,
4 315.511 and 315.604 and **section 12 of this 2005 Act** (all only to the extent applicable [for] to a
5 corporation) and ORS 285C.309, 315.507, 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038,
6 317.080, 317.124 to 317.131, 317.152 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to
7 317.485, 317.488, 317.510 to 317.635 and 317.705 to 317.725.

8 **“SECTION 16. Section 12 of this 2005 Act and the amendments to ORS 314.752 and 318.031**
9 **by sections 14 and 15 of this 2005 Act apply to tax years beginning on or after January 1, 2006.**

10
11 **“CLEAN EMISSION SCHOOL BUSES**

12
13 **“SECTION 17. (1) There is created within the State Treasury, separate and distinct from**
14 **the General Fund, the Clean School Bus Grant Fund. Interest earned by the Clean School**
15 **Bus Grant Fund shall be credited to the fund. Moneys in the fund are continuously appro-**
16 **propriated to the Department of Education for the purpose of making grants to school districts**
17 **under section 18 of this 2005 Act.**

18 **“(2) Any federal funds or private donations received for the purpose of making the grants**
19 **described in section 18 of this 2005 Act shall be deposited in the fund.**

20 **“SECTION 18. (1) The Department of Education shall award annual grants to school dis-**
21 **tricts from the Clean School Bus Grant Fund for any of the following purposes and with the**
22 **following limitations:**

23 **“(a) To assist school districts in replacing diesel fueled school buses manufactured before**
24 **1994. A grant made under this paragraph may not exceed \$10,000 per replaced bus.**

25 **“(b) To retrofit existing school buses manufactured after 1993 with diesel exhaust after-**
26 **treatment devices that have been verified effective in meeting industry standards by inde-**
27 **pendent test laboratories. As a condition to receipt of grant moneys under this paragraph,**
28 **a school district must prioritize the installation of these devices in accordance with bus age,**
29 **so that older buses are retrofitted before newer buses are retrofitted.**

30 **“(c) To help school districts meet federal grant matching requirements to perform**
31 **retrofits of school buses. A grant made under this paragraph may not exceed \$10,000 per**
32 **school district per year.**

33 **“(d) To provide funding to school districts for pilot projects utilizing biodiesel fuel in**
34 **school bus applications.**

35 **“(2) For purposes of the State School Fund distribution, the State Board of Education**
36 **shall consider expenditures by a school district made for the purposes described in subsection**
37 **(1) of this section to be approved transportation costs.**

38 **“(3) The State Board of Education may adopt any rules necessary to administer this**
39 **section.**

40 **“SECTION 19. Prior to February 1, 2009, the Department of Education shall report to the**
41 **Seventy-fifth Legislative Assembly on:**

42 **“(1) The extent to which school buses operated in this state and manufactured before**
43 **2004 have been retrofitted with diesel exhaust after-treatment devices or retired; and**

44 **“(2) The results of any pilot projects funded under section 18 of this 2005 Act utilizing**
45 **biodiesel fuel in school bus applications.**

1 **“SECTION 20.** Sections 17 to 19 of this 2005 Act are repealed on June 30, 2014.

2 **“SECTION 21.** On July 1, 2014, the Department of Education shall transfer all moneys in
3 the Clean School Bus Grant Fund established in section 17 of this 2005 Act to the Department
4 of Agriculture Service Fund established in ORS 561.144.

5
6 **“BIOFUEL OR EMISSIONS RESEARCH AND DEVELOPMENT**

7
8 **“SECTION 22.** Section 23 of this 2005 Act is added to and made a part of ORS chapter 315.

9 **“SECTION 23.** (1) As used in this section, ‘qualifying equipment’ means:

10 **“(a)** Any system, mechanism or series of mechanisms that is used in the production of
11 ethanol or biodiesel;

12 **“(b)** Any ultra-low sulfur diesel and particulate trap; or

13 **“(c)** Any equipment designed to be used on buses with a seating capacity of at least 16
14 passengers and designed to reduce bus tailpipe emissions.

15 **“(2)** A taxpayer shall be allowed a credit against the taxes that are otherwise due under
16 ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for costs
17 incurred in conducting research and development activities for developing qualifying equip-
18 ment that has commercial application.

19 **“(3)(a)** In order to claim a credit under this section, the taxpayer shall first obtain cer-
20 tification from the Department of Environmental Quality under this subsection. The tax-
21 payer shall apply for certification on a form prescribed by the Department of Environmental
22 Quality, setting forth the taxpayer’s estimate of costs incurred or to be incurred during the
23 tax year for which the credit is to be claimed and that are described in subsection (2) of this
24 section, and any other information required by the Department of Environmental Quality.

25 **“(b)** The Department of Environmental Quality shall issue a written certification to the
26 taxpayer, setting forth the costs being certified as eligible for a credit under this section.
27 The Department of Environmental Quality may not certify a total for all taxpayers of more
28 than \$2 million in costs as eligible for credit under this section. The Department of Envi-
29 ronmental Quality shall notify the Department of Revenue of the taxpayers and amounts
30 certified.

31 **“(4)** The amount of the credit shall equal five percent of the amount certified under
32 subsection (3) of this section or the amount actually paid or incurred by the taxpayer during
33 the tax year for activities described in subsection (2) of this section, whichever is less.

34 **“(5)** The amount of credit allowed in any one tax year may not exceed the tax liability
35 of the taxpayer.

36 **“(6)** Any tax credit otherwise allowable under this section that is not used by the tax-
37 payer in a particular year may be carried forward and offset against the taxpayer’s tax li-
38 ability for the next succeeding tax year. Any credit remaining unused in the next succeeding
39 tax year may be carried forward and used in the second succeeding tax year, and likewise
40 any credit not used in that second succeeding tax year may be carried forward and used in
41 the third succeeding tax year, and any credit not used in that third succeeding tax year may
42 be carried forward and used in the fourth succeeding tax year, and any credit not used in
43 that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax
44 year, but may not be carried forward for any tax year thereafter.

45 **“(7)** In the case of a credit allowed under this section for purposes of ORS chapter 316:

1 “(a) A nonresident shall be allowed the credit under this section in the proportion pro-
2 vided in ORS 316.117.

3 “(b) If a change in the status of a taxpayer from resident to nonresident or from non-
4 resident to resident occurs, the credit allowed by this section shall be determined in a man-
5 ner consistent with ORS 316.117.

6 “(c) A husband and wife who file separate returns for a taxable year may each claim a
7 share of the tax credit that would have been allowed on a joint return in proportion to the
8 contribution of each.

9 “(d) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
10 if the Department of Revenue terminates the taxpayer’s taxable year under ORS 314.440, the
11 credit allowed under this section shall be prorated or computed in a manner consistent with
12 ORS 314.085.

13 “(8) A taxpayer may not be allowed a credit under ORS 317.152 or 317.154 for the same
14 research and development costs that serve as the basis for the credit allowed under this
15 section.

16 “SECTION 24. Section 23 of this 2005 Act applies to tax years beginning on or after Jan-
17 uary 1, 2006, and before January 1, 2012.

18 “SECTION 25. ORS 314.752, as amended by section 14 of this 2005 Act, is amended to read:

19 “314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to
20 a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation.
21 The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or
22 are allowable to the shareholders of the S corporation.

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

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

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

35 “(5) As used in this section, ‘business tax credit’ means a tax credit granted to personal income
36 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
37 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
38 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
39 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
40 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
41 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
42 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
43 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
44 315.234 (child development program contributions), ORS 315.254 (youth apprenticeship sponsorship),
45 ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS

1 469.207 (energy conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.507
2 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
3 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative
4 fuel vehicle) and section 12 of this 2005 Act (production for biodiesel and ethanol, biomass usage)
5 **and section 23 of this 2005 Act (qualifying equipment research and development).**

6 **“SECTION 26.** ORS 318.031, as amended by section 15 of this 2005 Act, is amended to read:

7 “318.031. It being the intention of the Legislative Assembly that this chapter and the Corpo-
8 ration Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made
9 for the difference in imposition of the taxes and the operative date of this chapter), ORS 305.140 and
10 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this
11 chapter: ORS 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.234, 315.254, 315.304, 315.504,
12 315.511 and 315.604 and section 12 of this 2005 Act (all only to the extent applicable to a corpo-
13 ration) and ORS 285C.309, 315.507, 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038,
14 317.080, 317.124 to 317.131, 317.152 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to
15 317.485, 317.488, 317.510 to 317.635 and 317.705 to 317.725 **and section 23 of this 2005 Act.**

16
17 **“GASOLINE ADDITIVE RESTRICTIONS**

18
19 **“SECTION 27.** ORS 646.910 is amended to read:

20 “646.910. [No] (1) A wholesale or retail dealer may **not** sell or offer to sell any gasoline blended
21 or mixed with:

22 **“(a) [Alcohol] Ethanol** unless the blend or mixture meets the specifications or registration re-
23 quirements established by the United States Environmental Protection Agency pursuant to section
24 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79[.];

25 **“(b) Methyl tertiary butyl ether in concentrations that exceed five-tenths of one percent**
26 **by volume; or**

27 **“(c) A total of all of the following oxygenates that exceeds one-tenth of one percent, by**
28 **weight, of:**

29 **“(A) Diisopropylether.**

30 **“(B) Ethyl tert-butylether.**

31 **“(C) Iso-butanol.**

32 **“(D) Iso-propanol.**

33 **“(E) Methanol.**

34 **“(F) N-butanol.**

35 **“(G) N-propanol.**

36 **“(H) Sec-butanol.**

37 **“(I) Tert-amyl methyl ether.**

38 **“(J) Tert-butanol.**

39 **“(K) Tert-pentanol or tert-amyl alcohol.**

40 **“(2) Nothing in this section shall prohibit transshipment through this state, or storage**
41 **incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in con-**
42 **centrations that exceed five-tenths of one percent by volume or any of the oxygenates listed**
43 **in subsection (1)(c) of this section, provided:**

44 **“(a) The gasoline is used or disposed of outside this state; and**

45 **“(b) The gasoline is segregated from gasoline intended for use within this state.**

1 “**SECTION 28.** The amendments to ORS 646.910 by section 27 of this 2005 Act become
2 operative November 1, 2007.

3
4 “**ENERGY FACILITY SITING REQUIREMENTS**

5
6 “**SECTION 29.** ORS 469.320 is amended to read:

7 “469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be
8 constructed or expanded unless a site certificate has been issued for the site thereof in the manner
9 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be
10 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,
11 469.590 to 469.619, 469.930 and 469.992.

12 “(2) [No] A site certificate [*shall be*] **is not** required for:

13 “(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had
14 operable electric generating equipment for a modification that uses the same fuel type and increases
15 electric generating capacity, if:

16 “(A) The site is not enlarged; and

17 “(B) The ability of the energy facility to use fuel for electricity production under peak steady
18 state operating conditions is not more than 200 million Btu per hour greater than it was on August
19 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy
20 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

21 “(b) Construction or expansion of any interstate natural gas pipeline or associated underground
22 natural gas storage facility authorized by and subject to the continuing regulation of the Federal
23 Energy Regulatory Commission or successor agency.

24 “(c) An energy facility, except coal and nuclear power plants, if the energy facility:

25 “(A) Sequentially produces electrical energy and useful thermal energy from the same fuel
26 source; and

27 “(B) Under normal operating conditions, has a useful thermal energy output of no less than 33
28 percent of the total energy output or the fuel chargeable to power heat rate value is not greater
29 than 6,000 Btu per kilowatt hour.

30 “(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site
31 certificate has been issued by the State of Oregon, of radioactive waste from the plant.

32 “(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a sec-
33 ondary fuel used on site for the production of heat or electricity, if the output of the primary fuel
34 is less than six billion Btu of heat a day.

35 “(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

36 “(A) **Exclusively** uses [*biomass exclusively from*] grain, whey [*or*], potatoes, **oil seeds, waste**
37 **vegetable oil or cellulosic biomass** as the source of material for conversion to a liquid fuel, **the**
38 **production of electric energy, the generation of heat, the creation of transportation fuels or**
39 **the creation of substitutes for petroleum-based products;**

40 “(B) Has received local land use approval under the applicable acknowledged comprehensive
41 plan and land use regulations of the affected local government and the facility complies with any
42 statewide planning goals or rules of the Land Conservation and Development Commission that are
43 directly applicable to the facility;

44 “(C) Requires no new electric transmission lines or gas or petroleum product pipelines that
45 would require a site certificate under subsection (1) of this section; and

1 “(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling
2 facility located within one mile of the facility or is transported from the facility by rail or barge.

3 “(g) A temporary energy generating facility, if the facility complies with all applicable carbon
4 dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and
5 the applicant agrees to provide funds to a qualified organization in an amount determined by the
6 council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS
7 469.501. To support the council’s finding that the facility complies with all applicable carbon dioxide
8 emissions standards, the applicant shall provide proof acceptable to the council that shows the
9 contracted nominal electric generating capacity of the facility and the contracted heat rate in
10 higher heating value. The applicant shall pay the funds to the qualified organization before com-
11 mencing construction on the temporary facility. The amount of the carbon dioxide offset funds for
12 a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.

13 “(h) A standby generation facility, if the facility complies with all of the following:

14 “(A) The facility has received local land use approval under the applicable acknowledged com-
15 prehensive plan and land use regulations of the affected local government and the facility complies
16 with all statewide planning goals and applicable rules of the Land Conservation and Development
17 Commission;

18 “(B) The standby generators have been approved by the Department of Environmental Quality
19 as having complied with all applicable air and water quality requirements. For an applicant that
20 proposes to provide the physical facilities for the installation of standby generators, the requirement
21 of this subparagraph may be met by agreeing to require such a term in the lease contract for the
22 facility; and

23 “(C) The standby generators are electrically incapable of being interconnected to the trans-
24 mission grid. For an applicant that proposes to provide the physical facilities for the installation of
25 standby generators, the requirement of this subparagraph may be met by agreeing to require such
26 a term in the lease contract for the facility.

27 “(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable
28 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,
29 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in
30 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power
31 heat rate value for the best available, commercially viable thermal power plant technology at the
32 time of the revision.

33 “(4) Any person who proposes to construct or enlarge an energy facility and who claims an ex-
34 emption under subsection (2)(a), (c), (f) or (h) of this section from the requirement to obtain a site
35 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-
36 cility qualifies for the claimed exemption. The council shall make its determination within 60 days
37 after the request for exemption is filed. An appeal from the council’s determination on a request for
38 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court
39 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the
40 Supreme Court shall be the record established in the council proceeding on the exemption.

41 “(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-
42 quired for:

43 “(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if
44 such related or supporting facilities are addressed in and are subject to a site certificate for another
45 energy facility;

1 “(b) Expansion within the site or within the energy generation area of a facility for which a site
2 certificate has been issued, if the existing site certificate has been amended to authorize expansion;
3 or

4 “(c) Expansion, either within the site or outside the site, of an existing council certified surface
5 facility related to an underground gas storage reservoir, if the existing site certificate is amended
6 to authorize expansion.

7 “(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of
8 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this
9 section, the electric generating facility shall cease to operate one year after the substantial loss of
10 the steam host unless an application for a site certificate has been filed in accordance with the
11 provisions of ORS 469.300 to 469.563.

12 “(7)(a) Any person who proposes to construct or enlarge a temporary energy generating facility
13 and who claims an exemption under subsection (2)(g) of this section from the requirement to obtain
14 a site certificate shall request the Energy Facility Siting Council to determine whether the proposed
15 facility qualifies for the claimed exemption. The council shall make its determination within 30 days
16 of receiving all of the information necessary to support the determination. Such exemption shall
17 provide that the applicant may not begin construction of the temporary energy generating facility
18 until the facility has received the required local land use approval under the applicable acknowl-
19 edged comprehensive plan and land use regulations of the affected local government and the facility
20 complies with all statewide planning goals and applicable rules of the Land Conservation and De-
21 velopment Commission. The exemption shall also require that the temporary energy generating fa-
22 cility cease operation no later than 24 months after the date of first commercial operation or
23 January 2, 2006, whichever is earlier. An appeal from the council’s determination on a request for
24 exemption shall be made under ORS 469.403, except that the order may not be stayed and review
25 by the Supreme Court is limited to the record made by the council.

26 “(b) The council may not grant an exemption for a temporary energy generating facility pursu-
27 ant to subsection (2)(g) of this section after July 1, 2003.

28 “(c) Within 30 days of ceasing operation of a temporary energy generating facility, the applicant
29 shall report the total actual fuel used during commercial operation of the temporary energy gener-
30 ating facility. Based on the total actual fuel used during commercial operation, the council shall
31 determine whether additional offset funds, as defined in ORS 469.503, and contracting and selection
32 funds are owed to the qualified organization. If the council determines that additional offset funds
33 are owed to the qualified organization, the applicant shall pay such amounts within 60 days of the
34 council’s order determining the amount of additional funds.

35 “(d) Notwithstanding the provisions of paragraph (a) of this subsection that require a temporary
36 energy generating facility granted an exemption pursuant to subsection (2)(g) of this section to cease
37 operation within 24 months of first commercial operation, if the owner of a temporary energy gen-
38 erating facility submits an application for a site certificate prior to the last day of the period con-
39 stituting the exemption or January 1, 2005, whichever date is earlier, the council shall extend the
40 period constituting the exemption and shall allow the temporary energy generating facility to con-
41 tinue operation until the council concludes its review of the site certificate application. The council
42 may specify a date by which the application must be completed. If the application is not completed
43 by the date specified by the council, or is rejected by the council, the energy facility shall cease
44 operation on the specified date. An energy facility operating pursuant to this paragraph shall cease
45 operation if the applicant for the site certificate suspends the application.

1 “(8) As used in this section:

2 “(a) ‘Cellulosic biomass’ means forest or rangeland residue or any crop grown specifically
3 for the purpose of producing cellulosic feedstock that contains lignocellulose or
4 hemicellulose, or any by-product of agricultural commodity production.

5 “[a] (b) ‘Standby generation facility’ means an electric power generating facility, including
6 standby generators and the physical structures necessary to install and connect standby generators,
7 that provides temporary electric power in the event of a power outage and that is electrically in-
8 capable of being interconnected with the transmission grid.

9 “[b] (c) ‘Temporary energy generating facility’ means an electric power generating facility,
10 including a thermal power plant and a combustion turbine power plant, but not including a
11 hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that
12 is operated for no more than 24 months from the date of initial commercial operation.

13 “[c] (d) ‘Total energy output’ means the sum of useful thermal energy output and useful elec-
14 trical energy output.

15 “[d] (e) ‘Useful thermal energy’ means the verifiable thermal energy used in any viable indus-
16 trial or commercial process, heating or cooling application.

17 “(9) Notwithstanding the definition of ‘energy facility’ in ORS 469.300 (11)(a)(J), an electric
18 power generating plant with an average electric generating capacity of less than 35 megawatts
19 produced from wind energy at a single energy facility or within a single energy generation area may
20 elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to
21 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be
22 final upon submission of an application for a site certificate.

23 “**SECTION 30.** ORS 469.320, as amended by section 8, chapter 683, Oregon Laws 2001, and
24 section 77, chapter 186, Oregon Laws 2003, is amended to read:

25 “469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be
26 constructed or expanded unless a site certificate has been issued for the site thereof in the manner
27 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be
28 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,
29 469.590 to 469.619, 469.930 and 469.992.

30 “(2) [No] A site certificate [shall be] **is not** required for:

31 “(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had
32 operable electric generating equipment for a modification that uses the same fuel type and increases
33 electric generating capacity, if:

34 “(A) The site is not enlarged; and

35 “(B) The ability of the energy facility to use fuel for electricity production under peak steady
36 state operating conditions is not more than 200 million Btu per hour greater than it was on August
37 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy
38 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

39 “(b) Construction or expansion of any interstate natural gas pipeline or associated underground
40 natural gas storage facility authorized by and subject to the continuing regulation of the Federal
41 Energy Regulatory Commission or successor agency.

42 “(c) An energy facility, except coal and nuclear power plants, if the energy facility:

43 “(A) Sequentially produces electrical energy and useful thermal energy from the same fuel
44 source; and

45 “(B) Under normal operating conditions, has a useful thermal energy output of no less than 33

1 percent of the total energy output or the fuel chargeable to power heat rate value is not greater
2 than 6,000 Btu per kilowatt hour.

3 “(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site
4 certificate has been issued by the State of Oregon, of radioactive waste from the plant.

5 “(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a sec-
6 ondary fuel used on site for the production of heat or electricity, if the output of the primary fuel
7 is less than six billion Btu of heat a day.

8 “(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

9 “(A) **Exclusively** uses [*biomass exclusively from*] grain, whey [*or*], potatoes, **oil seeds, waste**
10 **vegetable oil or cellulosic biomass** as the source of material for conversion to a liquid fuel, **the**
11 **production of electric energy, the generation of heat, the creation of transportation fuels or**
12 **the creation of substitutes for petroleum-based products;**

13 “(B) Has received local land use approval under the applicable acknowledged comprehensive
14 plan and land use regulations of the affected local government and the facility complies with any
15 statewide planning goals or rules of the Land Conservation and Development Commission that are
16 directly applicable to the facility;

17 “(C) Requires no new electric transmission lines or gas or petroleum product pipelines that
18 would require a site certificate under subsection (1) of this section; and

19 “(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling
20 facility located within one mile of the facility or is transported from the facility by rail or barge.

21 “(g) A standby generation facility, if the facility complies with all of the following:

22 “(A) The facility has received local land use approval under the applicable acknowledged com-
23 prehensive plan and land use regulations of the affected local government and the facility complies
24 with all statewide planning goals and applicable rules of the Land Conservation and Development
25 Commission;

26 “(B) The standby generators have been approved by the Department of Environmental Quality
27 as having complied with all applicable air and water quality requirements. For an applicant that
28 proposes to provide the physical facilities for the installation of standby generators, the requirement
29 of this subparagraph may be met by agreeing to require such a term in the lease contract for the
30 facility; and

31 “(C) The standby generators are electrically incapable of being interconnected to the trans-
32 mission grid. For an applicant that proposes to provide the physical facilities for the installation of
33 standby generators, the requirement of this subparagraph may be met by agreeing to require such
34 a term in the lease contract for the facility.

35 “(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable
36 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,
37 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in
38 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power
39 heat rate value for the best available, commercially viable thermal power plant technology at the
40 time of the revision.

41 “(4) Any person who proposes to construct or enlarge an energy facility and who claims an ex-
42 emption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site
43 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-
44 cility qualifies for the claimed exemption. The council shall make its determination within 60 days
45 after the request for exemption is filed. An appeal from the council’s determination on a request for

1 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court
2 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the
3 Supreme Court shall be the record established in the council proceeding on the exemption.

4 “(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-
5 quired for:

6 “(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if
7 such related or supporting facilities are addressed in and are subject to a site certificate for another
8 energy facility;

9 “(b) Expansion within the site or within the energy generation area of a facility for which a site
10 certificate has been issued, if the existing site certificate has been amended to authorize expansion;
11 or

12 “(c) Expansion, either within the site or outside the site, of an existing council certified surface
13 facility related to an underground gas storage reservoir, if the existing site certificate is amended
14 to authorize expansion.

15 “(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of
16 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this
17 section, the electric generating facility shall cease to operate one year after the substantial loss of
18 the steam host unless an application for a site certificate has been filed in accordance with the
19 provisions of ORS 469.300 to 469.563.

20 “(7) As used in this section:

21 “(a) **‘Cellulosic biomass’ means forest or rangeland residue or any crop grown specifically**
22 **for the purpose of producing cellulosic feedstock that contains lignocellulose or**
23 **hemicellulose, or any by-product of agricultural commodity production.**

24 “[a] (b) ‘Standby generation facility’ means an electric power generating facility, including
25 standby generators and the physical structures necessary to install and connect standby generators,
26 that provides temporary electric power in the event of a power outage and that is electrically in-
27 capable of being interconnected with the transmission grid.

28 “[b] (c) ‘Total energy output’ means the sum of useful thermal energy output and useful elec-
29 trical energy output.

30 “[c] (d) ‘Useful thermal energy’ means the verifiable thermal energy used in any viable indus-
31 trial or commercial process, heating or cooling application.

32 “(8) Notwithstanding the definition of ‘energy facility’ in ORS 469.300 (11)(a)(J), an electric
33 power generating plant with an average electric generating capacity of less than 35 megawatts
34 produced from wind energy at a single energy facility or within a single energy generation area may
35 elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to
36 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be
37 final upon submission of an application for a site certificate.

38 **“SECTION 31. The amendments to ORS 469.320 by sections 29 and 30 of this 2005 Act do**
39 **not apply to applications for site certificates filed before the effective date of this 2005 Act.**

40
41 **“STATE GOVERNMENT USE OF BIODIESEL**

42
43 **“SECTION 32.** ORS 283.305 is amended to read:

44 “283.305. As used in ORS 283.305 to 283.350:

45 “(1) ‘Authorized driver’ means any of the following who has a valid driver license and an ac-

1 ceptable driving record:

2 “(a) A salaried state employee, including an agent of the state;

3 “(b) A volunteer, appointed in writing, whose written description of duties includes driving mo-
4 tor vehicles;

5 “(c) An agency client required to drive motor vehicles as part of a rehabilitation or treatment
6 program authorized by law;

7 “(d) Any personnel of any unit of government whose use of motor vehicles is permitted by an
8 authorized intergovernmental agreement;

9 “(e) Any student enrolled at any state institution of higher education and whose use of motor
10 vehicles meets the requirements of ORS 283.310; and

11 “(f) An inmate of a correctional institution with specific Department of Corrections approval
12 who is accompanied by a supervising correctional institution employee or who is performing a spe-
13 cific work assignment driving a special purpose vehicle required for that assignment and within the
14 visual range of a supervising correctional institution employee who is at the work assignment site
15 or who is part of the transport caravan.

16 “(2) ‘Alternative fuel’ means **biodiesel**, natural gas, liquified petroleum gas, methanol, ethanol,
17 any fuel mixture containing at least 85 percent methanol or ethanol and electricity.

18 “(3) ‘Motor vehicles’ includes state-owned, leased or otherwise controlled motor vehicles and the
19 supplies, parts and equipment for the operation, maintenance or repair of such motor vehicles.

20 “(4) ‘Official state business’ means activity conducted by a state agency that advances the lawful
21 policies of the agency as specified by the Oregon Department of Administrative Services by rule.

22 “(5) ‘Standard passenger vehicle’ means a motor vehicle that is commonly known as a sedan or
23 a station wagon and that is not equipped with special or unusual equipment.

24 “(6) ‘State agency’ or ‘agency’ includes the Legislative Assembly, at its option, or any of its
25 statutory, standing, special or interim committees, at the option of such committee.

26 “**SECTION 33.** ORS 283.327 is amended to read:

27 “283.327. (1) To the maximum extent economically possible, state-owned motor vehicles,
28 **whether the motor vehicles are for on-road, off-road or construction applications**, shall use
29 alternative fuel for operation.

30 “(2) After July 1, 1994, state agencies shall acquire only motor vehicles capable of using alter-
31 native fuel, except that acquired vehicles assigned to areas unable economically to dispense alter-
32 native fuel need not be so configured.

33 “(3) Each agency owning motor vehicles shall comply with all safety standards established by
34 the United States Department of Transportation in the conversion, operation and maintenance of
35 vehicles using alternative fuel.

36 “**SECTION 34.** ORS 319.530 is amended to read:

37 “319.530. (1) To compensate this state partially for the use of its highways, an excise tax
38 [*hereby*] is imposed at the rate of 24 cents per gallon on the use of fuel in a motor vehicle.

39 “(2) Except as otherwise provided in subsections [(2) and (3)] (3) and (4) of this section, 100
40 cubic feet of fuel used or sold in a gaseous state, measured at 14.73 pounds per square inch of
41 pressure at 60 degrees Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

42 “[2)] (3) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous
43 state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at
44 the same rate as a gallon of liquid fuel.

45 “[3)] (4) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at

1 the same rate as a gallon of other liquid fuel.

2 **“(5) Notwithstanding the excise tax specified in subsection (1) of this section, if the fuel**
3 **used in a motor vehicle is pure or part biodiesel, the excise tax imposed under this section**
4 **shall be reduced at the rate of 0.24 cents per gallon for each percent of biodiesel contained**
5 **in the fuel.**

6 **“SECTION 35.** ORS 319.530, as amended by section 34 of this 2005 Act, is amended to read:

7 “319.530. (1) To compensate this state partially for the use of its highways, an excise tax is im-
8 posed at the rate of 24 cents per gallon on the use of fuel in a motor vehicle.

9 “(2) Except as otherwise provided in subsections (3) and (4) of this section, 100 cubic feet of fuel
10 used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees
11 Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

12 “(3) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state,
13 measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the
14 same rate as a gallon of liquid fuel.

15 “(4) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the
16 same rate as a gallon of other liquid fuel.

17 “[*(5) Notwithstanding the excise tax specified in subsection (1) of this section, if the fuel used in*
18 *a motor vehicle is pure or part biodiesel, the excise tax imposed under this section shall be reduced*
19 *at the rate of 0.24 cents per gallon for each percent of biodiesel contained in the fuel.*]

20 **“SECTION 36. The amendments to ORS 319.530 by section 35 of this 2005 Act become**
21 **operative on January 2, 2012.**

22 **“SECTION 37.** ORS 319.831 is amended to read:

23 “319.831. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel
24 tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which
25 is applicable to use of the fuel to propel a motor vehicle:

26 “(a) In another state, if the user pays to the other state an additional tax on the same fuel;

27 “(b) Upon any road, thoroughfare or property in private ownership;

28 “(c) Upon any road, thoroughfare or property, other than a state highway, county road or city
29 street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest
30 products converted to a form other than logs at or near the harvesting site, or for the construction
31 or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit
32 authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

33 “(A) An agency of the United States;

34 “(B) The State Board of Forestry;

35 “(C) The State Forester; or

36 “(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;

37 “(d) By an agency of the United States or of this state or of any county, city or port of this state
38 on any road, thoroughfare or property, other than a state highway, county road or city street;

39 “(e) By any incorporated city or town of this state;

40 “(f) By any county of this state or by any road assessment district formed under ORS 371.405
41 to 371.535;

42 “(g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the
43 products of such forest products converted to a form other than logs at or near the harvesting site,
44 if:

45 “(A) Such use upon the county road is pursuant to a written agreement entered into with, or

1 to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United
2 States, authorizing such user to use such road and requiring such user to pay for or to perform the
3 construction or maintenance of the county road;

4 “(B) The board, officer or agency that entered into the agreement or granted the permit, by
5 contract with the county court or board of county commissioners, has assumed the responsibility for
6 the construction or maintenance of such county road; and

7 “(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this para-
8 graph are filed with the Department of Transportation;

9 “(h) By a school district or education service district of this state or the contractors of a school
10 district or education service district, for those vehicles being used to transport students;

11 “(i) By a rural fire protection district organized under the provisions of ORS chapter 478;

12 “(j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided
13 for in this section; [or]

14 “(k) By any state agency, as defined in ORS 240.855; or

15 “(L) **In any location, if the motor vehicle has a registration plate issued under ORS**
16 **803.520 but meets the qualifications under ORS 805.310 for farm vehicle registration and if**
17 **the fuel used to propel the motor vehicle is pure biodiesel.**

18 “(2) An application for a refund under subsection (1) of this section shall be filed with the de-
19 partment within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

20 “(3) The application for a refund provided by subsection (1) of this section shall include a signed
21 statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way
22 in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the
23 refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall
24 be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel
25 tax directly to the department, the applicant shall indicate the source of the fuel and the date it
26 was obtained.

27 “(4) The department may require any person who applies for a refund provided by subsection (1)
28 of this section to furnish a statement, under oath, giving the person’s occupation, description of the
29 machines or equipment in which the fuel was used, the place where used and such other information
30 as the department may require.

31 “**SECTION 38.** ORS 319.831, as amended by section 37 of this 2005 Act, is amended to read:

32 “319.831. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel
33 tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which
34 is applicable to use of the fuel to propel a motor vehicle:

35 “(a) In another state, if the user pays to the other state an additional tax on the same fuel;

36 “(b) Upon any road, thoroughfare or property in private ownership;

37 “(c) Upon any road, thoroughfare or property, other than a state highway, county road or city
38 street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest
39 products converted to a form other than logs at or near the harvesting site, or for the construction
40 or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit
41 authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

42 “(A) An agency of the United States;

43 “(B) The State Board of Forestry;

44 “(C) The State Forester; or

45 “(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;

1 “(d) By an agency of the United States or of this state or of any county, city or port of this state
2 on any road, thoroughfare or property, other than a state highway, county road or city street;

3 “(e) By any incorporated city or town of this state;

4 “(f) By any county of this state or by any road assessment district formed under ORS 371.405
5 to 371.535;

6 “(g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the
7 products of such forest products converted to a form other than logs at or near the harvesting site,
8 if:

9 “(A) Such use upon the county road is pursuant to a written agreement entered into with, or
10 to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United
11 States, authorizing such user to use such road and requiring such user to pay for or to perform the
12 construction or maintenance of the county road;

13 “(B) The board, officer or agency that entered into the agreement or granted the permit, by
14 contract with the county court or board of county commissioners, has assumed the responsibility for
15 the construction or maintenance of such county road; and

16 “(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this para-
17 graph are filed with the Department of Transportation;

18 “(h) By a school district or education service district of this state or the contractors of a school
19 district or education service district, for those vehicles being used to transport students;

20 “(i) By a rural fire protection district organized under the provisions of ORS chapter 478;

21 “(j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided
22 for in this section; **or**

23 “(k) By any state agency, as defined in ORS 240.855[; or].

24 “[L] *In any location, if the motor vehicle has a registration plate issued under ORS 803.520 but*
25 *meets the qualifications under ORS 805.310 for farm vehicle registration and if the fuel used to propel*
26 *the motor vehicle is pure biodiesel.*]

27 “(2) An application for a refund under subsection (1) of this section shall be filed with the de-
28 partment within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

29 “(3) The application for a refund provided by subsection (1) of this section shall include a signed
30 statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way
31 in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the
32 refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall
33 be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel
34 tax directly to the department, the applicant shall indicate the source of the fuel and the date it
35 was obtained.

36 “(4) The department may require any person who applies for a refund provided by subsection (1)
37 of this section to furnish a statement, under oath, giving the person’s occupation, description of the
38 machines or equipment in which the fuel was used, the place where used and such other information
39 as the department may require.

40 “**SECTION 39. The amendments to ORS 319.831 by section 38 of this 2005 Act become**
41 **operative on January 2, 2012.**

42
43 “**ADMINISTRATIVE RULES**

44
45 “**SECTION 40. In considering the adoption of any administrative rules, the Environmental**

1 **Quality Commission shall ensure that the rules permit and encourage the sale or lease of**
2 **new motor vehicles, and new agricultural vehicles and equipment, that use biodiesel as de-**
3 **defined in section 12 of this 2005 Act and that have been approved by the federal Environmental**
4 **Protection Agency.**

5

6

“CAPTIONS

7

8 **“SECTION 41. The unit captions used in this 2005 Act are provided only for the conven-**
9 **ience of the reader and do not become part of the statutory law of this state or express any**
10 **legislative intent in the enactment of this 2005 Act.”.**

11

/s/ Larry Galizio
Representative

12

13

/s/ Mark Hass
Representative

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