D-Engrossed
House Bill 3481

Ordered by the Senate July 19
Including House Amendments dated June 3 and June 23 and Senate
Amendments dated July 12 and July 19

Sponsored by Representatives ANDERSON, KROPF; Representatives BERGER, BOQUIST, BROWN, BRUUN, BURLEY, BUTLER, CAMERON, DALLUM, DINGFELDER, ESQUIVEL, FARR, FLORES, GARRARD, GILMAN, HANNA, JENSON, KRIEGER, LIM, MINNIS, NELSON, OLSON, RICHARDSON, SCHAUFLER, SCOTT, SUMNER, THATCHER, WHISNANT, Senators ATKINSON, BEYER, B STARR, WALKER, WHITSETT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates or expands tax incentives for production facilities producing ethanol, biofuel or certain fuel additives, for agricultural production of biofuel raw materials or biomass used for certain energy production and for certain biofuel or biomass conversion pollution control facilities.

Creates grant program to reduce emissions from school buses. Continuously appropriates moneys to Department of Education for purposes of grant program to replace or retrofit school buses.

Creates fuel tax incentive for use of biofuels.

Creates exemption from energy facility siting requirements for energy facilities using certain organic matter for conversion to energy.

Prohibits sales of gasoline that contain certain additives.

Establishes renewable fuel use standards.

Requires use of solar technology in construction, reconstruction or renovation of public buildings. Creates exceptions.

Authorizes issuance of lottery bonds. Authorizes State Department of Energy to use bond proceeds to make loans for small scale local and community renewable energy projects.

Extends operation of Sustainability Board.

A BILL FOR AN ACT

Relating to the expansion of environmental improvements; creating new provisions; amending ORS 276.212, 283.305, 283.327, 307.701, 314.752, 318.031, 319.530, 319.831, 468.155, 468.165, 468.170, 468.173, 469.320, 646.905 and 646.910 and section 4, chapter 475, Oregon Laws 1993, and sections 9, 15 and 17, chapter 918, Oregon Laws 2001; and appropriating money.

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

BIOFUEL, ETHANOL AND VERIFIED FUEL ADDITIVE FACILITIES

SECTION 1. ORS 307.701 is amended to read:

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

(a) "Biofuel" means liquid or gaseous fuel produced from a biological source, including but not limited to waste and residue from agriculture, forestry or related industries or other industrial or municipal waste.

(b) "Ethanol" has the meaning given the term under ORS 646.905.

(c) "Production facility" means a facility that is used to produce ethanol, biofuel or verified fuel additives.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(d) "Verified fuel additive" means a fuel additive that:

(A) Has been verified under the United States Environmental Protection Agency's Environmental Technology Verification Protocol or the California Air Resources Board verification programs; and

(B) Is at least 90 percent renewable materials.

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

(3) [*An ethanol*] **A** production facility may qualify for exemption from taxation under this section if the facility:

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

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

(c) Consists of newly constructed, installed or acquired property, including property that was previously owned by a different owner and used at a different location, that is first placed in service during the calendar year preceding the assessment year for which an exemption listed in paragraph (b) of this subsection is claimed; and

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

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

(B) Biofuel; or

(C) Verified fuel additives.

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

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

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

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

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

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

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

(b) If the ownership and use of the **production facility** property included in the statement **described in paragraph (a)(A) of this subsection and** filed for a prior year remain the same, a new

statement [*shall not be*] **is not** required. However, if the ownership or use changes, or if the facility property is added to or retired, a new statement is required and the property [*shall*] **may** not be exempt under this section if the statement is not filed. The new statement [*shall*] **must** be filed no later than December 31 of the year to which the statement pertains.

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

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

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

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

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

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

(6) An election or revocation made under this section applies to all biofuel production facility property or verified fuel additive production facility property within the taxing district:

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

(b) That qualifies for exemption under ORS 307.701.

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

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

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

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

POLLUTION CONTROL FACILITIES

SECTION 5. ORS 468.155 is amended to read:

468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means 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 reasonably used, erected, constructed or installed by any person if:

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

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

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

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

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

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

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

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

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

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

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

(A) A biofuel processing plant;

(B) A biofuel production plant;

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

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

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

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

(b) As used in this subsection, "biofuel" means liquid or gaseous fuel produced from a biological source, including but not limited to waste and residue from agriculture, forestry

or related industries or other industrial or municipal waste.

[*(3)*] **(4)** As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" does not include:

(a) Air conditioners;

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

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

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

(A) Office buildings and furnishings;

(B) Parking lots and road improvements;

(C) Landscaping;

(D) External lighting;

(E) Company or related signs; and

(F) Automobiles;

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

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

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

(f) Asbestos abatement; or

(g) Property installed, constructed or used for cleanup of emergency spills or unauthorized releases, as defined by the commission.

SECTION 6. ORS 468.165 is amended to read:

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

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

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

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

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

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

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

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

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

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984, and if:

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

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

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

(2) The application shall be made in writing in a form prescribed by the Department of Environmental Quality and shall contain information on the actual cost of the facility, a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate disposal of used oil served or to be served by the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil.

(3) The Director of the Department of Environmental Quality may require any further information the director considers necessary before a certificate is issued.

(4) The application shall be accompanied by a fee established under subsection (5) of this section. The fee may be refunded if the application for certification is rejected.

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

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

SECTION 7. ORS 468.170 is amended to read:

468.170. (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165. The action of the com-

mission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil. The actual cost or portion of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or portion of the facility. Each certificate shall bear a separate serial number for each such facility.

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the commission finds that the facility:

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165 (1);

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and

(C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468, 468A and 468B and rules thereunder.

(b) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application.

(c) If one or more facilities constitute an operational unit, the commission may certify such facilities under one certificate.

(d) A certificate under this section is effective for purposes of tax relief in accordance with ORS 307.405 and 315.304 if, on or before December 31, 2007, erection, construction or installation of the facility is completed, the facility is placed in service and the application for certification is filed with the commission under ORS 468.165.

(5) A person receiving a certificate under this section may take tax relief only under ORS 315.304, depending upon the tax status of the person's trade or business except that:

(a) A corporation organized under ORS chapter 65 or any subsequent transferee of the corporation shall take tax relief only under ORS 307.405; and

(b)(A) A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62 relating to the incorporation of cooperative associations or the subsequent transferee of the corporation may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405. The corporation shall make the election at the time of applying for the certificate, except that a

corporation receiving a certificate prior to December 31, 1995, may make the election at any time on or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the tax relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the corporation for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making the election shall be waived.

(B) In the case of a corporation making the election under subparagraph (A) of this paragraph, the election applies to:

(i) All existing or future facilities that are certified under this section, if the corporation claimed a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995; or

(ii) All future facilities that are certified under this section, if the corporation did not claim a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995.

(6) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 315.304, based on that partner's pro rata share of the certified cost of the facility.

(7) Certification under this section of a pollution control facility qualifying under ORS 468.165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 62 or 65 the facility shall be exempt from ad valorem taxation for a period of 20 consecutive years.

(8) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection may not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 315.304 [*(8)*] **(9)** apply to any sale, exchange or other disposition of a certified portion of a facility.

(9) A certificate issued under this section shall state the applicable percentage of the certified cost of the facility, as determined under ORS 468.173.

(10) If the construction or installation of a facility is commenced after December 31, 2005, the facility may be certified only if the facility or applicant is described in ORS 468.173 (3). A facility described in ORS 468.173 (2) for which construction or installation is commenced after December 31, 2005, may not be certified under this section.

SECTION 8. ORS 468.173 is amended to read:

468.173. For purposes of ORS 315.304, the applicable percentage of the certified cost of a facility shall be one of the following:

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

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

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

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

(3) If certified pursuant to application for certification filed on or after January 1, 2002, 35

percent if:

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

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

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

(d) The facility is used for material recovery or recycling, as those terms are defined in ORS 459.005;

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

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

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

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

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

[*(i)*] **(j)** The applicant demonstrates to the Department of Environmental Quality that the applicant uses an environmental management system at the facility. In order for the department to determine that the applicant uses an environmental management system at the facility:

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

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

SECTION 9. The amendments to ORS 468.155, 468.165, 468.170 and 468.173 by sections 5 to 8 of this 2005 Act apply to applications for pollution control facility certification issued on or after January 1, 2006.

PRODUCERS OF BIOFUEL RAW MATERIALS

SECTION 10. Section 11 of this 2005 Act is added to and made a part of ORS chapter 315.

SECTION 11. (1) As used in this section:

(a) "Agricultural producer" means a person engaged in farming or livestock operations that produce the plant or animal matter that is used by a biodiesel or ethanol producer to produce biodiesel or ethanol, or a person engaged in farming or forestry operations that produce the green biomass used to produce electric energy, direct application heat, transportation fuel or a substitute for a petroleum-based product.

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

(c)(A) "Biomass" means any organic matter that is available on a renewable or recurring basis from wood, forest or field residues or dedicated energy crops that do not include:

(i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol or inorganic arsenical compounds;

(ii) Municipal solid waste;

(iii) Tires; and

(iv) Black liquor.

(B) As used in this paragraph, "black liquor" means the liquid material remaining from the manufacturing of wood pulp using the soda pulping or kraft pulping process.

(d) "Ethanol" has the meaning given that term in ORS 646.905.

(2) An agricultural producer shall be allowed a credit against the taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for the production in this state of plant or animal matter that is used to produce biodiesel or ethanol in this state or that is forest or rangeland vegetative biomass that is used as described in subsection (3)(c) of this section.

(3) The amount of the credit shall equal:

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

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

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

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

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

(5) Except as provided in subsection (7) of this section, the amount of the credit may not:

(a) Exceed the tax liability of the taxpayer; and

(b) Exceed the amount stated on the tax credit certification issued under subsection (9) of this section.

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

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

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

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

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

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

(9)(a) Prior to the close of the calendar year in which begins the tax year for which a credit under this section is to be claimed, a taxpayer that seeks to claim a tax credit under this section shall apply to the department for tax credit certification. The application shall be on a form prescribed by the department that contains the information required by the department, including the amount of tax credit the taxpayer intends to claim.

(b) The department shall process applications in the order in which the applications are filed and shall certify the amount stated on the application, or a lesser amount that the department determines is within the annual limit set forth in paragraph (c) of this subsection. The department shall give written notice of the certified amount to the taxpayer.

(c) The department may not certify more than $500,000 as eligible for tax credits under this section in any calendar year.

(d) The department may deny an application for tax certification if the application is incomplete or if the department determines that the application does not state a reasonable basis for the allowance of any tax credit under this section.

SECTION 12. ORS 314.752 is amended to read:

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

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-

capture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

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

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

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the Department of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.234 (child development program contributions), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) **and section 11 of this 2005 Act (production for biodiesel and ethanol, biomass usage)**.

SECTION 13. ORS 318.031 is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and the Corporation Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes and the operative date of this chapter), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.234, 315.254, 315.304, 315.504, 315.511 and 315.604 **and section 11 of this 2005 Act** (all only to the extent applicable [*for*] **to** a corporation) and ORS 285C.309, 315.507, 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038, 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 317.485, 317.488, 317.510 to 317.635 and 317.705 to 317.725.

SECTION 14. Section 11 of this 2005 Act and the amendments to ORS 314.752 and 318.031 by sections 12 and 13 of this 2005 Act apply to tax years beginning on or after January 1, 2006.

CLEAN EMISSION SCHOOL BUSES

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

(2) Any federal funds or private donations received for the purpose of making the grants

described in section 16 of this 2005 Act shall be deposited in the fund.

SECTION 16. (1) The Department of Education shall award annual grants to school districts from the Clean School Bus Grant Fund for any of the following purposes and with the following limitations:

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

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

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

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

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

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

SECTION 17. Prior to February 1, 2009, the Department of Education shall report to the Seventy-fifth Legislative Assembly on:

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

(2) The results of any pilot projects funded under section 16 of this 2005 Act utilizing biodiesel fuel in school bus applications.

NOTE: Section 18 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 19. Sections 15 to 17 of this 2005 Act are repealed on June 30, 2014.

SECTION 20. On July 1, 2014, the Department of Education shall transfer all moneys in the Clean School Bus Grant Fund created in section 15 of this 2005 Act to the Department of Agriculture Service Fund established in ORS 561.144.

RENEWABLE FUEL STANDARDS

SECTION 21. Sections 22, 23, 25, 26 and 29 of this 2005 Act are added to and made a part of ORS 646.910 to 646.920.

SECTION 22. (1) The State Department of Agriculture shall study and monitor diesel fuel use and sales in this state.

(2) When the production of biodiesel in this state reaches a level of at least five million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, as described in subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of biodiesel has reached the level described in subsection (2) of this section; and

(b) Three months from the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may only sell or offer for sale diesel fuel described in section 23 of this 2005 Act.

SECTION 23. (1) A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume.

(2) The State Department of Agriculture shall adopt standards for biodiesel sold in this state. The department shall consult the specifications established for biodiesel in the American Society for Testing and Materials International specification D6751-03a, or similar specifications, in forming its standards. The department may review specifications adopted by the American Society for Testing and Materials International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(3) The minimum biodiesel fuel content requirement under subsection (1) of this section does not apply to diesel fuel sold or offered for sale for use by railroad locomotives.

SECTION 24. Section 23 of this 2005 Act becomes operative on a date that is three months following the date of the notice required under section 22 of this 2005 Act.

SECTION 25. (1) The State Department of Agriculture shall study and monitor the use and sale of gasoline in this state.

(2) When production of ethanol in this state reaches a level of at least 90 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, as described in subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of ethanol has reached the levels described in subsection (2) of this section; and

(b) Three months from the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may only sell or offer for sale gasoline described in section 26 of this 2005 Act.

SECTION 26. (1) A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale gasoline unless the gasoline contains at least 10 percent ethanol by volume.

(2) Gasoline containing ethanol that is sold or offered for sale meets the requirements of this section if the gasoline, exclusive of denaturants and permitted contaminants, contains not less than 9.2 percent and not more than 10 percent by volume of agriculturally derived, denatured ethanol that complies with the standards for ethanol adopted by the State Department of Agriculture.

(3) The department shall adopt standards for ethanol blended with gasoline sold in this state. The standards adopted shall require that the gasoline blended with ethanol:

(a) Contains ethanol that is agriculturally derived;

(b) Contains ethanol denatured as specified in 27 C.F.R. parts 20 and 21;

(c) Complies with volatility requirements specified in 40 C.F.R. part 80;

(d) Complies with or is produced from a gasoline base stock that complies with the American Society for Testing and Materials International specification D4814-04b, or an equivalent standard;

(e) Is not blended with casinghead gasoline, absorption gasoline, drip gasoline or natural gasoline after it has been sold, transferred or otherwise removed from a refinery or terminal;

and

(f) Complies with American Society for Testing and Materials International specification D4806-04a, or an equivalent standard.

(4) The department may review specifications adopted by the American Society for Testing and Materials International, or equivalent organizations, and federal regulations and revise the standards adopted pursuant to this section as necessary.

SECTION 27. Section 26 of this 2005 Act becomes operative on a date that is three months following the date of the notice required under section 25 of this 2005 Act.

SECTION 28. ORS 646.905 is amended to read:

646.905. As used in ORS 646.910 to 646.920:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH(2n+1)OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Biodiesel" means a monoalkyl ester of long-chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines.

[*(2)*] **(3)** "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

[*(3)*] **(4)** "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[*(4)*] **(5)** "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

[*(5)*] **(6)** "Methanol" means methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

[*(6)*] **(7)** "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

[*(7)*] **(8)** "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to nonretail customers.

[*(8)*] **(9)** "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

[*(9)*] **(10)** "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another.

SECTION 29. (1) The State Department of Agriculture shall study and monitor diesel fuel use and sales in this state.

(2) When the production of biodiesel in this state reaches a level of at least 15 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, as described in subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of biodiesel has reached the level described in subsection (2) of this section; and

(b) Three months from the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may only sell or offer for sale diesel fuel described in section 23 of this 2005 Act,

as amended by section 30 of this 2005 Act.

SECTION 30. Section 23 of this 2005 Act is amended to read:

Sec. 23. (1) A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least [*two*] **five** percent biodiesel by volume.

(2) The State Department of Agriculture shall adopt standards for biodiesel sold in the state. The department shall consult the specifications established for biodiesel in the American Society for Testing and Materials International specification D6751-03a, or similar specifications, in forming its standards. The department may review specifications adopted by the American Society for Testing and Materials International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(3) The minimum biodiesel fuel content requirement under subsection (1) of this section does not apply to diesel fuel sold or offered for sale for use by railroad locomotives.

SECTION 30a. The amendments to section 23 of this 2005 Act by section 30 of this 2005 Act become operative on a date that is three months following the date of the notice required under section 29 of this 2005 Act.

GASOLINE ADDITIVE RESTRICTIONS

SECTION 31. ORS 646.910 is amended to read:

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

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

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

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

(A) Diisopropylether.

(B) Ethyl tert-butylether.

(C) Iso-butanol.

(D) Iso-propanol.

(E) N-butanol.

(F) N-propanol.

(G) Sec-butanol.

(H) Tert-amyl methyl ether.

(I) Tert-butanol.

(J) Tert-pentanol or tert-amyl alcohol.

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

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

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

SECTION 32. The amendments to ORS 646.910 by section 31 of this 2005 Act become op-

erative November 1, 2007.

ENERGY FACILITY SITING REQUIREMENTS

SECTION 33. ORS 469.320 is amended to read:

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

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

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

(A) The site is not enlarged; and

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

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

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

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

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

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

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

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

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

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

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

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling

facility located within one mile of the facility or is transported from the facility by rail or barge.

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

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

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

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

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

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

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

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

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

(b) Expansion within the site or within the energy generation area of a facility for which a site

certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

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

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

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

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

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

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

(8) As used in this section:

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

[*(a)*] **(b)** "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

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

[*(c)*] **(d)** "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

[*(d)*] **(e)** "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

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

SECTION 34. ORS 469.320, as amended by section 8, chapter 683, Oregon Laws 2001, and section 77, chapter 186, Oregon Laws 2003, is amended to read:

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

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

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

(A) The site is not enlarged; and

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

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

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

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

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater

than 6,000 Btu per kilowatt hour.

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

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

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

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

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

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

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

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

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

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

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

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

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court

shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

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

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

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

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

(7) As used in this section:

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

[*(a)*] **(b)** "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

[*(b)*] **(c)** "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

[*(c)*] **(d)** "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

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

SECTION 35. The amendments to ORS 469.320 by sections 33 and 34 of this 2005 Act do not apply to applications for site certificates filed before the effective date of this 2005 Act.

STATE GOVERNMENT USE OF BIODIESEL

SECTION 36. ORS 283.305 is amended to read:

283.305. As used in ORS 283.305 to 283.350:

(1) "Authorized driver" means any of the following who has a valid driver license and an acceptable driving record:

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

(b) A volunteer, appointed in writing, whose written description of duties includes driving motor vehicles;

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

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

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

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

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

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

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

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

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

SECTION 37. ORS 283.327 is amended to read:

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

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

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

FUEL TAX INCENTIVES

SECTION 38. ORS 319.530 is amended to read:

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

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

[*(2)*] **(3)** One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at

the same rate as a gallon of liquid fuel.

[*(3)*] **(4)** One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the same rate as a gallon of other liquid fuel.

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

SECTION 39. ORS 319.530, as amended by section 38 of this 2005 Act, is amended to read:

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

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

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

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

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

SECTION 40. The amendments to ORS 319.530 by section 39 of this 2005 Act become operative on January 2, 2012.

SECTION 41. ORS 319.831 is amended to read:

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

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

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

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

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

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

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

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

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

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

if:

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

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

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the Department of Transportation;

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

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

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

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

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

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

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

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

SECTION 42. ORS 319.831, as amended by section 41 of this 2005 Act, is amended to read:

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

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

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

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

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

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

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

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

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

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

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

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

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the Department of Transportation;

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

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

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

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

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

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

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

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

SECTION 43. The amendments to ORS 319.831 by section 42 of this 2005 Act become operative on January 2, 2012.

SECTION 44. (1) Notwithstanding ORS 319.530 and 319.831, when the reductions in excise tax for use of biodiesel for all taxpayers reported under ORS 319.675 and 319.690 and refunds

for pure biodiesel paid under ORS 319.831 cumulatively exceed $1 million for a calendar year, the Department of Transportation shall suspend the reduction in the tax rate for biodiesel contained in fuel that is sold or used.

(2) The suspension shall become effective on the first day of a calendar month that is at least 30 days following the date on which the department determined that the total amount of reductions and refunds described in subsection (1) of this section exceeded $1 million. The department shall notify licensed sellers and users of the suspension of the tax reduction no later than 25 days prior to the effective date of the suspension.

(3) The department shall remove the suspension for fuel sold or used on or after January 1 of the subsequent calendar year.

SECTION 45. Section 44 of this 2005 Act is repealed on January 2, 2012.

NOTE: Sections 46 through 54 were deleted by amendment. Subsequent sections were not renumbered.

SOLAR TECHNOLOGIES

SECTION 55. Section 56 of this 2005 Act is added to and made a part of ORS 279C.005 to 279C.670.

SECTION 56. (1) If a public contract for the construction of a public building, or for the reconstruction or major renovation of a public building if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, uses funds from the State Department of Energy, the contract is considered to contain an amount equal to at least one percent of the total contract price for the inclusion of cost-effective solar energy design and technology in the public building. Solar energy design and technology may include daylighting, passive or active strategies.

(2)(a) If a public contract described in subsection (1) of this section does not use funds from the State Department of Energy, the contract is considered to contain an amount equal to at least one percent of the total contract price for the inclusion of cost-effective solar energy design and technology in the public building unless the contracting agency determines that it would be inappropriate to include solar energy design and technology in the construction, reconstruction or major renovation of the public building.

(b) If the contracting agency determines, under paragraph (a) of this subsection, that it would be inappropriate to include solar energy design and technology in the construction, reconstruction or major renovation of the public building, the contracting agency shall promptly submit a written report to the department explaining the reasons for the determination.

SECTION 57. Section 56 of this 2005 Act applies only to public contracts first advertised, but if not advertised then entered into, on or after the effective date of this 2005 Act.

COMMUNITY RENEWABLE ENERGY PROJECTS

SECTION 58. (1) For the biennium beginning July 1, 2005, pursuant to ORS 286.560 to 286.580, the State Treasurer, at the request of the State Department of Energy, may issue lottery bonds to provide financial and other assistance for which the Community Renewable Energy Project Fund established in section 60 of this 2005 Act may be used.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) Financial and other assistance to local governments will enable the governments to conduct feasibility studies of community renewable energy projects and small scale local energy projects.

(b) Community renewable energy projects and small scale local energy projects that contain renewable energy elements promote job growth, family wage jobs and sustainability.

(c) Without the ability to conduct feasibility studies, many small scale local and community renewable energy projects will not be developed.

(d) Financial and other assistance to local governments will therefore further economic development by allowing feasibility studies to be completed and spurring job growth in Oregon through the creation of small scale local and community renewable energy projects.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed $1 million, plus an additional amount established by the State Treasurer to be necessary to pay bond-related costs.

(4) The net proceeds of lottery bonds issued pursuant to this section must be deposited in the Community Renewable Energy Project Fund established in section 60 of this 2005 Act.

(5) The net proceeds of lottery bonds issued pursuant to this section may be used only for the purposes for which moneys in the Community Renewable Energy Project Fund may be used and for bond-related costs.

SECTION 59. Sections 60 and 61 of this 2005 Act are added to and made a part of ORS chapter 470.

SECTION 60. (1) The Community Renewable Energy Project Fund is established separate and distinct from the General Fund. Interest earned on the Community Renewable Energy Project Fund shall be credited to the Community Renewable Energy Project Fund.

(2) The fund consists of lottery bond proceeds deposited in the fund, moneys appropriated to the fund by the Legislative Assembly and moneys from repayment of loans made from the fund.

(3) The moneys in the Community Renewable Energy Project Fund are continuously appropriated to the State Department of Energy for the purpose of making loans to any entity eligible to apply for a small scale local energy project loan under ORS 470.060 so that the entity may conduct feasibility studies of small scale local and community renewable energy projects.

(4) Eligibility for assistance from the fund shall be subject to the availability of moneys in the fund and limited to those entities applying for loans from the fund pursuant to section 61 of this 2005 Act.

SECTION 61. (1) The State Department of Energy shall establish a program for the funding of feasibility studies of small scale local and community renewable energy projects by the Community Renewable Energy Project Fund established in section 60 of this 2005 Act.

(2) Applications to obtain a loan to fund a feasibility study shall be made in writing and in a form established by the department. Applications submitted to the department shall:

(a) Describe the nature and purpose of the proposed energy project;

(b) Specify the local community and local government support for the project;

(c) Include a description of the renewable energy technology proposed; and

(d) Meet minimum project standards established by the department.

(3) Entities eligible to apply for a small scale local energy project loan pursuant to ORS

470.060 are eligible to apply for loans from the Community Renewable Energy Project Fund under the program.

(4) An entity applying for a loan from the Community Renewable Energy Project Fund under the program shall pay all the costs of processing a loan and shall pay an application fee in an amount determined by the department by rule.

(5) The department shall establish loan repayment terms and conditions. However, the Director of State Department of Energy may release an entity borrowing money under the program from any loan obligation if the project for which the feasibility study is conducted is not developed.

STATE ENERGY FACILITIES

SECTION 62. (1) An agency of state government, as defined in ORS 174.111, may, provided the agency has received specific approval to expend moneys for that purpose and has received land use or other state and local government siting approval, construct and operate facilities at or on state buildings or grounds for the generation of electricity using renewable energy resources or cogeneration facilities.

(2) An agency of state government, as defined in ORS 174.111, that generates electricity may sell the electricity. However, the electricity may not be sold directly to a retail customer of a publicly owned or investor-owned utility.

(3) Revenues from the sale of electricity by an agency of state government, as defined in ORS 174.111, shall be deposited in the State Treasury and are continuously appropriated to the agency that sells the electricity.

(4) As used in this section, "state buildings or grounds" means the works, buildings, lands and grounds that are:

(a) Owned or leased by the state;

(b) Situated in this state;

(c) Governed, managed or administered by the state; and

(d) Used by the state.

SECTION 63. ORS 276.212 is amended to read:

276.212. (1) The Oregon Department of Administrative Services may, as it deems necessary, suitable or expedient, acquire, design, erect, complete, maintain and operate:

(a) Steam heating systems, power systems, machines, engines and equipment, with necessary transmission poles and lines, pipes or conduits for the purpose of generating and furnishing steam heat, electric energy, current, light, heat and power for the public buildings and grounds.

(b) Systems for the purpose of transmitting and receiving messages by radio, telephone, telegraph or other device or system in the transaction of business of the state or in which the state is interested.

(2) The department may do all things necessary for:

(a) The delivery of steam heat, electrical current, energy, light, heat and power to the public buildings and grounds.

(b) The transmitting and receiving of messages by radio, telephone, telegraph or other device or system in the transaction of business of the state or in which the state is interested.

(3) The department may, provided the department has received specific approval to expend moneys for that purpose and has received land use or other state and local government

siting approval:

(a) Construct and operate facilities at or on state buildings or grounds for the generation of electricity using renewable energy resources or cogeneration facilities.

(b) Sell electricity generated at or on state buildings or grounds. However, the electricity may not be sold directly to a retail customer of a publicly owned or investor-owned utility.

(4) Revenues from the sale of electricity by the department shall be deposited in the State Treasury and are continuously appropriated to the department.

(5) As used in this section, "state buildings or grounds" means the works, buildings, lands and grounds that are:

(a) Owned or leased by the state;

(b) Situated in this state;

(c) Governed, managed or administered by the state; and

(d) Used by the state.

NOTE: Sections 64 through 67 were deleted by amendment. Subsequent sections were not renumbered.

SUSTAINABILITY BOARD

SECTION 68. Section 9, chapter 918, Oregon Laws 2001, is amended to read:

Sec. 9. (1) The Sustainability Board Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Sustainability Board Fund shall be credited to the fund.

(2) All moneys received by the Sustainability Board under section 3**, chapter 918, Oregon Laws 2001,** [*of this 2001 Act*] shall be paid into the State Treasury [*and deposited into the General Fund to the credit of*] **and credited to** the Sustainability Board Fund. Such moneys are continuously appropriated to the Sustainability Board for the purposes of administering **ORS 184.421 and 184.423 and sections 2, 3 and 5 to 9, chapter 918, Oregon Laws 2001** [*sections 1 to 9 of this 2001 Act*].

SECTION 69. Section 15, chapter 918, Oregon Laws 2001, is amended to read:

Sec. 15. (1) Sections 2, 3 and 5 to 10**, chapter 918, Oregon Laws 2001,** [*of this 2001 Act*] are repealed January 2, [*2006*] **2012**.

(2) Any balance in the Sustainability Board Fund that is unexpended and unobligated on January 2, 2012, and all moneys that would have been credited to the Sustainability Board Fund had the fund continued to exist but for the repeal effected by this section, shall be transferred to and deposited in the General Fund and shall be available for general governmental expenses.

SECTION 70. Section 17, chapter 918, Oregon Laws 2001, is amended to read:

Sec. 17. The amendments to ORS 184.421 by section 16**, chapter 918, Oregon Laws 2001, become** [*of this 2001 Act becomes*] operative January 2, [*2006*] **2012**.

CAPTIONS

SECTION 71. The unit captions used in this 2005 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2005 Act.
