

CHAPTER 45

AN ACT

HB 4079

Relating to energy incentives programs; creating new provisions; amending ORS 184.484, 192.502, 285C.557, 315.141, 315.326, 315.329, 315.336, 315.341, 315.357, 316.116, 469B.106, 469B.109, 469B.148, 469B.253, 469B.256, 469B.276, 469B.285, 469B.291, 469B.320, 469B.326, 469B.332 and 469B.344 and section 2, chapter 199, Oregon Laws 2011; and prescribing an effective date.

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

SECTION 1. ORS 469B.256 is amended to read: 469B.256. (1) The Director of the State Department of Energy may require an applicant for a grant under this section for a renewable energy production system to submit plans, specifications and contract terms, and after examination of the plans, specifications and terms may request corrections and revisions.

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

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

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

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

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

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

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

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

SECTION 2. ORS 315.326 is amended to read:

315.326. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified renewable energy development contributions made by the taxpayer during the tax year to the Renewable Energy Development Subaccount, established in ORS 470.805, of the Clean Energy Deployment Fund established in ORS 470.800.

(2)(a) The Department of Revenue shall, in cooperation with the State Department of Energy, conduct an auction of tax credits under this section. **The auction may be conducted no later than April 15 following December 31 of any tax year for which the credit is allowed.** The department may conduct the auction in the manner that it determines is best suited to maximize the return to the state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit. Moneys necessary to reimburse the Department of Revenue for the actual costs incurred by the department in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department. The Department of Revenue shall deposit net receipts from the auction required under this section in the Renewable Energy Development Subaccount, established in ORS 470.805, of the Clean Energy Deployment Fund established in ORS 470.800. Net receipts from the auction required under this section shall be used only for purposes related to renewable energy development.

(b) The State Department of Energy shall adopt rules in order to achieve the following goals:

(A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of \$1.5 million are certified for each fiscal year;

(B) Maximize income and excise tax revenues that are retained by the State of Oregon for state operations; and

(C) Provide the necessary financial incentives for taxpayers to make contributions, taking into consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

(3) Contributions made under this section shall be deposited in the Renewable Energy Development Subaccount, established in ORS 470.805, of the Clean Energy Deployment Fund established in ORS 470.800.

(4)(a) Upon receipt of a contribution, the State Department of Energy shall, except as provided in ORS 315.329, issue to the taxpayer written certification of the amount certified for tax credit under this section to the extent the amount certified for tax credit, when added to all amounts previously certified for tax credit under this section, does not exceed \$1.5 million for the fiscal year in which certification is made.

(b) The State Department of Energy and the Department of Revenue are not liable, and a refund of a contributed amount need not be made, if a taxpayer who has received tax credit certification is unable to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

(5) The tax credit allowed under this section for any one tax year may not exceed the tax liability of the taxpayer.

(6) 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 but may not be carried forward for any tax year thereafter.

(7) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer, the amount shall be allowed without proration under ORS 316.117.

(8) If the amount of contribution for which a tax credit certification is made is allowed as a deduction for federal tax purposes, the amount of the contribution shall be added to federal taxable income for Oregon tax purposes.

SECTION 3. ORS 315.329 is amended to read:

315.329. (1) **In any fiscal year, the amount of tax credits allowed under ORS 315.326 may be reduced or eliminated, and the Legislative Assembly may, no later than 30 days prior to the end of each fiscal year, in lieu of the issuance of certifications for tax credit under ORS 315.326 by the State Department of Energy, [the Legislative Assembly may, no later than 30 days prior to the end of each fiscal year, appropriate] make an appropriation** to the State Department of Energy for deposit into the Renewable Energy Development Subaccount, established in ORS 470.805, of the Clean Energy Deployment Fund established in ORS 470.800, *an amount equal to the total amount that would otherwise be certified for tax credits during the current fiscal year, based on the amount of contributions and accompanying applications for credit received by the department during the fiscal year*. Moneys deposited under this section are to be used only for purposes related to renewable energy development.

[(2) If the Legislative Assembly makes the election allowed in subsection (1) of this section:]

[(a) Any contributions made pursuant to ORS 315.326 to the Renewable Energy Development Subaccount during the current fiscal year and for which an application for a credit under ORS 315.326 is pending shall, at the request of the taxpayer, be refunded by the State Department of Energy; and]

[(b) A credit under ORS 315.326 may not be claimed for any contribution made during the current fiscal year.]

(2) After a tax credit certificate has been sold as provided in ORS 315.326, the State Department of Energy may not revoke the certificate.

SECTION 4. ORS 469B.253 is amended to read:

469B.253. (1) Prior to the installation or construction of a renewable energy production system, any person may apply to the State Department of Energy for a grant under ORS 469B.256 if:

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

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

(c) The system is located in Oregon; and

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

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

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

(b) The anticipated total system cost.

(c) Information on the number and type of jobs, **directly connected to the awarding of the grant**, that will be:

(A) Created by the system;[,] and

(B) *[the number of jobs]* Sustained throughout the construction, installation and operation of the system.

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

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

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

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

(a) Filing the application before the start of installation or construction is inappropriate because

special circumstances render filing earlier unreasonable; and

(b) The system would otherwise qualify for a grant under ORS 469B.250 to 469B.265.

SECTION 5. The amendments to ORS 315.326, 315.329, 469B.253 and 469B.256 by sections 1 to 4 of this 2012 Act apply to applications for grants submitted under ORS 469B.253 after July 1, 2011, and to tax years beginning on or after January 1, 2011.

SECTION 6. ORS 315.336 is amended to read:

315.336. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for a transportation project, based upon the certified cost of the project during the period for which the project is certified under ORS 469B.320 to 469B.347.

(2) The credit allowed for a project other than an alternative fuel vehicle infrastructure project shall be as follows:

(a) For tax years beginning on or after January 1, 2011, and before January 1, 2012, the maximum allowed credit shall be:

(A) 35 percent of certified cost, if a preliminary certification is issued under ORS 469B.329 prior to July 1, 2011; or

(B) 25 percent of certified cost, if a preliminary certification is issued under ORS 469B.329 on or after July 1, 2011, and before January 1, 2012.

(b) For tax years beginning on or after January 1, 2012, and before January 1, 2013, the maximum allowed credit shall be 25 percent of certified cost.

(c) For tax years beginning on or after January 1, 2013, and before January 1, 2014, the maximum allowed credit shall be 20 percent of certified cost.

(d) For tax years beginning on or after January 1, 2014, and before January 1, 2015, the maximum allowed credit shall be 15 percent of certified cost.

(e) For tax years beginning on or after January 1, 2015, and before January 1, 2016, the maximum allowed credit shall be 10 percent of certified cost.

(3) The total amount of the credit allowable for an alternative fuel vehicle infrastructure project under this section may not exceed 35 percent of the certified cost of the project.

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

(b) If the amount of the credit allowed under this section is less than 35 percent of the certified cost of the project, the credit allowed in any tax year may not exceed five percent of the certified cost of the project, and may not exceed the tax liability of the taxpayer.

[(4)] (5) In order for a tax credit to be allowable under this section:

(a) The project must be located in Oregon.

(b) The project must have received final certification from the Director of the State Department of Energy under ORS 469B.320 to 469B.347.

[(5) The tax credit allowed under this section for any one tax year may not exceed the tax liability of the taxpayer.]

(6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise, any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (2) of this section only as provided in this subsection.

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

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

(9) The definitions in ORS 469B.320 apply to this section.

SECTION 7. ORS 469B.320 is amended to read: 469B.320. As used in ORS 315.336 and 469B.320 to 469B.347:

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

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

(3) "Transportation project" means: *[a public or nonprofit entity that provides]*

(a) Transit services provided to members of the public [and] by a public or nonprofit entity that receives state or federal funding for those services, or is the direct recipient of funding from an entity that receives state or federal funding for the services; or

(b) An alternative fuel vehicle infrastructure project.

SECTION 8. ORS 469B.326 is amended to read:

469B.326. (1) Prior to the acquisition or performance of a transportation project, a person may apply to the State Department of Energy for preliminary certification for the project under ORS 469B.329 if:

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

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

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

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

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

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

(d) The anticipated total project cost.

(e) Information on the number and types of jobs, **directly connected to the allowance of the credit**, that will be:

(A) Created by the project[.]; and

(B) [the number of jobs] Sustained throughout the acquisition and performance of the project.

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

(g) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of ORS 469B.320 to 469B.347, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469B.335. The director may refund all or a portion of the fee if the application for certification is rejected.

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

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

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

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

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

(b) The preliminary certification has been amended.

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

SECTION 9. ORS 469B.332 is amended to read:

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

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

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

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

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

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

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

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

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

(b)(A) The actual cost of the project attested to by a certified public accountant who is not an employee of the applicant or[,] **the applicant's completed audit in compliance with federal Office of Management and Budget Circular A-133; or**

(B) If the actual cost of the project is less than \$50,000, copies of receipts for acquisition and performance of the project;

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

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

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

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

(g) Any other information determined by the director to be necessary prior to issuance of a final

certificate, including inspection of the project by the department.

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

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

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

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

SECTION 10. ORS 469B.344 is amended to read: 469B.344. (1)(a) The total amount of potential tax credits for all transportation projects in this state may not, at the time of preliminary certification under ORS 469B.329, exceed \$20 million for any biennium.

(b) **For each tax year, the Director of the State Department of Energy may allocate a percentage of the amount allowed in paragraph (a) of this subsection to alternative fuel vehicle infrastructure projects and a percentage to transit services.**

(2) **Notwithstanding ORS 315.336, in the event that the director receives applications for preliminary certification with a total amount of potential tax credits in excess of the limits set by the director pursuant to subsection (1)(b) of this section, the director shall allocate the issuance of preliminary certifications among applicants as follows:**

(a) **If an excess of applications for credits for transit services is received, the director shall allocate the issuance of preliminary certifications among applicants for credits for transit services and proportionately reduce the amount of allowed credit, with no applicant receiving more than 20 percent of the amount established under subsection (1)(b) of this section for transit services.**

(b) **The director may allocate the issuance of preliminary certifications among applicants for credits for alternative fuel vehicle infrastructure projects and may award credits for less than the amount otherwise allowed applicants.**

(c) **If, after making any reductions required under paragraph (a) of this subsection, an unallocated amount remains, the director shall allocate this additional amount among applicants affected by the percentage restriction in paragraph (a) of this subsection.**

SECTION 11. The amendments to ORS 315.336, 469B.320, 469B.326, 469B.332 and 469B.344 by sections 6 to 10 of this 2012 Act apply to applications for preliminary certification submitted under ORS 469B.326 after July 1, 2011, and to tax years beginning on or after January 1, 2011.

SECTION 12. ORS 316.116 is amended to read:

316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred for construction or installation of each of one or more alternative energy devices in a dwelling.

(b) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related equipment.

(c) A credit against the taxes otherwise due under this chapter is not allowed for an alternative energy device that does not meet or exceed all applicable federal, state and local requirements for energy efficiency, including equipment codes, the state building code, specialty codes and any other standards.

(2)(a) In the case of a category one alternative energy device that is not an alternative fuel device, the credit shall be based upon the first year energy yield of the alternative energy device that qualifies under ORS 469B.100 to 469B.118. The amount of the credit shall be the same whether for collective or noncollective investment.

(b) The credit allowed under this section for each category one alternative energy device for each dwelling may not exceed the lesser of \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1998.

(c) For each category one alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed under this section shall be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to \$1,500 for tax years beginning on or after January 1, 1998.

(d) For each alternative fuel device, the credit allowed under this section is 25 percent of the cost of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed in service on or after January 1, 1998.

(e)(A) For each category two alternative energy device that is a solar electric system or fuel cell system, the credit allowed under this section may not exceed the lesser of \$3 per watt of installed output or \$6,000. The State Department of Energy may by rule provide for a lesser amount of incentive as market conditions warrant, taking into consideration factors including the availability of bulk purchasing of alternative energy devices.

(B) For each category two alternative energy device that is a wind electric system, the credit allowed under this section may not exceed the lesser of \$6,000 or the first year energy yield in kilowatt hours per year multiplied by \$2.

(C) Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credits allowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500 for each alternative energy device, whichever is less. Unused credit amounts may be carried forward as provided in subsection (6) of this section, but may not be carried forward to a tax year that is more than five tax years following the first tax year for which any credit was allowed with respect to the category two alternative energy device that is the basis for the credit.

(D) Notwithstanding subparagraph (A) or (B) of this paragraph, the total amount of the credit for each device allowed under this paragraph may not exceed 50 percent of the total installed cost of the category two alternative energy device.

(3) To qualify for a credit under this section, all of the following are required:

(a) The alternative energy device must be purchased, constructed, installed and operated in accordance with ORS 469B.100 to 469B.118 and a certificate issued thereunder.

(b) The taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling or dwellings served by the alternative energy device or the tenant of the owner or of the contract purchaser and must:

(A) Use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence; or

(B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(c) In the case of an alternative fuel device, unless the verification form and certificate are transferred as authorized under ORS 469B.106 (9), the taxpayer who is allowed the credit must be the contractor who constructs the dwelling that incorporates the alternative fuel device into the dwelling or installs the fueling station in the dwelling.

(d) The credit must be claimed for the tax year in which the alternative energy device was pur-

chased if the device is operational by April 1 of the next following tax year.

(e) If the alternative fuel vehicle is a gasoline-electric hybrid vehicle not designed for electric plug-in charging, it must be purchased before January 1, 2010.

(4) The credit provided by this section does not affect the computation of basis under this chapter.

(5) The total credits allowed under this section in any one year may not exceed the tax liability of the taxpayer.

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

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

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

(9) If a change in the status of a 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.

(10) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each. However, a husband or wife living in a separate principal residence may claim the tax credit in the same amount as permitted a single person.

(11) As used in this section, unless the context requires otherwise:

(a) "Collective investment" means an investment by two or more taxpayers for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(b) "Noncollective investment" means an investment by an individual taxpayer for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(c) "Taxpayer" includes a transferee of a verification form under ORS 469B.106 (9).

(12) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit allowed under subsection (1) of this section plus any

similar credit allowed for federal income tax purposes may not exceed the cost [to the taxpayer] for the acquisition, construction and installation of the alternative energy device.

SECTION 13. ORS 469B.106 is amended to read: 469B.106. (1) Subject to the limitations in section 75, chapter 730, Oregon Laws 2011, any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the person:

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

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

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

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

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

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

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

(a) The location of the alternative energy device;

(b) A description of the type of device;

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

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

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

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

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

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

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

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

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

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

(g) The date the alternative energy device was purchased by the residential property owner, or, for a third-party alternative energy device installation, the date that the residential property owner and the alternative energy device owner signed a contract;

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

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

(5)(a) When the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469B.103, the Director of the State Department of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

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

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

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

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

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

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

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

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

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

native energy devices authorized by the dealer certification.

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

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

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

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

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

(6) *[An applicant seeking a credit for a third-party alternative energy device installation must obtain certification from the State Department of Energy under subsection (5) of this section prior to commencing installation of alternative energy devices. An applicant may receive certifications for no more than 25 devices under this subsection in one application.]* **Prior to commencing installation of alternative energy devices, installers of third-party alternative energy device installations must apply to the State Department of Energy to reserve credits on behalf of owners of residential property. Installers may reserve credit for no more than 25 installations under this subsection in one application.**

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

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

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

(10) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 or 317.115 and 469B.100 to 469B.118 to the person who constructs or installs the

alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection.

SECTION 13a. ORS 469B.109 is amended to read:

469B.109. (1) The owner of an alternative fuel vehicle as defined in ORS 469B.100 may transfer a tax credit otherwise allowed under ORS 316.116 for cost of the vehicle in exchange for a cash payment equal to the present value of the **potential** tax credit, **as determined at the time of the application for preliminary certification.**

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

SECTION 14. **The amendments to ORS 316.116, 469B.106 and 469B.109 by sections 12, 13 and 13a of this 2012 Act apply to alternative energy devices certified by the State Department of Energy on or after January 1, 2012, and to tax years beginning on or after January 1, 2012.**

SECTION 15. ORS 315.141 is amended to read: 315.141. (1) As used in this section:

(a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

(b) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been converted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct biomass energy use at the biofuel producer's site.

(c) "Biofuel producer" means a person that through activities in Oregon:

(A) Alters the physical makeup of biomass to convert it into biofuel;

(B) Changes one biofuel into another type of biofuel; or

(C) Uses biomass in Oregon to produce energy.

(d) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

(A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(B) Wood material from hardwood timber described in ORS 321.267 (3);

(C) Agricultural residues;

(D) Offal and tallow from animal rendering;

(E) Food wastes collected as provided under ORS chapter 459 or 459A;

(F) Wood debris collected as provided under ORS chapter 459 or 459A;

(G) Wastewater solids; or

(H) Crops grown solely to be used for energy.

(e) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic or other inorganic chemical compounds or waste, other than matter described in paragraph (d) of this subsection.

(f) "Biomass collector" means a person that collects biomass in Oregon to be used, in Oregon, as biofuel or to produce biofuel.

(g) "Oilseed processor" means a person that receives agricultural oilseeds and separates them into meal and oil by mechanical or chemical means.

(2) The Director of the State Department of Energy may adopt rules to define criteria, only as the criteria apply to organic biomass, to determine additional characteristics of biomass for purposes of this section.

(3)(a) An agricultural producer or biomass collector 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:

(A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel; or

(B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

(b) A credit under this section may be claimed in the tax year in which the credit is certified under subsection (5) of this section.

(c) A taxpayer may be allowed a credit under this section for more than one of the roles defined in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or a biomass collector may not claim a credit under this section.

(d) A credit under this section may be claimed only once for each unit of biomass.

[(d)] (e) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain corn, but a tax credit shall be allowed for other corn material.

(4) The amount of the credit shall equal the amount certified under subsection (5) of this section.

(5)(a) The State Department of Energy may establish by rule procedures and criteria for determining the amount of the tax credit to be certified under this section, consistent with ORS 469B.403. The department shall provide written certification to taxpayers that are eligible to claim the credit under this section.

(b) The State Department of Energy may charge and collect a fee from taxpayers for certification of credits under this section. The fee may not exceed the cost to the department of determining the amount of certified cost.

(c) The State Department of Energy shall provide to the Department of Revenue a list, by tax year, of taxpayers for which a credit is certified under this section, upon request of the Department of Revenue.

(6) The amount of the credit claimed under this section for any tax year may not exceed the tax liability of the taxpayer.

(7) Each agricultural producer or biomass collector shall maintain the written documentation of

the amount certified for tax credit under this section in its records for a period of at least five years after the tax year in which the credit is claimed and provide the written documentation to the Department of Revenue upon request.

(8) The credit shall be claimed on a form prescribed by the Department of Revenue that contains the information required by the department.

(9) 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.

(10) 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.

SECTION 16. ORS 315.357 is amended to read:

315.357. (1) For a facility other than a renewable energy resource equipment manufacturing facility, a taxpayer may not be allowed a credit under ORS 315.354 unless the taxpayer:

[(1)] (a) Files an application for preliminary certification under ORS 469B.145 on or before April 15, 2011;

[(2)] (b) Receives preliminary certification under ORS 469B.157 before July 1, 2011; and

[(3)] (c) Receives final certification under ORS 469B.161 before January 1, 2013, or has demonstrated, to the State Department of Energy, evidence of beginning construction before April 15, 2011.

(2) Any preliminary certification issued for a facility, other than a renewable energy resource equipment manufacturing facility, under ORS 469B.157 that remains outstanding as of July 1, 2011, shall expire on July 1, 2014.

SECTION 17. ORS 315.341 is amended to read:

315.341. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer is a corporation, under ORS chapter 317 or

318), based upon the certified cost of a renewable energy resource equipment manufacturing facility during the period for which the facility is certified under ORS 285C.540 to 285C.559. The credit allowed under this section in each of five succeeding tax years shall be 10 percent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer.

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

(a) The facility must be located in Oregon;

(b) The facility must have received:

(A) Final certification from the Director of the Oregon Business Development Department under ORS 285C.540 to 285C.559; or

(B) Final certification from the Director of the State Department of Energy under ORS 469B.130 to 469B.169, prior to January 1, 2012; and

(c) The taxpayer must be an eligible applicant under ORS 285C.547 (1)(b).

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

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

(b) The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 285C.553. The new lessor or owner must meet the requirements of ORS 285C.540 to 285C.559 and may claim a tax credit under this section only if all moneys owed to the State of Oregon have been paid, the facility continues to operate, unless continued operation is waived by the Oregon Business Development Department, and all conditions in the final certification are met. The tax credit available to the new owner shall be limited to the amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all previous leases.

[(c) A transferee holding a credit that has been transferred under ORS 285C.549 may not claim the tax credit under this section for any tax year prior to the tax year in which the transferee obtained the credit.]

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

the fifth succeeding tax year, and likewise, any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and likewise, any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and likewise, any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (1) of this section only as provided in this subsection.

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

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

(8) The definitions in ORS 285C.540 apply to this section.

SECTION 18. ORS 285C.557 is amended to read:

285C.557. (1) A certificate issued under ORS 285C.553 or 469B.161 is required for purposes of obtaining tax credits in accordance with ORS 315.341. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which the completed application for final certification of the facility under ORS 285C.553 is received by the [State Department of Energy] **Oregon Business Development Department.**

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

(3) For a transferee holding a credit that has been transferred under ORS 285C.549, the five-year period shall begin with the tax year in which the transferee pays for the credit.

SECTION 19. The amendments to ORS 285C.557, 315.141, 315.341 and 315.357 by sections 15 to 18 of this 2012 Act apply to tax years beginning on or after January 1, 2012.

SECTION 20. ORS 469B.276 is amended to read:

469B.276. (1) The owner of a project may transfer a tax credit for the project in exchange for a cash payment equal to the present value of the **potential tax credit, as determined at the time of the application for preliminary certification.**

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

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

SECTION 21. ORS 469B.285 is amended to read: 469B.285. (1) Prior to the installation or construction of an energy conservation project, any person may apply to the State Department of Energy for preliminary certification under ORS 469B.288 if:

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

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

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

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

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

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

(d) The anticipated total project cost.

(e) Information on the number and type of jobs, **directly connected to the allowance of the credit**, that will be:

(A) Created by the project[.]; and

(B) [the number of jobs] Sustained throughout the construction, installation and operation of the project [and the benefits of the project with regard to overall economic activity in this state].

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

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

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

(i) Any other information the director considers necessary to determine whether the project is in accordance with the provisions of ORS 469B.270 to 469B.306, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469B.294. The director may refund all or a portion of the fee if the application for certification is rejected.

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

(a) Filing the application before the start of installation or construction is inappropriate because

special circumstances render filing earlier unreasonable; and

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

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

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

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

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

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

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

(b) The preliminary certification has been amended.

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

SECTION 22. ORS 469B.291 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(d) The number and type of jobs, **directly connected to the allowance of the credit, that will be created** by the operation and maintenance of the project over the five-year period beginning with the year of preliminary certification under ORS 469B.288 [and information on the benefits of the project with regard to overall economic activity in this state];

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

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

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

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

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

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

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

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

SECTION 23. The amendments to ORS 469B.276, 469B.285 and 469B.291 by sections 20 to 22 of this 2012 Act apply to applications for preliminary certification submitted under ORS 469B.285 after July 1, 2011, and to tax years beginning on or after January 1, 2011.

SECTION 23a. ORS 469B.148 is amended to read:

469B.148. (1) The owner of a facility may transfer a tax credit for the facility in exchange for a cash payment equal to the present value of the **potential tax credit, as determined at the time of the application for preliminary certification.**

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

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

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

SECTION 24. ORS 184.484 is amended to read:

184.484. (1) For each statute authorizing a tax expenditure that has a purpose connected to economic development and is listed in subsection (2) of this section, the state agency charged with certifying or otherwise administering the tax expenditure shall submit a report to the Oregon Department of Administrative Services. If no agency is authorized by statute, or if the statute does not provide for certification or administration of the tax expenditure, the Department of Revenue shall submit the report.

(2) *This section applies to ORS 285C.175, 285C.309, 285C.362, 307.123, 307.455, 307.462, 315.507, 315.514, 316.698, 316.778, 317.124, 317.391 and 317.394 and to ORS 315.354 except as applicable in ORS 469B.145 (2)(a)(L) or (N).*

(2) **This section applies to:**

(a) **ORS 285C.175, 285C.309, 285C.362, 307.123, 307.455, 307.462, 315.141, 315.331, 315.336, 315.341, 315.507, 315.514, 316.698, 316.778, 317.124, 317.391 and 317.394.**

(b) **Grants awarded under ORS 469B.256 in any tax year in which certified renewable energy contributions are received as provided in ORS 315.326.**

(c) **ORS 315.354 except as applicable in ORS 469B.145 (2)(a)(L) or (N).**

(d) **ORS 316.116, if the allowed credit exceeds \$2,000.**

(3) The following information, if it is already available in an existing database maintained by the agency, must be included in the report required under this section:

(a) The name of each taxpayer **or applicant** approved for the allowance of a tax expenditure **or a grant award under ORS 469B.256.**

(b) The address of each taxpayer **or applicant.**

(c) The total amount of credit against tax liability, reduction in taxable income or exemption from property taxation granted to each taxpayer **or applicant.**

(d) Specific outcomes or results required by the tax expenditure program and information about whether the taxpayer **or applicant** meets those requirements. This information shall be based on data already collected and analyzed by the agency in the course of administering the tax expenditure. Statistics must be accompanied by a description of the methodology employed in their generation.

(e) An explanation of the agency's certification decision for each taxpayer **or applicant**, if applicable.

(f) Any additional information submitted by the taxpayer **or applicant** and relied upon by the agency in its certification determination.

(g) Any other information that agency personnel deem valuable as providing context for the information described in this subsection.

(4) The information reported under subsection (3) of this section may not include proprietary information or information that is exempt from disclosure under ORS 192.410 to 192.505 or 314.835.

(5) No later than September 30 of each year, agencies described in subsection (1) of this section shall submit to the Oregon Department of Administrative Services the information required under subsection (3) of this section as applicable to applications for allowance of tax expenditures approved by the agency during the agency fiscal year ending during the current calendar year. The information shall then be posted on the Oregon transparency website required under ORS 184.483 no later than December 31 of the same year.

(6) The information described in this section that is available on the Oregon transparency website must be accessible in the format and manner required by the Oregon Department of Administrative Services.

(7) The information described in this section shall be furnished to the Oregon transparency website by posting reports and providing links to existing information systems applications in accordance with standards established by the Oregon Department of Administrative Services.

SECTION 25. Section 2, chapter 199, Oregon Laws 2011, is amended to read:

Sec. 2. [*Section 1 of this 2011 Act*] **ORS 184.484** applies to:

(1) Applications for tax expenditures pursuant to ORS 307.123, **315.141**, **315.331**, **315.336**, **315.341**, 315.354, 316.778 and 317.391 that are approved or certified by state agencies in agency fiscal years ending on or after June 30, 2011.

(2) Applications for tax expenditures pursuant to ORS 285C.175, 285C.309, 285C.362, 315.507 and 317.124 that are approved on or after June 30, 2011.

(3) Applications for tax credits pursuant to ORS 316.116 that are allowed in tax years beginning on or after January 1, 2012.

(4) Applications for grants under ORS 469B.256 that are awarded in fiscal years ending on or after June 30, 2012.

(3) (5) Applications for tax expenditures pursuant to ORS 307.455, 307.462, 315.514, 316.698 and 317.394 that are approved or certified by state agencies in agency fiscal years ending on or after June 30, 2013.

SECTION 26. ORS 192.502 is amended to read: 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially

prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9)(a) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information compiled in a public record when:

(A) The basis for the claim of exemption is ORS 40.225;

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

(C) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the agents

of the treasurer or the council relating to active or proposed publicly traded investments under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or liquidation of the investments. For the purposes of this subsection:

(a) The exemption does not apply to:

(A) Information in investment records solely related to the amount paid directly into an investment by, or returned from the investment directly to, the treasurer or council; or

(B) The identity of the entity to which the amount was paid directly or from which the amount was received directly.

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset including but not limited to records regarding the solicitation, acquisition, deployment, exchange or liquidation of the investments including but not limited to:

(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership or to their respective investment vehicles.

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

(C) Meeting materials of an investment fund, an asset ownership or their respective investment vehicles.

(D) Records containing information regarding the portfolio positions in which an investment fund, an asset ownership or their respective investment vehicles invest.

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

(b) The exemption under this subsection does not apply to:

(A) The name, address and vintage year of each privately placed investment fund.

(B) The dollar amount of the commitment made to each privately placed investment fund since inception of the fund.

(C) The dollar amount of cash contributions made to each privately placed investment fund since inception of the fund.

(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board from each privately placed investment fund.

(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately placed investment fund attributable to an investment by the

State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

(F) The net internal rate of return of each privately placed investment fund since inception of the fund.

(G) The investment multiple of each privately placed investment fund since inception of the fund.

(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis to each privately placed investment fund.

(I) The dollar amount of cash profit received from each privately placed investment fund on a fiscal year-end basis.

(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(16) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(17)(a) The following records, communications and information submitted to the Oregon Business Development Commission, the Oregon Business Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports as defined in ORS 777.005, or a county or city governing body and any board, department, commission, council or agency thereof, by applicants for investment funds, grants, loans, services or economic development moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(b) The following records, communications and information submitted to the State Department of Energy by applicants for tax credits **or for grants awarded under ORS 469B.256**:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not

been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(18) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

(a) Circulation records, showing use of specific library material by a named person;

(b) The name of a library patron together with the address or telephone number of the patron; and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(l) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain

services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(31) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(32) A county elections security plan developed and filed under ORS 254.074.

(33) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

(E) Sewage; or

(F) Water.

(b) Telecommunication systems, including cellular, wireless or radio systems.

(c) Data transmissions by whatever means provided.

(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court designates the information as confidential by rule under ORS 1.002.

(35)(a) Employer account records of the State Accident Insurance Fund Corporation.

(b) As used in this subsection, “employer account records” means all records maintained in any form that are specifically related to the account of any employer insured, previously insured or under consideration to be insured by the State Accident Insurance Fund Corporation and any information obtained or developed by the corporation in connection with providing, offering to provide or declining to provide insurance to a specific employer. “Employer account records” includes, but is not limited to, an employer’s payroll records, premium payment history, payroll classifications, employee names and identification information, experience modification factors, loss experience and dividend payment history.

(c) The exemption provided by this subsection may not serve as the basis for opposition to the discovery documents in litigation pursuant to applicable rules of civil procedure.

(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

(b) As used in this subsection, “claimant files” includes, but is not limited to, all records held by the corporation pertaining to a person who has made

a claim, as defined in ORS 656.005, and all records pertaining to such a claim.

(c) The exemption provided by this subsection may not serve as the basis for opposition to the discovery documents in litigation pursuant to applicable rules of civil procedure.

(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s discharge or other separation from military service.

(38) Records of or submitted to a domestic violence service or resource center that relate to the name or personal information of an individual who visits a center for service, including the date of service, the type of service received, referrals or contact information or personal information of a family member of the individual. As used in this subsection, “domestic violence service or resource center” means an entity, the primary purpose of which is to assist persons affected by domestic or sexual violence by providing referrals, resource information or other assistance specifically of benefit to domestic or sexual violence victims.

SECTION 27. This 2012 Act takes effect on the 91st day after the date on which the 2012 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

Approved by the Governor March 16, 2012
 Filed in the office of Secretary of State March 19, 2012
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