

B-Engrossed
House Bill 2448

Ordered by the House May 20
Including House Amendments dated March 13 and May 20

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for State Department of Energy)

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.

[Extends sunset for tax credit for energy conservation projects.] Allows State Department of Energy to require recertification of eligibility for tax credits and to require project owners to enter into performance agreements.

Applies to applications for final certification submitted on or after September 1, 2015, and to tax years beginning on or after January 1, 2015.

[Extends sunset for tax credit for renewable energy development contributions. Extends biennial limits on amount of credits and corresponding grants.]

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to energy incentives programs; creating new provisions; amending ORS 315.331, 469B.276,
3 469B.291, 469B.294, 469B.297 and 469B.300; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 469B.270 to**
6 **469B.306.**

7 **SECTION 2. (1) An owner of an energy conservation project with a total project cost**
8 **certified under ORS 469B.291 of \$1 million or more that is subject to a recertification re-**
9 **quirement in a performance agreement shall apply under this section for recertification of**
10 **eligibility for the tax credit allowed under ORS 315.331.**

11 **(2) The applicant shall file an application for recertification with the State Department**
12 **of Energy at least 60 days prior to the anniversary date of the issuance of the final certif-**
13 **icate. The Director of the State Department of Energy may require recertification for the**
14 **three years following the date of the issuance of the final certificate.**

15 **(3) The recertification application shall contain the following information:**

16 **(a) A description of the business operations conducted at the facility and any changes in**
17 **the business operations since the project was completed;**

18 **(b) Energy consumption for the project or facility as shown in the preceding 12 months**
19 **of utility billing records;**

20 **(c) A statement signed by the applicant attesting that the project is in compliance with**
21 **all applicable laws related to the ownership and operation of the project;**

22 **(d) A statement signed by the project owner attesting that the project owner is current**
23 **on all obligations to the state, including but not limited to taxes and permitting fees;**

24 **(e) An inspection of the project by the department, if required by the department; and**

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.

1 (f) Any other information required by the department.

2 (4) A recertification application filed under this section must be accompanied by the fee
3 established under ORS 469B.294.

4 (5) The department shall review the recertification application and approve the applica-
5 tion if it meets the requirements of subsections (3) and (4) of this section and the project is
6 in compliance with all applicable statutes and administrative rules and with the performance
7 agreement.

8 (6) The department may consult with the city or county in which the facility is located
9 or with any state agency in determining whether to approve a recertification application
10 under this section.

11 (7) If the director approves a recertification application, the director shall issue a recer-
12 tification of eligibility for a tax credit under ORS 315.331 for up to 10 percent of the total
13 project cost certified under ORS 469B.291. The director may deny the recertification or issue
14 a recertification in an amount of credit less than 10 percent of the total project cost certified
15 under ORS 469B.291 if the director determines that the project is not in compliance with all
16 applicable statutes and administrative rules and with the performance agreement.

17 (8) If the director does not approve a recertification application or reduces the amount
18 of tax credit, the project owner may not claim, use or transfer that portion of the tax credit
19 for which the recertification was denied.

20 (9) A person aggrieved by a decision of the director to deny or reduce the amount of a
21 recertification for a tax credit may request and be granted a contested case hearing under
22 ORS chapter 183.

23 **SECTION 3.** ORS 315.331 is amended to read:

24 315.331. (1) A credit is allowed against the taxes otherwise due under ORS chapter 316 or, if the
25 taxpayer is a corporation, under ORS chapter 317 or 318, for an energy conservation project that
26 is certified under ORS 469B.270 to 469B.306. The credit is allowed as follows:

27 (a) Except as provided in **section 2 of this 2015 Act and in** paragraph (b) of this subsection,
28 the credit allowed in each of the first two tax years in which the credit is claimed shall be 10 per-
29 cent of the certified cost of the facility, but may not exceed the tax liability of the taxpayer. The
30 credit allowed in each of the succeeding three years shall be five percent of the certified cost, but
31 may not exceed the tax liability of the taxpayer.

32 (b) If the certified cost of the facility does not exceed \$20,000, the total amount of the credit
33 allowable under subsection (3) of this section may be claimed in the first tax year for which the
34 credit may be claimed, but may not exceed the tax liability of the taxpayer.

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

36 (a) The project must be located in Oregon.

37 (b) The project must have received final certification from the Director of the State Department
38 of Energy under ORS 469B.270 to 469B.306.

39 (c) If the project is a research and development project, it must receive, prior to certification
40 under ORS 469B.288, a recommendation from a qualified third party selected by the director.

41 (d) If the project is new construction or a total building retrofit, then the project must achieve,
42 at a minimum, the energy efficiency standards required for:

43 (A) LEED Platinum certification;

44 (B) A four globes rating from the Green Globes program;

45 (C) A nationally or regionally recognized and appropriate sustainable building program whose

1 performance standards are equivalent to the standards required for LEED Platinum certification or
2 a four globes rating from the Green Globes program, as determined by the department; or

3 (D) Verification that the construction conformed to the standards of the Reach Code adopted
4 pursuant to ORS 455.500.

5 (3) The total amount of credit allowable to an eligible taxpayer under this section may not ex-
6 ceed 35 percent of the certified cost of the project.

7 (4)(a) Upon any sale, termination of the lease or contract, exchange or other disposition of the
8 project, notice thereof shall be given to the director, who shall revoke the certificate covering the
9 project as of the date of such disposition.

10 (b) A new owner, or, upon re-leasing of the project, a new lessee, may apply for a new certificate
11 under ORS 469B.291. The new lessee or owner must meet the requirements of ORS 469B.270 to
12 469B.306 and may claim a tax credit under this section only if all moneys owed by the new owner
13 or lessee to the State of Oregon have been paid, if the project continues to operate and if all con-
14 ditions in the final certification are met. The tax credit available to the new owner shall be limited
15 to the amount of credit not claimed by the former owner or, for a new lessee, the amount of credit
16 not claimed by the lessee under all previous leases. The State Department of Energy may waive the
17 requirement that a new owner or lessee apply for a new certificate under ORS 469B.291 if the re-
18 remaining credit is less than \$20,000.

19 (c) The department may not revoke the certificate covering a project under paragraph (a) of this
20 subsection if the tax credit associated with the project has been transferred to a taxpayer who is
21 an eligible applicant under ORS 469B.285.

22 (5) The tax credit allowed under this section for any one tax year may not exceed the tax li-
23 ability of the taxpayer.

24 (6) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
25 particular year may be carried forward and offset against the taxpayer's tax liability for the next
26 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
27 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
28 succeeding tax year may be carried forward and used in the third succeeding tax year, and likewise,
29 any credit not used in that third succeeding tax year may be carried forward and used in the fourth
30 succeeding tax year, and likewise, any credit not used in that fourth succeeding tax year may be
31 carried forward and used in the fifth succeeding tax year, but may not be carried forward for any
32 tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years
33 specified in subsection (1) of this section only as provided in this subsection.

34 (7) The credit allowed under this section is not in lieu of any depreciation or amortization de-
35 duction for the project to which the taxpayer otherwise may be entitled for purposes of ORS chapter
36 316, 317 or 318 for such year.

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

39 (9) The definitions in ORS 469B.270 apply to this section.

40 **SECTION 4.** ORS 469B.276 is amended to read:

41 469B.276. (1) The owner of a project may transfer a tax credit for the project in exchange for
42 a cash payment equal to the present value of the potential tax credit, as determined at the time of
43 the application for preliminary certification. **If the tax credit is subject to recertification, only**
44 **that portion of the tax credit that has been recertified may be transferred.**

45 (2) The State Department of Energy shall establish by rule a formula to be employed in the de-

1 termination of prices of credits transferred under this section. In establishing the formula the de-
2 partment shall incorporate inflation projections and market real rate of return.

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

5 **SECTION 5.** ORS 469B.291 is amended to read:

6 469B.291. (1) The Director of the State Department of Energy may issue a final certification for
7 an energy conservation project under this section only if:

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

10 (b) The applicant demonstrates the ability to provide the information required by ORS 469B.285
11 (2) and does not violate any condition that may be imposed as described in [*subsection (4)*] **sub-**
12 **sections (4) and (5)** of this section; and

13 (c) The project was installed or constructed in accordance with the applicable provisions of ORS
14 469B.270 to 469B.306 and any applicable rules or standards adopted by the director.

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

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

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

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

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

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

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

25 (d) The number and type of jobs, directly connected to the allowance of the credit, that will be
26 created by the operation and maintenance of the project over the five-year period beginning with
27 the year of preliminary certification under ORS 469B.288;

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

30 (f) Documentation of compliance with applicable state and local laws and regulations and li-
31 censing and permitting requirements as defined by the director;

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

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

36 **(4) As part of the final certification process, the director may require the applicant to**
37 **enter into a performance agreement with the department. The performance agreement may**
38 **include a recertification requirement under section 2 of this 2015 Act and any additional re-**
39 **quirements that the director determines are appropriate to promote the purposes of ORS**
40 **315.331 and 469B.270 to 469B.306.**

41 [~~4~~] **(5)** After the filing of the application under this section, the director may issue the certif-
42 icate together with any conditions, **including conditions imposed by a performance agreement,**
43 that the director determines are appropriate to promote the purposes of ORS 315.331 and 469B.270
44 to 469B.306. If the applicant is an entity subject to regulation by the Public Utility Commission, the
45 director may consult with the commission prior to issuance of the certificate. The action of the di-

1 rector shall include certification of the actual cost of the project. However, the director may not
2 certify an amount for tax credit purposes that is more than the amount approved in the preliminary
3 certificate issued for the project.

4 [(5)] (6) **Except as otherwise provided in section 2 of this 2015 Act**, if the director rejects
5 an application for final certification, or certifies a lesser amount of credit than was claimed in the
6 application, the director shall send to the applicant written notice of the action, together with a
7 statement of the findings and reasons for the action, by certified mail, before the 60th day after the
8 filing of the application. Failure of the director to act constitutes rejection of the application.

9 [(6)] (7) Upon approval of an application for final certification of a project, the director shall
10 certify the project. The final certification shall indicate the amount of projected energy savings at-
11 tributable to the project and the total project cost.

12 [(7)] (8) The director may establish by rule timelines and intermediate deadlines for submission
13 of application materials.

14 **SECTION 6.** ORS 469B.294 is amended to read:

15 469B.294. By rule and after hearing, the Director of the State Department of Energy may adopt
16 a schedule of reasonable fees that the State Department of Energy may require of applicants for
17 preliminary or final certification **or recertification** of an energy conservation project under ORS
18 469B.270 to 469B.306. Before the adoption or revision of the fees, the department shall estimate the
19 total cost of the program to the department. The fees shall be used to recover the anticipated cost
20 of administering and enforcing the provisions of ORS 469B.270 to 469B.306, including filing, investi-
21 gating, granting and rejecting applications for certification **or recertification** and ensuring compli-
22 ance with ORS 469B.270 to 469B.306 and shall be designed not to exceed the total cost estimated
23 by the department. Any excess fees shall be held by the department and shall be used by the de-
24 partment to reduce any future fee increases. The fee may vary according to the size and complexity
25 of the project. The fee is not considered part of the cost of the project to be certified.

26 **SECTION 7.** ORS 469B.297 is amended to read:

27 469B.297. (1) A certificate issued under ORS 469B.291 is required for purposes of obtaining tax
28 credits in accordance with ORS 315.331. **Except as otherwise provided in section 2 of this 2015**
29 **Act**, such certification shall be granted for a period not to exceed five years. The five-year period
30 shall begin with the tax year of the applicant during which the completed application for final cer-
31 tification of the project under ORS 469B.291 is received by the State Department of Energy. **If re-**
32 **quired by the department in a performance agreement, the project owner shall seek**
33 **recertification during the five-year period, as provided in section 2 of this 2015 Act.**

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

36 (3) For a transferee holding a credit that has been transferred under ORS 469B.276, the five-year
37 period shall begin with the tax year in which the transferee pays for the credit.

38 **SECTION 8.** ORS 469B.300 is amended to read:

39 469B.300. (1) Under the procedures for a contested case under ORS chapter 183, the Director
40 of the State Department of Energy may order the revocation of a certificate issued under ORS
41 469B.291 if the director finds that:

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

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

45 (c) The project is no longer in operation.

1 (2) As soon as an order of revocation under this section becomes final, the director shall notify
2 the Department of Revenue and the project owner, contract purchaser or lessee of the order of re-
3 vocation. Upon notification, the Department of Revenue immediately shall proceed to collect those
4 taxes not paid by the certificate holder as a result of the tax credits provided to the certificate
5 holder under ORS 315.331, from the certificate holder or a successor in interest to the business in-
6 terests of the certificate holder. All prior tax credits provided to the holder of the certificate by
7 virtue of the certificate shall be forfeited.

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

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

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

20 (5) Notwithstanding subsections (1) to (4) of this section, a certificate or portion of a certificate
21 held by a transferee under ORS 469B.276 may not be considered revoked for purposes of the
22 transferee, the tax credit allowable to the transferee under ORS 469B.276 may not be reduced, and
23 a transferee is not liable under subsections (2) to (4) of this section.

24 **(6) If the project owner is subject to a performance agreement requiring recertification**
25 **under section 2 of this 2015 Act, the certificate shall be considered revoked as to any portion**
26 **of the tax credit that has not previously received approval under a recertification application**
27 **that was required to have been filed pursuant to section 2 of this 2015 Act.**

28 **SECTION 9. Section 2 of this 2015 Act and the amendments to ORS 315.331, 469B.276,**
29 **469B.291, 469B.294, 469B.297 and 469B.300 by sections 3 to 8 of this 2015 Act apply to applica-**
30 **tions for final certification under ORS 469B.291 submitted on or after September 1, 2015, and**
31 **to tax years beginning on or after January 1, 2015.**

32 **SECTION 10. This 2015 Act takes effect on the 91st day after the date on which the 2015**
33 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

34