

LC 563 (ODOE LC - 1)
Business Energy Tax Credit
10/4/06

Bill Summary

1. Increase credit for renewable energy from 35% to 50% and the project cost limit from \$10 million to \$20 million.
2. Repeal the offset for federal tax credits for BETC projects that also receive a federal credit.
3. Provide an incentive to builders of high performance homes that reduce purchased energy use to near zero on an annual basis.
4. Make combined heat and power projects of less than one megawatt eligible for the 50% and \$20 million for renewables.
5. Make hydro projects on existing diversions or impoundments meeting ODFW requirements eligible for the 50% and \$20 million and increase the hydro project cap from 1 megawatt to 10 megawatts.
6. Make builders eligible for installation of renewable energy systems in new homes but at the value of the residential credit.
7. Effective retroactive to 1/1/07.

A BILL FOR AN ACT

Relating to renewable energy.

315.354 Energy conservation facilities. (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 the facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit is allowed as follows:

(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 facility, 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)(i) **For facilities using or producing renewable energy resources as defined in ORS 469.185, except for homebuilders as provided in subsections 8 and 9 of this section, and for combined heat and power facilities of less than one megawatt, the credit allowed shall be ten percent of the certified cost of the facility taken in each of five years, but may not exceed the tax liability of the taxpayer.**

(ii) If the application for certification under ORS 469.185 to 469.225 was filed with the State Department of Energy on or after January 1, 2001, and the certified cost of the facility does not exceed \$20,000, the total amount of the credit allowable under

subsection (3) of this section may be claimed in the first tax year for which the credit may be claimed, but may not exceed the tax liability of the taxpayer.

(iii) For high performance homes and homebuilder-installed renewable energy systems certified on or after January 1, 2007, the total amount of the credit allowable under subsection (3) may be claimed in the first tax year for which the credit may be claimed, 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 final certification from the Director of the State Department of Energy under ORS 469.185 to 469.225; and

(c) The taxpayer must be an eligible applicant under ORS 469.205 (1)(c).

(3) The maximum total credit or credits allowed for a facility under this section to eligible taxpayers may not exceed **50 percent of the certified cost of the facility for renewable energy resources or combined heat and power or 35 percent of the certified cost of the facility for all other applications except those in subsections 8 and 9 which shall be up to \$12,000 per single-family dwelling for a high performance home and up to \$9000 per single-family dwelling for homebuilder-installed renewable energy systems.**

(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 State Department of Energy who shall revoke the certificate covering the facility as of the date of such disposition. The new owner, or upon re-leasing of the facility, the new lessor, may apply for a new certificate under ORS 469.215, but 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.

(b) The State Department of Energy may not revoke the certificate covering a facility under paragraph (a) of this subsection if the tax credit associated with the facility has been transferred to a taxpayer who is an eligible applicant under ORS 469.205 (1)(c)(A).

(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 provided by 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. [1993 c.730 §34 (enacted in lieu of 316.140 and 317.104); 1995 c.746 §15; 1997 c.656 §4; 1999 c.365 §10; 2001 c.583 §1; 2001 c.660 §1a]

(8) A special credit is established for a builder of a new single-family dwelling that is a high performance home. The amount of the high performance home credit shall be up to \$12,000. Of that amount, up to \$9000 may be claimed for any on-site renewable energy resource system or systems and an additional \$3000 may be claimed for qualifying as a high performance home. The amount of the renewable resource credit shall be the same as that established under ORS 316.116 for residential alternative energy devices.

(9) A special credit also is established for homebuilder-installed renewable energy systems. The amount of the credit shall be established using the rates established under ORS 316.116 for residential alternative energy devices.

(10) Use by a homebuilder of the credit under subsections 8 and 9 precludes the use of any tax credit by the homebuyer for the same features. The homebuilder must disclose this to the buyer prior to sale of the home.

315.356 Other grants as offset to cost of energy conservation facility; changes in credit eligibility when taxpayer participates in other programs. (1) If a taxpayer obtains a grant [*or tax credit*] from the federal government [*other than an investment tax credit or a low income housing tax credit*] in connection with a facility which has been certified by the Director of the State Department of Energy, the certified cost of the facility shall be reduced on a dollar for dollar basis. Any income or excise tax credits which such taxpayer would be entitled to under ORS 315.354 and 469.185 to 469.225 after any such reduction shall not be reduced by such federal grants [*or tax credits*]. A taxpayer applying for a federal grant [*or credit*] shall notify the Department of Revenue by certified mail within 30 days after each application, and after the receipt of any grant.

(2) A taxpayer is eligible to participate in both this tax credit program and low interest, government-sponsored loans.

(3) A taxpayer who receives a tax credit or ad valorem tax relief on a pollution control facility or an alternative energy device under ORS 307.405, 315.304 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 315.354 and 469.185 to 469.225.

(4) A credit may not be allowed under ORS 315.354 if the taxpayer has received a tax credit on the same facility or device under ORS 315.324. [1993 c.730 §36 (enacted in lieu of 316.141, 316.142 and 317.103); 1995 c.556 §35; 1999 c.623 §3; 2001 c.583 §2]

SECTION __. The amendments to ORS 315.354 and 315.356 by section __ of this 2007 Act apply to corporate excise or income tax years beginning on or after January 1, 2007.

469.185 Definitions for ORS 469.185 to 469.225 and 469.878. As used in ORS 469.185 to 469.225 and 469.878:

* * * *

ReNUMBER 469.185 (1) through (13).

(X) “Combined Heat and Power” means the simultaneous production of electricity and heat using a single fuel.

(6) “Facility” means an energy facility, recycling facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station. **“Facility” also means a facility used to manufacture or distribute alternative fuels, such as electricity, ethanol, methanol, gasohol, and biodiesel, from renewable energy resources.**

(X) “High performance home” means a new single-family home designed and constructed to reduce purchased energy use to near zero on an annual basis. The State Department of Energy shall define by rule criteria for a high performance home, including standards for the building envelope, HVAC, lighting and appliances, water conservation, sustainable building materials, and on-site renewable energy resource systems. The criteria shall achieve at least 35% energy savings compared with conventional construction and deliver at least 4000 kilowatt hours of energy.

(X) “Homebuilder-installed renewable energy systems” means renewable energy resource systems installed in a new single-family home. Eligible renewable energy resource systems include: solar electric systems, solar domestic water heating systems, passive solar space heating systems, wind power systems, geothermal heating systems, fuel cell systems, and others wood pellet stoves that meet US Environmental Protection Agency Standards. The State Department of Energy shall define by rule the criteria for systems.

(9)(a) “Renewable energy resource” includes, but is not limited to, straw, forest slash, wood waste or other wastes from farm or forest land, industrial waste, solar energy, wind power, water power or geothermal energy.

(b) “Renewable energy resource” does not include a hydroelectric generating facility larger than **ten[one]** megawatts of installed capacity unless the facility qualifies as

a research, development or demonstration facility. **To qualify, a hydroelectric generating facility greater than one megawatt must be installed on an existing diversion or impoundment and meet ODFW requirements.**

469.200 Annual limit to cost of facility in granting tax credits. The total cost of a facility that receives a preliminary certification from the Director of the State Department of Energy for tax credits in any calendar year shall not exceed **\$20 million for facilities using or producing renewable energy resources or facilities using combined heat and power or \$10 million for all other applications.** The director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the determination. [1979 c.512 §5; 1981 c.894 §18; 1985 c.745 §3; 1987 c.158 §98; 1991 c.711 §3; 1993 c.684 §2; 1995 c.746 §15a; 1997 c.534 §12; 1997 c.656 §6a; 1999 c.365 §2; 2003 c.186 §23]

469.205 Application for renewable energy resource facility tax credit; eligibility; contents; fees.

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

(a) A statement that the applicant or the lessee of the applicant's facility:

(J) Plans to acquire a sustainable building practices facility; [*or*]

(K) Plans to acquire a car sharing facility and operate a car sharing program; **or[.]**

(L) Plans to construct one or more high performance homes.

(M) Plans to construct a combined heat and power facility.
