

# LEGISLATIVE CONCEPT

A concept proposed to the Renewable Energy Working Group (REWG)

From the REWG Incentives Committee – August 14, 2008

Concept Subject/Title **BETC Transferability**

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◆ BRIEF DESCRIPTION OF THIS CONCEPT:

Revise ORS 469.206 to: (1) clarify that a facility tax credit may be transferred to a partnership, corporation, limited liability company, trust or other entity, and (2) permit the transferee of a facility tax credit to further transfer the credit to another person or entity, including a shareholder, member or partner of the transferee, and (3) direct the Department of Energy to establish by rule procedures for the further transfer of facility tax credits.

◆ PURPOSE OF THIS CONCEPT (DESCRIBE PROBLEM YOU ARE TRYING TO SOLVE AND SUGGESTED SOLUTION):

The purpose of this concept is to resolve questions concerning the transferability of facility tax credits.

- ◆ The Department of Energy's Business Energy Tax Credit regulations implement ORS 469.206 by creating a "Pass-through Partner" program. The regulations define a "Pass-through Partner" as a "person or business." *See* OAR 330-090-0110(49). It is unclear whether an entity – such as a corporation, partnership, limited liability company or trust – that is not engaged in business may become a Pass-through Partner. This concept would amend ORS 469.206 to provide that a facility tax credit may be transferred to "a person" and to provide a definition of "person" that includes corporations, partnerships, limited liability companies, trusts and other entities.
- ◆ ORS 469.206 permits the transfer a facility tax credit, but it is unclear whether the credit may be further transferred by the transferee. This concept would revise ORS 469.206 to clarify that a facility tax credit may be further transferred, whether by sale or by allocation/distribution to the owners of an entity that holds the credit, subject to rules established by the Department of Energy.
- ◆ It is unclear from ORS 469.206 and the BETC regulations whether a facility tax credit held by an individual terminates upon death. This concept would amend ORS 469.206 to confirm that a facility tax credit is transferable to heirs and designated beneficiaries.

◆ POLICY IMPLICATIONS:

◆ PARTNERS OR OTHER AGENCIES AFFECTED:

Agency:

Person you talked to about concept:

Phone:

◆ KNOWN SUPPORT

◆ KNOWN OPPOSITION:

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◆ THIS CONCEPT: (Do not skip answers. Enter *none* or *N/A* as needed.)

Revises ORS 469.206

Adds new sections to ORS Chapter \_\_\_

Check one:  Major program change  Minor program change  Technical correction/housekeeping only

Was previously proposed in: Year \_\_\_ as Bill No.

Why are you proposing it again (what changed)?

Is a PLACEHOLDER? No  Yes  Expected date of completion:

Reason not completed:

Is due to legal decision: Case cite: \_\_\_\_\_ or AGO No./date (attach copy)

Raises fees or assessments? No  Yes  (attach Fiscal Impact Estimate and form 107BF22)

Imposes or adds to unfunded mandate on local governments? No  Yes  (attach Fiscal Impact Estimate)

Has other fiscal, revenue, or position impacts? No  Yes  (attach Fiscal Impact Estimate)

Have you discussed this Concept with your Attorney General liaison? No  Yes