

Enrolled

# House Bill 2843

Sponsored by Representative FAWBUSH, Senator BROWN, Representatives  
BYERS, FADELEY, KAFOURY, MASON, Senator KAFOURY

512

CHAPTER.....

AN ACT

Relating to taxation.

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

**SECTION 1.** Sections 2 to 10 of this Act are added to and made a part of ORS 469.010 to 469.180.

**SECTION 2.** In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources.

**SECTION 3.** As used in sections 2 to 10 of this 1979 Act:

(1) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation facility.

(2) "Energy conservation facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for use in the trade or business; or

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005.

(3) "Person" means any individual or legal entity except an entity whose principal business activity is directly or indirectly the production, transportation or distribution of electricity, petroleum or natural gas for wholesale or retail use.

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

**SECTION 4.** In determining the eligibility of energy conservation facilities for tax credits,

preference shall be given to those projects which:

- (1) Are not routinely used in a commercial or industrial trade or business;
- (2) Have the potential, if developed at other suitable locations, for making a significant contribution to meeting the energy needs of the state; or
- (3) Are not reasonably expected, in the absence of the tax credit granted under this 1979 Act, to be cost effective within five years of erection, construction or installation.

**SECTION 5.** (1) The total of all costs of energy conservation facilities certified by the director for tax credits in any calendar year shall not exceed \$30 million. If the applications exceed the \$30 million limit, the director, in his discretion, shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in sections 2 to 10 of this 1979 Act.

(2) Not less than \$5 million of the \$30 million annual certification limit shall be allocated to facilities having a certified cost of \$100,000 or less for any facility.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any facility shall not exceed \$10 million. However, if the applications certified in any calendar year do not total \$25 million, the director, in his discretion, may increase the certified costs above the \$10 million maximum for previously certified facilities. Such increases shall be allocated according to the director's determination of how the previously certified facilities meet the criteria of sections 2 to 10 of this 1979 Act. The increased allocation to previously certified facilities under this subsection shall not include any of the \$5 million reserved under subsection (2) of this section.

**SECTION 6.** (1) Prior to erection, construction or installation of a proposed facility any person may apply to the department for preliminary certification under section 7 of this 1979 Act if:

(a) The erection, construction or installation of the facility is to be commenced on or after the effective date of this 1979 Act and before December 31, 1983;

(b) The facility complies with the standards or rules adopted by the director; and

(c) The applicant is the owner or contract purchaser of a trade or business that plans to utilize an energy conservation facility in connection with Oregon property or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes the facility in connection with Oregon property.

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

(a) A statement that the applicant is using or would have used an energy source that uses electricity, petroleum or natural gas and that the applicant:

(A) Intends to convert from that energy source to a renewable energy resource;

(B) Plans to construct a facility that will use a renewable energy resource or solid waste instead of electricity, petroleum or natural gas; or

(C) Plans to use a renewable energy resource in the generation of electricity that will replace an existing or proposed use of an existing source of electricity.

(b) A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application.

(c) Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant will be reduced as the result of using the facility.

(d) The projected cost of the facility.

(e) Any other information the director deems necessary to determine whether the proposed facility is in accordance with the provisions of sections 2 to 10 of this 1979 Act, and any applicable rules or standards adopted by the director.

(3) The director may waive the filing of the preliminary application if he finds the filing inappropriate because special circumstances render the filing unreasonable, and if he finds such facility would otherwise qualify for tax credit certification pursuant to sections 2 to 10 of this 1979 Act.

**SECTION 7.** (1) The director may require the submission of plans and specifications and, after examination thereof, may request corrections and revisions of the plans and specifications.

(2) If the director determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of sections 2 to 10 of this 1979 Act and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the acquisition, erection, construction or installation of the facility. If the director determines that the acquisition, erection, construction or installation does not comply with the provisions of sections 2 to 10 of this 1979 Act and applicable rules and standards, the director shall issue an order denying certification.

(3) If within 120 days of the receipt of an application for preliminary certification, the director fails to issue a preliminary certificate of approval or an order denying certification, the preliminary certificate shall be considered to have been denied.

(4) Within 60 days from the date of mailing of the order under subsection (2) of this section or from a denial under subsection (3) of this section, any person whose preliminary application has been denied may request a hearing. The request shall be in writing, shall state the grounds for hearing and shall be mailed to the director. The hearing shall be conducted in accordance with the provisions of ORS 183.310 to 183.500 applicable to contested cases.

**SECTION 8.** (1) No certification shall be issued by the director under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under section 7 of this 1979 Act, except where the filing of a preliminary application has been waived under section 6 of this 1979 Act, and in accordance with the applicable provisions of sections 2 to 10 of this 1979 Act and any applicable rules or standards adopted by the director.

(2) Any person may apply to the department for final certification of a facility:

(a) Unless filing has been waived, after having obtained preliminary certification for the facility under section 7 of this 1979 Act; and

(b) After completion of erection, construction or installation of the proposed facility.

(3) Applications shall be made in writing on a form prepared by the department and shall contain:

(a) Unless filing has been waived, a statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the facility certified to by a certified public accountant who is not an employe of the applicant;

(c) A statement that the facility is in operation or, if not in operation, that the applicant has made every reasonable effort to make the facility operable; and

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

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The action of the director shall include certification of the actual cost of the facility. However, in no event shall the director certify an amount for tax credit purposes which is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

(5) If the director rejects an application for final certification, or certifies a lesser actual cost of the facility 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 therefor, 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) If the application is rejected for any reason, or if the applicant is dissatisfied with the certification of cost, then, within 60 days of the date of mailing of the notice under subsection (5) of this section or from a denial under subsection (5) of this section, the applicant may request a hearing to appeal the rejection under the provisions of ORS 183.310 to 183.500 governing contested cases.

(7) Upon approval of an application for final certification of a facility, the director shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the director may certify the operational unit under one certificate.

**SECTION 9.** A certificate issued under section 8 of this 1979 Act is required for purposes of obtaining tax credits in accordance with sections 12 and 14 of this 1979 Act. 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 a certified facility is placed into operation, or the year the facility is certified under section 8 of this 1979 Act, at the election of the applicant.

**SECTION 10.** (1) Under the procedures for a contested case under ORS 183.310 to 183.500, the director may order the revocation of the certificate issued under section 8 of this 1979 Act if the director finds that:

- (a) The certification was obtained by fraud or misrepresentation; or
- (b) The holder of the certificate has failed substantially to construct or to make every reasonable effort to operate the facility in compliance with the plans, specifications and procedures in such certificate.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue of such order.

(3) If the certificate is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax credits provided to the holder of the certificate by virtue of such certificate shall be forfeited and upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under section 12 or 14 of this 1979 Act. The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certificate is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief under section 12 or 14 of this 1979 Act in connection with such facility from and after the date that the order of revocation becomes final.

**SECTION 11.** Section 12 of this Act is added to and made a part of ORS chapter 316.

**SECTION 12.** (1) A credit is allowed against the taxes otherwise due under this chapter, based upon the certified cost of the facility during the period for which that facility is certified under sections 2 to 10 of this 1979 Act. 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 shall 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 shall not exceed the tax liability of the taxpayer.

(2) The facility must be in Oregon and owned or leased during the tax year by the taxpayer claiming the credit.

(3) A credit under this section may be claimed by a taxpayer for a facility only in those tax years which begin on and after January 1, 1980.

(4) The maximum total credit allowable shall not exceed 35 percent of the certified cost of such facility.

(5) Upon any sale, exchange or other disposition of the facility, notice thereof shall be given to the Director of the Department of Energy who shall revoke the certificate covering the facility as of the date of such disposition. The transferee may apply for a new certificate under section 8 of this 1979 Act, but the tax credit available to that transferee shall be limited to the amount of credit not claimed by the transferor.

(6) Any tax credit otherwise allowable under this section which 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, 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.

(7) 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 under this chapter for such year.

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

(9) If the taxpayer is a shareholder of a Subchapter S corporation, the credit shall be computed using the shareholder's pro rata share of the corporation's certified cost of the facility. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

**SECTION 13.** Section 14 of this Act is added to and made a part of ORS chapter 317.

**SECTION 14.** (1) A credit is allowed against the taxes otherwise due under this chapter, based upon the certified cost of a facility during the period for which that facility is certified under sections 2 to 10 of this 1979 Act. 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 shall 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 shall not exceed the tax liability of the taxpayer.

(2) The facility must be in Oregon and owned or leased during the tax year by the taxpayer claiming the credit.

(3) A credit under this section may be claimed by a taxpayer for a facility only in those tax years which begin on and after January 1, 1980.

(4) The maximum total credit allowable shall not exceed 35 percent of the certified cost of such facility.

(5) Upon any sale, exchange or other disposition of a facility, notice thereof shall be given to the Director of the Department of Energy who shall revoke the certificate covering the facility as of the date of such disposition. The transferee may apply for a new certificate under section 8 of this 1979 Act, but the tax credit available to that transferee shall be limited to the amount of credit not claimed by the transferor.

(6) Any tax credit otherwise allowable under this section which 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, 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.

(7) 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 under this chapter for such year.

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

**SECTION 15.** If a taxpayer obtains grants or tax credits from the Federal Government other than investment credits granted under section 46 of the Internal Revenue Code of 1954 as it reads on the effective date of this Act, in connection with a facility which has been certified by the Director of the Department of Energy, the certified cost of the equipment shall be reduced on a dollar for dollar basis. Any income or excise tax credits which such taxpayer would be entitled to under this Act after any such reduction shall not be reduced by such federal grants or tax credits. Taxpayers applying for federal grants or credits shall notify the Department of Revenue by certified mail within 30 days of each such application, and of the receipt of any such grant.

**SECTION 16.** No tax credit shall be allowed under this Act for any facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or form thereof.

**SECTION 17.** A person who applies for and receives a tax credit on a pollution control facility or an alternate energy device under ORS 316.097, 316.116 or 317.072 is not eligible to apply for and receive a tax credit on the same facility or device under the provisions of this Act.