

# House Bill 3481

Sponsored by Representatives ANDERSON, KROPF; Representatives BERGER, BOQUIST, BROWN, BRUUN, BURLEY, BUTLER, CAMERON, DALLUM, ESQUIVEL, FARR, FLORES, GARRARD, GILMAN, HANNA, JENSON, KRIEGER, LIM, MINNIS, OLSON, RICHARDSON, SCOTT, SUMNER, THATCHER, WHISNANT, Senator WHITSETT

## 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 **as introduced**.

Creates or expands tax incentives for production facilities producing ethanol, biofuel or certain fuel additives, for agricultural production of biofuel raw materials or biomass used for certain energy production, for research and development related to biofuel production and for bus tailpipe emission reduction devices.

Creates grant program to reduce emissions from school buses. Continuously appropriates monies to Department of Education for purposes of grant program to replace or retrofit school buses.

Extends period for which pollution control facilities may be certified for tax credits.

Creates fuel tax incentive for use of biofuels.

Creates exemption from energy facility siting requirements for energy facilities using certain organic matter for conversion to energy.

Prohibits sales of gasoline that contain certain additives.

## A BILL FOR AN ACT

Relating to the expansion of environmental improvements; creating new provisions; amending ORS 283.305, 283.327, 307.701, 314.752, 318.031, 319.530, 319.831, 468.155, 468.165, 468.170, 468.173, 468.183, 469.320 and 646.910 and section 4, chapter 475, Oregon Laws 1993; and appropriating money.

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

## BIOFUEL, ETHANOL AND VERIFIED FUEL ADDITIVE FACILITIES

**SECTION 1.** ORS 307.701 is amended to read:

307.701. (1) As used in this section:

(a) **"Biofuel" means liquid or gaseous fuel produced from a biological source, including but not limited to waste and residue from agriculture, forestry or related industries or other industrial or municipal waste.**

(b) "Ethanol" has the meaning given the term under ORS 646.905.

(c) **"Production facility" means a facility that is used to produce ethanol, biofuel or verified fuel additives.**

(d) **"Verified fuel additive" means a fuel additive that:**

(A) **Has been verified under the United States Environmental Protection Agency's Environmental Technology Verification Protocol or the California Air Resources Board verification programs; and**

(B) **Is at least 90 percent renewable materials.**

(2) Upon compliance with subsection (4) of this section, the real and personal property of [*an ethanol*] a production facility that meets the requirements of subsection (3) of this section is exempt

**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 from taxation. The exemption shall be 50 percent of the assessed value of the property determined  
 2 under ORS 308.146. The exemption under this section may be claimed for five assessment years.

3 (3) *[An ethanol]* **A** production facility may qualify for exemption from taxation under this section  
 4 if the facility:

5 (a) Is *[first]* in the process of construction, erection or installation as a new facility after July  
 6 1, 1993;

7 (b) Is or will be placed in service to produce ethanol, **biofuel or verified fuel additives** within  
 8 *[four]* **five** years after January 1 of the first assessment year for which *[the]* **an** exemption *[under this*  
 9 *section]* is claimed **under this section or ORS 285C.170 or 285C.175**; and

10 (c) Within *[four]* **five** years after January 1 of the first assessment year for which *[the]* **an** ex-  
 11 emption *[under this section]* **listed in paragraph (b) of this subsection** is claimed, is or will be  
 12 certified by the State Department of Agriculture as a facility that produces:

13 **(A)** Ethanol capable of blending or mixing with gasoline. The blend or mixture shall meet the  
 14 specifications or registration requirements established by the United States Environmental Pro-  
 15 tection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. 7545 and 40 C.F.R. Part  
 16 79[.];

17 **(B) Biofuel; or**

18 **(C) Verified fuel additives.**

19 (4)(a)**(A)** In order to claim an exemption from taxation under this section for any assessment  
 20 year, the owner of *[an ethanol]* **a** production facility shall file with the county assessor, on or before  
 21 April 1 of the year for which exemption is claimed, a statement verified by the oath or affirmation  
 22 of the owner listing all real and personal property claimed to be exempt and showing the purpose  
 23 for which the property will be or is used.

24 **(B) In the case of a biofuel production facility or a verified fuel additive production fa-**  
 25 **ility, in addition to the requirements of subparagraph (A) of this paragraph, the application**  
 26 **for exemption must include all of the following:**

27 **(i) A list of the taxing districts in which the property is located; and**

28 **(ii) A copy of a written notice mailed to each taxing district. The notice must:**

29 **(I) State that the applicant is seeking a property tax exemption under this section;**

30 **(II) State that a taxing district may elect not to participate in the exemption, in which**  
 31 **case taxes of the district will continue to be imposed on the property of the applicant; and**

32 **(III) Comply with any other requirements established by the Department of Revenue.**

33 (b) If the ownership and use of the **production facility** property included in the statement **de-**  
 34 **scribed in paragraph (a)(A) of this subsection and** filed for a prior year remain the same, a new  
 35 statement *[shall not be]* **is not** required. However, if the ownership or use changes, or if the facility  
 36 property is added to or retired, a new statement is required and the property *[shall]* **may** not be  
 37 exempt under this section if the statement is not filed. The new statement *[shall]* **must** be filed no  
 38 later than December 31 of the year to which the statement pertains.

39 (5) If the **production** facility property is not placed in service within the time required under  
 40 subsection (3) of this section, or if the certification required under subsection (3) of this section is  
 41 not obtained within the required time, then the facility property *[shall]* **may** not be exempt for any  
 42 year under this section. For any year for which the property has been granted exemption under this  
 43 section, the county assessor shall add the property to the assessment and tax roll as omitted prop-  
 44 erty in the manner provided under ORS 311.216 to 311.232.

45 **SECTION 2. (1) A city, county or other local taxing district with property tax authority**

1 may elect not to participate in an exemption for a biofuel production facility or a verified fuel  
 2 additive production facility granted under ORS 307.701.

3 (2) A taxing district may make the election by filing written notification of the election  
 4 with the county assessor of the county in which the taxing district is located before July 1  
 5 of the first tax year for which the election is to be effective.

6 (3) An election made under this section shall be valid for all tax years following the year  
 7 for which the election is first made, until the election is revoked by the taxing district.

8 (4) A taxing district may revoke an election made under this section by filing written  
 9 notification of the revocation with the county assessor of the county in which the taxing  
 10 district is located before July 1 of the first tax year for which the revocation is to be effec-  
 11 tive.

12 (5) The written notifications of election and revocation described in this section shall  
 13 contain the information and be in the form prescribed by the Department of Revenue.

14 (6) An election or revocation made under this section applies to all biofuel production  
 15 facility property or verified fuel additive production facility property within the taxing dis-  
 16 trict:

17 (a) For which an application has been filed under ORS 307.701; and

18 (b) That qualifies for exemption under ORS 307.701.

19 **SECTION 3.** The amendments to ORS 307.701 by section 1 of this 2005 Act apply to pro-  
 20 duction facilities for which an application for exemption under ORS 307.701 is first filed on  
 21 or after January 1, 2006, for tax years beginning on or after July 1, 2006.

22 **SECTION 4.** Section 4, chapter 475, Oregon Laws 1993, is amended to read:

23 **Sec. 4.** [(1) *An ad valorem property tax exemption provided by section 2 of this Act is first appli-  
 24 cable to the tax year beginning July 1, 1994.*]

25 [(2) *Section 2 of this Act is repealed on July 1, 2008. The repeal applies to tax years beginning on  
 26 or after July 1, 2008. Notwithstanding that an ethanol production facility has not received five years  
 27 of exemption under section 2 of this Act, no exemption for the facility shall be granted under section  
 28 2 of this Act for a tax year beginning on or after July 1, 2008.*] **An exemption for a production  
 29 facility may not be granted under ORS 307.701 for any production facility that has not qual-  
 30 ified for at least one year of exemption as of July 1, 2012.**

31  
 32 **POLLUTION CONTROL FACILITIES**

33  
 34 **SECTION 5.** ORS 468.155 is amended to read:

35 468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, “pol-  
 36 lution control facility” or “facility” means any land, structure, building, installation, excavation,  
 37 machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or  
 38 an existing structure, building, installation, excavation, machinery, equipment or device reasonably  
 39 used, erected, constructed or installed by any person if:

40 (A) The principal purpose of such use, erection, construction or installation is to comply with  
 41 a requirement imposed by the Department of Environmental Quality, the federal Environmental  
 42 Protection Agency or regional air pollution authority to prevent, control or reduce air, water or  
 43 noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of  
 44 used oil; or

45 (B) The sole purpose of such use, erection, construction or installation is to prevent, control or

1 reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to re-  
 2 cycle or provide for the appropriate disposal of used oil.

3 (b) Such prevention, control or reduction required by this subsection shall be accomplished by:

4 (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of  
 5 treatment works for industrial waste as defined in ORS 468B.005;

6 (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or  
 7 air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

8 (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise  
 9 emission sources as defined by rule of the Environmental Quality Commission;

10 (D) The use of a material recovery process which obtains useful material from material that  
 11 would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS  
 12 466.005, or used oil as defined in ORS 459A.555; or

13 (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially re-  
 14 duce or eliminate hazardous waste as defined in ORS 466.005.

15 (2)(a) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” includes a  
 16 nonpoint source pollution control facility.

17 (b) As used in this subsection, “nonpoint source pollution control facility” means a facility that  
 18 the Environmental Quality Commission has identified by rule as reducing or controlling significant  
 19 amounts of nonpoint source pollution.

20 **(3)(a) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” includes:**

21 **(A) A biofuel processing plant;**

22 **(B) A biofuel production plant;**

23 **(C) A farm storage facility;**

24 **(D) A facility that produces electric energy, direct application heat, transportation fuel**  
 25 **or a substitute for a petroleum-based product using an open-loop biomass conversion plant;**

26 **(E) Equipment used in biofuel processing or biofuel production; or**

27 **(F) Equipment used for growing crops that are harvested for biofuel purposes.**

28 **(b) As used in this subsection, “biofuel” means liquid or gaseous fuel produced from a**  
 29 **biological source, including but not limited to waste and residue from agriculture, forestry**  
 30 **or related industries or other industrial or municipal waste.**

31 **(c) As used in this subsection, “open-loop” means forest material, thinnings, slash, brush,**  
 32 **waste or by-products from manufacturing activity.**

33 ~~[(3)]~~ **(4) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” does not**  
 34 **include:**

35 (a) Air conditioners;

36 (b) Septic tanks or other facilities for human waste;

37 (c) Property installed, constructed or used for moving sewage to the collecting facilities of a  
 38 public or quasi-public sewerage system;

39 (d) Any distinct portion of a pollution control facility that makes an insignificant contribution  
 40 to the principal or sole purpose of the facility including the following specific items:

41 (A) Office buildings and furnishings;

42 (B) Parking lots and road improvements;

43 (C) Landscaping;

44 (D) External lighting;

45 (E) Company or related signs; and

1 (F) Automobiles;

2 (e) Replacement or reconstruction of all or a part of any facility for which a pollution control  
3 facility certificate has previously been issued under ORS 468.170, except:

4 (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement  
5 cost of the original facility due to a requirement imposed by the department, the federal Environ-  
6 mental Protection Agency or a regional air pollution authority, then the facility may be eligible for  
7 tax credit certification up to an amount equal to the difference between the cost of the new facility  
8 and the like-for-like replacement cost of the original facility; or

9 (B) If a facility is replaced or reconstructed before the end of its useful life then the facility  
10 may be eligible for the remainder of the tax credit certified to the original facility;

11 (f) Asbestos abatement; or

12 (g) Property installed, constructed or used for cleanup of emergency spills or unauthorized re-  
13 leases, as defined by the commission.

14 **SECTION 6.** ORS 468.165 is amended to read:

15 468.165. (1) Any person may apply to the Environmental Quality Commission for certification  
16 under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed  
17 by the person in Oregon if:

18 (a) The air or water pollution control facility was erected, constructed or installed on or after  
19 January 1, 1967.

20 (b) The noise pollution control facility was erected, constructed or installed on or after January  
21 1, 1977.

22 (c) The solid waste facility was under construction on or after January 1, 1973, the hazardous  
23 waste or used oil facility was under construction on or after October 3, 1979, and if:

24 (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and  
25 (2);

26 (B) The facility will utilize material that would otherwise be solid waste as defined in ORS  
27 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by me-  
28 chanical process or chemical process or through the production, processing including presegre-  
29 gation, or use of, materials which have useful chemical or physical properties and which may be  
30 used for the same or other purposes, or materials which may be used in the same kind of application  
31 as its prior use without change in identity;

32 (C) The end product of the utilization is an item of real economic value;

33 (D) The end product of the utilization, other than a usable source of power, is competitive with  
34 an end product produced in another state; and

35 (E) The Oregon law regulating solid waste imposes standards at least substantially equivalent  
36 to the federal law.

37 (d) The hazardous waste control facility was erected, constructed or installed on or after Janu-  
38 ary 1, 1984, and if:

39 (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and  
40 (2); and

41 (B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as de-  
42 fined in ORS 466.005.

43 **(e) The biofuel production facility was erected, constructed or installed on or after Jan-**  
44 **uary 1, 2006, and the facility's principal or sole purpose conforms to the requirements of ORS**  
45 **468.155 (3).**

1 (2) The application shall be made in writing in a form prescribed by the Department of Envi-  
 2 ronmental Quality and shall contain information on the actual cost of the facility, a description of  
 3 the materials incorporated therein, all machinery and equipment made a part thereof, the existing  
 4 or proposed operational procedure thereof, and a statement of the purpose of prevention, control or  
 5 reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate  
 6 disposal of used oil served or to be served by the facility and the portion of the actual cost properly  
 7 allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazard-  
 8 ous waste or to recycling or appropriately disposing of used oil.

9 (3) The Director of the Department of Environmental Quality may require any further informa-  
 10 tion the director considers necessary before a certificate is issued.

11 (4) The application shall be accompanied by a fee established under subsection (5) of this sec-  
 12 tion. The fee may be refunded if the application for certification is rejected.

13 (5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the  
 14 department may require of applicants for certificates issued under ORS 468.167 and 468.170. Before  
 15 the adoption or revision of any such fees the commission shall estimate the total cost of the program  
 16 to the department. The fees shall be based on the anticipated cost of filing, investigating, granting  
 17 and rejecting the applications and shall be designed not to exceed the total cost estimated by the  
 18 commission. Any excess fees shall be held by the department and shall be used by the commission  
 19 to reduce any future fee increases. The fee may vary according to the size and complexity of the  
 20 facility. The fees may not be considered by the commission as part of the cost of the facility to be  
 21 certified.

22 (6) The application shall be submitted after construction of the facility is substantially completed  
 23 and the facility is placed in service and within one year after construction of the facility is sub-  
 24 stantially completed. Failure to file a timely application shall make the facility ineligible for tax  
 25 credit certification. An application may not be considered filed until it is complete and ready for  
 26 processing. The commission may grant an extension of time to file an application for circumstances  
 27 beyond the control of the applicant that would make a timely filing unreasonable. [*However, the*  
 28 *period for filing an application may not be extended to a date beyond December 31, 2008.*]

29 **SECTION 7.** ORS 468.170 is amended to read:

30 468.170. (1) The Environmental Quality Commission shall act on an application for certification  
 31 before the 120th day after the filing of the application under ORS 468.165. The action of the com-  
 32 mission shall include certification of the actual cost of the facility and the portion of the actual cost  
 33 properly allocable to the prevention, control or reduction of air, water or noise pollution or solid  
 34 or hazardous waste or to recycling or appropriately disposing of used oil. The actual cost or portion  
 35 of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or  
 36 portion of the facility. Each certificate shall bear a separate serial number for each such facility.

37 (2) If the commission rejects an application for certification, or certifies a lesser actual cost of  
 38 the facility or a lesser portion of the actual cost properly allocable to the prevention, control or  
 39 reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropri-  
 40 ately disposing of used oil than was claimed in the application for certification, the commission shall  
 41 cause written notice of its action, and a concise statement of the findings and reasons therefor, to  
 42 be sent by registered or certified mail to the applicant before the 120th day after the filing of the  
 43 application.

44 (3) If the application is rejected for any reason, including the information furnished by the ap-  
 45 plicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual

1 cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water  
 2 or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil,  
 3 the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the cer-  
 4 tification is final and conclusive on all parties unless the applicant takes an appeal therefrom as  
 5 provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

6 (4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil  
 7 facility or portion thereof, for which an application has been made under ORS 468.165, if the com-  
 8 mission finds that the facility:

9 (A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165  
 10 (1);

11 (B) Is designed for, and is being operated or will operate in accordance with the requirements  
 12 of ORS 468.155; and

13 (C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255,  
 14 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468,  
 15 468A and 468B and rules thereunder.

16 (b) No determination of the proportion of the actual cost of the facility to be certified shall be  
 17 made until receipt of the application.

18 (c) If one or more facilities constitute an operational unit, the commission may certify such fa-  
 19 cilities under one certificate.

20 (d) A certificate under this section is effective for purposes of tax relief in accordance with ORS  
 21 307.405 and 315.304 if, *on or before December 31, 2007,*] erection, construction or installation of the  
 22 facility is completed, the facility is placed in service and the application for certification is filed  
 23 with the commission under ORS 468.165.

24 (5) A person receiving a certificate under this section may take tax relief only under ORS  
 25 315.304, depending upon the tax status of the person's trade or business except that:

26 (a) A corporation organized under ORS chapter 65 or any subsequent transferee of the corpo-  
 27 ration shall take tax relief only under ORS 307.405; and

28 (b)(A) A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62  
 29 relating to the incorporation of cooperative associations or the subsequent transferee of the corpo-  
 30 ration may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405.  
 31 The corporation shall make the election at the time of applying for the certificate, except that a  
 32 corporation receiving a certificate prior to December 31, 1995, may make the election at any time  
 33 on or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the  
 34 tax relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the cor-  
 35 poration for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making  
 36 the election shall be waived.

37 (B) In the case of a corporation making the election under subparagraph (A) of this paragraph,  
 38 the election applies to:

39 (i) All existing or future facilities that are certified under this section, if the corporation claimed  
 40 a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995; or

41 (ii) All future facilities that are certified under this section, if the corporation did not claim a  
 42 credit under ORS 315.304 for a tax year beginning prior to December 31, 1995.

43 (6) If the person receiving the certificate is a partnership, each partner shall be entitled to take  
 44 tax credit relief as provided in ORS 315.304, based on that partner's pro rata share of the certified  
 45 cost of the facility.

(7) Certification under this section of a pollution control facility qualifying under ORS 468.165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 62 or 65 the facility shall be exempt from ad valorem taxation for a period of 20 consecutive years.

(8) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection may not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 315.304 (8) apply to any sale, exchange or other disposition of a certified portion of a facility.

(9) A certificate issued under this section shall state the applicable percentage of the certified cost of the facility, as determined under ORS 468.173.

(10) *[If the construction or installation of a facility is commenced after December 31, 2005, the facility may be certified only if the facility or applicant is described in ORS 468.173 (3).]* A facility *[described in ORS 468.173 (2)]* for which construction or installation is commenced after December 31, *[2005]* **2016**, may not be certified under this section.

**SECTION 8.** ORS 468.173 is amended to read:

468.173. (1) For purposes of ORS 315.304, the applicable percentage of the certified cost of a facility shall be *[one of the following:]* **35 percent, except as provided in subsection (2) of this section.**

*[(1) If the facility is certified under ORS 468.155 to 468.190 (1999 Edition) or if construction or installation of the facility is commenced prior to January 1, 2001, and completed prior to January 1, 2004, 50 percent.]*

*[(2) Except as provided in subsection (1) or (3) of this section, if the facility is certified pursuant to application for certification filed on or after January 1, 2002, and:]*

*[(a) Construction or installation of the facility is commenced on or after January 1, 2001, and on or before December 31, 2003, 25 percent; or]*

*[(b) Construction or installation of the facility is commenced after December 31, 2003, and on or before December 31, 2005, 15 percent.]*

*[(3) If certified pursuant to application for certification filed on or after January 1, 2002, 35 percent if:]*

**(2) For purposes of ORS 315.304, the applicable percentage of the certified cost of a facility shall be 50 percent if:**

(a) The applicant is certified under International Organization for Standardization standard ISO 14001;

(b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;

(c) The facility is a nonpoint source or is regulated as a confined animal feeding operation under ORS 468B.200 to 468B.230;

(d) The facility is used for material recovery or recycling, as those terms are defined in ORS 459.005;

(e) The facility is used in an agricultural or forest products operation and is used for energy recovery, as defined in ORS 459.005;

(f) The certified cost of the facility does not exceed \$200,000;

1 (g) Construction or installation of the facility is entirely voluntary and no portion of it is re-  
 2 quired in order to comply with a federal law administered by the United States Environmental  
 3 Protection Agency, a state law administered by the Department of Environmental Quality or a law  
 4 administered by a regional air pollution authority;

5 (h) The facility is, at the time of certification, located within an enterprise zone established  
 6 under ORS 285C.050 to 285C.250 or within an area that has been designated a distressed area, as  
 7 defined in ORS 285A.010, by the Economic and Community Development Department; [or]

8 **(i) The facility is a facility described in ORS 468.155 (3); or**

9 [(i)] **(j)** The applicant demonstrates to the Department of Environmental Quality that the appli-  
 10 cant uses an environmental management system at the facility. In order for the department to de-  
 11 termine that the applicant uses an environmental management system at the facility:

12 (A) The applicant must have the environmental management system used at the facility reviewed  
 13 by an independent third party familiar with environmental management systems and submit a report  
 14 to the department stating that the provisions of this paragraph have been met. The report shall be  
 15 accompanied by supporting materials that document compliance with the provisions of this para-  
 16 graph. The report shall include certification from a registered or certified environmental manage-  
 17 ment auditor employed by, or under contract with, the independent third party that reviewed the  
 18 environmental management system; or

19 (B) The department shall contract with an independent third party familiar with environmental  
 20 management systems to review the environmental management system employed at the facility. The  
 21 third party shall review the environmental management system, and, if the third party determines  
 22 that the environmental management system meets the provisions of this paragraph, a registered or  
 23 certified environmental management system auditor employed by, or contracted with, the third party  
 24 shall certify that determination to the department. The department shall recover from the applicant  
 25 the costs incurred by the department as prescribed in ORS 468.073. An applicant shall be liable for  
 26 the costs of the department under this subparagraph without regard to whether the department  
 27 certifies the facility as a pollution control facility. The department may not certify a facility to  
 28 which this subparagraph applies until the department has received full payment from the applicant.

29 **(3) As used in this section, “open-loop” has the meaning given that term in ORS 468.155**  
 30 **(3).**

31 **SECTION 9.** ORS 468.183 is amended to read:

32 468.183. [(1)] If a person has obtained pollution control facility certification [*in which the appli-*  
 33 *cable percentage is 35 percent because of issuance of a Green Permit described under ORS 468.173*  
 34 *(3)(b) that applies to the certified facility]* **for a facility for which a Green Permit applies** and the  
 35 Green Permit is revoked, the applicable percentage for any remaining tax credit to be claimed under  
 36 ORS 315.304 shall be the applicable percentage described under ORS 468.173 (1). [(2). *If the con-*  
 37 *struction or installation of the facility is commenced on or after January 1, 2006, the pollution control*  
 38 *facility certification shall be revoked.*]

39 [(2) *The Department of Environmental Quality shall inform the Department of Revenue of the re-*  
 40 *vocation.*]

41 **SECTION 10.** The amendments to ORS 468.155, 468.165, 468.170, 468.173 and 468.183 by  
 42 sections 5 to 9 of this 2005 Act apply to applications for pollution control facility certification  
 43 issued on or after January 1, 2006.

44  
 45 **PRODUCERS OF BIOFUEL RAW MATERIALS**

1       **SECTION 11.** Sections 12 and 13 of this 2005 Act are added to and made a part of ORS  
2 chapter 315.

3       **SECTION 12.** (1) As used in this section:

4       (a) “Agricultural producer” means a person engaged in farming or livestock operations  
5 that produce the plant or animal matter that, after sale, is used by a biodiesel or ethanol  
6 producer to produce biodiesel or ethanol, or a person engaged in farming or forestry oper-  
7 ations that produce the green biomass used to produce electric energy, direct application  
8 heat, transportation fuel or a substitute for a petroleum-based product.

9       (b) “Biodiesel” means the monoalkyl esters of long-chain fatty acids derived from plant  
10 or animal matter that meet the registration requirements for fuels and fuel additives es-  
11 tablished under 42 U.S.C. 7545, as amended and in effect on the effective date of this 2005  
12 Act, and regulations adopted thereunder.

13       (c) “Biomass” means any organic matter that is available on a renewable or recurring  
14 basis, including agricultural crops and trees, wood and wood wastes and residues, plants  
15 (including aquatic plants), grasses, residues, fibers, animal wastes, municipal wastes and  
16 other waste materials.

17       (d) “Ethanol” has the meaning given that term in ORS 646.905.

18       (2) An agricultural producer shall be allowed a credit against the taxes that would oth-  
19 erwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter  
20 317 or 318, for the production in this state of plant or animal matter that is used to produce  
21 biodiesel or ethanol in this state.

22       (3) The amount of the credit shall equal:

23       (a) Five cents per gallon of biodiesel produced in this state from plant or animal matter  
24 produced in this state;

25       (b) Four cents per gallon of ethanol produced in this state from plant or animal matter  
26 produced in this state; and

27       (c) Twenty dollars per ton of biomass delivered to a producer that uses the biomass to  
28 produce electric energy, direct application heat, transportation fuel or a substitute for a  
29 petroleum-based product.

30       (4)(a) Each biodiesel producer or ethanol producer shall report to an agricultural pro-  
31 ducer the quantity, in gallons, of biodiesel or ethanol produced from plant or animal matter  
32 sold to the producer by the agricultural producer. The report shall be made in writing within  
33 30 days of the date of sale of the plant or animal matter to the biodiesel or ethanol producer.

34       (b) Each producer that uses biomass to produce electric energy, direct application heat,  
35 transportation fuel or a substitute for a petroleum-based product shall maintain records of  
36 the quantity of biomass obtained and the identity of the agricultural producer from whom  
37 the biomass was obtained. The producer shall maintain the records for the length of time  
38 prescribed by the Department of Revenue.

39       (5) Except as provided in subsection (7) of this section, the amount of the credit may not  
40 exceed the tax liability of the taxpayer.

41       (6) The credit shall be claimed on a form prescribed by the department that contains the  
42 information required by the department.

43       (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer  
44 in a particular tax year may be carried forward and offset against the taxpayer’s tax liability  
45 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax

1 year may be carried forward and used in the second succeeding tax year, and likewise any  
 2 credit not used in that second succeeding tax year may be carried forward and used in the  
 3 third succeeding tax year, and any credit not used in that third succeeding tax year may be  
 4 carried forward and used in the fourth succeeding tax year, but may not be carried forward  
 5 for any tax year thereafter.

6 (8) In the case of a credit allowed under this section:

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

9 (b) If a change in the status of the taxpayer from resident to nonresident or from non-  
 10 resident to resident occurs, the credit allowed by this section shall be determined in a man-  
 11 ner consistent with ORS 316.117.

12 (c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,  
 13 or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit  
 14 allowed under this section shall be prorated or computed in a manner consistent with ORS  
 15 314.085.

16 **SECTION 13.** (1) A taxpayer that is entitled to claim a tax credit under section 12 of this  
 17 2005 Act may transfer the tax credit to another taxpayer.

18 (2) The Department of Revenue shall adopt rules prescribing the procedures that a tax-  
 19 payer shall follow to transfer a tax credit under this section.

20 **SECTION 14.** ORS 314.752 is amended to read:

21 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 22 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 23 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 24 allowable to the shareholders of the S corporation.

25 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on  
 26 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
 27 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
 28 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
 29 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
 30 manner prescribed under section 1377(a) of the Internal Revenue Code.

31 (3) The character of any item included in a shareholder's pro rata share under subsection (2)  
 32 of this section shall be determined as if such item were realized directly from the source from which  
 33 realized by the corporation, or incurred in the same manner as incurred by the corporation.

34 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 35 credit that in the case of a nonresident that the credit be allowed in the proportion provided in ORS  
 36 316.117, then that provision shall apply to the nonresident shareholder.

37 (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
 38 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
 39 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
 40 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
 41 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
 42 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS  
 43 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS  
 44 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care  
 45 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS

1 315.234 (child development program contributions), ORS 315.254 (youth apprenticeship sponsorship),  
 2 ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS  
 3 469.207 (energy conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.507  
 4 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone  
 5 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative  
 6 fuel vehicle) **and section 12 of this 2005 Act (production for biodiesel and ethanol, biomass  
 7 usage).**

8 **SECTION 15.** ORS 318.031 is amended to read:

9 318.031. It being the intention of the Legislative Assembly that this chapter and the Corporation  
 10 Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made for  
 11 the difference in imposition of the taxes and the operative date of this chapter), ORS 305.140 and  
 12 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this  
 13 chapter: ORS 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.234, 315.254, 315.304, 315.504,  
 14 315.511 and 315.604 **and section 12 of this 2005 Act** (all only to the extent applicable [*for*] to a  
 15 corporation) and ORS 285C.309, 315.507, 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038,  
 16 317.080, 317.124 to 317.131, 317.152 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to  
 17 317.485, 317.488, 317.510 to 317.635 and 317.705 to 317.725.

18 **SECTION 16.** Sections 12 and 13 of this 2005 Act and the amendments to ORS 314.752 and  
 19 318.031 by sections 14 and 15 of this 2005 Act apply to tax years beginning on or after January  
 20 1, 2006.

21  
 22 **CLEAN EMISSION SCHOOL BUSES**  
 23

24 **SECTION 17.** (1) There is created within the State Treasury, separate and distinct from  
 25 the General Fund, the Clean School Bus Grant Fund. Interest earned by the Clean School  
 26 Bus Grant Fund shall be credited to the fund. Moneys in the fund are continuously appro-  
 27 priated to the Department of Education for the purpose of making grants to school districts  
 28 under section 18 of this 2005 Act.

29 (2) Any federal funds or private donations received for the purpose of making the grants  
 30 described in section 18 of this 2005 Act shall be deposited in the fund.

31 **SECTION 18.** (1) The Department of Education shall award annual grants to school dis-  
 32 tricts from the Clean School Bus Grant Fund for any of the following purposes and with the  
 33 following limitations:

34 (a) To assist school districts in replacing diesel fueled school buses manufactured before  
 35 1994. A grant made under this paragraph may not exceed \$10,000 per replaced bus.

36 (b) To retrofit existing school buses manufactured after 1993 with diesel exhaust after-  
 37 treatment devices that have been verified effective in meeting industry standards by inde-  
 38 pendent test laboratories. As a condition to receipt of grant moneys under this paragraph,  
 39 a school district must prioritize the installation of these devices in accordance with bus age,  
 40 so that older buses are retrofitted before newer buses are retrofitted.

41 (c) To help school districts meet federal grant matching requirements to perform  
 42 retrofits of school buses. A grant made under this paragraph may not exceed \$10,000 per  
 43 school district per year.

44 (d) To provide funding to school districts for pilot projects utilizing biodiesel fuel in  
 45 school bus applications.

1 (2) For purposes of the State School Fund distribution, the State Board of Education  
 2 shall consider expenditures by a school district made for the purposes described in subsection  
 3 (1) of this section to be approved transportation costs.

4 (3) The State Board of Education may adopt any rules necessary to administer this sec-  
 5 tion.

6 **SECTION 19.** Prior to February 1, 2009, the Department of Education shall report to the  
 7 Seventy-fifth Legislative Assembly on:

8 (1) The extent to which school buses operated in this state and manufactured before 2004  
 9 have been retrofitted with diesel exhaust after-treatment devices or retired; and

10 (2) The results of any pilot projects funded under section 18 of this 2005 Act utilizing  
 11 biodiesel fuel in school bus applications.

12 **SECTION 20.** Sections 17 to 19 of this 2005 Act are repealed on June 30, 2014.

13 **SECTION 21.** On July 1, 2014, the Department of Education shall transfer all moneys in  
 14 the Clean School Bus Grant Fund established in section 17 of this 2005 Act to the Department  
 15 of Agriculture Service Fund established in ORS 561.144.

16  
 17 **BIOFUEL OR EMISSIONS RESEARCH AND DEVELOPMENT**

18  
 19 **SECTION 22.** Section 23 of this 2005 Act is added to and made a part of ORS chapter 315.

20 **SECTION 23.** (1) As used in this section, “qualifying equipment” means:

21 (a) Any system, mechanism or series of mechanisms that is used in the production of  
 22 ethanol or biodiesel;

23 (b) Any ultra-low sulfur diesel and particulate trap; or

24 (c) Any equipment designed to be used on buses with a seating capacity of at least 16  
 25 passengers and designed to reduce bus tailpipe emissions.

26 (2) A taxpayer shall be allowed a credit against the taxes that are otherwise due under  
 27 ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for costs  
 28 incurred in conducting research and development activities for developing qualifying equip-  
 29 ment that has commercial application.

30 (3)(a) In order to claim a credit under this section, the taxpayer shall first obtain cer-  
 31 tification from the Department of Environmental Quality under this subsection. The tax-  
 32 payer shall apply for certification on a form prescribed by the Department of Environmental  
 33 Quality, setting forth the taxpayer’s estimate of costs incurred or to be incurred during the  
 34 tax year for which the credit is to be claimed and that are described in subsection (2) of this  
 35 section, and any other information required by the Department of Environmental Quality.

36 (b) The Department of Environmental Quality shall issue a written certification to the  
 37 taxpayer, setting forth the costs being certified as eligible for a credit under this section.  
 38 The Department of Environmental Quality may not certify a total for all taxpayers of more  
 39 than \$2 million in costs as eligible for credit under this section. The Department of Envi-  
 40 ronmental Quality shall notify the Department of Revenue of the taxpayers and amounts  
 41 certified.

42 (4) The amount of the credit shall equal five percent of the amount certified under sub-  
 43 section (3) of this section or the amount actually paid or incurred by the taxpayer during the  
 44 tax year for activities described in subsection (2) of this section, whichever is less.

45 (5) The amount of credit allowed in any one tax year may not exceed the tax liability of

1 the taxpayer.

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

11 (7) In the case of a credit allowed under this section for purposes of ORS chapter 316:

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

14 (b) If a change in the status of a taxpayer from resident to nonresident or from nonres-  
 15 ident to resident occurs, the credit allowed by this section shall be determined in a manner  
 16 consistent with ORS 316.117.

17 (c) A husband and wife who file separate returns for a taxable year may each claim a  
 18 share of the tax credit that would have been allowed on a joint return in proportion to the  
 19 contribution of each.

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

24 **SECTION 24.** Section 23 of this 2005 Act applies to tax years beginning on or after Jan-  
 25 uary 1, 2006, and before January 1, 2012.

26 **SECTION 25.** ORS 314.752, as amended by section 14 of this 2005 Act, is amended to read:

27 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 28 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 29 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 30 allowable to the shareholders of the S corporation.

31 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on  
 32 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
 33 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
 34 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
 35 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
 36 manner prescribed under section 1377(a) of the Internal Revenue Code.

37 (3) The character of any item included in a shareholder's pro rata share under subsection (2)  
 38 of this section shall be determined as if such item were realized directly from the source from which  
 39 realized by the corporation, or incurred in the same manner as incurred by the corporation.

40 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 41 credit that in the case of a nonresident that the credit be allowed in the proportion provided in ORS  
 42 316.117, then that provision shall apply to the nonresident shareholder.

43 (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
 44 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
 45 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-

1 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
 2 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
 3 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS  
 4 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS  
 5 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care  
 6 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS  
 7 315.234 (child development program contributions), ORS 315.254 (youth apprenticeship sponsorship),  
 8 ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS  
 9 469.207 (energy conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.507  
 10 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone  
 11 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative  
 12 fuel vehicle) and section 12 of this 2005 Act (production for biodiesel, ethanol and green biomass)  
 13 **and section 23 of this 2005 Act (qualifying equipment research and development).**

14 **SECTION 26.** ORS 318.031, as amended by section 15 of this 2005 Act is amended to read:

15 318.031. It being the intention of the Legislative Assembly that this chapter and the Corporation  
 16 Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made for  
 17 the difference in imposition of the taxes and the operative date of this chapter), ORS 305.140 and  
 18 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this  
 19 chapter: ORS 315.104, 315.134, 315.156, 315.204, 315.208, 315.213, 315.234, 315.254, 315.304, 315.504,  
 20 315.511 and 315.604 and section 12 of this 2005 Act (all only to the extent applicable to a corpo-  
 21 ration) and ORS 285C.309, 315.507, 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038,  
 22 317.080, 317.124 to 317.131, 317.152 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to  
 23 317.485, 317.488, 317.510 to 317.635 and 317.705 to 317.725 **and section 23 of this 2005 Act.**

24  
 25 **GASOLINE ADDITIVE RESTRICTIONS**

26  
 27 **SECTION 27.** ORS 646.910 is amended to read:

28 646.910. [No] A wholesale or retail dealer may **not** sell or offer to sell any gasoline blended or  
 29 mixed with:

30 (1) Alcohol unless the blend or mixture meets the specifications or registration requirements  
 31 established by the United States Environmental Protection Agency pursuant to section 211 of the  
 32 Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79[.];

33 (2) **Methyl tertiary butyl ether in concentrations that exceed three-tenths of one percent**  
 34 **by volume; or**

35 (3) **A total of all of the following oxygenates that exceeds one-tenth of one percent, by**  
 36 **weight, of:**

37 (a) **Diisopropylether.**

38 (b) **Ethyl tert-butylether.**

39 (c) **Iso-butanol.**

40 (d) **Iso-propanol.**

41 (e) **Methanol.**

42 (f) **N-butanol.**

43 (g) **N-propanol.**

44 (h) **Sec-butanol.**

45 (i) **Tert-amyl methyl ether.**

1 (j) Tert-butanol.

2 (k) Tert-pentanol or tert-amyl alcohol.

3 **SECTION 28.** The amendments to ORS 646.910 by section 27 of this 2005 Act become op-  
 4 erative November 1, 2007.

5  
 6 **ENERGY FACILITY SITING REQUIREMENTS**

7  
 8 **SECTION 29.** ORS 469.320 is amended to read:

9 469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be  
 10 constructed or expanded unless a site certificate has been issued for the site thereof in the manner  
 11 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be  
 12 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,  
 13 469.590 to 469.619, 469.930 and 469.992.

14 (2) [No] **A** site certificate [*shall be*] **is not** required for:

15 (a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had  
 16 operable electric generating equipment for a modification that uses the same fuel type and increases  
 17 electric generating capacity, if:

18 (A) The site is not enlarged; and

19 (B) The ability of the energy facility to use fuel for electricity production under peak steady  
 20 state operating conditions is not more than 200 million Btu per hour greater than it was on August  
 21 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy  
 22 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

23 (b) Construction or expansion of any interstate natural gas pipeline or associated underground  
 24 natural gas storage facility authorized by and subject to the continuing regulation of the Federal  
 25 Energy Regulatory Commission or successor agency.

26 (c) An energy facility, except coal and nuclear power plants, if the energy facility:

27 (A) Sequentially produces electrical energy and useful thermal energy from the same fuel source;  
 28 and

29 (B) Under normal operating conditions, has a useful thermal energy output of no less than 33  
 30 percent of the total energy output or the fuel chargeable to power heat rate value is not greater  
 31 than 6,000 Btu per kilowatt hour.

32 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site cer-  
 33 tificate has been issued by the State of Oregon, of radioactive waste from the plant.

34 (e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary  
 35 fuel used on site for the production of heat or electricity, if the output of the primary fuel is less  
 36 than six billion Btu of heat a day.

37 (f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

38 (A) **Exclusively** uses [*biomass exclusively from*] grain, whey [*or*], potatoes, **oil seeds, waste**  
 39 **vegetable oil or cellulosic biomass** as the source of material for conversion to a liquid fuel, **the**  
 40 **production of electric energy, the generation of heat, the creation of transportation fuels or**  
 41 **the creation of substitutes for petroleum-based products;**

42 (B) Has received local land use approval under the applicable acknowledged comprehensive plan  
 43 and land use regulations of the affected local government and the facility complies with any state-  
 44 wide planning goals or rules of the Land Conservation and Development Commission that are di-  
 45 rectly applicable to the facility;

1 (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would  
2 require a site certificate under subsection (1) of this section; and

3 (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling  
4 facility located within one mile of the facility or is transported from the facility by rail or barge.

5 (g) A temporary energy generating facility, if the facility complies with all applicable carbon  
6 dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and  
7 the applicant agrees to provide funds to a qualified organization in an amount determined by the  
8 council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS  
9 469.501. To support the council's finding that the facility complies with all applicable carbon dioxide  
10 emissions standards, the applicant shall provide proof acceptable to the council that shows the  
11 contracted nominal electric generating capacity of the facility and the contracted heat rate in  
12 higher heating value. The applicant shall pay the funds to the qualified organization before com-  
13 mencing construction on the temporary facility. The amount of the carbon dioxide offset funds for  
14 a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.

15 (h) A standby generation facility, if the facility complies with all of the following:

16 (A) The facility has received local land use approval under the applicable acknowledged com-  
17 prehensive plan and land use regulations of the affected local government and the facility complies  
18 with all statewide planning goals and applicable rules of the Land Conservation and Development  
19 Commission;

20 (B) The standby generators have been approved by the Department of Environmental Quality  
21 as having complied with all applicable air and water quality requirements. For an applicant that  
22 proposes to provide the physical facilities for the installation of standby generators, the requirement  
23 of this subparagraph may be met by agreeing to require such a term in the lease contract for the  
24 facility; and

25 (C) The standby generators are electrically incapable of being interconnected to the trans-  
26 mission grid. For an applicant that proposes to provide the physical facilities for the installation of  
27 standby generators, the requirement of this subparagraph may be met by agreeing to require such  
28 a term in the lease contract for the facility.

29 (3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable  
30 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,  
31 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in  
32 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power  
33 heat rate value for the best available, commercially viable thermal power plant technology at the  
34 time of the revision.

35 (4) Any person who proposes to construct or enlarge an energy facility and who claims an ex-  
36 emption under subsection (2)(a), (c), (f) or (h) of this section from the requirement to obtain a site  
37 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-  
38 cility qualifies for the claimed exemption. The council shall make its determination within 60 days  
39 after the request for exemption is filed. An appeal from the council's determination on a request for  
40 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court  
41 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the  
42 Supreme Court shall be the record established in the council proceeding on the exemption.

43 (5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-  
44 quired for:

45 (a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if

1 such related or supporting facilities are addressed in and are subject to a site certificate for another  
2 energy facility;

3 (b) Expansion within the site or within the energy generation area of a facility for which a site  
4 certificate has been issued, if the existing site certificate has been amended to authorize expansion;  
5 or

6 (c) Expansion, either within the site or outside the site, of an existing council certified surface  
7 facility related to an underground gas storage reservoir, if the existing site certificate is amended  
8 to authorize expansion.

9 (6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of  
10 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this  
11 section, the electric generating facility shall cease to operate one year after the substantial loss of  
12 the steam host unless an application for a site certificate has been filed in accordance with the  
13 provisions of ORS 469.300 to 469.563.

14 (7)(a) Any person who proposes to construct or enlarge a temporary energy generating facility  
15 and who claims an exemption under subsection (2)(g) of this section from the requirement to obtain  
16 a site certificate shall request the Energy Facility Siting Council to determine whether the proposed  
17 facility qualifies for the claimed exemption. The council shall make its determination within 30 days  
18 of receiving all of the information necessary to support the determination. Such exemption shall  
19 provide that the applicant may not begin construction of the temporary energy generating facility  
20 until the facility has received the required local land use approval under the applicable acknowl-  
21 edged comprehensive plan and land use regulations of the affected local government and the facility  
22 complies with all statewide planning goals and applicable rules of the Land Conservation and De-  
23 velopment Commission. The exemption shall also require that the temporary energy generating fa-  
24 cility cease operation no later than 24 months after the date of first commercial operation or  
25 January 2, 2006, whichever is earlier. An appeal from the council's determination on a request for  
26 exemption shall be made under ORS 469.403, except that the order may not be stayed and review  
27 by the Supreme Court is limited to the record made by the council.

28 (b) The council may not grant an exemption for a temporary energy generating facility pursuant  
29 to subsection (2)(g) of this section after July 1, 2003.

30 (c) Within 30 days of ceasing operation of a temporary energy generating facility, the applicant  
31 shall report the total actual fuel used during commercial operation of the temporary energy gener-  
32 ating facility. Based on the total actual fuel used during commercial operation, the council shall  
33 determine whether additional offset funds, as defined in ORS 469.503, and contracting and selection  
34 funds are owed to the qualified organization. If the council determines that additional offset funds  
35 are owed to the qualified organization, the applicant shall pay such amounts within 60 days of the  
36 council's order determining the amount of additional funds.

37 (d) Notwithstanding the provisions of paragraph (a) of this subsection that require a temporary  
38 energy generating facility granted an exemption pursuant to subsection (2)(g) of this section to cease  
39 operation within 24 months of first commercial operation, if the owner of a temporary energy gen-  
40 erating facility submits an application for a site certificate prior to the last day of the period con-  
41 stituting the exemption or January 1, 2005, whichever date is earlier, the council shall extend the  
42 period constituting the exemption and shall allow the temporary energy generating facility to con-  
43 tinue operation until the council concludes its review of the site certificate application. The council  
44 may specify a date by which the application must be completed. If the application is not completed  
45 by the date specified by the council, or is rejected by the council, the energy facility shall cease

1 operation on the specified date. An energy facility operating pursuant to this paragraph shall cease  
 2 operation if the applicant for the site certificate suspends the application.

3 (8) As used in this section:

4 (a) **“Cellulosic biomass” means barley grain, grapeseed, forest thinnings, rice bran, rice**  
 5 **hulls, rice straw, soybean matter, sugarcane bagasse or any other crop grown specifically for**  
 6 **the purpose of producing cellulosic feedstock that contains lignocellulose or hemicellulose.**

7 [(a)] (b) “Standby generation facility” means an electric power generating facility, including  
 8 standby generators and the physical structures necessary to install and connect standby generators,  
 9 that provides temporary electric power in the event of a power outage and that is electrically in-  
 10 capable of being interconnected with the transmission grid.

11 [(b)] (c) “Temporary energy generating facility” means an electric power generating facility,  
 12 including a thermal power plant and a combustion turbine power plant, but not including a  
 13 hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that  
 14 is operated for no more than 24 months from the date of initial commercial operation.

15 [(c)] (d) “Total energy output” means the sum of useful thermal energy output and useful elec-  
 16 trical energy output.

17 [(d)] (e) “Useful thermal energy” means the verifiable thermal energy used in any viable indus-  
 18 trial or commercial process, heating or cooling application.

19 (9) Notwithstanding the definition of “energy facility” in ORS 469.300 (11)(a)(J), an electric  
 20 power generating plant with an average electric generating capacity of less than 35 megawatts  
 21 produced from wind energy at a single energy facility or within a single energy generation area may  
 22 elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to  
 23 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be  
 24 final upon submission of an application for a site certificate.

25 **SECTION 30.** ORS 469.320, as amended by section 8, chapter 683, Oregon Laws 2001, and sec-  
 26 tion 77, chapter 186, Oregon Laws 2003, is amended to read:

27 469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be  
 28 constructed or expanded unless a site certificate has been issued for the site thereof in the manner  
 29 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be  
 30 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,  
 31 469.590 to 469.619, 469.930 and 469.992.

32 (2) [No] **A** site certificate [*shall be*] **is not** required for:

33 (a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had  
 34 operable electric generating equipment for a modification that uses the same fuel type and increases  
 35 electric generating capacity, if:

36 (A) The site is not enlarged; and

37 (B) The ability of the energy facility to use fuel for electricity production under peak steady  
 38 state operating conditions is not more than 200 million Btu per hour greater than it was on August  
 39 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy  
 40 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

41 (b) Construction or expansion of any interstate natural gas pipeline or associated underground  
 42 natural gas storage facility authorized by and subject to the continuing regulation of the Federal  
 43 Energy Regulatory Commission or successor agency.

44 (c) An energy facility, except coal and nuclear power plants, if the energy facility:

45 (A) Sequentially produces electrical energy and useful thermal energy from the same fuel source;

1 and

2 (B) Under normal operating conditions, has a useful thermal energy output of no less than 33  
3 percent of the total energy output or the fuel chargeable to power heat rate value is not greater  
4 than 6,000 Btu per kilowatt hour.

5 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site cer-  
6 tificate has been issued by the State of Oregon, of radioactive waste from the plant.

7 (e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary  
8 fuel used on site for the production of heat or electricity, if the output of the primary fuel is less  
9 than six billion Btu of heat a day.

10 (f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

11 (A) **Exclusively** uses [*biomass exclusively from*] grain, whey [*or*], potatoes, **oil seeds, waste**  
12 **vegetable oil or cellulosic biomass** as the source of material for conversion to a liquid fuel, **the**  
13 **production of electric energy, the generation of heat, the creation of transportation fuels or**  
14 **the creation of substitutes for petroleum-based products;**

15 (B) Has received local land use approval under the applicable acknowledged comprehensive plan  
16 and land use regulations of the affected local government and the facility complies with any state-  
17 wide planning goals or rules of the Land Conservation and Development Commission that are di-  
18 rectly applicable to the facility;

19 (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would  
20 require a site certificate under subsection (1) of this section; and

21 (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling  
22 facility located within one mile of the facility or is transported from the facility by rail or barge.

23 (g) A standby generation facility, if the facility complies with all of the following:

24 (A) The facility has received local land use approval under the applicable acknowledged com-  
25 prehensive plan and land use regulations of the affected local government and the facility complies  
26 with all statewide planning goals and applicable rules of the Land Conservation and Development  
27 Commission;

28 (B) The standby generators have been approved by the Department of Environmental Quality  
29 as having complied with all applicable air and water quality requirements. For an applicant that  
30 proposes to provide the physical facilities for the installation of standby generators, the requirement  
31 of this subparagraph may be met by agreeing to require such a term in the lease contract for the  
32 facility; and

33 (C) The standby generators are electrically incapable of being interconnected to the trans-  
34 mission grid. For an applicant that proposes to provide the physical facilities for the installation of  
35 standby generators, the requirement of this subparagraph may be met by agreeing to require such  
36 a term in the lease contract for the facility.

37 (3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable  
38 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,  
39 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in  
40 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power  
41 heat rate value for the best available, commercially viable thermal power plant technology at the  
42 time of the revision.

43 (4) Any person who proposes to construct or enlarge an energy facility and who claims an ex-  
44emption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site  
45 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-

1 cility qualifies for the claimed exemption. The council shall make its determination within 60 days  
 2 after the request for exemption is filed. An appeal from the council’s determination on a request for  
 3 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court  
 4 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the  
 5 Supreme Court shall be the record established in the council proceeding on the exemption.

6 (5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-  
 7 quired for:

8 (a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if  
 9 such related or supporting facilities are addressed in and are subject to a site certificate for another  
 10 energy facility;

11 (b) Expansion within the site or within the energy generation area of a facility for which a site  
 12 certificate has been issued, if the existing site certificate has been amended to authorize expansion;  
 13 or

14 (c) Expansion, either within the site or outside the site, of an existing council certified surface  
 15 facility related to an underground gas storage reservoir, if the existing site certificate is amended  
 16 to authorize expansion.

17 (6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of  
 18 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this  
 19 section, the electric generating facility shall cease to operate one year after the substantial loss of  
 20 the steam host unless an application for a site certificate has been filed in accordance with the  
 21 provisions of ORS 469.300 to 469.563.

22 (7) As used in this section:

23 (a) **“Cellulosic biomass” means barley grain, grapeseed, forest thinnings, rice bran, rice**  
 24 **hulls, rice straw, soybean matter, sugarcane bagasse or any other crop grown specifically for**  
 25 **the purpose of producing cellulosic feedstock that contains lignocellulose or hemicellulose.**

26 [(a)] (b) “Standby generation facility” means an electric power generating facility, including  
 27 standby generators and the physical structures necessary to install and connect standby generators,  
 28 that provides temporary electric power in the event of a power outage and that is electrically in-  
 29 capable of being interconnected with the transmission grid.

30 [(b)] (c) “Total energy output” means the sum of useful thermal energy output and useful elec-  
 31 trical energy output.

32 [(c)] (d) “Useful thermal energy” means the verifiable thermal energy used in any viable indus-  
 33 trial or commercial process, heating or cooling application.

34 (8) Notwithstanding the definition of “energy facility” in ORS 469.300 (11)(a)(J), an electric  
 35 power generating plant with an average electric generating capacity of less than 35 megawatts  
 36 produced from wind energy at a single energy facility or within a single energy generation area may  
 37 elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to  
 38 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be  
 39 final upon submission of an application for a site certificate.

40 **SECTION 31. The amendments to ORS 469.320 by sections 29 and 30 of this 2005 Act do**  
 41 **not apply to applications for site certificates filed before the effective date of this 2005 Act.**

42  
 43 **STATE GOVERNMENT USE OF BIODIESEL**

44  
 45 **SECTION 32.** ORS 283.305 is amended to read:

283.305. As used in ORS 283.305 to 283.350:

(1) "Authorized driver" means any of the following who has a valid driver license and an acceptable driving record:

(a) A salaried state employee, including an agent of the state;

(b) A volunteer, appointed in writing, whose written description of duties includes driving motor vehicles;

(c) An agency client required to drive motor vehicles as part of a rehabilitation or treatment program authorized by law;

(d) Any personnel of any unit of government whose use of motor vehicles is permitted by an authorized intergovernmental agreement;

(e) Any student enrolled at any state institution of higher education and whose use of motor vehicles meets the requirements of ORS 283.310; and

(f) An inmate of a correctional institution with specific Department of Corrections approval who is accompanied by a supervising correctional institution employee or who is performing a specific work assignment driving a special purpose vehicle required for that assignment and within the visual range of a supervising correctional institution employee who is at the work assignment site or who is part of the transport caravan.

(2) "Alternative fuel" means **biodiesel**, natural gas, liquified petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity.

(3) "Motor vehicles" includes state-owned, leased or otherwise controlled motor vehicles and the supplies, parts and equipment for the operation, maintenance or repair of such motor vehicles.

(4) "Official state business" means activity conducted by a state agency that advances the lawful policies of the agency as specified by the Oregon Department of Administrative Services by rule.

(5) "Standard passenger vehicle" means a motor vehicle that is commonly known as a sedan or a station wagon and that is not equipped with special or unusual equipment.

(6) "State agency" or "agency" includes the Legislative Assembly, at its option, or any of its statutory, standing, special or interim committees, at the option of such committee.

**SECTION 33.** ORS 283.327 is amended to read:

283.327. (1) To the maximum extent economically possible, state-owned motor vehicles, **whether the motor vehicles are for on-road, off-road or construction applications**, shall use alternative fuel for operation.

(2) After July 1, 1994, state agencies shall acquire only motor vehicles capable of using alternative fuel, except that acquired vehicles assigned to areas unable economically to dispense alternative fuel need not be so configured.

(3) Each agency owning motor vehicles shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

**SECTION 34.** ORS 319.530 is amended to read:

319.530. (1) To compensate this state partially for the use of its highways, an excise tax [hereby] is imposed at the rate of 24 cents per gallon on the use of fuel in a motor vehicle.

(2) Except as otherwise provided in subsections [(2) and (3)] **(3) and (4)** of this section, 100 cubic feet of fuel used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

[(2)] **(3)** One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at

1 the same rate as a gallon of liquid fuel.

2 ~~[(3)]~~ (4) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at  
3 the same rate as a gallon of other liquid fuel.

4 **(5) Notwithstanding the excise tax specified in subsection (1) of this section, if the fuel**  
5 **used in a motor vehicle is pure or part biodiesel, the excise tax imposed under this section**  
6 **shall be reduced at the rate of 0.24 cents per gallon for each percent of biodiesel contained**  
7 **in the fuel.**

8 **SECTION 35.** ORS 319.530, as amended by section 34 of this 2005 Act, is amended to read:

9 319.530. (1) To compensate this state partially for the use of its highways, an excise tax is im-  
10 posed at the rate of 24 cents per gallon on the use of fuel in a motor vehicle.

11 (2) Except as otherwise provided in subsections (3) and (4) of this section, 100 cubic feet of fuel  
12 used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees  
13 Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

14 (3) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state,  
15 measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the  
16 same rate as a gallon of liquid fuel.

17 (4) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the  
18 same rate as a gallon of other liquid fuel.

19 *[(5) Notwithstanding the excise tax specified in subsection (1) of this section, if the fuel used in a*  
20 *motor vehicle is pure or part biodiesel, the excise tax imposed under this section shall be reduced at*  
21 *the rate of 0.24 cents per gallon for each percent of biodiesel contained in the fuel.]*

22 **SECTION 36. The amendments to ORS 319.530 by section 35 of this 2005 Act become op-**  
23 **erative on January 2, 2012.**

24 **SECTION 37.** ORS 319.831 is amended to read:

25 319.831. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel  
26 tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which  
27 is applicable to use of the fuel to propel a motor vehicle:

28 (a) In another state, if the user pays to the other state an additional tax on the same fuel;

29 (b) Upon any road, thoroughfare or property in private ownership;

30 (c) Upon any road, thoroughfare or property, other than a state highway, county road or city  
31 street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest  
32 products converted to a form other than logs at or near the harvesting site, or for the construction  
33 or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit  
34 authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

35 (A) An agency of the United States;

36 (B) The State Board of Forestry;

37 (C) The State Forester; or

38 (D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;

39 (d) By an agency of the United States or of this state or of any county, city or port of this state  
40 on any road, thoroughfare or property, other than a state highway, county road or city street;

41 (e) By any incorporated city or town of this state;

42 (f) By any county of this state or by any road assessment district formed under ORS 371.405 to  
43 371.535;

44 (g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the  
45 products of such forest products converted to a form other than logs at or near the harvesting site,

1 if:

2 (A) Such use upon the county road is pursuant to a written agreement entered into with, or to  
 3 a permit issued by, the State Board of Forestry, the State Forester or an agency of the United  
 4 States, authorizing such user to use such road and requiring such user to pay for or to perform the  
 5 construction or maintenance of the county road;

6 (B) The board, officer or agency that entered into the agreement or granted the permit, by  
 7 contract with the county court or board of county commissioners, has assumed the responsibility for  
 8 the construction or maintenance of such county road; and

9 (C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph  
 10 are filed with the Department of Transportation;

11 (h) By a school district or education service district of this state or the contractors of a school  
 12 district or education service district, for those vehicles being used to transport students;

13 (i) By a rural fire protection district organized under the provisions of ORS chapter 478;

14 (j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided for  
 15 in this section; *[or]*

16 (k) By any state agency, as defined in ORS 240.855; or

17 **(L) In any location, if the motor vehicle has a registration plate issued under ORS 803.520**  
 18 **but meets the qualifications under ORS 805.310 for farm vehicle registration and if the fuel**  
 19 **used to propel the motor vehicle is pure biodiesel.**

20 (2) An application for a refund under subsection (1) of this section shall be filed with the de-  
 21 partment within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

22 (3) The application for a refund provided by subsection (1) of this section shall include a signed  
 23 statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way  
 24 in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the  
 25 refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall  
 26 be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel  
 27 tax directly to the department, the applicant shall indicate the source of the fuel and the date it  
 28 was obtained.

29 (4) The department may require any person who applies for a refund provided by subsection (1)  
 30 of this section to furnish a statement, under oath, giving the person's occupation, description of the  
 31 machines or equipment in which the fuel was used, the place where used and such other information  
 32 as the department may require.

33 **SECTION 38.** ORS 319.831, as amended by section 37 of this 2005 Act, is amended to read:

34 319.831. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel  
 35 tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which  
 36 is applicable to use of the fuel to propel a motor vehicle:

37 (a) In another state, if the user pays to the other state an additional tax on the same fuel;

38 (b) Upon any road, thoroughfare or property in private ownership;

39 (c) Upon any road, thoroughfare or property, other than a state highway, county road or city  
 40 street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest  
 41 products converted to a form other than logs at or near the harvesting site, or for the construction  
 42 or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit  
 43 authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

44 (A) An agency of the United States;

45 (B) The State Board of Forestry;

- 1 (C) The State Forester; or
- 2 (D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;
- 3 (d) By an agency of the United States or of this state or of any county, city or port of this state
- 4 on any road, thoroughfare or property, other than a state highway, county road or city street;
- 5 (e) By any incorporated city or town of this state;
- 6 (f) By any county of this state or by any road assessment district formed under ORS 371.405 to
- 7 371.535;
- 8 (g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the
- 9 products of such forest products converted to a form other than logs at or near the harvesting site,
- 10 if:
- 11 (A) Such use upon the county road is pursuant to a written agreement entered into with, or to
- 12 a permit issued by, the State Board of Forestry, the State Forester or an agency of the United
- 13 States, authorizing such user to use such road and requiring such user to pay for or to perform the
- 14 construction or maintenance of the county road;
- 15 (B) The board, officer or agency that entered into the agreement or granted the permit, by
- 16 contract with the county court or board of county commissioners, has assumed the responsibility for
- 17 the construction or maintenance of such county road; and
- 18 (C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph
- 19 are filed with the Department of Transportation;
- 20 (h) By a school district or education service district of this state or the contractors of a school
- 21 district or education service district, for those vehicles being used to transport students;
- 22 (i) By a rural fire protection district organized under the provisions of ORS chapter 478;
- 23 (j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided for
- 24 in this section; **or**
- 25 (k) By any state agency, as defined in ORS 240.855[; or].

26 *[(L) In any location, if the motor vehicle has a registration plate issued under ORS 803.520 but*  
 27 *meets the qualifications under ORS 805.310 for farm vehicle registration and if the fuel used to propel*  
 28 *the motor vehicle is pure biodiesel.]*

29 (2) An application for a refund under subsection (1) of this section shall be filed with the de-  
 30 partment within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

31 (3) The application for a refund provided by subsection (1) of this section shall include a signed  
 32 statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way  
 33 in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the  
 34 refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall  
 35 be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel  
 36 tax directly to the department, the applicant shall indicate the source of the fuel and the date it  
 37 was obtained.

38 (4) The department may require any person who applies for a refund provided by subsection (1)  
 39 of this section to furnish a statement, under oath, giving the person's occupation, description of the  
 40 machines or equipment in which the fuel was used, the place where used and such other information  
 41 as the department may require.

42 **SECTION 39. The amendments to ORS 319.831 by section 38 of this 2005 Act become op-**  
 43 **erative on January 2, 2012.**

44  
 45

**CAPTIONS**

1        **SECTION 40.** The unit captions used in this 2005 Act are provided only for the conven-  
2        ience of the reader and do not become part of the statutory law of this state or express any  
3        legislative intent in the enactment of this 2005 Act.

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