

# A-Engrossed Senate Bill 31

Ordered by the House July 5  
Including House Amendments dated July 5

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Revenue for Department of Revenue)

## 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.

*[Permits Department of Revenue to implead persons who may be jointly and severally liable for unpaid withholding taxes, resulting in impleaded persons being made party to appeal taken to Oregon Tax Court.]*

*[Applies to appeals taken on or after effective date of Act.]*

**Exempts tangible or intangible property, property rights or property interests in or related to Pacific Northwest AC Intertie and referenced in certain agreements from property taxation. Applies to tax years beginning on or after date of execution of agreement and tax years beginning on or after July 1, 2005.**

**Provides that for purposes of business income apportionment, sale of goods shipped from public warehouse is not considered to take place in this state if taxpayer's only activity in Oregon is storage of goods in public warehouse prior to shipment or taxpayer's only activities in Oregon are storage of goods in public warehouse prior to shipment and presence of employees in this state is solely for purposes of soliciting sales of taxpayer's products. Applies to tax years beginning on or after January 1, 2006.**

**Allows residential energy income tax credit for construction or installation of solar electric system. Establishes maximum amount of credit that may be claimed in single tax year. Allows unused credit amounts to be carried forward to tax year that is not more than five tax years following first tax year for which any credit was allowed. Applies to solar electric systems certified for credit on or after January 1, 2006.**

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to taxation; creating new provisions; amending ORS 307.090, 314.665, 316.116, 469.160,  
3 469.165, 469.170, 469.172, 469.176 and 469.180; and prescribing an effective date.

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

5 **SECTION 1.** ORS 307.090 is amended to read:

6 307.090. (1) Except as provided by law, all property of the state and all public or corporate  
7 property used or intended for corporate purposes of the several counties, cities, towns, school dis-  
8 tricts, irrigation districts, drainage districts, ports, water districts, housing authorities and all other  
9 public or municipal corporations in this state, is exempt from taxation.

10 (2) Any city may agree with any school district to make payments in lieu of taxes on all prop-  
11 erty of the city located in any such school district, and which is exempt from taxation under sub-  
12 section (1) of this section when such property is outside the boundaries of the city and owned, used  
13 or operated for the production, transmission, distribution or furnishing of electric power or energy  
14 or electric service for or to the public.

15 **(3) Any tangible or intangible property, property rights or property interests in or related**  
16 **to the Pacific Northwest AC Intertie, as referenced in a written agreement executed between**

**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 **the United States Department of Energy and a city of any state, are exempt from taxation.**

2 **SECTION 2. The amendments to ORS 307.090 by section 1 of this 2005 Act apply to:**

3 **(1) Any tax year beginning on or after the date a written agreement described in ORS**  
4 **307.090 (3) is executed; and**

5 **(2) Any tax year beginning on or after July 1, 2005.**

6 **SECTION 3. ORS 314.665 is amended to read:**

7 314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is the  
8 total sales of the taxpayer in this state during the tax period, and the denominator of which is the  
9 total sales of the taxpayer everywhere during the tax period.

10 (2) Sales of tangible personal property are in this state if:

11 (a) The property is delivered or shipped to a purchaser, other than the United States Govern-  
12 ment, within this state regardless of the f.o.b. point or other conditions of the sale; or

13 (b) The property is shipped from an office, store, warehouse, factory, or other place of storage  
14 in this state and [(A)] the purchaser is the United States Government or [(B)] the taxpayer is not  
15 taxable in the state of the purchaser. **For purposes of this paragraph:**

16 **(A) The sale of goods shipped from a public warehouse is not considered to take place in**  
17 **this state if:**

18 **(i) The taxpayer's only activity in Oregon is the storage of the goods in the public ware-**  
19 **house prior to shipment; or**

20 **(ii) The taxpayer's only activities in Oregon are the storage of the goods in the public**  
21 **warehouse prior to shipment and the presence of employees within this state solely for pur-**  
22 **poses of soliciting sales of the taxpayer's products; and**

23 **(B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code,**  
24 **an affiliate of the person storing goods in a public warehouse or a person that is related**  
25 **under section 267 of the Internal Revenue Code to the person storing goods in a public**  
26 **warehouse.**

27 (3) Subsection (2)(b) of this section shall not apply to sales of tangible personal property if:

28 (a) The sales are included in the numerator of a formula used to apportion business income to  
29 another state of the United States, a foreign country or the District of Columbia; and

30 (b) The other state, a foreign country or the District of Columbia has imposed a tax on or  
31 measured by the apportioned business income.

32 (4) Sales, other than sales of tangible personal property, are in this state if (a) the income-  
33 producing activity is performed in this state; or (b) the income-producing activity is performed both  
34 in and outside this state and a greater proportion of the income-producing activity is performed in  
35 this state than in any other state, based on costs of performance.

36 (5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS  
37 314.682, 314.684, 317.660 or other law, the Department of Revenue shall adopt rules that are con-  
38 sistent with the determination of the sales factor under this section.

39 (6) For purposes of this section, "sales":

40 (a) Excludes gross receipts arising from the sale, exchange, redemption or holding of intangible  
41 assets, including but not limited to securities, unless those receipts are derived from the taxpayer's  
42 primary business activity.

43 (b) Includes net gain from the sale, exchange or redemption of intangible assets not derived from  
44 the primary business activity of the taxpayer but included in the taxpayer's business income.

45 (c) Excludes gross receipts arising from an incidental or occasional sale of a fixed asset or as-

1 sets used in the regular course of the taxpayer's trade or business if a substantial amount of the  
2 gross receipts of the taxpayer arise from an incidental or occasional sale or sales of fixed assets  
3 used in the regular course of the taxpayer's trade or business. Insubstantial amounts of gross re-  
4 cepts arising from incidental or occasional transactions or activities may be excluded from the sales  
5 factor unless the exclusion would materially affect the amount of income apportioned to this state.

6 **(7) The department may determine that a warehouse that meets the definition of "public**  
7 **warehouse" under this section may not be treated as a public warehouse if the warehouse**  
8 **is being used primarily for tax avoidance purposes or if transactions related to the use of the**  
9 **warehouse are primarily for tax avoidance purposes.**

10 **(8) As used in this section, "public warehouse":**

11 **(a) Means a warehouse owned or operated by a person that does not own the goods stored**  
12 **in the warehouse; and**

13 **(b) Does not include a warehouse that is owned by a person that is related to the person**  
14 **that owns goods that are stored in the warehouse, as determined under section 267 of the**  
15 **Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the**  
16 **warehouse.**

17 **SECTION 4. The amendments to ORS 314.665 by section 3 of this 2005 Act apply to tax**  
18 **years beginning on or after January 1, 2006.**

19 **SECTION 5.** ORS 316.116 is amended to read:

20 316.116. (1)(a) A resident individual shall be allowed a credit against the taxes otherwise due  
21 under this chapter for costs paid or incurred for construction or installation of an alternative energy  
22 device in a dwelling.

23 (b) A resident individual shall be allowed a credit against the taxes otherwise due under this  
24 chapter for costs paid or incurred to modify or purchase an alternative fuel vehicle or related  
25 equipment.

26 **(c) A resident individual shall be allowed a credit against the taxes otherwise due under**  
27 **this chapter for costs paid or incurred for construction or installation of a solar electric**  
28 **system in a dwelling.**

29 (2)(a) Except in the case of an alternative fuel device **or a solar electric system**, the credit  
30 shall be based upon the first year energy yield of the alternative energy device that qualifies under  
31 ORS 469.160 to 469.180. The amount of the credit shall be the same whether for collective or non-  
32 collective investment.

33 (b) The credit allowed under this section for each dwelling shall not exceed the lesser of:

34 (A) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per  
35 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or  
36 domestic water heating for tax years beginning on or after January 1, 1990, and before January 1,  
37 1996.

38 (B) \$1,200 or the first year energy yield in kilowatt hours per year multiplied by 48 cents per  
39 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or  
40 domestic water heating for tax years beginning on or after January 1, 1996, and before January 1,  
41 1998.

42 (C) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per  
43 dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or  
44 domestic water heating for tax years beginning on or after January 1, 1998.

45 (c) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit

1 allowed under this section shall be based upon 50 percent of the cost of the device or the first year's  
2 energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to:

3 (A) \$1,500 for tax years beginning on or after January 1, 1990, and before January 1, 1996.

4 (B) \$1,200 for tax years beginning on or after January 1, 1996, and before January 1, 1998.

5 (C) \$1,500 for tax years beginning on or after January 1, 1998.

6 (d) For an alternative fuel device, the credit allowed under this section is 25 percent of the cost  
7 of the alternative fuel device but the total credit shall not exceed \$750 if the device is placed in  
8 service on or after January 1, 1998.

9 **(e)(A) For a solar electric system, the credit allowed under this section shall equal \$3 per**  
10 **watt of installed output, but the installed output that is used to determine the amount of**  
11 **credit under this paragraph may not exceed 2,000 watts.**

12 **(B) Notwithstanding subparagraph (A) of this paragraph, the amount of the credit al-**  
13 **lowed in any one tax year may not exceed the tax liability of the taxpayer or \$1,500, which-**  
14 **ever is less. Unused credit amounts may be carried forward as provided in subsection (7) of**  
15 **this section, but may not be carried forward to a tax year that is more than five tax years**  
16 **following the first tax year for which any credit was allowed with respect to the solar electric**  
17 **system that is the basis for the credit.**

18 **(C) Notwithstanding subparagraph (A) of this paragraph, the total amount of the credit**  
19 **allowed under this paragraph may not exceed 50 percent of the total installed cost of the**  
20 **solar electric system.**

21 (3)(a) In the case of a credit for an alternative energy device that is an energy efficient appli-  
22 ance, the credit allowed to a resident individual under this section shall equal:

23 (A) 48 cents per first year kilowatt hour saved, or the equivalent for other fuel saved, not to  
24 exceed \$1,200 for each tax year beginning on or after January 1, 1998, and before January 1, 1999;  
25 and

26 (B) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000  
27 for each tax year beginning on or after January 1, 1999.

28 (b) Notwithstanding paragraph (a) of this subsection, the credit allowed for an energy efficient  
29 appliance shall not exceed 25 percent of the cost of the appliance.

30 (4) To qualify for a credit under this section, all of the following are required:

31 (a) The alternative energy device **or solar electric system** must be purchased, constructed,  
32 installed and operated in accordance with ORS 469.160 to 469.180 and a certificate issued there-  
33 under.

34 (b) Except for credits claimed for alternative fuel devices, the taxpayer who is allowed the credit  
35 must be the owner or contract purchaser of the dwelling or dwellings served by the alternative en-  
36 ergy device **or solar electric system** or the tenant of the owner or of the contract purchaser and  
37 must:

38 (A) Use the dwelling or dwellings served by the alternative energy device **or solar electric**  
39 **system** as a principal or secondary residence; or

40 (B) Rent or lease, under a residential rental agreement, the dwelling or dwellings to a tenant  
41 who uses the dwelling or dwellings as a principal or secondary residence, unless the basis for the  
42 credit is the installation of an energy efficient appliance. If the basis for the credit is the installation  
43 of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually oc-  
44 cupies the dwelling as a principal or secondary residence.

45 (c) In the case of an alternative fuel device, if the device is a fueling station necessary to op-

1 erate an alternative fuel vehicle, unless the verification form and certificate are transferred as au-  
 2 thorized under ORS 469.170 (8), the taxpayer who is allowed the credit must be the contractor who  
 3 constructs the dwelling that incorporates the fueling station into the dwelling or installs the fueling  
 4 station in the dwelling. If the alternative energy device is an alternative fuel vehicle, the credit must  
 5 be claimed by the owner as defined under ORS 801.375 or contract purchaser. If the alternative  
 6 energy device is related equipment, the credit may be claimed by the owner or contract purchaser.

7 (d) The credit must be claimed for the tax year in which the alternative energy device **or solar**  
 8 **electric system** was purchased if the **device or** system is operational by April 1 of the next fol-  
 9 lowing tax year.

10 (5) The credit provided by this section [*shall*] **does** not affect the computation of basis under this  
 11 chapter.

12 (6) The credit allowed under this section in any one year [*shall*] **may** not exceed the tax liability  
 13 of the taxpayer.

14 (7) Any tax credit otherwise allowable under this section [*which*] **that** is not used by the tax-  
 15 payer in a particular year may be carried forward and offset against the taxpayer's tax liability for  
 16 the next succeeding tax year. Any credit remaining unused in [*such*] **the** next succeeding tax year  
 17 may be carried forward and used in the second succeeding tax year, and likewise any credit not used  
 18 in that second succeeding tax year may be carried forward and used in the third succeeding tax  
 19 year, and any credit not used in that third succeeding tax year may be carried forward and used in  
 20 the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be  
 21 carried forward and used in the fifth succeeding tax year, but may not be carried forward for any  
 22 tax year thereafter.

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

25 (9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the  
 26 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-  
 27 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

28 (10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to  
 29 resident occurs, the credit allowed by this section shall be determined in a manner consistent with  
 30 ORS 316.117.

31 (11) A husband and wife who file separate returns for a taxable year may each claim a share  
 32 of the tax credit that would have been allowed on a joint return in proportion to the contribution  
 33 of each. However, a husband or wife living in a separate principal residence may claim the tax  
 34 credit in the same amount as permitted a single person.

35 (12) As used in this section, unless the context requires otherwise:

36 (a) "Collective investment" means an investment by two or more taxpayers for the acquisition,  
 37 construction and installation of an alternative energy device for one or more dwellings.

38 (b) "First year energy yield" has the meaning given in ORS 469.160.

39 (c) "Noncollective investment" means an investment by an individual taxpayer for the acqui-  
 40 sition, construction and installation of an alternative energy device for one or more dwellings.

41 (13) As used in this section, "taxpayer" includes a transferee of a verification form under ORS  
 42 469.170 (8).

43 (14) Notwithstanding any provision of subsection (1) or (2) of this section, the sum of the credit  
 44 allowed under subsection (1) of this section plus any similar credit allowed for federal income tax  
 45 purposes shall not exceed the cost to the taxpayer for the acquisition, construction and installation

1 of the alternative energy device **or solar electric system**.

2 **SECTION 6.** ORS 469.160 is amended to read:

3 469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

4 (1) "Alternative energy device" means:

5 (a) Any system, mechanism or series of mechanisms, including photovoltaic systems, that uses  
6 solar radiation or wind for space heating, cooling or electrical energy for one or more dwellings;

7 (b) Any system that uses solar radiation for:

8 (A) Domestic water heating; or

9 (B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS  
10 316.116;

11 (c) A ground water heat pump and ground loop system;

12 (d) A wind powered turbine that generates electricity;

13 (e) Any wind powered device used to offset or supplement the use of electricity by performing  
14 a specific task such as pumping water;

15 (f) Equipment used in the production of alternative fuels;

16 (g) A generator powered by alternative fuels and used to produce electricity;

17 (h) A fuel cell;

18 (i) An energy efficient appliance; or

19 (j) An alternative fuel device.

20 (2) "Alternative fuel device" means any of the following:

21 (a) An alternative fuel vehicle;

22 (b) Related equipment; or

23 (c) A fueling station necessary to operate an alternative fuel vehicle.

24 (3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

25 (a) Registered in this state; and

26 (b) Manufactured or modified to use an alternative fuel, including but not limited to electricity,  
27 natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Direc-  
28 tor of the State Department of Energy that produces less exhaust emissions than vehicles fueled by  
29 gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without  
30 regard to energy consumption savings.

31 (4) "Coefficient of performance" means the ratio calculated by dividing the usable output energy  
32 by the electrical input energy. Both energy values must be expressed in equivalent units.

33 (5) "Contractor" means a person whose trade or business consists of offering for sale an alter-  
34 native energy device, construction service, installation service or design service.

35 (6)(a) "Cost" means the actual cost of the acquisition, construction and installation of the al-  
36 ternative energy device **or solar electric system** paid by the taxpayer for the alternative energy  
37 device **or solar electric system**.

38 (b) For an alternative fuel vehicle, "cost" means the difference between the cost of the alter-  
39 native fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use con-  
40 ventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the  
41 modification. "Cost" does not include any amounts paid for remodification of the same vehicle.

42 (c) For a fueling station necessary to operate an alternative fuel vehicle, "cost" means the cost  
43 to the contractor of constructing or installing the fueling station in a dwelling and of making the  
44 fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180  
45 and any rules adopted by the Director of the State Department of Energy.

1 (d) For related equipment, “cost” means the cost of the related equipment and any modifications  
2 or additions to the related equipment necessary to prepare the related equipment for use in con-  
3 verting a vehicle to alternative fuel use.

4 (7) “Domestic water heating” means the heating of water used in a dwelling for bathing, clothes  
5 washing, dishwashing and other related functions.

6 (8) “Dwelling” means real or personal property ordinarily inhabited as a principal or secondary  
7 residence and located within this state. “Dwelling” includes, but is not limited to, an individual unit  
8 within multiple unit residential housing.

9 (9) “Energy efficient appliance” means a clothes washer, clothes dryer, water heater,  
10 refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major  
11 household appliance that has been certified by the State Department of Energy to have premium  
12 energy efficiency characteristics.

13 (10) “First year energy yield” of an alternative energy device is the usable energy produced  
14 under average environmental conditions in one year.

15 (11) “Fueling station” includes but is not limited to a compressed natural gas compressor fueling  
16 system or an electric charging system for vehicle power battery charging.

17 (12) “Placed in service” means:

18 (a) The date an alternative energy device **or solar electric system** is ready and available to  
19 produce usable energy or save energy.

20 (b) For an alternative fuel vehicle:

21 (A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an  
22 alternative fuel vehicle ready and available for use.

23 (B) In the case of modification, the date that the modification is completed and the vehicle is  
24 ready and available for use as an alternative fuel vehicle.

25 (c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fu-  
26 eling station is first operational.

27 (d) For related equipment, the date that the equipment is first operational.

28 (13) “Related equipment” means equipment necessary to convert a vehicle to use an alternative  
29 fuel.

30 (14) **“Solar electric system” means any system, mechanism or series of mechanisms, in-  
31 cluding photovoltaic systems, that uses solar radiation to generate electrical energy for a  
32 dwelling.**

33 **SECTION 7.** ORS 469.165 is amended to read:

34 469.165. (1) For the purposes of carrying out ORS 469.160 to 469.180, the State Department of  
35 Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for  
36 dwellings **and solar electric systems.**

37 (2) The department, in adopting rules under this section for solar heating and cooling systems,  
38 shall take into consideration applicable standards of federal performance criteria prescribed pursu-  
39 ant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act  
40 of 1974).

41 (3) The Director of the State Department of Energy shall adopt rules governing the determi-  
42 nation of eligibility, verification and certification of an alternative fuel device for purposes of the  
43 tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further  
44 define an alternative fuel vehicle, related equipment or fueling station necessary to operate an al-  
45 ternative fuel vehicle, that govern the computation of costs eligible for credit and that require eq-

1 uitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel  
2 vehicle as a condition of tax credit eligibility.

3 **SECTION 8.** ORS 469.170 is amended to read:

4 469.170. (1) Any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person  
5 is a corporation) if the person:

6 (a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

7 (b) Meets the requirements of ORS 469.160 to 469.180; and

8 (c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative  
9 energy device **or a solar electric system**.

10 (2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling  
11 station necessary to operate an alternative fuel vehicle.

12 (3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming  
13 a tax credit for construction or installation of an alternative energy device (including a fueling  
14 station) **or a solar electric system** shall have the **device or system** certified by the State Depart-  
15 ment of Energy or constructed or installed by a contractor certified by the department under sub-  
16 section (5) of this section. This [subsection] **paragraph** does not apply to an alternative fuel vehicle  
17 or to related equipment.

18 (b) Certification of an alternative fuel vehicle or related equipment shall be accomplished under  
19 rules that shall be adopted by the Director of the State Department of Energy.

20 (4) Verification of the purchase, construction or installation of an alternative energy device **or**  
21 **solar electric system** shall be made in writing on a form provided by the Department of Revenue  
22 and, if applicable, shall contain:

23 (a) The location of the alternative energy device **or solar electric system**;

24 (b) A description of the type of device **or system**;

25 (c) If the device **or system** was constructed or installed by a contractor, evidence that the  
26 contractor has any license, bond, insurance and permit required to sell and construct or install the  
27 alternative energy device **or solar electric system**;

28 (d) If the device **or system** was constructed or installed by a contractor, a statement signed by  
29 the contractor that the applicant has received:

30 (A) A statement of the reasonably expected energy savings of the device **or system**;

31 (B) A copy of consumer information published by the State Department of Energy;

32 (C) An operating manual for the alternative energy device **or solar electric system**; and

33 (D) A copy of the contractor's certification certificate or alternative energy device system cer-  
34 tificate **for the alternative energy device or solar electric system**, as appropriate;

35 (e) If the device **or system** was not constructed or installed by a contractor, evidence that:

36 (A) The State Department of Energy has issued an alternative energy device system certificate  
37 for the **alternative energy device or solar electric system**; and

38 (B) The taxpayer has obtained all building permits required for construction or installation of  
39 the device **or system**;

40 (f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device  
41 **or system** was constructed or installed by a contractor, that the construction or installation meets  
42 all the requirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer  
43 is the contractor, a statement signed by the contractor that the construction or installation meets  
44 all of the requirements of ORS 469.160 to 469.180;

45 (g) The date the alternative energy device **or solar electric system** was purchased;

1 (h) The date the alternative energy device **or solar electric system** was placed in service; and

2 (i) Any other information that the Director of the State Department of Energy or the Depart-  
3 ment of Revenue determines is necessary.

4 (5)(a) When the State Department of Energy finds that an alternative energy device **or solar**  
5 **electric system** can meet the standards adopted under ORS 469.165, the Director of the State De-  
6 partment of Energy may issue a contractor system certification to the person selling and con-  
7 structing or installing the alternative energy device **or solar electric system**.

8 (b) Any person who sells or installs more than 12 alternative energy devices **or solar electric**  
9 **systems** in one year shall apply for a contractor system certification. An application for a con-  
10 tractor system certification shall be made in writing on a form provided by the State Department  
11 of Energy and shall contain:

12 (A) A statement that the contractor has any license, bonding, insurance and permit that is re-  
13 quired for the sale and construction or installation of the alternative energy device **or solar elec-**  
14 **tric system**;

15 (B) A specific description of the alternative energy device **or solar electric system**, including,  
16 but not limited to, the material, equipment and mechanism used in the device **or system**, operating  
17 procedure, sizing and siting method and construction or installation procedure;

18 (C) The addresses of three installations of the **device or system** that are available for inspection  
19 by the State Department of Energy;

20 (D) The range of installed costs to purchasers of the device **or system**;

21 (E) Any important construction, installation or operating instructions; and

22 (F) Any other information that the State Department of Energy determines is necessary.

23 (c) A new application for contractor system approval shall be filed when there is a change in  
24 the information supplied under paragraph (b) of this subsection.

25 (d) The State Department of Energy may issue contractor system certificates to each contractor  
26 who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and  
27 installation of the same domestic water heating alternative energy devices authorized by the dealer  
28 certification.

29 (e) If the State Department of Energy finds that an alternative energy device **or solar electric**  
30 **system** can meet the standards adopted under ORS 469.165, the Director of the State Department  
31 of Energy may issue an alternative energy device system certificate to the taxpayer constructing  
32 or installing or having an alternative energy device **or solar electric system** constructed or in-  
33 stalled.

34 (f) An application for an alternative energy device system certificate shall be made in writing  
35 on a form provided by the State Department of Energy and shall contain:

36 (A) A specific description of the alternative energy device **or solar electric system**, including,  
37 but not limited to, the material, equipment and mechanism used in the device **or system**, operating  
38 procedure, sizing, siting method and construction or installation procedure;

39 (B) The constructed or installed cost of the device **or system**; and

40 (C) A statement that the taxpayer has all permits required for construction or installation of the  
41 device **or system**.

42 (6) To claim the tax credit, the verification form described in subsection (4) of this section shall  
43 be submitted with the taxpayer's tax return for the year the alternative energy device **or solar**  
44 **electric system** is placed in service or the immediately succeeding tax year. A copy of the con-  
45 tractor's certification certificate, alternative energy device system certificate or alternative fuel

1 vehicle or related equipment certificate also shall be submitted.

2 (7) The verification form and contractor's certificate, alternative energy device system certifi-  
3 cate or alternative fuel vehicle or related equipment certificate described under this section shall  
4 be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

5 (8) The verification form and contractor's certificate described under this section may be  
6 transferred to the first purchaser of a dwelling or, in the case of construction or installation of a  
7 fueling station in an existing dwelling, the current owner, who intends to use or is using the  
8 dwelling as a principal or secondary residence.

9 (9) Any person that pays the present value of the tax credit for an alternative energy device  
10 **or solar electric system** provided under ORS 316.116 or 317.115 and 469.160 to 469.180 to the per-  
11 son who constructs or installs the alternative energy device **or solar electric system** shall be en-  
12 titled to claim the credit in the manner and subject to rules adopted by the Department of Revenue  
13 to carry out the purposes of this subsection. The State Department of Energy may establish by rule  
14 uniform discount rates to be used in calculating the present value of a tax credit under this sub-  
15 section.

16 **SECTION 9.** ORS 469.172 is amended to read:

17 469.172. The following devices are not eligible for the [*alternative energy device*] tax credit under  
18 ORS 316.116:

- 19 (1) Standard efficiency furnaces;
- 20 (2) Standard back-up heating systems;
- 21 (3) Woodstoves or wood furnaces, or any part of a heating system that burns wood;
- 22 (4) Heat pump water heaters that are part of a geothermal heat pump space heating system;
- 23 (5) Structures that cover or enclose a swimming pool;
- 24 (6) Swimming pools, hot tubs or spas used to store heat;
- 25 (7) Above ground, uninsulated swimming pools, hot tubs or spas;
- 26 (8) Photovoltaic systems installed on recreational vehicles;
- 27 (9) Conversion of an existing alternative energy device **or solar electric system** to another  
28 type of alternative energy device **or solar electric system**;
- 29 (10) Repair or replacement of an existing alternative energy device **or solar electric system**;

30 [*or*]

31 (11) **A solar electric system, if the equipment or other property that comprises the solar**  
32 **electric system is also the basis for an allowed credit for an alternative energy device under**  
33 **ORS 316.116;**

34 (12) **An alternative energy device, if the equipment or other property that comprises the**  
35 **alternative energy device is also the basis for an allowed credit for a solar electric system**  
36 **under ORS 316.116; or**

37 [(11)] (13) Any other device identified by the State Department of Energy. The department may  
38 adopt rules defining standards for eligible and ineligible devices under this section.

39 **SECTION 10.** ORS 469.176 is amended to read:

40 469.176. (1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS  
41 469.160 to 469.180, the State Department of Energy shall develop performance assumptions and  
42 prescriptive measures to determine the eligibility and tax credit amount for alternative energy de-  
43 vices **and solar electric systems** constructed or installed in a dwelling.

44 (2) The department shall use the performance assumptions and prescriptive measures to develop  
45 information for the Department of Revenue to use to allow taxpayers to determine their eligibility

1 and tax credit amount. The State Department of Energy may review this information on an annual  
2 basis to take into consideration new technology and performance assumption accuracy.

3 (3) For the purpose of determining the first year energy yield of an alternative energy device,  
4 the department shall use the following assumptions and test standards:

5 (a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of  
6 Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute  
7 standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing require-  
8 ments under this paragraph shall not apply to an owner-built alternative energy device.

9 (b) For an alternative energy device used as a source for domestic water heating energy, a hot  
10 water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120  
11 degrees Fahrenheit shall be achieved by including conservation measures in the construction or in-  
12 stallation of the alternative energy device.

13 (c) For an alternative energy device used as a source for space heating or cooling, the heating  
14 or cooling energy load as determined by a heat loss or gain calculation performed in accordance  
15 with the methods established by the American Society of Heating, Refrigerating and Air-  
16 Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device  
17 used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply  
18 with comparable requirements as determined by the department.

19 (d) For an alternative energy device used as a source for electrical energy, the first year energy  
20 yield shall be based upon the electrical energy load of the dwelling as determined according to the  
21 procedure established by the department.

22 (e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating,  
23 the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub  
24 as determined according to the procedure established by the department.

25 **SECTION 11.** ORS 469.180 is amended to read:

26 469.180. (1) Upon the Department of Revenue's own motion, or upon request of the State De-  
27 partment of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax  
28 credit allowed under ORS 316.116 or 317.115 if:

29 (a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor  
30 owned utility;

31 (b) The verification was fraudulent because of a misrepresentation by the contractor;

32 (c) In the case of a **solar electric system** or an alternative energy device other than an alter-  
33 native fuel vehicle or related equipment, the **solar electric system** or alternative energy device  
34 has not been constructed, installed or operated in substantial compliance with the requirements of  
35 ORS 469.160 to 469.180; or

36 (d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed  
37 or installed alternative energy device **or solar electric system** by the State Department of Energy  
38 after a reasonable, written request for such an inspection by the State Department of Energy. This  
39 paragraph does not apply to an alternative fuel vehicle or to related equipment.

40 (2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the  
41 State Department of Energy may order the revocation of a contractor certificate issued under ORS  
42 469.170 if the director finds that:

43 (a) The contractor certificate was obtained by fraud or misrepresentation by the contractor  
44 certificate holder;

45 (b) The contractor's performance for the alternative energy device **or solar electric system** for

1 which the contractor is issued a certificate under ORS 469.170 does not meet industry standards;  
2 or

3 (c) The contractor has misrepresented to the customer either the tax credit program or the na-  
4 ture or quality of the alternative energy device **or solar electric system**.

5 (3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or in-  
6 stallation of an alternative energy device **or solar electric system** is ordered forfeited due to an  
7 action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all  
8 prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the De-  
9 partment of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a  
10 result of the tax credit relief under ORS 316.116 or 317.115.

11 (4) If the tax credit for the construction or installation of an alternative energy device **or solar**  
12 **electric system** is ordered forfeited due to an action of the contractor under subsection (1)(b) of  
13 this section, the Department of Revenue shall proceed to collect, from the contractor, an amount  
14 equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax  
15 credit relief under ORS 316.116 or 317.115. [So] **As** long as the forfeiture is due to an action of the  
16 contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be  
17 levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the De-  
18 partment of Revenue may disclose information from income tax returns or reports to the extent such  
19 disclosure is necessary to collect amounts from contractors under this subsection.

20 (5) In order to obtain information necessary to verify eligibility and amount of the tax credit,  
21 the State Department of Energy or its representative may inspect an alternative energy device **or**  
22 **solar electric system** that has been purchased, constructed or installed. The inspection shall be  
23 made only with the consent of the owner of the dwelling. Failure to consent to the inspection is  
24 grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of  
25 Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For  
26 electrical generating alternative energy devices **or solar electric systems**, the State Department  
27 of Energy may obtain energy consumption records for the dwelling the device **or system** serves, for  
28 a 12-month period, in order to verify eligibility and amount of the tax credit.

29 **SECTION 12. The amendments to ORS 316.116, 469.160, 469.165, 469.170, 469.172, 469.176**  
30 **and 469.180 by sections 5 to 11 of this 2005 Act apply to alternative energy devices and solar**  
31 **electric systems certified by the State Department of Energy on or after January 1, 2006.**

32 **SECTION 13. This 2005 Act takes effect on the 91st day after the date on which the**  
33 **regular session of the Seventy-third Legislative Assembly adjourns sine die.**

34