

D R A F T

SUMMARY

Creates or expands property tax exemptions for facilities producing ethanol, biofuel or certain fuel additives. Allows taxing district to opt out of exemptions. Limits period for which new facilities may claim exemption.

Creates income tax credit for production or collection of biomass used to produce biofuel. Creates income tax credit for consumer use of biofuel fuel blends or solid biofuel.

Establishes renewable fuel use standards. Prohibits sale of gasoline that contains certain additives. Modifies energy facility siting requirement exemptions.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to fuel; creating new provisions; amending ORS 215.203, 215.283,
3 283.327, 307.701, 308A.056, 314.752, 318.031, 469.320, 646.905 and 646.910 and
4 section 4, chapter 475, Oregon Laws 1993; and prescribing an effective
5 date.

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

8 **BIOFUEL, ETHANOL AND VERIFIED FUEL ADDITIVE FACILITIES**

9
10 **SECTION 1.** ORS 307.701 is amended to read:

11 307.701. (1) As used in this section:

12 (a) **“Biodiesel” means a diesel fuel substitute produced from vege-**
13 **table oils, animal fats, biomass or other nonpetroleum renewable re-**
14 **sources that meet the registration requirements for fuels and fuel**
15 **additives established by the United States Environmental Protection**

1 **Agency and any blending components derived from renewable fuel.**

2 (b) **“Biofuel” means biodiesel or liquid, gaseous or solid fuel**
 3 **produced from an organic source, including but not limited to waste**
 4 **and residue from agriculture, forestry or related industries or other**
 5 **industrial or municipal waste in any form.**

6 (c) **“Biomass”:**

7 (A) **Means any organic matter that is available on a renewable or**
 8 **recurring basis and that is derived from wood, forest or field residues,**
 9 **wastewater biosolids, or crops grown solely to be used for energy; and**

10 (B) **Does not include wood that has been treated with creosote,**
 11 **pentachlorophenol, inorganic arsenic or other chemical compounds.**

12 (d) **“Ethanol” has the meaning given [the term under] that term in ORS**
 13 **646.905.**

14 (e) **“Production facility” means a facility that is used to produce**
 15 **ethanol, biofuel or verified fuel additives.**

16 (f) **“Verified fuel additive” means a fuel additive that:**

17 (A) **Has been verified under the United States Environmental Pro-**
 18 **tection Agency’s Environmental Technology Verification Protocol or**
 19 **the California Air Resources Board verification programs; and**

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

21 (2) Upon compliance with subsection (4) of this section, the real and
 22 personal property of [*an ethanol*] a production facility that meets the re-
 23 quirements of subsection (3) of this section is exempt from taxation. The
 24 exemption shall be 50 percent of the assessed value of the property deter-
 25 mined under ORS 308.146. The exemption under this section may be claimed
 26 for five assessment years.

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

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

31 (b) Is or will be placed in service to produce ethanol, **biofuel or verified**

1 **fuel additives** within *[four]* **five** years after January 1 of the first assess-
2 ment year for which *[the]* **an** exemption *[under this section]* is claimed **under**
3 **this section or ORS 285C.170 or 285C.175; [and]**

4 **(c) Consists of newly constructed, installed or acquired property,**
5 **including property that was previously owned by a different owner and**
6 **used at a different location, that is first placed in service during the**
7 **calendar year preceding the assessment year for which an exemption**
8 **listed in paragraph (b) of this subsection is claimed; and**

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

13 **(A) Ethanol** capable of blending or mixing with gasoline. The blend or
14 mixture shall meet the specifications or registration requirements established
15 by the United States Environmental Protection Agency pursuant to section
16 211 of the Clean Air Act, 42 U.S.C. 7545 and 40 C.F.R. Part 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
20 for any assessment year, the owner of *[an ethanol]* **a** production facility shall
21 file with the county assessor, on or before April 1 of the year for which ex-
22 emption is claimed, a statement verified by the oath or affirmation of the
23 owner listing all real and personal property claimed to be exempt and
24 showing the purpose for which the property will be or is used.

25 **(B) In the case of a biofuel production facility or a verified fuel**
26 **additive production facility, in addition to the requirements of sub-**
27 **paragraph (A) of this paragraph, the owner claiming exemption shall**
28 **do all of the following:**

29 **(i) Prepare a list of the taxing districts in which the property is**
30 **located.**

31 **(ii) Send a written notice to each taxing district. The notice must:**

1 (I) State that the claimant is seeking a property tax exemption
2 under this section;

3 (II) State that a taxing district may elect not to participate in the
4 exemption, in which case taxes of the district will continue to be im-
5 posed on the property of the claimant; and

6 (III) Comply with any other requirements established by the De-
7 partment of Revenue.

8 (iii) Include a copy of the list of taxing districts and notice prepared
9 under this subparagraph with the claim for exemption.

10 (b) If the ownership and use of the **production facility** property included
11 in the statement **described in paragraph (a)(A) of this subsection and**
12 filed for a prior year remain the same, a new statement [*shall not be*] **is not**
13 required. However, if the ownership or use changes, or if the facility prop-
14 erty is added to or retired, a new statement is required and the property
15 [*shall*] **may** not be exempt under this section if the statement is not filed.
16 The new statement shall be filed no later than December 31 of the year to
17 which the statement pertains.

18 (5) If the **production** facility property is not placed in service within the
19 time required under subsection (3) of this section, or if the certification re-
20 quired under subsection (3) of this section is not obtained within the re-
21 quired time, then the [*facility*] property shall not be exempt for any year
22 under this section. For any year for which the property has been granted
23 exemption under this section, the county assessor shall add the property to
24 the assessment and tax roll as omitted property in the manner provided un-
25 der ORS 311.216 to 311.232.

26 **SECTION 2.** (1) A city, county or other local taxing district with
27 property tax authority may elect not to participate in the exemptions
28 for a biofuel production facility or a verified fuel additive production
29 facility granted under ORS 307.701.

30 (2) A taxing district may make the election by filing written no-
31 tification of the election with the county assessor of the county in

1 which the taxing district is located before July 1 of the first tax year
2 for which the election is to be effective.

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

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

10 (5) The written notifications of election and revocation described in
11 this section shall contain the information and be in the form pre-
12 scribed by the Department of Revenue.

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

16 (a) For which a claim has been filed under ORS 307.701; and

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

18 **SECTION 3.** The amendments to ORS 307.701 by section 1 of this
19 2007 Act apply to production facilities for which a claim for exemption
20 under ORS 307.701 is first filed on or after January 1, 2008, for tax
21 years beginning on or after July 1, 2008.

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

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

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

1 production facility that has not qualified for at least one year of ex-
2 emption as of July 1, 2014.

3
4 **PRODUCERS OF BIOFUEL RAW MATERIALS**

5
6 **SECTION 5.** Sections 6 and 7 of this 2007 Act are added to and made
7 a part of ORS chapter 315.

8 **SECTION 6.** (1) As used in this section and section 9 of this 2007
9 Act:

10 (a) "Agricultural producer" means a person that produces plant or
11 animal matter that is used in Oregon as biofuel or to produce biofuel.

12 (b) "Biofuel" has the meaning given that term in ORS 307.701.

13 (c) "Biomass" means any of the following that are transferred to a
14 biofuel producer by an agricultural producer or a biomass collector:

15 (A) Plant or animal matter;

16 (B) Forest products;

17 (C) Wood waste;

18 (D) Forest, farmland or rangeland vegetative matter;

19 (E) Wastewater biosolids; or

20 (F) Waste grease.

21 (d) "Biomass collector" means a person that collects forest pro-
22 ducts, wood waste, wastewater biosolids, waste grease or forest,
23 farmland or rangeland vegetative matter that is used in Oregon as
24 biofuel or to produce biofuel.

25 (2)(a) An agricultural producer or biomass collector shall be allowed
26 a credit against the taxes that would otherwise be due under ORS
27 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317
28 or 318 for:

29 (A) The production of biomass that is used to produce biofuel in
30 this state; or

31 (B) The collection of biomass that is used to produce biofuel in this

1 state.

2 (b) A credit under this section shall be allowed only:

3 (A) For the tax year in which the agricultural producer or biomass
4 collector transfers biomass to a biofuel producer; and

5 (B) If the taxpayer has obtained tax credit certification from the
6 State Department of Energy under section 9 of this 2007 Act.

7 (3) The amount of the credit shall be calculated as follows:

8 (a) Determine the quantity of biomass transferred to a biofuel pro-
9 ducer during the tax year;

10 (b) Categorize the biomass into appropriate categories as prescribed
11 in rules adopted under section 9 of this 2007 Act; and

12 (c) Multiply the quantity of biomass in a particular category by the
13 appropriate credit rate for that category, expressed in dollars and
14 cents, that is prescribed in rules adopted under section 9 of this 2007
15 Act.

16 (4) Notwithstanding subsection (3) of this section, the credit may
17 not exceed:

18 (a) One dollar per million Btu of biofuel;

19 (b) The amount stated on the tax credit certification issued under
20 section 9 of this 2007 Act; and

21 (c) Except as provided in subsection (7) of this section, the tax li-
22 ability of the taxpayer.

23 (5)(a) A biofuel producer shall provide a written receipt to an agri-
24 cultural producer or biomass collector at the time biomass is trans-
25 ferred from the agricultural producer or biomass collector to the
26 biofuel producer. The receipt must state the quantity and type of
27 biomass being transferred and that the biomass is to be used to
28 produce biofuel.

29 (b) Each agricultural producer or biomass collector shall maintain
30 the receipts described in this subsection in their records for a period
31 of at least five years after the tax year in which the credit is claimed

1 or for a longer period of time prescribed by the Department of Reve-
2 nue.

3 (6) The credit shall be claimed on a form prescribed by the Depart-
4 ment of Revenue that contains the information required by the de-
5 partment.

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

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

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

19 (b) If a change in the status of the taxpayer from resident to non-
20 resident or from nonresident to resident occurs, the credit allowed by
21 this section shall be determined in a manner consistent with ORS
22 316.117.

23 (c) If a change in the taxable year of the taxpayer occurs as de-
24 scribed in ORS 314.085, or if the department terminates the taxpayer's
25 taxable year under ORS 314.440, the credit allowed under this section
26 shall be prorated or computed in a manner consistent with ORS
27 314.085.

28 SECTION 7. (1) A person that has obtained a tax credit certification
29 under section 9 of this 2007 Act may transfer the certification for
30 consideration to a taxpayer subject to tax under ORS chapter 316, 317
31 or 318.

1 (2) In order to transfer the certification, the person that obtained
2 the certification and the taxpayer that will claim the credit under
3 section 6 of this 2007 Act shall jointly file a notice of tax credit cer-
4 tification transfer with the Department of Revenue. The notice shall
5 be given on a form prescribed by the department that contains all of
6 the following:

7 (a) The name, address and taxpayer identification number of the
8 transferor and transferee of the certification;

9 (b) The amount certified as eligible for a tax credit under section 6
10 of this 2007 Act; and

11 (c) Any other information required by the department.

12 (3) A tax credit certification may not be transferred under this
13 section if the person to whom the certification was issued has claimed
14 any portion of the tax credit:

15 (a) Allowed under section 6 of this 2007 Act; and

16 (b) Authorized by the certification.

17 SECTION 8. Section 9 of this 2007 Act is added to and made a part
18 of ORS chapter 469.

19 SECTION 9. (1) The State Department of Energy shall by rule:

20 (a) Identify categories of biomass that, when used by a biofuel
21 producer to produce biofuel in this state, qualify for a tax credit under
22 section 6 of this 2007 Act; and

23 (b) Establish a dollar rate per quantity of biomass in each category
24 identified in rules adopted under paragraph (a) of this subsection, to
25 be used to calculate the amount of credit allowed under section 6 of
26 this 2007 Act.

27 (2)(a) The department shall review rules adopted under subsection
28 (1) of this section at least annually.

29 (b) Rules adopted under subsection (1) of this section must state the
30 income and corporate excise tax years to which the rules apply.

31 (3)(a) Each agricultural producer or biomass collector seeking a tax

1 credit under section 6 of this 2007 Act shall apply for and obtain a tax
2 credit certification from the department. The producer or collector
3 shall apply to the department for certification:

4 (A) In the calendar year in which begins the tax year for which the
5 credit will be claimed under section 6 of this 2007 Act; and

6 (B) For the specific amount of biomass for which certification is
7 sought.

8 (b) The application shall be on a form prescribed by the department
9 that contains the information required by the department, including
10 the amount of tax credit the taxpayer intends to claim.

11 (c) The department shall process applications in the order in which
12 the applications are filed and shall certify the amount stated on the
13 application, or a lesser amount that the department determines is
14 within the annual limit set forth in subsection (4) of this section. The
15 department may deny an application for tax certification if the appli-
16 cation is incomplete or if the department determines that the appli-
17 cation does not state a reasonable basis for the allowance of any tax
18 credit under section 6 of this 2007 Act.

19 (d) The department shall give written notice of the certified amount
20 to the applicant.

21 (4) For each calendar year, the department may not certify more
22 than \$_____ per applicant as eligible for a tax credit under section 6
23 of this 2007 Act.

24 (5)(a) A decision to deny certification or to certify a lesser amount
25 than was sought in the application for certification may be appealed
26 to the department as a contested case under ORS chapter 183.

27 (b) Notwithstanding paragraph (a) of this subsection, a decision to
28 deny certification or to certify a lesser amount may not be appealed
29 if the reason for the decision is that certification of the amount sought
30 in the application would result in exceeding the annual limitation on
31 total certification described in subsection (4) of this section.

1 **(6) The definitions in section 6 of this 2007 Act apply to this section.**

2 **SECTION 10. Sections 6, 7 and 9 of this 2007 Act apply to tax credit**
3 **certifications issued under section 9 of this 2007 Act for tax years be-**
4 **ginning on or after January 1, 2008, and before January 1, 2013.**

5 **SECTION 11. ORS 314.752 is amended to read:**

6 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits al-
7 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
8 318 shall not be allowed to an S corporation. The business tax credits al-
9 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
10 allowable to the shareholders of the S corporation.

11 (2) In determining the tax imposed under ORS chapter 316, as provided
12 under ORS 314.734, on income of the shareholder of an S corporation, there
13 shall be taken into account the shareholder's pro rata share of business tax
14 credit (or item thereof) that would be allowed to the corporation (but for
15 subsection (1) of this section) or recapture or recovery thereof. The credit (or
16 item thereof), recapture or recovery shall be passed through to shareholders
17 in pro rata shares as determined in the manner prescribed under section
18 1377(a) of the Internal Revenue Code.

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

23 (4) If the shareholder is a nonresident and there is a requirement appli-
24 cable for the business tax credit that in the case of a nonresident the credit
25 be allowed in the proportion provided in ORS 316.117, then that provision
26 shall apply to the nonresident shareholder.

27 (5) As used in this section, "business tax credit" means a tax credit
28 granted to personal income taxpayers to encourage certain investment, to
29 create employment, economic opportunity or incentive or for charitable, ed-
30 ucational, scientific, literary or public purposes that is listed under this
31 subsection as a business tax credit or is designated as a business tax credit

1 by law or by the Department of Revenue by rule and includes but is not
 2 limited to the following credits: ORS 285C.309 (tribal taxes on reservation
 3 enterprise zones), ORS 315.104 (forestation and reforestation), ORS 315.134
 4 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices,
 5 fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker
 6 housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent
 7 care facilities), ORS 315.213 (contributions for child care), ORS 315.254
 8 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility),
 9 ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy con-
 10 servation facilities), ORS 315.507 (electronic commerce), ORS 315.511 (ad-
 11 vanced telecommunications facilities), ORS 315.604 (bone marrow transplant
 12 expenses) and ORS 317.115 (fueling stations necessary to operate an alterna-
 13 tive fuel vehicle) **and section 6 of this 2007 Act (biomass production for**
 14 **biofuel).**

15 **SECTION 12.** ORS 318.031 is amended to read:

16 318.031. It being the intention of the Legislative Assembly that this
 17 chapter and ORS chapter 317 shall be administered as uniformly as possible
 18 (allowance being made for the difference in imposition of the taxes), ORS
 19 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
 20 porated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134,
 21 315.156, 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604
 22 **and section 6 of this 2007 Act** (all only to the extent applicable [*for*] **to a**
 23 corporation) and ORS chapter 317.

24

25 **RENEWABLE FUEL STANDARDS**

26

27 **SECTION 13.** ORS 646.905 is amended to read:

28 646.905. As used in ORS 646.910 to 646.920:

29 (1) "Alcohol" means a volatile flammable liquid having the general for-
 30 mula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with
 31 gasoline for use in propelling motor vehicles, and commonly or commercially

1 known or sold as an alcohol, and includes ethanol or methanol.

2 (2) **“Biodiesel”** means a diesel fuel substitute produced from non-
3 petroleum renewable resources (inclusive of vegetable oils, animal fats
4 and biomass) that meet the registration requirements for fuels and
5 fuel additives established by the United States Environmental Pro-
6 tection Agency and any blending components derived from renewable
7 fuel.

8 [(2)] (3) **“Co-solvent”** means an alcohol other than methanol which is
9 blended with either methanol or ethanol or both to minimize phase sepa-
10 ration in gasoline.

11 [(3)] (4) **“Ethanol”** means ethyl alcohol, a flammable liquid having the
12 formula C_2H_5OH used or sold for the purpose of blending or mixing with
13 gasoline for use in motor vehicles.

14 [(4)] (5) **“Gasoline”** means any fuel sold for use in spark ignition engines
15 whether leaded or unleaded.

16 [(5)] (6) **“Methanol”** means methyl alcohol, a flammable liquid having the
17 formula CH_3OH used or sold for the purpose of blending or mixing with
18 gasoline for use in motor vehicles.

19 [(6)] (7) **“Motor vehicles”** means all vehicles, vessels, watercraft, engines,
20 machines or mechanical contrivances that are propelled by internal com-
21 bustion engines or motors.

22 [(7)] (8) **“Nonretail dealer”** means any person who owns, operates, con-
23 trols or supervises an establishment at which motor vehicle fuel is dispensed
24 through a card- or key-activated fuel dispensing device to nonretail custom-
25 ers.

26 [(8)] (9) **“Retail dealer”** means any person who owns, operates, controls
27 or supervises an establishment at which gasoline is sold or offered for sale
28 to the public.

29 [(9)] (10) **“Wholesale dealer”** means any person engaged in the sale of
30 gasoline if the seller knows or has reasonable cause to believe the buyer
31 intends to resell the gasoline in the same or an altered form to another.

1 **SECTION 14.** Sections 15, 16, 18 and 19 of this 2007 Act are added to
2 **and made a part of ORS 646.910 to 646.920.**

3 **SECTION 15.** (1) The State Department of Agriculture shall study
4 **and monitor biodiesel fuel production, use and sales in this state.**

5 (2) When the production of biodiesel in this state from sources in
6 **Oregon, Washington, Idaho and Montana reaches a level of at least**
7 **five million gallons on an annualized basis for at least three months,**
8 **the department shall notify all retail dealers, nonretail dealers and**
9 **wholesale dealers in this state, in a notice that meets the requirements**
10 **of subsection (4) of this section.**

11 (3) When the production of biodiesel in this state from sources in
12 **Oregon, Washington, Idaho and Montana reaches a level of at least**
13 **15 million gallons on an annualized basis for at least three months, the**
14 **department shall notify all retail dealers, nonretail dealers and**
15 **wholesale dealers in this state, in a notice that meets the requirements**
16 **of subsection (4) of this section.**

17 (4) The notice under subsections (2) and (3) of this section shall in-
18 **form retail dealers, nonretail dealers and wholesale dealers that:**

19 (a) **The production of biodiesel has reached the level described in**
20 **subsection (2) or (3) of this section; and**

21 (b) **Three months from the date of the notice, a retail dealer,**
22 **nonretail dealer or wholesale dealer may sell or offer for sale only**
23 **diesel fuel described in section 16 of this 2007 Act.**

24 **SECTION 16.** (1) **Three months after the date of the notice given**
25 **under section 15 (2) of this 2007 Act, a retail dealer, nonretail dealer**
26 **or wholesale dealer may not sell or offer for sale diesel fuel unless the**
27 **diesel fuel contains at least two percent biodiesel by volume.**

28 (2) **Three months after the date of the notice given under section**
29 **15 (3) of this 2007 Act, a retail dealer, nonretail dealer or wholesale**
30 **dealer may not sell or offer for sale diesel fuel unless the diesel fuel**
31 **contains at least five percent biodiesel by volume.**

1 (3) The State Department of Agriculture shall adopt standards for
2 biodiesel sold in this state. The department shall consult the specifi-
3 cations established for biodiesel in ASTM International specification
4 D6751-06a, or similar specifications, in forming its standards. The de-
5 partment may review specifications adopted by ASTM International,
6 or equivalent organizations, and revise the standards adopted pursuant
7 to this subsection as necessary.

8 (4) The minimum biodiesel fuel content requirement under sub-
9 sections (1) and (2) of this section does not apply to diesel fuel sold or
10 offered for sale for use by railroad locomotives.

11 SECTION 17. Section 16 of this 2007 Act becomes operative on a date
12 that is three months following the date of the first notice required
13 under section 15 of this 2007 Act.

14 SECTION 18. (1) The State Department of Agriculture shall study
15 and monitor the ethanol fuel production, use and sales in this state.

16 (2) When production of ethanol in this state reaches a level of at
17 least 90 million gallons on an annualized basis for at least three
18 months, the department shall notify all retail dealers, nonretail deal-
19 ers and wholesale dealers in this state, in a notice that meets the re-
20 quirements of subsection (3) of this section.

21 (3) The notice under subsection (2) of this section shall inform retail
22 dealers, nonretail dealers and wholesale dealers that:

23 (a) The production of ethanol has reached the levels described in
24 subsection (2) of this section; and

25 (b) Three months from the date of the notice, a retail dealer,
26 nonretail dealer or wholesale dealer may sell or offer for sale only
27 gasoline described in section 19 of this 2007 Act.

28 SECTION 19. (1) A retail dealer, nonretail dealer or wholesale dealer
29 may not sell or offer for sale gasoline unless the gasoline contains at
30 least 10 percent ethanol by volume.

31 (2) Gasoline containing ethanol that is sold or offered for sale meets

1 the requirements of this section if the gasoline, exclusive of
2 denaturants and permitted contaminants, contains not less than 9.2
3 percent by volume of agriculturally derived, denatured ethanol that
4 complies with the standards for ethanol adopted by the State Depart-
5 ment of Agriculture.

6 (3) The department shall adopt standards for ethanol blended with
7 gasoline sold in this state. The standards adopted shall require that
8 the gasoline blended with ethanol:

9 (a) Contains ethanol that is derived from agricultural or woody
10 waste or residue;

11 (b) Contains ethanol denatured as specified in 27 C.F.R. parts 20
12 and 21;

13 (c) Complies with the volatility requirements specified in 40 C.F.R.
14 part 80;

15 (d) Complies with or is produced from a gasoline base stock that
16 complies with ASTM International specification D4814-06, or an equiv-
17 alent standard;

18 (e) Is not blended with casinghead gasoline, absorption gasoline,
19 drip gasoline or natural gasoline after it has been sold, transferred or
20 otherwise removed from a refinery or terminal; and

21 (f) Complies with ASTM International specification D4806-06a, or
22 an equivalent standard.

23 (4) The department may review specifications adopted by ASTM
24 International, or equivalent organizations, and federal regulations and
25 revise the standards adopted pursuant to this section as necessary.

26 SECTION 20. Section 19 of this 2007 Act becomes operative on a date
27 that is three months following the date of the notice required under
28 section 18 of this 2007 Act.

29
30 **GASOLINE ADDITIVE RESTRICTIONS**

31

1 **SECTION 21.** ORS 646.910 is amended to read:

2 646.910. [No] (1) A wholesale or retail dealer may **not** sell or offer to sell
3 any gasoline blended or mixed with:

4 **(a)** [*Alcohol*] **Ethanol** unless the blend or mixture meets the specifica-
5 tions or registration requirements established by the United States Envi-
6 ronmental Protection Agency pursuant to section 211 of the Clean Air Act,
7 42 U.S.C. section 7545 and 40 C.F.R. Part 79[.];

8 **(b)** **Methyl tertiary butyl ether in concentrations that exceed five-**
9 **tenths of one percent by volume; or**

10 **(c)** **A total of all of the following oxygenates that exceeds one-tenth**
11 **of one percent, by weight, of:**

12 **(A)** **Diisopropylether.**

13 **(B)** **Ethyl tert-butylether.**

14 **(C)** **Iso-butanol.**

15 **(D)** **Iso-propanol.**

16 **(E)** **N-butanol.**

17 **(F)** **N-propanol.**

18 **(G)** **Sec-butanol.**

19 **(H)** **Tert-amyl methyl ether.**

20 **(I)** **Tert-butanol.**

21 **(J)** **Tert-pentanol or tert-amyl alcohol.**

22 **(K)** **Any other additive that has not been approved by the California**
23 **Air Resources Board or the United States Environmental Protection**
24 **Agency.**

25 **(2)** **Nothing in this section shall prohibit transshipment through**
26 **this state, or storage incident to the transshipment, of gasoline that**
27 **contains methyl tertiary butyl ether in concentrations that exceed**
28 **five-tenths of one percent by volume or any of the oxygenates listed**
29 **in subsection (1)(c) of this section, provided:**

30 **(a)** **The gasoline is used or disposed of outside this state; and**

31 **(b)** **The gasoline is segregated from gasoline intended for use within**

1 this state.

2 **SECTION 22.** The amendments to ORS 646.910 by section 21 of this
3 2007 Act become operative November 1, 2009.

4 **SECTION 22a.** Section 22b is added to and made a part of ORS
5 646.910 to 646.920.

6 **SECTION 22b.** Notwithstanding ORS 646.910, a person may sell,
7 supply or offer to sell or supply gasoline in this state that contains any
8 oxygenate other than ethanol, if the California Air Resources Board,
9 the California Environmental Policy Council or the United States En-
10 vironmental Protection Agency allows the use of the oxygenate.

11 **SECTION 22c.** Section 22b of this 2007 Act becomes operative on the
12 effective date of this 2007 Act.

13

14 **STATE GOVERNMENT USE OF BIOFUEL**

15

16 **SECTION 23.** ORS 283.327 is amended to read:

17 283.327. (1) To the maximum extent economically possible, state-owned
18 motor vehicles shall use alternative fuel for operation.

19 (2) State agencies shall acquire only motor vehicles capable of using al-
20 ternative fuel, except that acquired vehicles assigned to areas unable eco-
21 nomically to dispense alternative fuel need not be so configured.

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

25 (4) **To the maximum extent economically possible, state-owned**
26 **structures shall use biofuel, or direct-application electricity generated**
27 **from biofuel, where diesel is currently utilized for stationary or**
28 **back-up generation.**

29

30 **BIOFUEL CONSUMER INCOME TAX CREDIT**

31

1 **SECTION 24.** Section 25 of this 2007 Act is added to and made a part
2 of ORS chapter 315.

3 **SECTION 25.** (1) As used in this section:

4 (a) “Alternative fuel vehicle” means a motor vehicle that can op-
5 erate on a fuel blend.

6 (b) “Biodiesel” has the meaning given that term in ORS 307.701.

7 (c) “Biomass” has the meaning given that term in section 6 of this
8 2007 Act.

9 (d) “Bone dry ton” means matter that is dried to less than one
10 percent moisture content and that weighs 2,000 pounds.

11 (e) “Fuel blend” means diesel fuel of blends equal to or exceeding
12 99 percent biodiesel or gasoline of a blend equal to or exceeding 85
13 percent methanol or ethanol.

14 (2)(a) A resident individual shall be allowed a credit against the
15 taxes otherwise due under ORS chapter 316 for costs paid or incurred
16 to purchase fuel blends for use in an alternative fuel vehicle.

17 (b) A resident individual shall be allowed a credit against the taxes
18 otherwise due under ORS chapter 316 for costs paid or incurred to
19 purchase forest or agriculture waste or residue solid biofuel that con-
20 tains 100 percent biomass.

21 (3) The amount of the credit shall be calculated as follows:

22 (a) Determine the quantity of fuel blend or solid biofuel purchased
23 by the taxpayer during the tax year;

24 (b) Categorize the fuel blend or solid biofuel as prescribed in rules
25 adopted under section 28 of this 2007 Act; and

26 (c) Multiply the quantity of fuel blend or solid biofuel in a partic-
27 ular category by the appropriate credit rate for that category, ex-
28 pressed in dollars and cents, that is prescribed in rules adopted under
29 section 28 of this 2007 Act.

30 (4) Notwithstanding subsection (3) of this section:

31 (a) The credit allowed under this section for diesel blended fuel may

1 not exceed \$0.50 per gallon and in any one tax year may not exceed
2 \$200 per Oregon registered motor vehicle that is owned or leased by the
3 taxpayer under a lease of greater than 30 days' duration and that is
4 capable of using a fuel blend.

5 (b) The credit allowed for gasoline blended fuel may not exceed \$0.50
6 per gallon and in any one tax year may not exceed \$200 per Oregon
7 registered motor vehicle that is owned or leased by the taxpayer under
8 a lease of greater than 30 days' duration and that is capable of using
9 a fuel blend.

10 (c) The credit allowed for forest or agriculture waste or residue
11 solid biofuel may not exceed \$10 per bone dry ton of solid biofuel and
12 in any one tax year may not exceed \$200 per taxpayer.

13 (d) The credit allowed in any one tax year may not exceed the tax
14 liability of the taxpayer and may not be carried forward to a subse-
15 quent tax year.

16 (5) For each tax year for which a credit is claimed under this sec-
17 tion, the taxpayer shall maintain records sufficient to determine the
18 taxpayer's purchase of qualifying fuel blends. A taxpayer shall main-
19 tain the records required under this subsection for at least five years.

20 (6) A nonresident shall be allowed the credit under this section in
21 the proportion provided in ORS 316.117.

22 (7) If a change in the taxable year of a taxpayer occurs as described
23 in ORS 314.085, or if the Department of Revenue terminates the tax-
24 payer's taxable year under ORS 314.440, the credit allowed by this
25 section shall be prorated or computed in a manner consistent with
26 ORS 314.085.

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

31 (9) A husband and wife who file separate returns for a taxable year

1 may each claim a share of the tax credit that would have been allowed
2 on a joint return in proportion to the contribution of each.

3 SECTION 26. Section 25 of this 2007 Act applies to tax years begin-
4 ning on or after January 1, 2007, and before January 1, 2012.

5 SECTION 27. Section 28 of this 2007 Act is added to and made a part
6 of ORS chapter 469.

7 SECTION 28. (1) The State Department of Energy shall by rule:

8 (a) Identify categories of fuel blend and solid biofuel that qualify for
9 the personal income tax credit allowed under section 25 of this 2007
10 Act; and

11 (b) Subject to section 25 (4) of this 2007 Act, for each category
12 identified in rules adopted under this section, prescribe a dollar rate
13 per quantity of fuel blend or solid biofuel, to be used to calculate the
14 amount of credit allowed under section 25 of this 2007 Act.

15 (2) The department shall review rules adopted under this section
16 at least annually.

17 SECTION 29. The State Department of Energy shall adopt rules
18 under section 28 of this 2007 Act on or before 60 days after the effective
19 date of this 2007 Act.

20
21 **ENERGY FACILITY SITING PROCESS;**
22 **EXCEPTIONS**

23
24 SECTION 30. ORS 469.320 is amended to read:

25 469.320. (1) Except as provided in subsections (2) and (5) of this section,
26 no facility shall be constructed or expanded unless a site certificate has been
27 issued for the site thereof in the manner provided in ORS 469.300 to 469.563,
28 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or
29 operated except in conformity with the requirements of ORS 469.300 to
30 469.563, 469.590 to 469.619, 469.930 and 469.992.

31 (2) A site certificate is not required for:

1 (a) An energy facility for which no site certificate has been issued that,
2 on August 2, 1993, had operable electric generating equipment for a modifi-
3 cation that uses the same fuel type and increases electric generating capac-
4 ity, if:

5 (A) The site is not enlarged; and

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

12 (b) Construction or expansion of any interstate natural gas pipeline or
13 associated underground natural gas storage facility authorized by and sub-
14 ject to the continuing regulation of the Federal Energy Regulatory Com-
15 mission or successor agency.

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

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

20 (B) Under normal operating conditions, has a useful thermal energy out-
21 put of no less than 33 percent of the total energy output or the fuel charge-
22 able to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

23 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant
24 for which a site certificate has been issued by the State of Oregon, of ra-
25 dioactive waste from the plant.

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

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

31 (A) Exclusively uses **biomass, including but not limited to** grain, whey,

1 potatoes, oil seeds, waste vegetable oil or cellulosic biomass, as the source
2 of material for conversion to a liquid fuel;

3 (B) Has received local land use approval under the applicable acknowl-
4 edged comprehensive plan and land use regulations of the affected local
5 government and the facility complies with any statewide planning goals or
6 rules of the Land Conservation and Development Commission that are di-
7 rectly applicable to the facility;

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

11 (D) Produces synthetic fuel, at least 90 percent of which is used in an
12 industrial or refueling facility located within one mile of the facility or is
13 transported from the facility by rail or barge; **and**

14 **(E) Emits less than 118 pounds of carbon dioxide per million Btu**
15 **from fossil fuel used for conversion energy.**

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

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

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

28 (C) The standby generators are electrically incapable of being intercon-
29 nected to the transmission grid. For an applicant that proposes to provide
30 the physical facilities for the installation of standby generators, the re-
31 quirement of this subparagraph may be met by agreeing to require such a

1 term in the lease contract for the facility.

2 (3) The Energy Facility Siting Council may review and, if necessary, re-
3 vise the fuel chargeable to power heat rate value set forth in subsection
4 (2)(c)(B) of this section. In making its determination, the council shall ensure
5 that the fuel chargeable to power heat rate value for facilities set forth in
6 subsection (2)(c)(B) of this section remains significantly lower than the fuel
7 chargeable to power heat rate value for the best available, commercially vi-
8 able thermal power plant technology at the time of the revision.

9 (4) Any person who proposes to construct or enlarge an energy facility
10 and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this
11 section from the requirement to obtain a site certificate shall request the
12 Energy Facility Siting Council to determine whether the proposed facility
13 qualifies for the claimed exemption. The council shall make its determination
14 within 60 days after the request for exemption is filed. An appeal from the
15 council's determination on a request for exemption shall be made under ORS
16 469.403, except that the scope of review by the Supreme Court shall be the
17 same as a review by a circuit court under ORS 183.484. The record on review
18 by the Supreme Court shall be the record established in the council pro-
19 ceeding on the exemption.

20 (5) Notwithstanding subsection (1) of this section, a separate site certif-
21 icate shall not be required for:

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

25 (b) Expansion within the site or within the energy generation area of a
26 facility for which a site certificate has been issued, if the existing site cer-
27 tificate has been amended to authorize expansion; or

28 (c) Expansion, either within the site or outside the site, of an existing
29 council certified surface facility related to an underground gas storage res-
30 ervoir, if the existing site certificate is amended to authorize expansion.

31 (6) If the substantial loss of the steam host causes a facility exempt under

1 subsection (2)(c) of this section to substantially fail to meet the exemption
 2 requirements under subsection (2)(c) of this section, the electric generating
 3 facility shall cease to operate one year after the substantial loss of the steam
 4 host unless an application for a site certificate has been filed in accordance
 5 with the provisions of ORS 469.300 to 469.563.

6 (7) As used in this section:

7 (a) "Standby generation facility" means an electric power generating fa-
 8 cility, including standby generators and the physical structures necessary to
 9 install and connect standby generators, that provides temporary electric
 10 power in the event of a power outage and that is electrically incapable of
 11 being interconnected with the transmission grid.

12 (b) "Total energy output" means the sum of useful thermal energy output
 13 and useful electrical energy output.

14 (c) "Useful thermal energy" means the verifiable thermal energy used in
 15 any viable industrial or commercial process, heating or cooling application.

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

24

25 **EXCLUSIVE FARM USE FOR ON-FARM**
 26 **BIOFUEL PRODUCTION**

27

28 **SECTION 31.** ORS 215.203 is amended to read:

29 215.203. (1) Zoning ordinances may be adopted to zone designated areas
 30 of land within the county as exclusive farm use zones. Land within such
 31 zones shall be used exclusively for farm use except as otherwise provided in

1 ORS 215.213, 215.283 or 215.284. Farm use zones shall be established only
2 when such zoning is consistent with the comprehensive plan.

3 (2)(a) As used in this section, "farm use" means the current employment
4 of land for the primary purpose of obtaining a profit in money by raising,
5 harvesting and selling crops or the feeding, breeding, management and sale
6 of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or
7 for dairying and the sale of dairy products or any other agricultural or
8 horticultural use or animal husbandry or any combination thereof. "Farm
9 use" includes the preparation, storage and disposal by marketing or other-
10 wise of the products or by-products raised on such land for human or animal
11 use, **including the commercial processing of farm crops into biofuel.**
12 "Farm use" also includes the current employment of land for the primary
13 purpose of obtaining a profit in money by stabling or training equines in-
14 cluding but not limited to providing riding lessons, training clinics and
15 schooling shows. "Farm use" also includes the propagation, cultivation,
16 maintenance and harvesting of aquatic, bird and animal species that are
17 under the jurisdiction of the State Fish and Wildlife Commission, to the ex-
18 tent allowed by the rules adopted by the commission. "Farm use" includes
19 the on-site construction and maintenance of equipment and facilities used for
20 the activities described in this subsection. "Farm use" does not include the
21 use of land subject to the provisions of ORS chapter 321, except land used
22 exclusively for growing cultured Christmas trees as defined in subsection (3)
23 of this section or land described in ORS 321.267 (3) or 321.824 (3).

24 (b) "Current employment" of land for farm use includes:

25 (A) Farmland, the operation or use of which is subject to any farm-related
26 government program;

27 (B) Land lying fallow for one year as a normal and regular requirement
28 of good agricultural husbandry;

29 (C) Land planted in orchards or other perennials, other than land speci-
30 fied in subparagraph (D) of this paragraph, prior to maturity;

31 (D) Land not in an exclusive farm use zone which has not been eligible

1 for assessment at special farm use value in the year prior to planting the
2 current crop and has been planted in orchards, cultured Christmas trees or
3 vineyards for at least three years;

4 (E) Wasteland, in an exclusive farm use zone, dry or covered with water,
5 neither economically tillable nor grazeable, lying in or adjacent to and in
6 common ownership with a farm use land and which is not currently being
7 used for any economic farm use;

8 (F) Except for land under a single family dwelling, land under buildings
9 supporting accepted farm practices, including the processing facilities al-
10 lowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

11 (G) Water impoundments lying in or adjacent to and in common owner-
12 ship with farm use land;

13 (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous
14 to and owned by the owner of land specially valued for farm use even if the
15 land constituting the woodlot is not utilized in conjunction with farm use;

16 (I) Land lying idle for no more than one year where the absence of
17 farming activity is due to the illness of the farmer or member of the farmer's
18 immediate family. For purposes of this paragraph, illness includes injury or
19 infirmity whether or not such illness results in death;

20 (J) Any land described under ORS 321.267 (3) or 321.824 (3); and

21 (K) Land used for the primary purpose of obtaining a profit in money by
22 breeding, raising, kenneling or training of greyhounds for racing.

23 (c) As used in this subsection, "accepted farming practice" means a mode
24 of operation that is common to farms of a similar nature, necessary for the
25 operation of such farms to obtain a profit in money, and customarily utilized
26 in conjunction with farm use.

27 (3) "Cultured Christmas trees" means trees:

28 (a) Grown on lands used exclusively for that purpose, capable of prepa-
29 ration by intensive cultivation methods such as plowing or turning over the
30 soil;

31 (b) Of a marketable species;

1 (c) Managed to produce trees meeting U.S. No. 2 or better standards for
2 Christmas trees as specified by the Agriculture Marketing Services of the
3 United States Department of Agriculture; and

4 (d) Evidencing periodic maintenance practices of shearing for Douglas fir
5 and pine species, weed and brush control and one or more of the following
6 practices: Basal pruning, fertilizing, insect and disease control, stump cul-
7 ture, soil cultivation, irrigation.

8 **SECTION 32.** ORS 215.283 is amended to read:

9 215.283. (1) The following uses may be established in any area zoned for
10 exclusive farm use:

11 (a) Public or private schools, including all buildings essential to the op-
12 eration of a school.

13 (b) Churches and cemeteries in conjunction with churches.

14 (c) The propagation or harvesting of a forest product.

15 (d) Utility facilities necessary for public service, including wetland waste
16 treatment systems but not including commercial facilities for the purpose of
17 generating electrical power for public use by sale or transmission towers
18 over 200 feet in height. A utility facility necessary for public service may
19 be established as provided in ORS 215.275.

20 (e) A dwelling on real property used for farm use if the dwelling is oc-
21 cupied by a relative of the farm operator or the farm operator's spouse,
22 which means a child, parent, stepparent, grandchild, grandparent,
23 stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either,
24 if the farm operator does or will require the assistance of the relative in the
25 management of the farm use and the dwelling is located on the same lot or
26 parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to
27 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if
28 the owner of a dwelling described in this paragraph obtains construction fi-
29 nancing or other financing secured by the dwelling and the secured party
30 forecloses on the dwelling, the secured party may also foreclose on the
31 homesite, as defined in ORS 308A.250, and the foreclosure shall operate as

1 a partition of the homesite to create a new parcel.

2 (f) Primary or accessory dwellings and other buildings customarily pro-
3 vided in conjunction with farm use.

4 (g) Operations for the exploration for and production of geothermal re-
5 sources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005,
6 including the placement and operation of compressors, separators and other
7 customary production equipment for an individual well adjacent to the
8 wellhead. Any activities or construction relating to such operations shall not
9 be a basis for an exception under ORS 197.732 (1)(a) or (b).

10 (h) Operations for the exploration for minerals as defined by ORS 517.750.
11 Any activities or construction relating to such operations shall not be a ba-
12 sis for an exception under ORS 197.732 (1)(a) or (b).

13 (i) A site for the disposal of solid waste that has been ordered to be es-
14 tablished by the Environmental Quality Commission under ORS 459.049, to-
15 gether with equipment, facilities or buildings necessary for its operation.

16 (j) The breeding, kenneling and training of greyhounds for racing.

17 (k) Climbing and passing lanes within the right of way existing as of July
18 1, 1987.

19 (L) Reconstruction or modification of public roads and highways, includ-
20 ing the placement of utility facilities overhead and in the subsurface of
21 public roads and highways along the public right of way, but not including
22 the addition of travel lanes, where no removal or displacement of buildings
23 would occur, or no new land parcels result.

24 (m) Temporary public road and highway detours that will be abandoned
25 and restored to original condition or use at such time as no longer needed.

26 (n) Minor betterment of existing public road and highway related facili-
27 ties such as maintenance yards, weigh stations and rest areas, within right
28 of way existing as of July 1, 1987, and contiguous public-owned property
29 utilized to support the operation and maintenance of public roads and high-
30 ways.

31 (o) A replacement dwelling to be used in conjunction with farm use if the

1 existing dwelling has been listed in a county inventory as historic property
2 as defined in ORS 358.480.

3 (p) Creation of, restoration of or enhancement of wetlands.

4 (q) A winery, as described in ORS 215.452.

5 (r) Farm stands if:

6 (A) The structures are designed and used for the sale of farm crops or
7 livestock grown on the farm operation, or grown on the farm operation and
8 other farm operations in the local agricultural area, including the sale of
9 retail incidental items and fee-based activity to promote the sale of farm
10 crops or livestock sold at the farm stand if the annual sale of incidental
11 items and fees from promotional activity do not make up more than 25 per-
12 cent of the total annual sales of the farm stand; and

13 (B) The farm stand does not include structures designed for occupancy
14 as a residence or for activity other than the sale of farm crops or livestock
15 and does not include structures for banquets, public gatherings or public
16 entertainment.

17 (s) Alteration, restoration or replacement of a lawfully established
18 dwelling that:

19 (A) Has intact exterior walls and roof structure;

20 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing
21 facilities connected to a sanitary waste disposal system;

22 (C) Has interior wiring for interior lights;

23 (D) Has a heating system; and

24 (E) In the case of replacement:

25 (i) Is removed, demolished or converted to an allowable nonresidential use
26 within three months of the completion of the replacement dwelling. A re-
27 placement dwelling may be sited on any part of the same lot or parcel. A
28 dwelling established under this paragraph shall comply with all applicable
29 siting standards. However, the standards shall not be applied in a manner
30 that prohibits the siting of the dwelling. If the dwelling to be replaced is
31 located on a portion of the lot or parcel not zoned for exclusive farm use,

1 the applicant, as a condition of approval, shall execute and record in the
2 deed records for the county where the property is located a deed restriction
3 prohibiting the siting of a dwelling on that portion of the lot or parcel. The
4 restriction imposed shall be irrevocable unless a statement of release is
5 placed in the deed records for the county. The release shall be signed by the
6 county or its designee and state that the provisions of this paragraph re-
7 garding replacement dwellings have changed to allow the siting of another
8 dwelling. The county planning director or the director's designee shall
9 maintain a record of the lots and parcels that do not qualify for the siting
10 of a new dwelling under the provisions of this paragraph, including a copy
11 of the deed restrictions and release statements filed under this paragraph;
12 and

13 (ii) For which the applicant has requested a deferred replacement permit,
14 is removed or demolished within three months after the deferred replacement
15 permit is issued. A deferred replacement permit allows construction of the
16 replacement dwelling at any time. If, however, the established dwelling is
17 not removed or demolished within three months after the deferred replace-
18 ment permit is issued, the permit becomes void. The replacement dwelling
19 must comply with applicable building codes, plumbing codes, sanitation codes
20 and other requirements relating to health and safety or to siting at the time
21 of construction. A deferred replacement permit may not be transferred, by
22 sale or otherwise, except by the applicant to the spouse or a child of the
23 applicant.

24 (t) A site for the takeoff and landing of model aircraft, including such
25 buildings or facilities as may reasonably be necessary. Buildings or facilities
26 shall not be more than 500 square feet in floor area or placed on a permanent
27 foundation unless the building or facility preexisted the use approved under
28 this paragraph. The site shall not include an aggregate surface or hard sur-
29 face area unless the surface preexisted the use approved under this para-
30 graph. As used in this paragraph, "model aircraft" means a small-scale
31 version of an airplane, glider, helicopter, dirigible or balloon that is used or

1 intended to be used for flight and is controlled by radio, lines or design by
2 a person on the ground.

3 (u) A facility for the processing of farm crops **or the production of**
4 **biofuel that is** located on a farm operation that provides at least one-
5 quarter of the farm crops processed at the facility. The building established
6 for the processing facility shall not exceed 10,000 square feet of floor area
7 exclusive of the floor area designated for preparation, storage or other farm
8 use or devote more than 10,000 square feet to the processing activities within
9 another building supporting farm uses. A processing facility shall comply
10 with all applicable siting standards but the standards shall not be applied
11 in a manner that prohibits the siting of the processing facility.

12 (v) Fire service facilities providing rural fire protection services.

13 (w) Irrigation canals, delivery lines and those structures and accessory
14 operational facilities associated with a district as defined in ORS 540.505.

15 (x) Utility facility service lines. Utility facility service lines are utility
16 lines and accessory facilities or structures that end at the point where the
17 utility service is received by the customer and that are located on one or
18 more of the following:

19 (A) A public right of way;

20 (B) Land immediately adjacent to a public right of way, provided the
21 written consent of all adjacent property owners has been obtained; or

22 (C) The property to be served by the utility.

23 (y) Subject to the issuance of a license, permit or other approval by the
24 Department of Environmental Quality under ORS 454.695, 459.205, 468B.050,
25 468B.053 or 468B.055, or in compliance with rules adopted under ORS
26 468B.095, and as provided in ORS 215.246 to 215.251, the land application of
27 reclaimed water, agricultural or industrial process water or biosolids for
28 agricultural, horticultural or silvicultural production, or for irrigation in
29 connection with a use allowed in an exclusive farm use zone under this
30 chapter.

31 (z) A county law enforcement facility that lawfully existed on August 20,

1 2002, and is used to provide rural law enforcement services primarily in rural
2 areas, including parole and post-prison supervision, but not including a
3 correctional facility as defined under ORS 162.135.

4 (2) The following nonfarm uses may be established, subject to the ap-
5 proval of the governing body or its designee in any area zoned for exclusive
6 farm use subject to ORS 215.296:

7 (a) Commercial activities that are in conjunction with farm use but not
8 including the processing of farm crops as described in subsection (1)(u) of
9 this section.

10 (b) Operations conducted for:

11 (A) Mining and processing of geothermal resources as defined by ORS
12 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted
13 under subsection (1)(g) of this section;

14 (B) Mining, crushing or stockpiling of aggregate and other mineral and
15 other subsurface resources subject to ORS 215.298;

16 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or
17 portland cement; and

18 (D) Processing of other mineral resources and other subsurface resources.

19 (c) Private parks, playgrounds, hunting and fishing preserves and
20 campgrounds. Subject to the approval of the county governing body or its
21 designee, a private campground may provide yurts for overnight camping.
22 No more than one-third or a maximum of 10 campsites, whichever is smaller,
23 may include a yurt. The yurt shall be located on the ground or on a wood
24 floor with no permanent foundation. Upon request of a county governing
25 body, the Land Conservation and Development Commission may provide by
26 rule for an increase in the number of yurts allowed on all or a portion of
27 the campgrounds in a county if the commission determines that the increase
28 will comply with the standards described in ORS 215.296 (1). As used in this
29 paragraph, "yurt" means a round, domed shelter of cloth or canvas on a
30 collapsible frame with no plumbing, sewage disposal hookup or internal
31 cooking appliance.

1 (d) Parks and playgrounds. A public park may be established consistent
2 with the provisions of ORS 195.120.

3 (e) Community centers owned by a governmental agency or a nonprofit
4 community organization and operated primarily by and for residents of the
5 local rural community. A community center authorized under this paragraph
6 may provide services to veterans, including but not limited to emergency and
7 transitional shelter, preparation and service of meals, vocational and educa-
8 tional counseling and referral to local, state or federal agencies providing
9 medical, mental health, disability income replacement and substance abuse
10 services, only in a facility that is in existence on January 1, 2006. The ser-
11 vices may not include direct delivery of medical, mental health, disability
12 income replacement or substance abuse services.

13 (f) Golf courses.

14 (g) Commercial utility facilities for the purpose of generating power for
15 public use by sale.

16 (h) Personal-use airports for airplanes and helicopter pads, including as-
17 sociated hangar, maintenance and service facilities. A personal-use airport,
18 as used in this section, means an airstrip restricted, except for aircraft
19 emergencies, to use by the owner, and, on an infrequent and occasional basis,
20 by invited guests, and by commercial aviation activities in connection with
21 agricultural operations. No aircraft may be based on a personal-use airport
22 other than those owned or controlled by the owner of the airstrip. Ex-
23 ceptions to the activities permitted under this definition may be granted
24 through waiver action by the Oregon Department of Aviation in specific in-
25 stances. A personal-use airport lawfully existing as of September 13, 1975,
26 shall continue to be permitted subject to any applicable rules of the Oregon
27 Department of Aviation.

28 (i) Home occupations as provided in ORS 215.448.

29 (j) A facility for the primary processing of forest products, provided that
30 such facility is found to not seriously interfere with accepted farming prac-
31 tices and is compatible with farm uses described in ORS 215.203 (2). Such a

1 facility may be approved for a one-year period which is renewable. These
2 facilities are intended to be only portable or temporary in nature. The pri-
3 mary processing of a forest product, as used in this section, means the use
4 of a portable chipper or stud mill or other similar methods of initial treat-
5 ment of a forest product in order to enable its shipment to market. Forest
6 products, as used in this section, means timber grown upon a parcel of land
7 or contiguous land where the primary processing facility is located.

8 (k) A site for the disposal of solid waste approved by the governing body
9 of a city or county or both and for which a permit has been granted under
10 ORS 459.245 by the Department of Environmental Quality together with
11 equipment, facilities or buildings necessary for its operation.

12 (L) One manufactured dwelling or recreational vehicle, or the temporary
13 residential use of an existing building, in conjunction with an existing
14 dwelling as a temporary use for the term of a hardship suffered by the ex-
15 isting resident or a relative of the resident. Within three months of the end
16 of the hardship, the manufactured dwelling or recreational vehicle shall be
17 removed or demolished or, in the case of an existing building, the building
18 shall be removed, demolished or returned to an allowed nonresidential use.
19 The governing body or its designee shall provide for periodic review of the
20 hardship claimed under this paragraph. A temporary residence approved un-
21 der this paragraph is not eligible for replacement under subsection (1)(s) of
22 this section.

23 (m) Transmission towers over 200 feet in height.

24 (n) Dog kennels not described in subsection (1)(j) of this section.

25 (o) Residential homes as defined in ORS 197.660, in existing dwellings.

26 (p) The propagation, cultivation, maintenance and harvesting of aquatic
27 species that are not under the jurisdiction of the State Fish and Wildlife
28 Commission or insect species. Insect species shall not include any species
29 under quarantine by the State Department of Agriculture or the United
30 States Department of Agriculture. The county shall provide notice of all
31 applications under this paragraph to the State Department of Agriculture.

1 Notice shall be provided in accordance with the county's land use regu-
2 lations but shall be mailed at least 20 calendar days prior to any adminis-
3 trative decision or initial public hearing on the application.

4 (q) Construction of additional passing and travel lanes requiring the ac-
5 quisition of right of way but not resulting in the creation of new land par-
6 cels.

7 (r) Reconstruction or modification of public roads and highways involving
8 the removal or displacement of buildings but not resulting in the creation
9 of new land parcels.

10 (s) Improvement of public road and highway related facilities, such as
11 maintenance yards, weigh stations and rest areas, where additional property
12 or right of way is required but not resulting in the creation of new land
13 parcels.

14 (t) A destination resort that is approved consistent with the requirements
15 of any statewide planning goal relating to the siting of a destination resort.

16 (u) Room and board arrangements for a maximum of five unrelated per-
17 sons in existing residences.

18 (v) Operations for the extraction and bottling of water.

19 (w) Expansion of existing county fairgrounds and activities directly re-
20 lating to county fairgrounds governed by county fair boards established
21 pursuant to ORS 565.210.

22 (x) A living history museum related to resource based activities owned
23 and operated by a governmental agency or a local historical society, together
24 with limited commercial activities and facilities that are directly related to
25 the use and enjoyment of the museum and located within authentic buildings
26 of the depicted historic period or the museum administration building, if
27 areas other than an exclusive farm use zone cannot accommodate the mu-
28 seum and related activities or if the museum administration buildings and
29 parking lot are located within one quarter mile of an urban growth bound-
30 ary. As used in this paragraph:

31 (A) "Living history museum" means a facility designed to depict and in-

1 interpret everyday life and culture of some specific historic period using au-
2 thentic buildings, tools, equipment and people to simulate past activities and
3 events; and

4 (B) "Local historical society" means the local historical society recog-
5 nized by the county governing body and organized under ORS chapter 65.

6 (y) An aerial fireworks display business that has been in continuous op-
7 eration at its current location within an exclusive farm use zone since De-
8 cember 31, 1986, and possesses a wholesaler's permit to sell or provide
9 fireworks.

10 (z) A landscaping business, as defined in ORS 671.520, or a business pro-
11 viding landscape architecture services, as described in ORS 671.318, if the
12 business is pursued in conjunction with the growing and marketing of nurs-
13 ery stock on the land that constitutes farm use.

14 (3) Roads, highways and other transportation facilities and improvements
15 not allowed under subsections (1) and (2) of this section may be established,
16 subject to the approval of the governing body or its designee, in areas zoned
17 for exclusive farm use subject to:

18 (a) Adoption of an exception to the goal related to agricultural lands and
19 to any other applicable goal with which the facility or improvement does not
20 comply; or

21 (b) ORS 215.296 for those uses identified by rule of the Land Conservation
22 and Development Commission as provided in section 3, chapter 529, Oregon
23 Laws 1993.

24 **SECTION 33.** ORS 308A.056 is amended to read:

25 308A.056. (1) As used in ORS 308A.050 to 308A.128, "farm use" means the
26 current employment of land for the primary purpose of obtaining a profit in
27 money by:

28 (a) Raising, harvesting and selling crops;

29 (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing
30 animals or honeybees or the produce thereof;

31 (c) Dairying and selling dairy products;

1 (d) Stabling or training equines, including but not limited to providing
2 riding lessons, training clinics and schooling shows;

3 (e) Propagating, cultivating, maintaining or harvesting aquatic species
4 and bird and animal species to the extent allowed by the rules adopted by
5 the State Fish and Wildlife Commission;

6 (f) On-site constructing and maintaining equipment and facilities used for
7 the activities described in this subsection;

8 (g) Preparing, storing or disposing of, by marketing or otherwise, the
9 products or by-products raised for human or animal use on land described in
10 this section; [or]

11 **(h) Commercial processing of farm crops into biofuel; or**

12 [(h)] (i) Using land described in this section for any other agricultural
13 or horticultural use or animal husbandry or any combination thereof.

14 (2) "Farm use" does not include the use of land subject to timber and
15 forestland taxation under ORS chapter 321, except land used exclusively for
16 growing cultured Christmas trees or land described in ORS 321.267 (3) or
17 321.824 (3) (relating to land used to grow certain hardwood timber, including
18 hybrid cottonwood).

19 (3) For purposes of this section, land is currently employed for farm use
20 if the land is:

21 (a) Farmland, the operation or use of which is subject to any farm-related
22 government program;

23 (b) Land lying fallow for one year as a normal and regular requirement
24 of good agricultural husbandry;

25 (c) Land planted in orchards or other perennials, other than land specified
26 in paragraph (d) of this subsection, prior to maturity;

27 (d) Land not in an exclusive farm use zone that has not been eligible for
28 assessment at special farm use value in the year prior to planting the current
29 crop and has been planted in orchards, cultured Christmas trees or vineyards
30 for at least three years;

31 (e) Wasteland, in an exclusive farm use zone, dry or covered with water,

1 neither economically tillable nor grazeable, lying in or adjacent to and in
2 common ownership with farm use land and that is not currently being used
3 for any economic farm use;

4 (f) Except for land under a single family dwelling, land under buildings
5 supporting accepted farming practices, including the processing facilities al-
6 lowed by ORS 215.213 (1)(x) and 215.283 (1)(u);

7 (g) Water impoundments lying in or adjacent to and in common ownership
8 with farm use land;

9 (h) Any land constituting a woodlot, not to exceed 20 acres, contiguous
10 to and owned by the owner of land specially valued for farm use even if the
11 land constituting the woodlot is not utilized in conjunction with farm use;

12 (i) Land lying idle for no more than one year when the absence of farming
13 activity is the result of the illness of the farmer or a member of the farmer's
14 immediate family, including injury or infirmity, regardless of whether the
15 illness results in death;

16 (j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land
17 used to grow certain hardwood timber, including hybrid cottonwood); or

18 (k) Land used for the primary purpose of obtaining a profit in money by
19 breeding, raising, kenneling or training greyhounds for racing.

20 (4) As used in this section:

21 (a) "Accepted farming practice" means a mode of operation that is com-
22 mon to farms of a similar nature, necessary for the operation of these similar
23 farms to obtain a profit in money and customarily utilized in conjunction
24 with farm use.

25 (b) "Cultured Christmas trees" means trees:

26 (A) Grown on lands used exclusively for that purpose, capable of prepa-
27 ration by intensive cultivation methods such as plowing or turning over the
28 soil;

29 (B) Of a marketable species;

30 (C) Managed to produce trees meeting U.S. No. 2 or better standards for
31 Christmas trees as specified by the Agricultural Marketing Service of the

1 United States Department of Agriculture; and

2 (D) Evidencing periodic maintenance practices of shearing for Douglas fir
3 and pine species, weed and brush control and one or more of the following
4 practices:

5 (i) Basal pruning;

6 (ii) Fertilizing;

7 (iii) Insect and disease control;

8 (iv) Stump culture;

9 (v) Soil cultivation; or

10 (vi) Irrigation.

11 **SECTION 34. The amendments to ORS 308A.056 by section 33 of this**
12 **2007 Act apply to tax years beginning on or after July 1, 2006.**

13

14

CAPTIONS

15

16 **SECTION 35. The unit captions used in this 2007 Act are provided**
17 **only for the convenience of the reader and do not become part of the**
18 **statutory law of this state or express any legislative intent in the**
19 **enactment of this 2007 Act.**

20

21

EFFECTIVE DATE

22

23 **SECTION 36. This 2007 Act takes effect on the 91st day after the**
24 **date on which the regular session of the Seventy-fourth Legislative**
25 **Assembly adjourns sine die.**

26
