

D R A F T

SUMMARY

Makes legislative findings regarding tax credit allowed for biomass. Provides that tax credit for biomass may be claimed only by bioenergy producer. Discontinues eligibility of agricultural producer or biomass collector to claim credit. Modifies relevant definitions. Eliminates fixed rates for credit for various types of biomass. Allows State Department of Energy to establish rates for credit. Authorizes Director of State Department of Energy to suspend or revoke tax credit certification in certain instances.

Applies to tax years beginning on or after January 1, 2014.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credit for biomass; creating new provisions; amending ORS
3 315.141 and 459.109 and section 6, chapter 739, Oregon Laws 2007; repeal-
4 ing ORS 469B.403; and prescribing an effective date.

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

6 **SECTION 1. The Legislative Assembly finds and declares that:**

7 **(1) A bioenergy industry can help support and enhance key Oregon**
8 **industries in agriculture, forest products, food processing and natural**
9 **resource management.**

10 **(2) Strengthening the health of our environment, our rural com-**
11 **munities and key industries in agriculture, forest products, food pro-**
12 **cessing and natural resource management is a priority for the state**
13 **and will be advanced by a strategic, integrated approach to bioenergy**
14 **opportunities.**

15 **(3) Sustainable production of bioenergy provides a renewable source**
16 **of energy and can reduce net greenhouse gas emissions, reduce air**

1 **pollution that is caused by wildfires, improve water quality, improve**
2 **fish and wildlife habitat, create jobs and provide economic benefits to**
3 **rural communities.**

4 **(4) The policy of this state is to support efforts to build and sustain**
5 **bioenergy facilities that will create jobs in Oregon and that will pro-**
6 **vide other environmental, economic and social benefits to the state.**

7 **(5) The goal of allowing an income or excise tax credit for biomass**
8 **production is to support the development of new bioenergy and biofuel**
9 **production facilities.**

10 **SECTION 2. Section 3 of this 2013 Act is added to and made a part**
11 **of ORS chapter 315.**

12 **SECTION 3. (1) Under the procedures for a contested case under**
13 **ORS chapter 183, the Director of the State Department of Energy may**
14 **order the suspension or revocation of the certification issued under**
15 **ORS 315.141 if the director finds that:**

16 **(a) The certification was obtained by fraud or misrepresentation;**
17 **or**

18 **(b) The bioenergy production facility is no longer in operation.**

19 **(2) As soon as the order of revocation under this section becomes**
20 **final, the director shall notify the Department of Revenue, the facility**
21 **owner, the contract purchaser or lessee and any transferee under ORS**
22 **315.144 of the order of revocation.**

23 **(3)(a) The Department of Revenue shall have the benefit of all laws**
24 **of this state pertaining to the collection of income and excise taxes**
25 **and may proceed to collect any amount due from the person that ob-**
26 **tained certification from the State Department of Energy or any suc-**
27 **cessor in interest to the business interests of that person. All prior tax**
28 **credits provided to the holder of the certificate by virtue of the cer-**
29 **tificate shall be forfeited. No assessment of tax shall be necessary and**
30 **no statute of limitation shall preclude the collection of taxes described**
31 **in this subsection.**

1 (b) For purposes of this subsection, a lender, bankruptcy trustee
2 or other person that acquires an interest through bankruptcy or
3 through foreclosure of a security interest is not considered to be a
4 successor in interest to the business interests of the person that ob-
5 tained certification from the State Department of Energy.

6 (4) Notwithstanding subsections (1) to (3) of this section, a certif-
7 ication held by a transferee under ORS 315.144 may not be considered
8 revoked for purposes of the transferee, the tax credit allowable to the
9 transferee under ORS 315.141 may not be reduced and a transferee is
10 not liable under subsection (3) of this section.

11 **SECTION 4.** ORS 315.141, as amended by section 15, chapter 45, Oregon
12 Laws 2012, is amended to read:

13 315.141. (1) As used in this section:

14 [(a) “Agricultural producer” means a person that produces biomass in
15 Oregon that is used, in Oregon, as biofuel or to produce biofuel.]

16 (a) **“Bioenergy” means electricity or thermal energy produced from
17 biomass.**

18 (b) **“Bioenergy producer” means a person that produces bioenergy
19 or biofuel in Oregon.**

20 [(b)] (c) “Biofuel” means liquid, gaseous or solid fuels[,] derived from
21 biomass[, that have been converted into a processed fuel ready for use as en-
22 ergy by a biofuel producer’s customers or for direct biomass energy use at the
23 biofuel producer’s site]. **“Biofuel” does not include hog fuel, chipped fuel,
24 charcoal or pellets used for cooking.**

25 [(c) “Biofuel producer” means a person that through activities in Oregon:]

26 [(A) Alters the physical makeup of biomass to convert it into biofuel;]

27 [(B) Changes one biofuel into another type of biofuel; or]

28 [(C) Uses biomass in Oregon to produce energy.]

29 (d) “Biomass” means organic matter that is available on a renewable or
30 recurring basis and that is derived from:

31 [(A) Forest or rangeland woody debris from harvesting or thinning con-

1 *ducted to improve forest or rangeland ecological health and reduce uncharac-*
2 *teristic stand replacing wildfire risk;]*

3 *[(B) Wood material from hardwood timber described in ORS 321.267 (3);]*

4 **(A) Woody biomass as defined in ORS 526.005;**

5 **(B) Used cooking oil or waste grease that is composed of organic**
6 **polar compounds derived from vegetable, plant or animal sources;**

7 (C) Agricultural residues;

8 (D) Offal and tallow from animal rendering;

9 (E) Food wastes collected as provided under ORS chapter 459 or 459A;

10 (F) Wood debris collected as provided under ORS chapter 459 or 459A;

11 (G) Wastewater solids; or

12 (H) Crops grown solely to be used for energy.

13 (e) "Biomass" does not mean wood that has been treated with creosote,
14 pentachlorophenol, inorganic arsenic or other inorganic chemical compounds
15 or waste, other than matter described in paragraph (d) of this subsection.

16 *[(f) "Biomass collector" means a person that collects biomass in Oregon to*
17 *be used, in Oregon, as biofuel or to produce biofuel.]*

18 *[(g) "Oilseed processor" means a person that receives agricultural oilseeds*
19 *and separates them into meal and oil by mechanical or chemical means.]*

20 (2) The Director of the State Department of Energy may adopt rules to
21 *[define criteria, only as the criteria apply to organic biomass, to determine*
22 *additional characteristics of biomass]* **determine the eligibility of**
23 **bioenergy, biofuel production and biomass** for purposes of **the credit**
24 **allowed under** this section.

25 (3)(a) *[An agricultural producer or biomass collector]* **A bioenergy pro-**
26 **ducer** shall be allowed a credit against the taxes that would otherwise be
27 due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
28 chapter 317 or 318 for^[:] **the production of bioenergy or biofuel from**
29 **biomass that is produced or collected in Oregon.**

30 *[(A) The production of biomass in Oregon that is used, in Oregon, as*
31 *biofuel or to produce biofuel; or]*

1 *[(B) The collection of biomass in Oregon that is used, in Oregon, as biofuel*
2 *or to produce biofuel.]*

3 (b) A credit under this section may be claimed in the tax year *[in]* **for**
4 which the credit is certified under subsection (5) of this section.

5 *[(c) A taxpayer may be allowed a credit under this section for more than*
6 *one of the roles defined in subsection (1) of this section, but a biofuel producer*
7 *that is not also an agricultural producer or a biomass collector may not claim*
8 *a credit under this section.]*

9 *[(d)]* **(c)** A credit under this section may be claimed only once for each
10 unit of biomass.

11 *[(e)]* **(d)** Notwithstanding paragraph (a) of this subsection, a tax credit is
12 not allowed for grain corn, but a tax credit shall be allowed for other corn
13 material.

14 (4) The amount of the credit shall equal the amount certified under sub-
15 section (5) of this section.

16 (5)(a) The State Department of Energy may establish by rule procedures
17 and criteria for determining the amount of the tax credit to be certified un-
18 der this section[, *consistent with ORS 469B.403*]. The department shall pro-
19 vide written certification to taxpayers that are eligible to claim the credit
20 under this section.

21 **(b) The State Department of Energy shall establish by rule credit**
22 **rates for eligible biomass consistent with the rules established pursu-**
23 **ant to subsection (2) of this section.**

24 *[(b)]* **(c)** The State Department of Energy may charge and collect a fee
25 from taxpayers for certification of credits under this section. The fee may
26 not exceed the cost to the department of determining the amount of certified
27 cost **and of verifying compliance with this section.**

28 *[(c)]* **(d)** The State Department of Energy shall provide to the Department
29 of Revenue a list, by tax year, of taxpayers for which a credit is certified
30 under this section, upon request of the Department of Revenue.

31 **(6) The State Department of Energy may establish by rule proce-**

1 **dures and criteria for verifying compliance with this section.**

2 **(7) If the director determines that the bioenergy or biofuel pro-**
3 **duction is in accordance with this section and section 2 of this 2013**
4 **Act and any applicable rules or standards adopted by the director, the**
5 **director may enter into a performance agreement with the applicant**
6 **in anticipation of certification of credits under this section. The term**
7 **of the agreement may not exceed five years.**

8 [(6)] **(8)** The amount of the credit claimed under this section for any tax
9 year may not exceed the tax liability of the taxpayer.

10 [(7)] **(9)** Each [*agricultural producer or biomass collector*] **bioenergy pro-**
11 **ducer** shall maintain the written documentation of the amount certified for
12 tax credit under this section in its records for a period of at least five years
13 after the tax year in which the credit is claimed and provide the written
14 documentation to the Department of Revenue upon request.

15 [(8)] **(10)** The credit shall be claimed on a form prescribed by the De-
16 partment of Revenue that contains the information required by the depart-
17 ment.

18 [(9)] **(11)** Any tax credit otherwise allowable under this section that is
19 not used by the taxpayer in a particular tax year may be carried forward and
20 offset against the taxpayer's tax liability for the next succeeding tax year.
21 Any credit remaining unused in the next succeeding tax year may be carried
22 forward and used in the second succeeding tax year, and likewise any credit
23 not used in that second succeeding tax year may be carried forward and used
24 in the third succeeding tax year, and any credit not used in that third suc-
25 ceeding tax year may be carried forward and used in the fourth succeeding
26 tax year, but may not be carried forward for any tax year thereafter.

27 [(10)] **(12)** In the case of a credit allowed under this section:

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

30 (b) If a change in the status of the taxpayer from resident to nonresident
31 or from nonresident to resident occurs, the credit allowed by this section

1 shall be determined in a manner consistent with ORS 316.117.

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

6 **SECTION 5.** ORS 459.109 is amended to read:

7 459.109. Nothing in ORS 215.203, 215.213, 215.283, 308A.056, 315.141,
8 315.144[,] **and** 469.320 [*and 469B.403*]:

9 (1) Supersedes any authority under ORS chapter 459 or 459A for cities and
10 counties to regulate the collection of solid waste; or

11 (2) Authorizes the collection of solid waste within a city or county with-
12 out permission of the city or county.

13 **SECTION 6.** Section 6, chapter 739, Oregon Laws 2007, as amended by
14 section 5, chapter 590, Oregon Laws 2007, section 18, chapter 913, Oregon
15 Laws 2009, and section 2, chapter 730, Oregon Laws 2011, is amended to read:

16 **Sec. 6.** (1) ORS 315.141[,] **and** 315.144 [*and 469.790*] apply to tax credits
17 for tax years beginning on or after January 1, 2007, and before January 1,
18 2018.

19 (2) Notwithstanding subsection (1) of this section, a tax credit is not al-
20 lowed for wheat grain (other than nongrain wheat material) for tax years
21 beginning before January 1, 2009, or on or after January 1, 2018.

22 **SECTION 7.** ORS 469B.403 is repealed.

23 **SECTION 8.** Section 3 of this 2013 Act, the amendments to ORS
24 315.141 and 459.109 and section 6, chapter 739, Oregon Laws 2007, by
25 sections 4 to 6 of this 2013 Act and the repeal of ORS 469B.403 by sec-
26 tion 7 of this 2013 Act apply to tax years beginning on or after January
27 1, 2014.

28 **SECTION 9.** This 2013 Act takes effect on the 91st day after the date
29 on which the 2013 regular session of the Seventy-seventh Legislative
30 Assembly adjourns sine die.

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