

House Bill 3104

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 315.141 and 459.109 and
3 section 6, chapter 739, Oregon Laws 2007; repealing ORS 469B.403; and prescribing an effective
4 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 industries in agricul-**
8 **ture, forest products, food processing and natural resource management.**

9 (2) **Strengthening the health of our environment, our rural communities and key indus-**
10 **tries in agriculture, forest products, food processing and natural resource management is a**
11 **priority for the state and will be advanced by a strategic, integrated approach to bioenergy**
12 **opportunities.**

13 (3) **Sustainable production of bioenergy provides a renewable source of energy and can**
14 **reduce net greenhouse gas emissions, reduce air pollution that is caused by wildfires, im-**
15 **prove water quality, improve fish and wildlife habitat, create jobs and provide economic**
16 **benefits to rural communities.**

17 (4) **The policy of this state is to support efforts to build and sustain bioenergy facilities**
18 **that will create jobs in Oregon and that will provide other environmental, economic and so-**
19 **cial benefits to the state.**

20 (5) **The goal of allowing an income or excise tax credit for biomass production is to sup-**
21 **port the development of new bioenergy and biofuel production facilities.**

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

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

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

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

28 (2) **As soon as the order of revocation under this section becomes final, the director shall**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **notify the Department of Revenue, the facility owner, the contract purchaser or lessee and**
 2 **any transferee under ORS 315.144 of the order of revocation.**

3 **(3)(a) The Department of Revenue shall have the benefit of all laws of this state per-**
 4 **taining to the collection of income and excise taxes and may proceed to collect any amount**
 5 **due from the person that obtained certification from the State Department of Energy or any**
 6 **successor in interest to the business interests of that person. All prior tax credits provided**
 7 **to the holder of the certificate by virtue of the certificate shall be forfeited. No assessment**
 8 **of tax shall be necessary and no statute of limitation shall preclude the collection of taxes**
 9 **described in this subsection.**

10 **(b) For purposes of this subsection, a lender, bankruptcy trustee or other person that**
 11 **acquires an interest through bankruptcy or through foreclosure of a security interest is not**
 12 **considered to be a successor in interest to the business interests of the person that obtained**
 13 **certification from the State Department of Energy.**

14 **(4) Notwithstanding subsections (1) to (3) of this section, a certification held by a**
 15 **transferee under ORS 315.144 may not be considered revoked for purposes of the transferee,**
 16 **the tax credit allowable to the transferee under ORS 315.141 may not be reduced and a**
 17 **transferee is not liable under subsection (3) of this section.**

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

20 315.141. (1) As used in this section:

21 *[(a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in*
 22 *Oregon, as biofuel or to produce biofuel.]*

23 **(a) "Bioenergy" means electricity or thermal energy produced from biomass.**

24 **(b) "Bioenergy producer" means a person that produces bioenergy or biofuel in Oregon.**

25 *[(b)] (c) "Biofuel" means liquid, gaseous or solid fuels[,] derived from biomass[, that have been*
 26 *converted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct*
 27 *biomass energy use at the biofuel producer's site].* **"Biofuel" does not include hog fuel, chipped**
 28 **fuel, charcoal or pellets used for cooking.**

29 *[(c) "Biofuel producer" means a person that through activities in Oregon:]*

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

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

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

33 **(d) "Biomass" means organic matter that is available on a renewable or recurring basis and that**
 34 **is derived from:**

35 *[(A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or*
 36 *rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;]*

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

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

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

41 **(C) Agricultural residues;**

42 **(D) Offal and tallow from animal rendering;**

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

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

45 **(G) Wastewater solids; or**

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

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

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

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

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

13 (3)(a) [An agricultural producer or biomass collector] **A bioenergy producer** shall be allowed a
 14 credit against the taxes that would otherwise be due under ORS chapter 316 or, if the taxpayer is
 15 a corporation, under ORS chapter 317 or 318 for[.] **the production of bioenergy or biofuel from**
 16 **biomass that is produced or collected in Oregon.**

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

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

21 (b) A credit under this section may be claimed in the tax year [in] **for** which the credit is cer-
 22 tified under subsection (5) of this section.

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

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

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

29 (4) The amount of the credit shall equal the amount certified under subsection (5) of this section.

30 (5)(a) The State Department of Energy may establish by rule procedures and criteria for deter-
 31 mining the amount of the tax credit to be certified under this section[, consistent with ORS
 32 469B.403]. The department shall provide written certification to taxpayers that are eligible to claim
 33 the credit under this section.

34 (b) **The State Department of Energy shall establish by rule credit rates for eligible**
 35 **biomass consistent with the rules established pursuant to subsection (2) of this section.**

36 [(b)] (c) The State Department of Energy may charge and collect a fee from taxpayers for cer-
 37 tification of credits under this section. The fee may not exceed the cost to the department of de-
 38 termining the amount of certified cost **and of verifying compliance with this section.**

39 [(c)] (d) The State Department of Energy shall provide to the Department of Revenue a list, by
 40 tax year, of taxpayers for which a credit is certified under this section, upon request of the De-
 41 partment of Revenue.

42 (6) **The State Department of Energy may establish by rule procedures and criteria for**
 43 **verifying compliance with this section.**

44 (7) **If the director determines that the bioenergy or biofuel production is in accordance**
 45 **with this section and section 2 of this 2013 Act and any applicable rules or standards adopted**

1 **by the director, the director may enter into a performance agreement with the applicant in**
 2 **anticipation of certification of credits under this section. The term of the agreement may**
 3 **not exceed five years.**

4 [(6)] (8) The amount of the credit claimed under this section for any tax year may not exceed
 5 the tax liability of the taxpayer.

6 [(7)] (9) Each [*agricultural producer or biomass collector*] **bioenergy producer** shall maintain the
 7 written documentation of the amount certified for tax credit under this section in its records for a
 8 period of at least five years after the tax year in which the credit is claimed and provide the written
 9 documentation to the Department of Revenue upon request.

10 [(8)] (10) The credit shall be claimed on a form prescribed by the Department of Revenue that
 11 contains the information required by the department.

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

19 [(10)] (12) In the case of a credit allowed under this section:

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

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

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

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

29 459.109. Nothing in ORS 215.203, 215.213, 215.283, 308A.056, 315.141, 315.144[,] **and** 469.320 [*and*
 30 *469B.403*]:

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

33 (2) Authorizes the collection of solid waste within a city or county without permission of the
 34 city or county.

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

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

40 (2) Notwithstanding subsection (1) of this section, a tax credit is not allowed for wheat grain
 41 (other than nongrain wheat material) for tax years beginning before January 1, 2009, or on or after
 42 January 1, 2018.

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

44 **SECTION 8. Section 3 of this 2013 Act, the amendments to ORS 315.141 and 459.109 and**
 45 **section 6, chapter 739, Oregon Laws 2007, by sections 4 to 6 of this 2013 Act and the repeal**

1 of ORS 469B.403 by section 7 of this 2013 Act apply to tax years beginning on or after January
2 1, 2014.

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

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