

A-Engrossed
House Bill 2072

Ordered by the House April 7
Including House Amendments dated April 7

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

SUMMARY

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

Provides for transfer from State Department of Energy to State Forestry Department of administration of tax credit allowed for biomass, as applicable only to credit for collection of woody biomass. Limits total credits for collection of woody biomass allowed to all tax-payers per tax year.

Applies to tax years beginning on or after January 1, 2018, and to applications for certification filed after January 1, 2018.

Extends sunset for tax credit for biomass production or collection for all types of biomass. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a tax credit for biomass; creating new provisions; amending ORS 315.141 and 315.144 and
3 section 6, chapter 739, Oregon Laws 2007; and prescribing an effective date.

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

5 **SECTION 1.** Section 6, chapter 739, Oregon Laws 2007, as amended by section 5, chapter 590,
6 Oregon Laws 2007, section 18, chapter 913, Oregon Laws 2009, section 2, chapter 730, Oregon Laws
7 2011, and section 11, chapter 29, Oregon Laws 2016, is amended to read:

8 **Sec. 6.** (1)[(a)] ORS 315.141, 315.144 and 469B.403 apply to tax credits for tax years beginning
9 on or after January 1, 2007, and before January 1, [2022] **2024**.

10 [(b) Notwithstanding paragraph (a) of this subsection, credits as provided under ORS 469B.403 (1)
11 to (7) are not allowed for tax years beginning on or after January 1, 2018.]

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

15 **SECTION 2.** ORS 315.141 is amended to read:

16 315.141. (1) As used in this section:

17 (a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in
18 Oregon, as biofuel or to produce biofuel.

19 (b) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been con-
20 verted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct
21 biomass energy use at the biofuel producer's site.

22 (c) "Biofuel producer" means a person that through activities in Oregon:

23 (A) Alters the physical makeup of biomass to convert it into biofuel;

24 (B) Changes one biofuel into another type of biofuel; or

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 (C) Uses biomass in Oregon to produce energy.
- 2 (d) "Biomass" means organic matter that is available on a renewable or recurring basis and that
3 is derived from:
- 4 (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
5 or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;
- 6 (B) Wood material from hardwood timber described in ORS 321.267 (3);
- 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, pentachlorophenol, in-
14 organic arsenic or other inorganic chemical compounds or waste, other than matter described in
15 paragraph (d) of this subsection.
- 16 (f) "Biomass collector" means a person that collects biomass in Oregon to be used, in Oregon,
17 as biofuel or to produce biofuel.
- 18 (g) "Canola" means plants of the genus Brassica:
- 19 (A) In which seeds having a high oil content are the primary economically valuable product; and
- 20 (B) That have a high erucic acid content suitable for industrial uses or a low erucic acid content
21 suitable for edible oils.
- 22 (h) "Oilseed processor" means a person that receives agricultural oilseeds and separates them
23 into meal and oil by mechanical or chemical means.
- 24 (i) "Willamette Valley" means Clackamas, Linn, Marion, Multnomah, Polk, Washington and
25 Yamhill Counties and the portion of Benton and Lane Counties lying east of the summit of the Coast
26 Range.
- 27 (2)(a) The Director of the State Department of Energy may adopt rules to define criteria, only
28 as the criteria apply to organic biomass **other than woody biomass**, to determine additional char-
29 acteristics of biomass for purposes of this section.
- 30 **(b) The State Forester may adopt rules to define criteria, only as the criteria apply to**
31 **woody biomass, to determine additional characteristics of biomass for purposes of this sec-**
32 **tion.**
- 33 (3)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes
34 that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
35 chapter 317 or 318 for:
- 36 (A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce
37 biofuel; or
- 38 (B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.
- 39 (b) A credit under this section may be claimed in the tax year in which the credit is certified
40 under subsection (5) **or (6)** of this section.
- 41 (c) A taxpayer may be allowed a credit under this section for more than one of the roles defined
42 in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or
43 a biomass collector may not claim a credit under this section.
- 44 (d) A credit under this section may be claimed only once for each unit of biomass.
- 45 (e) Notwithstanding paragraph (a) of this subsection, a tax credit:

1 (A) Is not allowed for canola grown, collected or produced in the Willamette Valley; and

2 (B) Is not allowed for grain corn, but a tax credit shall be allowed for other corn material.

3 (4) The amount of the credit shall equal the amount certified under subsection (5) **or (6)** of this
4 section, **but may not exceed the tax liability of the taxpayer.**

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

9 *[(b) The State Department of Energy may charge and collect a fee from taxpayers for certification*
10 *of credits under this section. The fee may not exceed the cost to the department of determining the*
11 *amount of certified cost.]*

12 *[(c) The State Department of Energy shall provide to the Department of Revenue a list, by tax year,*
13 *of taxpayers for which a credit is certified under this section, upon request of the Department of Re-*
14 *venue.]*

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

17 **(5) The State Department of Energy:**

18 **(a) May establish by rule procedures and criteria for determining the amount of the tax**
19 **credit to be certified under this section, other than credits for woody biomass, consistent**
20 **with ORS 469B.403.**

21 **(b) Shall provide written certification to taxpayers that are eligible to claim the credit**
22 **under this section.**

23 **(c) May charge and collect a fee from taxpayers for certification of credits under this**
24 **section, not to exceed the cost to the department of determining the amount of certified**
25 **cost.**

26 **(d) Shall provide to the Department of Revenue a list, by tax year, of taxpayers for which**
27 **a credit is certified under this section, upon request of the Department of Revenue.**

28 **(6) The State Forestry Department:**

29 **(a) May establish by rule procedures and criteria for determining the amount of the tax**
30 **credit to be certified under this section, for credits allowed for woody biomass, consistent**
31 **with ORS 469B.403.**

32 **(b) Shall provide written certification to taxpayers that are eligible to claim the credit**
33 **under this section.**

34 **(c) May charge and collect a fee from taxpayers for certification of credits under this**
35 **section, not to exceed the cost to the department of determining the amount of certified**
36 **cost.**

37 **(d) Shall provide to the Department of Revenue a list, by tax year, of taxpayers for which**
38 **a credit is certified under this section, upon request of the Department of Revenue.**

39 **(7) The total amount certified for tax credits for the collection of woody biomass may**
40 **not exceed \$600,000 for all taxpayers for the tax year in which the certification is made.**

41 *[(7)]* **(8)** Each agricultural producer or biomass collector shall maintain the written documenta-
42 tion of the amount certified for tax credit under this section in its records for a period of at least
43 five years after the tax year in which the credit is claimed and provide the written documentation
44 to the Department of Revenue upon request.

45 *[(8)]* **(9)** The credit shall be claimed on a form prescribed by the Department of Revenue that

1 contains the information required by the department.

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

9 [(10)] (11) In the case of a credit allowed under this section:

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

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

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

18 **SECTION 3.** ORS 315.144 is amended to read:

19 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit
20 to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

21 (2) A tax credit allowed under ORS 315.141 may be transferred on or before the date on which
22 the return is due for the tax year in which the credit may first be claimed. After that date, no
23 portion of a credit allowed under ORS 315.141 may be transferred.

24 (3) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will claim
25 the credit shall, on or before the date prescribed in subsection (2) of this section, jointly file a notice
26 of tax credit transfer with the Department of Revenue. The notice shall be given on a form pre-
27 scribed by the department that contains all of the following:

28 (a) The name and address of the transferor and transferee;

29 (b) The amount of the tax credit that is being transferred;

30 (c) The amount of the tax credit that is being retained by the transferor; and

31 (d) Any other information required by the department.

32 (4) The State Department of Energy may establish by rule a minimum discounted value of a tax
33 credit, **other than a credit allowed for woody biomass**, under this section.

34 (5) **The State Forestry Department may establish by rule a minimum discounted value**
35 **of a tax credit allowed under this section for woody biomass.**

36 [(5)] (6) The Department of Revenue, in consultation with the State Department of Energy, **or**
37 **the State Forestry Department, in the case of a credit allowed for woody biomass**, may by
38 rule establish procedures for the transfer of tax credits provided by this section.

39 **SECTION 4. The amendments to ORS 315.141 and 315.144 by sections 2 and 3 of this 2017**
40 **Act apply to tax years beginning on or after January 1, 2018, and to applications for certi-**
41 **fication under ORS 315.141 filed after January 1, 2018.**

42 **SECTION 5. This 2017 Act takes effect on the 91st day after the date on which the 2017**
43 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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