

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 55th Legislature (2015)

4 HOUSE BILL 1554

By: Sears and Bennett of the
House

5 and

6 Mazzei of the Senate

7
8
9 AS INTRODUCED

10 **[revenue and taxation - income tax credit for**
11 **electricity produced from certain zero emission**
12 **facilities - effective date]**

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16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2357.32A-1 of Title 68, unless
19 there is created a duplication in numbering, reads as follows:

20 A. As used in this section:

21 1. "Electricity generated by zero-emission facilities" means
22 electricity that is exclusively produced by any facility located in
23 this state with a rated production capacity of one megawatt (1 MW)
24 or greater, constructed for the generation of electricity on or

1 after January 1, 2016, and first placed in operation on or after
2 January 1, 2016, which utilizes eligible renewable resources as its
3 fuel source. The construction and operation of such facilities
4 shall result in no pollution or emissions that are or may be harmful
5 to the environment, pursuant to a determination by the Department of
6 Environmental Quality; and

7 2. "Eligible renewable resources" means resources derived from:

- 8 a. wind,
- 9 b. moving water,
- 10 c. sun, or
- 11 d. geothermal energy.

12 B. For taxable years beginning on or after January 1, 2016, and
13 ending not later than December 31, 2020, there shall be allowed a
14 credit against the tax imposed pursuant to Section 2355 of Title 68
15 of the Oklahoma Statutes to a taxpayer for the taxpayer's production
16 and sale to an unrelated person of electricity generated by zero-
17 emission facilities located in this state equal to:

18 1. Five-tenths of one cent (\$0.005) per kilowatt hour for
19 electricity generated during calendar year 2016;

20 2. Four-tenths of one cent (\$0.004) per kilowatt hour for
21 electricity generated during calendar year 2017;

22 3. Three-tenths of one cent (\$0.003) per kilowatt hour for
23 electricity generated during calendar year 2018;

1 4. Two-tenths of one cent (\$0.002) per kilowatt hour for
2 electricity generated during calendar year 2019; and

3 5. One-tenth of one cent (\$0.001) per kilowatt hour for
4 electricity generated during calendar year 2020.

5 C. The credits authorized pursuant to the provisions of this
6 section shall not be transferable.

7 D. The credits authorized pursuant to the provisions of this
8 section may be allocated to members of partnerships, shareholders in
9 corporations, members of limited liability companies or other owners
10 of equity interests in a business entity entitled to the credits
11 according to the applicable provisions of the Internal Revenue Code
12 of 1986, as amended, regarding pass-through treatment of profits,
13 losses and tax credits.

14 E. For credits generated, but not used to reduce an income tax
15 liability on an income tax return, after January 1, 2016, the
16 Oklahoma Tax Commission shall refund, at the taxpayer's election,
17 directly to the taxpayer eighty-five percent (85%) of the face
18 amount of such credits. The direct refund of the credits pursuant
19 to this subsection shall be available to all taxpayers, including,
20 without limitation, pass-through entities and taxpayers subject to
21 Section 2355 of Title 68 of the Oklahoma Statutes. The amount of
22 any direct refund of credits actually received at the eighty-five
23 percent (85%) level by the taxpayer pursuant to this subsection
24 shall not be subject to the tax imposed by Section 2355 of Title 68

1 of the Oklahoma Statutes. If the pass-through entity does not file
2 a claim for a direct refund, the pass-through entity shall allocate
3 the credit to one or more of the shareholders, partners or members
4 of the pass-through entity; provided, the total of all credits
5 refunded or allocated shall not exceed the amount of the credit or
6 refund to which the pass-through entity is entitled. For the
7 purposes of this subsection, "pass-through entity" means a
8 corporation that for the applicable tax year is treated as an S
9 corporation under the Internal Revenue Code of 1986, as amended,
10 general partnership, limited partnership, limited liability
11 partnership, trust or limited liability company that for the
12 applicable tax year is not taxed as a corporation for federal income
13 tax purposes.

14 F. The credits authorized by this section may be claimed for
15 use in reducing an income tax liability with respect to each tax
16 year as authorized by subsection B of this section or the credits
17 may be refunded, based upon the election of the taxpayer, with
18 respect to each tax year as authorized by subsection E of this
19 section.

20 G. There shall be no carryover of unused tax credits from one
21 taxable year to any other taxable year. All tax credits authorized
22 pursuant to the provisions of this section shall either be used to
23 reduce an income tax liability on an income tax return, or the tax
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1 credits shall be refunded pursuant to the provisions of subsection E
2 of this section.

3 H. The tax credits authorized by the provisions of this section
4 shall not be authorized for any electricity generated by a zero
5 emission facility after December 31, 2020.

6 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
7 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2014,
8 Section 2357.32A), is amended to read as follows:

9 Section 2357.32A A. Except as otherwise provided in subsection
10 H of this section, for tax years beginning on or after January 1,
11 2003, and for tax years ending not later than December 31, 2015,
12 there shall be allowed a credit against the tax imposed by Section
13 2355 of Title 68 of the Oklahoma Statutes to a taxpayer for the
14 taxpayer's production and sale to an unrelated person of electricity
15 generated by zero-emission facilities located in this state. As
16 used in this section:

17 1. "Electricity generated by zero-emission facilities" means
18 electricity that is exclusively produced by any facility located in
19 this state with a rated production capacity of one megawatt (1 mw)
20 or greater, constructed for the generation of electricity and placed
21 in operation after June 4, 2001, which utilizes eligible renewable
22 resources as its fuel source. The construction and operation of
23 such facilities shall result in no pollution or emissions that are
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1 or may be harmful to the environment, pursuant to a determination by
2 the Department of Environmental Quality; and

3 2. "Eligible renewable resources" means resources derived from:

- 4 a. wind,
- 5 b. moving water,
- 6 c. sun, or
- 7 d. geothermal energy.

8 B. For facilities placed in operation on or after January 1,
9 2003, and before January 1, 2007, the amount of the credit for the
10 electricity generated on or after January 1, 2003, but prior to
11 January 1, 2004, shall be seventy-five one-hundredths of one cent
12 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
13 emission facilities. For electricity generated on or after January
14 1, 2004, but prior to January 1, 2007, the amount of the credit
15 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
16 hour for electricity generated by zero-emission facilities. For
17 electricity generated on or after January 1, 2007, but prior to
18 January 1, 2012, the amount of the credit shall be twenty-five one-
19 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
20 generated by zero-emission facilities. For facilities placed in
21 operation on or after January 1, 2007, and before January 1, ~~2021~~
22 2016, the amount of the credit for the electricity generated on or
23 after January 1, 2007, shall be fifty one-hundredths of one cent
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1 (\$0.0050) for each kilowatt-hour of electricity generated by zero-
2 emission facilities.

3 C. ~~Credits~~ 1. Except as provided by paragraph 2 of this
4 subsection, credits may be claimed with respect to electricity
5 generated on or after January 1, 2003, during a ten-year period
6 following the date that the facility is placed in operation on or
7 after June 4, 2001, but not later than December 31, 2015.

8 2. The provisions of this subsection shall not be applicable
9 with respect to a zero emission facility which becomes operational
10 and produces electricity for the first time on or after January 1,
11 2016.

12 D. 1. For credits generated prior to January 1, 2014, if the
13 credit allowed pursuant to this section exceeds the amount of income
14 taxes due or if there are no state income taxes due on the income of
15 the taxpayer, the amount of the credit allowed but not used in any
16 tax year may be carried forward as a credit against subsequent
17 income tax liability for a period not exceeding ten (10) years.

18 2. For credits generated, but not used, on or after January 1,
19 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
20 election, directly to the taxpayer eighty-five percent (85%) of the
21 face amount of such credits. The direct refund of the credits
22 pursuant to this paragraph shall be available to all taxpayers,
23 including, without limitation, pass-through entities and taxpayers
24 subject to Section 2355 of this title, but shall not be available to

1 any entities falling within the provisions of subsection E of this
2 section. The amount of any direct refund of credits actually
3 received at the eighty-five percent (85%) level by the taxpayer
4 pursuant to this paragraph shall not be subject to the tax imposed
5 by Section 2355 of this title. If the pass-through entity does not
6 file a claim for a direct refund, the pass-through entity shall
7 allocate the credit to one or more of the shareholders, partners or
8 members of the pass-through entity; provided, the total of all
9 credits refunded or allocated shall not exceed the amount of the
10 credit or refund to which the pass-through entity is entitled. For
11 the purposes of this paragraph, "pass-through entity" means a
12 corporation that for the applicable tax year is treated as an S
13 corporation under the Internal Revenue Code of 1986, as amended,
14 general partnership, limited partnership, limited liability
15 partnership, trust or limited liability company that for the
16 applicable tax year is not taxed as a corporation for federal income
17 tax purposes.

18 E. Any nontaxable entities, including agencies of the State of
19 Oklahoma or political subdivisions thereof, shall be eligible to
20 establish a transferable tax credit in the amount provided in
21 subsection B of this section. Such tax credit shall be a property
22 right available to a state agency or political subdivision of this
23 state to transfer or sell to a taxable entity, whether individual or
24 corporate, who shall have an actual or anticipated income tax

1 liability under Section 2355 of this title. These tax credit
2 provisions are authorized as an incentive to the State of Oklahoma,
3 its agencies and political subdivisions to encourage the expenditure
4 of funds in the development, construction and utilization of
5 electricity from zero-emission facilities as defined in subsection A
6 of this section.

7 F. For credits generated prior to January 1, 2014, the amount
8 of the credit allowed, but not used, shall be freely transferable at
9 any time during the ten (10) years following the year of
10 qualification. Any person to whom or to which a tax credit is
11 transferred shall have only such rights to claim and use the credit
12 under the terms that would have applied to the entity by whom or by
13 which the tax credit was transferred. The provisions of this
14 subsection shall not limit the ability of a tax credit transferee to
15 reduce the tax liability of the transferee, regardless of the actual
16 tax liability of the tax credit transferor, for the relevant taxable
17 period. The transferor initially allowed the credit and any
18 subsequent transferees shall jointly file a copy of any written
19 transfer agreement with the Oklahoma Tax Commission within thirty
20 (30) days of the transfer. The written agreement shall contain the
21 name, address and taxpayer identification number or social security
22 number of the parties to the transfer, the amount of the credit
23 being transferred, the year the credit was originally allowed to the
24 transferor, and the tax year or years for which the credit may be

1 claimed. The Tax Commission may promulgate rules to permit
2 verification of the validity and timeliness of the tax credit
3 claimed upon a tax return pursuant to this subsection but shall not
4 promulgate any rules that unduly restrict or hinder the transfers of
5 such tax credit. The tax credit allowed by this section, upon the
6 election of the taxpayer, may be claimed as a payment of tax, a
7 prepayment of tax or a payment of estimated tax for purposes of
8 Section 1803 or Section 2355 of this title.

9 G. For electricity generation produced and sold in a calendar
10 year, the tax credit allowed by the provisions of this section, upon
11 election of the taxpayer, shall be treated and may be claimed as a
12 payment of tax, a prepayment of tax or a payment of estimated tax
13 for purposes of Section 2355 of this title on or after July 1 of the
14 following calendar year.

15 H. No credit otherwise authorized by the provisions of this
16 section may be claimed for any event, transaction, investment,
17 expenditure or other act occurring on or after July 1, 2010, for
18 which the credit would otherwise be allowable until the provisions
19 of this subsection shall cease to be operative on July 1, 2011.
20 Beginning July 1, 2011, the credit authorized by this section may be
21 claimed for any event, transaction, investment, expenditure or other
22 act occurring on or after July 1, 2010, according to the provisions
23 of this section. Any tax credits which accrue during the period of
24 July 1, 2010, through June 30, 2011, may not be claimed for any

1 period prior to the taxable year beginning January 1, 2012. No
2 credits which accrue during the period of July 1, 2010, through June
3 30, 2011, may be used to file an amended tax return for any taxable
4 year prior to the taxable year beginning January 1, 2012.

5 I. The provisions of this section shall not be operative with
6 respect to any electricity produced by a zero emission facility
7 which becomes operational and produces electricity for the first
8 time on or after January 1, 2016. Any tax credits which may be
9 claimed with respect to such zero emission facility may only be
10 computed and claimed as provided by Section 1 of this act.

11 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.4, is
12 amended to read as follows:

13 Section 2357.4 A. Except as otherwise provided in subsection F
14 of Section 3658 of this title and in subsection J and K of this
15 section, for taxable years beginning after December 31, 1987, there
16 shall be allowed a credit against the tax imposed by Section 2355 of
17 this title for:

18 1. Investment in qualified depreciable property placed in
19 service during those years for use in a manufacturing operation, as
20 defined in Section 1352 of this title, which has received a
21 manufacturer exemption permit pursuant to the provisions of Section
22 1359.2 of this title or a qualified aircraft maintenance or
23 manufacturing facility as defined in paragraph 14 of Section 1357 of
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1 this title in this state or a qualified web search portal as defined
2 paragraph 35 of Section 1357 of this title; or

3 2. A net increase in the number of full-time-equivalent
4 employees engaged in manufacturing, processing or aircraft
5 maintenance in this state including employees engaged in support
6 services.

7 B. Except as otherwise provided in subsection F of Section 3658
8 of this title and in subsection J of this section, for taxable years
9 beginning after December 31, 1998, there shall be allowed a credit
10 against the tax imposed by Section 2355 of this title for:

11 1. Investment in qualified depreciable property with a total
12 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
13 within three (3) years from the date of initial qualifying
14 expenditure and placed in service in this state during those years
15 for use in the manufacture of products described by any Industry
16 Number contained in Division D of Part I of the Standard Industrial
17 Classification (SIC) Manual, latest revision; or

18 2. A net increase in the number of full-time-equivalent
19 employees in this state engaged in the manufacture of any goods
20 identified by any Industry Number contained in Division D of Part I
21 of the Standard Industrial Classification (SIC) Manual, latest
22 revision, if the total cost of qualified depreciable property placed
23 in service by the business entity within the state equals or exceeds
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Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

C. The business entity may claim the credit authorized by subsection B of this section for expenditures incurred or for a net increase in the number of full-time-equivalent employees after the business entity provides proof satisfactory to the Oklahoma Tax Commission that the conditions imposed pursuant to paragraph 1 or paragraph 2 of subsection B of this section have been satisfied.

D. If a business entity fails to expend the amount required by paragraph 1 or paragraph 2 of subsection B of this section within the time required, the business entity may not claim the credit authorized by subsection B of this section, but shall be allowed to claim a credit pursuant to subsection A of this section if the requirements of subsection A of this section are met with respect to the investment in qualified depreciable property or net increase in the number of full-time-equivalent employees.

E. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00). The credit provided for in subsection A or B of this section shall not be allowed if the applicable investment is the direct cause of a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment,

1 buildings or substantial improvements thereto, placed in service in
2 this state during the taxable year. The taxable years for which the
3 credit may be allowed if based upon investment in qualified
4 depreciable property shall be measured from the year in which the
5 qualified property is placed in service. If the credit provided for
6 in subsection A or B of this section is calculated on the basis of
7 the cost of the qualified property, the credit shall be allowed in
8 each of the four (4) subsequent years. If the qualified property on
9 which a credit has previously been allowed is acquired from a
10 related party, the date such property is placed in service by the
11 transferor shall be considered to be the date such property is
12 placed in service by the transferee, for purposes of determining the
13 aggregate number of years for which credit may be allowed.

14 F. The credit provided for in subsection A or B of this
15 section, if based upon an increase in the number of full-time-
16 equivalent employees, shall be allowed in each of the four (4)
17 subsequent years only if the level of new employees is maintained in
18 the subsequent year. In calculating the credit by the number of new
19 employees, only those employees whose paid wages or salary were at
20 least Seven Thousand Dollars (\$7,000.00) during each year the credit
21 is claimed shall be included in the calculation. Provided, that the
22 first year a credit is claimed for a new employee, such employee may
23 be included in the calculation notwithstanding paid wages of less
24 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in

1 the last three quarters of the tax year, has wages or salary which
2 will result in annual paid wages in excess of Seven Thousand Dollars
3 (\$7,000.00) and the taxpayer submits an affidavit stating that the
4 employee's position will be retained in the following tax year and
5 will result in the payment of wages in excess of Seven Thousand
6 Dollars (\$7,000.00). The number of new employees shall be
7 determined by comparing the monthly average number of full-time
8 employees subject to Oklahoma income tax withholding for the final
9 quarter of the taxable year with the corresponding period of the
10 prior taxable year, as substantiated by such reports as may be
11 required by the Tax Commission.

12 G. The credit allowed by subsection A of this section shall be
13 the greater amount of either:

14 1. One percent (1%) of the cost of the qualified property in
15 the year the property is placed in service; or

16 2. Five Hundred Dollars (\$500.00) for each new employee. No
17 credit shall be allowed in any taxable year for a net increase in
18 the number of full-time-equivalent employees if such increase is a
19 result of an investment in qualified depreciable property for which
20 an income tax credit has been allowed as authorized by this section.

21 H. The credit allowed by subsection B of this section shall be
22 the greater amount of either:

23 1. Two percent (2%) of the cost of the qualified property in
24 the year the property is placed in service; or

2. One Thousand Dollars (\$1,000.00) for each new employee.

No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

I. Except as provided by subsection G of Section 3658 of this title, any credits allowed but not used in any taxable year may be carried over in order as follows:

1. To each of the four (4) years following the year of qualification;

2. To the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period; and

3. If a C corporation that otherwise qualified for the credits under subsection A of this section subsequently changes its operating status to that of a pass-through entity which is being treated as the same entity for federal tax purposes, the credits will continue to be available as if the pass-through entity had originally qualified for the credits subject to the limitations of this section.

To the extent not used in paragraphs 1 and 2 of this subsection, such credits from qualified depreciable property placed in service on or after January 1, 2000, may be utilized in any subsequent tax years after the initial twenty-year period.

1 J. No credit otherwise authorized by the provisions of this
2 section may be claimed for any event, transaction, investment,
3 expenditure or other act occurring on or after July 1, 2010, for
4 which the credit would otherwise be allowable until the provisions
5 of this subsection shall cease to be operative on July 1, 2012.
6 Beginning July 1, 2012, the credit authorized by this section may be
7 claimed for any event, transaction, investment, expenditure or other
8 act occurring on or after July 1, 2010, according to the provisions
9 of this section; provided, credits accrued during the period from
10 July 1, 2010, through June 30, 2012, shall be limited to a period of
11 two (2) taxable years. The credit shall be limited in each taxable
12 year to fifty percent (50%) of the total amount of the accrued
13 credit. Any tax credits which accrue during the period of July 1,
14 2010, through June 30, 2012, may not be claimed for any period prior
15 to the taxable year beginning January 1, 2012. No credits which
16 accrue during the period of July 1, 2010, through June 30, 2012, may
17 be used to file an amended tax return for any taxable year prior to
18 the taxable year beginning January 1, 2012.

19 K. Beginning January 1, 2016, the credits authorized by this
20 section may not be used by any person, firm, partnership,
21 corporation, limited liability company or any other lawfully
22 recognized business entity if the person or entity claims any tax
23 credit or requests a refund as authorized by law with respect to tax
24 credits for electric power produced by a zero emission facility

1 pursuant to Section 2357.32A of this title or pursuant to Section 1
2 of this act if:

3 1. The qualified depreciable property for purposes of the
4 credit authorized by this section consists of the same assets or
5 substantially the same assets used to produce the electric power for
6 which the tax credit authorized by Section 2357.32A of this title or
7 by Section 1 of this act is authorized; or

8 2. If the increase in full-time-equivalent jobs occurs as a
9 result of the same business activity which produces electric power
10 for which the tax credit authorized by Section 2357.32A of this
11 title or by Section 1 of this act is authorized.

12 SECTION 4. This act shall become effective January 1, 2016.

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14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
15 02/19/2015 - DO PASS, As Amended and Coauthored.
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