

1 **SENATE FLOOR VERSION**

2 March 1, 2018

3 **AS AMENDED**

4 SENATE BILL NO. 1035

5 By: **Schulz**

6 **[income tax credits - zero-emission electricity -**
7 **effective date]**

8
9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
11 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
12 2017, Section 2357.32A), is amended to read as follows:

13 Section 2357.32A. A. Except as otherwise provided in
14 subsection H of this section, for tax years beginning on or after
15 January 1, 2003, there shall be allowed a credit against the tax
16 imposed by Section 2355 of this title to a taxpayer for the
17 taxpayer's production and sale to an unrelated person of electricity
18 generated by zero-emission facilities located in this state. As
19 used in this section:

20 1. "Electricity generated by zero-emission facilities" means
21 electricity that is exclusively produced by any facility located in
22 this state with a rated production capacity of one megawatt (1 mw)
23 or greater, constructed for the generation of electricity and placed
24 in operation after June 4, 2001, and with respect to electricity

1 generated by wind for any facility placed in operation not later
2 than July 1, 2017, which utilizes eligible renewable resources as
3 its 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 facilities placed in operation on or after January 1,
13 2003, and before January 1, 2007, the amount of the credit for the
14 electricity generated on or after January 1, 2003, but prior to
15 January 1, 2004, shall be seventy-five one-hundredths of one cent
16 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
17 emission facilities. For electricity generated on or after January
18 1, 2004, but prior to January 1, 2007, the amount of the credit
19 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
20 hour for electricity generated by zero-emission facilities. For
21 electricity generated on or after January 1, 2007, but prior to
22 January 1, 2012, the amount of the credit shall be twenty-five one-
23 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
24 generated by zero-emission facilities. For facilities placed in

1 operation on or after January 1, 2007, and before January 1, 2021,
2 or with respect to electricity generated by wind for any facility
3 placed in operation not later than July 1, 2017, the amount of the
4 credit for the electricity generated on or after January 1, 2007,
5 shall be fifty one-hundredths of one cent (\$0.0050) for each
6 kilowatt-hour of electricity generated by zero-emission facilities,
7 except as otherwise provided in subsection I of this section.

8 C. Credits may be claimed with respect to electricity generated
9 on or after January 1, 2003, during a ten-year period following the
10 date that the facility is placed in operation on or after June 4,
11 2001.

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, except as otherwise provided in
22 subsection I of this section. The direct refund of the credits
23 pursuant to this paragraph shall be available to all taxpayers,
24 including, without limitation, pass-through entities and taxpayers

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

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

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

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

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

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

16 H. No credit otherwise authorized by the provisions of this
17 section may be claimed for any event, transaction, investment,
18 expenditure or other act occurring on or after July 1, 2010, for
19 which the credit would otherwise be allowable until the provisions
20 of this subsection shall cease to be operative on July 1, 2011.
21 Beginning July 1, 2011, the credit authorized by this section may be
22 claimed for any event, transaction, investment, expenditure or other
23 act occurring on or after July 1, 2010, according to the provisions
24 of this section. Any tax credits which accrue during the period of

1 July 1, 2010, through June 30, 2011, may not be claimed for any
2 period prior to the taxable year beginning January 1, 2012. No
3 credits which accrue during the period of July 1, 2010, through June
4 30, 2011, may be used to file an amended tax return for any taxable
5 year prior to the taxable year beginning January 1, 2012.

6 I. 1. The total amount of all refundable credits allowed in a
7 taxable year shall be limited to the percentage calculated by the
8 Oklahoma Tax Commission pursuant to the provisions of this
9 subsection; provided, such limit shall apply only to credits for
10 electricity generated by means of eligible renewable resources other
11 than wind.

12 2. The total amount of all claims allowed for refundable
13 credits pursuant to this subsection for tax year 2018 and all
14 subsequent years shall not exceed Five Million Dollars
15 (\$5,000,000.00).

16 3. The total amount of all refundable credits allowed by this
17 subsection shall be claimed before October 15 of any year for
18 electricity generated during the prior tax year. The Tax Commission
19 shall not allow or pay any claim filed on or after October 15 for
20 any electricity generated during the prior tax year.

21 4. If the Tax Commission determines the total amount of
22 refundable credits allowed pursuant to this subsection exceeds the
23 limitations provided in this subsection, the Tax Commission shall
24 determine the percentage of the credit which establishes the

1 proportionate share which may be claimed so that the maximum amount
2 authorized is not exceeded.

3 5. The Tax Commission shall notify the Office of the State
4 Secretary of Energy and Environment at any time when the amount of
5 claims for credits allowed pursuant to this subsection reaches
6 eighty percent (80%) of the total annual limit provided in paragraph
7 2 of this subsection. Upon such notification, the Secretary shall
8 provide notice to the Governor, President Pro Tempore of the Senate
9 and Speaker of the House of Representatives.

10 SECTION 2. This act shall become effective November 1, 2018.

11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
12 March 1, 2018 - DO PASS AS AMENDED
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