

1 STATE OF OKLAHOMA

2 2nd Extraordinary Session of the 56th Legislature (2017)

3 SENATE BILL 6xx

By: Dahm

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6 AS INTRODUCED

7 An Act relating to education funding; providing
8 intent; amending 68 O.S. 2011, Section 2352, as last
9 amended by Section 5, Chapter 337, O.S.L. 2016 (68
10 O.S. Supp. 2017, Section 2352), which relates to
11 apportionment of income tax revenue; directing
12 certain apportionment to Education Reform Revolving
13 Fund; and amending 68 O.S. 2011, Section 2357.32A, as
14 last amended by Section 1, Chapter 44, O.S.L. 2017
(68 O.S. Supp. 2017, Section 2357.32A), which relates
to income tax credits for electricity generated by
zero-emission facilities; providing exception to
authority for refund of certain credits; limiting
time period during which unused credits are
refundable; providing for noncodification; and
providing an effective date.

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

18 SECTION 1. NEW LAW A new section of law not to be
19 codified in the Oklahoma Statutes reads as follows:

20 It is hereby declared the intent of the Oklahoma Legislature
21 that income tax revenue collected as a result of Section 3 of this
22 act, which in the absence of this act would otherwise be refunded as
23 a credit pursuant to the provisions of Section 2357.32A of Title 68
24 of the Oklahoma Statutes, shall be dedicated to education funding by

1 apportionment to the Education Reform Revolving Fund as provided in
2 Section 2 of this act.

3 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2352, as
4 last amended by Section 5, Chapter 337, O.S.L. 2016 (68 O.S. Supp.
5 2017, Section 2352), is amended to read as follows:

6 Section 2352. A. It is hereby declared to be the purpose of
7 Section 2351 et seq. of this title to provide revenue for general
8 governmental functions of state government; and, for that purpose
9 and to that end, it is expressly declared that the revenue derived
10 herefrom and penalties and interest thereon, subject to the
11 apportionment requirements for the Rebuilding Oklahoma Access and
12 Driver Safety Fund, the Oklahoma Tourism and Passenger Rail
13 Revolving Fund and the Public Transit Revolving Fund to be derived
14 from income tax revenue that would otherwise be apportioned to the
15 General Revenue Fund as provided by Section 1521 of Title 69 of the
16 Oklahoma Statutes, subject to the apportionment requirements for the
17 Oklahoma Tax Commission and Office of Management and Enterprise
18 Services Joint Computer Enhancement Fund provided by Section 265 of
19 this title, and subject to the apportionment requirements ~~for the~~
20 ~~Oklahoma State Capitol Building Repair and Restoration Fund provided~~
21 ~~by Section 19 of Title 73 of the Oklahoma Statutes~~ provided for in
22 subsection B of this section, shall be distributed as follows:

23 1. For the fiscal year beginning July 1, 2002, the first Five
24 Million Eight Hundred Thousand Dollars (\$5,800,000.00) of revenue

1 derived pursuant to the provisions of subsections A, B and E of
2 Section 2355 of this title shall be apportioned to the Education
3 Reform Revolving Fund. The remainder of such revenue for the fiscal
4 year beginning July 1, 2002, and all such revenue for each fiscal
5 year thereafter shall be apportioned monthly as follows:

6 a. (1) the following amounts shall be paid to the State
7 Treasurer to be placed to the credit of the
8 General Revenue Fund of the state for such fiscal
9 year for the support of the state government to
10 be paid out only pursuant to appropriation by the
11 Legislature:

Fiscal Year	Amount
FY 2003 and FY 2004	87.12%
FY 2005	86.91%
FY 2006	86.66%
FY 2007	86.16%
FY 2008 and each fiscal year thereafter	85.66%

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19 (2) in the event that additional monies are necessary
20 pursuant to paragraph 3 of this section, such
21 additional monies shall be deducted in the
22 proportion determined by the State Board of
23 Equalization pursuant to paragraph 3 of Section
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1 2355.1B of this title from the monies apportioned
2 to the General Revenue Fund,

3 b. for FY 2003 and each fiscal year thereafter, eight and
4 thirty-four one-hundredths percent (8.34%) shall be
5 paid to the State Treasurer to be placed to the credit
6 of the Education Reform Revolving Fund,

7 c. the following amounts shall be paid to the State
8 Treasurer to be placed to the credit of the Teachers'
9 Retirement System Dedicated Revenue Revolving Fund:

Fiscal Year	Amount
FY 2003 and FY 2004	3.54%
FY 2005	3.75%
FY 2006	4.0%
FY 2007	4.5%
FY 2008 and each fiscal year thereafter	5.0%

17 d. for FY 2003 and each fiscal year thereafter, one
18 percent (1%) shall be placed to the credit of the Ad
19 Valorem Reimbursement Fund;

20 2. Beginning July 1, 2003, for any period of time as certified
21 by the Oklahoma Development Finance Authority and the Oklahoma
22 Department of Commerce to be necessary for the repayment of
23 obligations issued by the Oklahoma Development Finance Authority
24 pursuant to Section 3654 of this title if the other sources of

1 revenue paid to or apportioned to the Quality Jobs Program Incentive
2 Leverage Fund are not adequate, including the proceeds from payment
3 pursuant to the guaranty required by subsection M of Section 3654 of
4 this title, an amount certified by the Oklahoma Development Finance
5 Authority to the Oklahoma Tax Commission shall be apportioned to the
6 Quality Jobs Program Incentive Leverage Fund before any other
7 apportionments are made as otherwise authorized by this paragraph.
8 The Oklahoma Development Finance Authority shall certify to the
9 Oklahoma Tax Commission the time as of which the revenue authorized
10 for apportionment pursuant to this paragraph is no longer required.
11 After the certification, the revenue derived from the income tax
12 shall be apportioned in the manner otherwise provided by this
13 section. Except as otherwise provided by this paragraph, for the
14 fiscal year beginning July 1, 2002, the first Forty-One Million One
15 Hundred Ninety Thousand Eight Hundred Dollars (\$41,190,800.00) of
16 revenue derived pursuant to the provisions of subsections D and E of
17 Section 2355 of this title shall be apportioned to the Education
18 Reform Revolving Fund. The remainder of such revenue for the fiscal
19 year beginning July 1, 2002, and all such revenue for each fiscal
20 year thereafter, subject to the apportionment requirements for the
21 Oklahoma Tax Commission and Office of Management and Enterprise
22 Services Joint Computer Enhancement Fund provided by Section 265 of
23 this title, shall be apportioned monthly as follows:

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1 a. the following amounts shall be paid to the State
2 Treasurer to be placed to the credit of the General
3 Revenue Fund of the state for such fiscal year for the
4 support of the state government to be paid out only
5 pursuant to appropriation by the Legislature:

6 Fiscal Year	Amount
7 FY 2003 and FY 2004	78.96%
8 FY 2005	78.75%
9 FY 2006	78.50%
10 FY 2007	78.0%

11 (1) FY 2018 and each fiscal
12 year thereafter until the
13 apportionment to the
14 General Revenue Fund
15 equals the moving five-
16 year average amount for
17 corporate income tax as
18 prescribed by paragraph 4
19 of this section 77.50%

20 (2) there shall be apportioned from the tax
21 levy imposed on corporate income tax to
22 the Revenue Stabilization Fund created by
23 Section 1 of this act, or to the
24 Constitutional Reserve Fund, as provided

1 by Section 1 of this act, the amount of
2 revenue, if any, which exceeds the moving
3 five-year average amount as defined
4 pursuant to paragraph 4 of this section,

5 b. for FY 2003 and each fiscal year thereafter, sixteen
6 and five-tenths percent (16.5%) shall be paid to the
7 State Treasurer to be placed to the credit of the
8 Education Reform Revolving Fund of the State
9 Department of Education,

10 c. the following amounts shall be paid to the State
11 Treasurer to be placed to the credit of the Teachers'
12 Retirement System Dedicated Revenue Revolving Fund:

13 Fiscal Year	Amount
14 FY 2003 and FY 2004	3.54%
15 FY 2005	3.75%
16 FY 2006	4.0%
17 FY 2007	4.5%
18 FY 2008 and each fiscal	
19 year thereafter	5.0%

20 d. for FY 2003 and each fiscal year thereafter, one
21 percent (1%) shall be placed to the credit of the Ad
22 Valorem Reimbursement Fund;

23 3. During the first fiscal year after the State Board of
24 Equalization has made a determination as provided in Section 2355.1B

1 of this title, regarding a baseline amount of revenue apportioned
2 pursuant to subparagraph c of paragraph 1 of this section, and for
3 each fiscal year thereafter, in no event shall monies apportioned
4 pursuant to subparagraph c of paragraph 1 of this section, paragraph
5 3 of Section 1353 of this title and paragraph 3 of Section 1403 of
6 this title be less than such baseline amount; and

7 4. "Moving five-year average for corporate income tax" means,
8 for purposes of the apportionments prescribed by this section, the
9 amount of income tax on corporations, as determined by the State
10 Board of Equalization in the manner prescribed by Section 2 of this
11 act.

12 B. Prior to the apportionments otherwise provided for in this
13 section, there shall be apportioned to the Education Reform
14 Revolving Fund of the State Department of Education the following
15 amounts in the following fiscal years:

16 FY 2020 \$6,900,000.00; and

17 FY 2021 through FY 2029 \$70,300,000.00.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
19 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
20 2017, Section 2357.32A), is amended to read as follows:

21 Section 2357.32A. A. Except as otherwise provided in
22 subsection H of this section, for tax years beginning on or after
23 January 1, 2003, there shall be allowed a credit against the tax
24 imposed by Section 2355 of this title to a taxpayer for the

1 taxpayer's production and sale to an unrelated person of electricity
2 generated by zero-emission facilities located in this state. As
3 used in this section:

4 1. "Electricity generated by zero-emission facilities" means
5 electricity that is exclusively produced by any facility located in
6 this state with a rated production capacity of one megawatt (1 mw)
7 or greater, constructed for the generation of electricity and placed
8 in operation after June 4, 2001, and with respect to electricity
9 generated by wind for any facility placed in operation not later
10 than July 1, 2017, which utilizes eligible renewable resources as
11 its fuel source. The construction and operation of such facilities
12 shall result in no pollution or emissions that are or may be harmful
13 to the environment, pursuant to a determination by the Department of
14 Environmental Quality; and

15 2. "Eligible renewable resources" means resources derived from:
16 a. wind,
17 b. moving water,
18 c. sun, or
19 d. geothermal energy.

20 B. For facilities placed in operation on or after January 1,
21 2003, and before January 1, 2007, the amount of the credit for the
22 electricity generated on or after January 1, 2003, but prior to
23 January 1, 2004, shall be seventy-five one-hundredths of one cent
24 (\$0.0075) for each kilowatt-hour of electricity generated by zero-

1 emission facilities. For electricity generated on or after January
2 1, 2004, but prior to January 1, 2007, the amount of the credit
3 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
4 hour for electricity generated by zero-emission facilities. For
5 electricity generated on or after January 1, 2007, but prior to
6 January 1, 2012, the amount of the credit shall be twenty-five one-
7 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
8 generated by zero-emission facilities. For facilities placed in
9 operation on or after January 1, 2007, and before January 1, 2021,
10 or with respect to electricity generated by wind for any facility
11 placed in operation not later than July 1, 2017, the amount of the
12 credit for the electricity generated on or after January 1, 2007,
13 shall be fifty one-hundredths of one cent (\$0.0050) for each
14 kilowatt-hour of electricity generated by zero-emission facilities.

15 C. Credits may be claimed with respect to electricity generated
16 on or after January 1, 2003, during a ten-year period following the
17 date that the facility is placed in operation on or after June 4,
18 2001.

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

1 2. ~~For~~ Except as otherwise provided in paragraph 3 of this
2 subsection, for credits generated, but not used, on or after January
3 1, 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
4 election, directly to the taxpayer eighty-five percent (85%) of the
5 face amount of such credits. The direct refund of the credits
6 pursuant to this paragraph shall be available to all taxpayers,
7 including, without limitation, pass-through entities and taxpayers
8 subject to Section 2355 of this title, but shall not be available to
9 any entities falling within the provisions of subsection E of this
10 section. The amount of any direct refund of credits actually
11 received at the eighty-five percent (85%) level by the taxpayer
12 pursuant to this paragraph shall not be subject to the tax imposed
13 by Section 2355 of this title. If the pass-through entity does not
14 file a claim for a direct refund, the pass-through entity shall
15 allocate the credit to one or more of the shareholders, partners or
16 members of the pass-through entity; provided, the total of all
17 credits refunded or allocated shall not exceed the amount of the
18 credit or refund to which the pass-through entity is entitled. For
19 the purposes of this paragraph, "pass-through entity" means a
20 corporation that for the applicable tax year is treated as an S
21 corporation under the Internal Revenue Code of 1986, as amended,
22 general partnership, limited partnership, limited liability
23 partnership, trust or limited liability company that for the

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1 applicable tax year is not taxed as a corporation for federal income
2 tax purposes.

3 3. No refund of unused credits, pursuant to the provisions of
4 this subsection, for electricity generated by wind shall be
5 authorized for tax years beginning on or after January 1, 2019.

6 E. Any nontaxable entities, including agencies of the State of
7 Oklahoma or political subdivisions thereof, shall be eligible to
8 establish a transferable tax credit in the amount provided in
9 subsection B of this section. Such tax credit shall be a property
10 right available to a state agency or political subdivision of this
11 state to transfer or sell to a taxable entity, whether individual or
12 corporate, who shall have an actual or anticipated income tax
13 liability under Section 2355 of this title. These tax credit
14 provisions are authorized as an incentive to the State of Oklahoma,
15 its agencies and political subdivisions to encourage the expenditure
16 of funds in the development, construction and utilization of
17 electricity from zero-emission facilities as defined in subsection A
18 of this section.

19 F. For credits generated prior to January 1, 2014, the amount
20 of the credit allowed, but not used, shall be freely transferable at
21 any time during the ten (10) years following the year of
22 qualification. Any person to whom or to which a tax credit is
23 transferred shall have only such rights to claim and use the credit
24 under the terms that would have applied to the entity by whom or by

1 which the tax credit was transferred. The provisions of this
2 subsection shall not limit the ability of a tax credit transferee to
3 reduce the tax liability of the transferee, regardless of the actual
4 tax liability of the tax credit transferor, for the relevant taxable
5 period. The transferor initially allowed the credit and any
6 subsequent transferees shall jointly file a copy of any written
7 transfer agreement with the Oklahoma Tax Commission within thirty
8 (30) days of the transfer. The written agreement shall contain the
9 name, address and taxpayer identification number or social security
10 number of the parties to the transfer, the amount of the credit
11 being transferred, the year the credit was originally allowed to the
12 transferor, and the tax year or years for which the credit may be
13 claimed. The Tax Commission may promulgate rules to permit
14 verification of the validity and timeliness of the tax credit
15 claimed upon a tax return pursuant to this subsection but shall not
16 promulgate any rules that unduly restrict or hinder the transfers of
17 such tax credit. The tax credit allowed by this section, upon the
18 election of the taxpayer, may be claimed as a payment of tax, a
19 prepayment of tax or a payment of estimated tax for purposes of
20 Section 1803 or Section 2355 of this title.

21 G. For electricity generation produced and sold in a calendar
22 year, the tax credit allowed by the provisions of this section, upon
23 election of the taxpayer, shall be treated and may be claimed as a
24 payment of tax, a prepayment of tax or a payment of estimated tax

1 for purposes of Section 2355 of this title on or after July 1 of the
2 following calendar year.

3 H. No credit otherwise authorized by the provisions of this
4 section may be claimed for any event, transaction, investment,
5 expenditure or other act occurring on or after July 1, 2010, for
6 which the credit would otherwise be allowable until the provisions
7 of this subsection shall cease to be operative on July 1, 2011.
8 Beginning July 1, 2011, the credit authorized by this section may be
9 claimed for any event, transaction, investment, expenditure or other
10 act occurring on or after July 1, 2010, according to the provisions
11 of this section. Any tax credits which accrue during the period of
12 July 1, 2010, through June 30, 2011, may not be claimed for any
13 period prior to the taxable year beginning January 1, 2012. No
14 credits which accrue during the period of July 1, 2010, through June
15 30, 2011, may be used to file an amended tax return for any taxable
16 year prior to the taxable year beginning January 1, 2012.

17 SECTION 4. This act shall become effective November 1, 2018.

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