

A-Engrossed
House Bill 2685

Ordered by the House April 4
Including House Amendments dated April 4

Sponsored by Representative OWENS; Representative LEVY B (at the request of Mark Albertson) (Presession filed.)

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.

Restores availability of income or corporate excise tax credit for processing or collection of woody biomass. **Allows credit for activities related to biochar. Transfers administration of credit from State Department of Energy to State Forestry Department.**

Applies to tax years beginning on or after January 1, 2024, and before January 1, 2030.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for woody biomass; creating new provisions; amending ORS 315.141, 315.144
3 and 469B.403 and 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, section 11, chapter 29, Oregon Laws 2016, and section 12, chapter 610, Oregon Laws 2017, is
8 amended to read:

9 **Sec. 6.** (1) ORS 315.141, 315.144 and 469B.403 apply to tax credits for tax years beginning on
10 or after January 1, 2007, and before January 1, 2018[,], **and to tax years beginning on or after**
11 **January 1, 2024, and before January 1, 2030.**

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 **or biochar.**

19 (b) "**Biochar**" means biomass that has been carbonized or charred from untreated plant
20 **or animal material.**

21 (c) "**Biochar producer**" means a person that through activities in Oregon alters the
22 **physical makeup of biomass to convert it into biochar that is intended for purposes that in-**
23 **clude use as a soil amendment, use in agricultural applications or use in the reclamation of**
24 **contaminated land and water.**

25 [(b)] (d) "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

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 direct biomass energy use at the biofuel producer's site.

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

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

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

5 (C) Uses biomass in Oregon to produce energy.

6 [(d)] (f) "Biomass" means organic matter that is available on a renewable or recurring basis and
7 that is derived from:

8 (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
9 or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

10 (B) Wood material from hardwood timber described in ORS 321.267 (3);

11 (C) Agricultural residues;

12 [(D) *Offal and tallow from animal rendering;*]

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

14 [(F)] (D) Wood debris collected as provided under ORS chapter 459 or 459A; **or**

15 [(G) *Wastewater solids; or*]

16 [(H)] (E) Crops grown solely to be used for energy.

17 [(e)] (g) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol,
18 inorganic arsenic or other inorganic chemical compounds or waste, other than matter described in
19 paragraph [(d)] (f) of this subsection.

20 [(f)] (h) "Biomass collector" means a person that collects biomass in Oregon to be used, in
21 Oregon, as biofuel or to produce biofuel **or biochar**.

22 [(g)] (i) "Canola" means plants of the genus Brassica:

23 (A) In which seeds having a high oil content are the primary economically valuable product; and

24 (B) That have a high erucic acid content suitable for industrial uses or a low erucic acid content
25 suitable for edible oils.

26 [(h) "*Oilseed processor*" means a person that receives agricultural oilseeds and separates them into
27 meal and oil by mechanical or chemical means.]

28 [(i)] (j) "Willamette Valley" means Clackamas, Linn, Marion, Multnomah, Polk, Washington and
29 Yamhill Counties and the portion of Benton and Lane Counties lying east of the summit of the Coast
30 Range.

31 (2) The [Director of the State Department of Energy] **State Forester** may adopt rules to define
32 criteria, only as the criteria apply to organic biomass, to determine additional characteristics of
33 biomass for purposes of this section.

34 (3)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes
35 that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
36 chapter 317 or 318 for:

37 (A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel
38 **or biochar**; or

39 (B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel
40 **or biochar**.

41 (b) A credit under this section may be claimed in the tax year in which the credit is certified
42 under subsection (5) of this section.

43 (c) A taxpayer may be allowed a credit under this section for more than one of the roles defined
44 in subsection (1) of this section, but a biofuel producer **or biochar producer** that is not also an
45 agricultural producer or a biomass collector may not claim a credit under this section.

1 (d) A credit under this section may be claimed only once for each unit of biomass.

2 (e) Notwithstanding paragraph (a) of this subsection, a tax credit:

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

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

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

6 (5)(a) The State [*Department of Energy*] **Forestry Department** may establish by rule procedures
7 and criteria for determining the amount of the tax credit to be certified under this section, consist-
8 ent with ORS 469B.403. **For mixed loads containing biomass and other wood products, the de-**
9 **partment shall establish by rule criteria to determine and certify the amount of credit**
10 **allowed for that portion of the load consisting of biomass.** The department shall provide written
11 certification to taxpayers that are eligible to claim the credit under this section.

12 (b) The State [*Department of Energy*] **Forestry Department** may charge and collect a fee from
13 taxpayers for certification of credits under this section. The fee may not exceed the cost to the de-
14 partment of determining the amount of certified cost.

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

21 (8) The credit shall be claimed on a form prescribed by the Department of Revenue that contains
22 the information required by the department.

23 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
24 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
25 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
26 forward and used in the second succeeding tax year, and likewise any credit not used in that second
27 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
28 credit not used in that third succeeding tax year may be carried forward and used in the fourth
29 succeeding tax year, but may not be carried forward for any tax year thereafter.

30 (10) In the case of a credit allowed under this section:

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

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

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

39 (11) The [*Director of the State Department of Energy*] **State Forester** may order the suspension
40 or revocation of a certification issued under this section, as provided in ORS 315.061.

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

42 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit
43 to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

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

1 portion of a credit allowed under ORS 315.141 may be transferred.

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

- 6 (a) The name and address of the transferor and transferee;
- 7 (b) The amount of the tax credit that is being transferred;
- 8 (c) The amount of the tax credit that is being retained by the transferor; and
- 9 (d) Any other information required by the department.

10 (4) The State [*Department of Energy*] **Forestry Department** may establish by rule a minimum
11 discounted value of a tax credit under this section.

12 (5) The Department of Revenue, in consultation with the State [*Department of Energy*] **Forestry**
13 **Department**, may by rule establish procedures for the transfer of tax credits provided by this sec-
14 tion.

15 **SECTION 4.** ORS 469B.403 is amended to read:

16 469B.403. To be eligible for the tax credit under ORS 315.141, the biomass must be produced or
17 collected in Oregon as a feedstock for **biochar**, bioenergy or biofuel production in Oregon. The
18 credit [*rates for biomass are:*] **rate for biomass is \$10 per bone dry ton.**

19 [(1) *For oilseed crops, \$0.05 per pound.*]

20 [(2) *For grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel.*]

21 [(3) *For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10*
22 *per gallon.*]

23 [(4) *For used cooking oil or waste grease, \$0.10 per gallon.*]

24 [(5) *For wastewater biosolids, \$10.00 per wet ton.*]

25 [(6) *For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property*
26 *in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash*
27 *resulting from harvest or forest health stewardship, \$10.00 per bone dry ton.*]

28 [(7) *For grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per bone*
29 *dry ton.*]

30 [(8) *For animal manure or rendering offal, \$3.50 per wet ton.*]

31 **SECTION 5.** The amendments to ORS 315.141, 315.144 and 469B.403 by sections 2 to 4 of
32 this 2023 Act apply to tax years beginning on or after January 1, 2024, and before January
33 1, 2030.

34 **SECTION 6.** This 2023 Act takes effect on the 91st day after the date on which the 2023
35 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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