

# Senate Bill 251

Sponsored by Senator ROBINSON (Pre-session 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 **as introduced**.

Creates income tax credit for energy production in Oregon. Applies to tax years beginning on or after January 1, 2022.

Establishes Task Force on Free-Market Energy Production. Directs task force to review existing laws related to energy production in Oregon to determine how to ensure all forms of energy production are regulated equally, based on scientific analysis of risks and rewards posed by each form of energy production. Sunsets on December 31, 2024.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to energy; creating new provisions; amending ORS 314.772 and 318.031; and prescribing an  
3 effective date.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Energy facility" includes any facility for the production of energy, including but not**  
8 **limited to facilities powered by wind power, solar power, landfill gas, digester gas, waste,**  
9 **dedicated energy crops, renewable marine energy, nuclear energy, fossil fuels, geothermal**  
10 **energy or hydroelectric power.**

11 (b) **"Energy producer" means a person that produces energy at an energy facility located**  
12 **in Oregon.**

13 (2) **A taxpayer that is an energy producer shall be allowed a credit against taxes that are**  
14 **otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter**  
15 **317 or 318 for energy produced at an energy facility located in Oregon.**

16 (3) **The credit allowed under this section shall equal 50 percent of the taxes due for ac-**  
17 **tivities described in subsection (2) of this section.**

18 (4) **Prior to claiming the credit allowed under this section, a taxpayer is required to re-**  
19 **ceive written certification of eligibility from the Department of Revenue.**

20 (5) **The credit allowed under this section may not exceed the tax liability of the taxpayer**  
21 **for the tax year.**

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

28 (7) **A nonresident shall be allowed the credit under this section. The credit shall be**

**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 **computed in the same manner and be subject to the same limitations as the credit granted**  
2 **to a resident. However, the credit shall be prorated using the proportion provided in ORS**  
3 **316.117.**

4 **(8) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,**  
5 **or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit**  
6 **allowed under this section shall be prorated or computed in a manner consistent with ORS**  
7 **314.085.**

8 **(9) If a change in the status of a taxpayer from resident to nonresident or from nonres-**  
9 **ident to resident occurs, the credit allowed under this section shall be determined in a**  
10 **manner consistent with ORS 316.117.**

11 **(10) The department shall adopt rules for the purposes of this section, including policies**  
12 **and procedures for certifying taxpayers as eligible for the credit allowed under this section**  
13 **as required in subsection (4) of this section.**

14 **SECTION 3.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section  
15 15, chapter 115, Oregon Laws 2022, is amended to read:

16 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a  
17 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
18 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
19 allowable to the shareholders of the S corporation.

20 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on  
21 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
22 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
23 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
24 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
25 manner prescribed under section 1377(a) of the Internal Revenue Code.

26 (3) The character of any item included in a shareholder's pro rata share under subsection (2)  
27 of this section shall be determined as if such item were realized directly from the source from which  
28 realized by the corporation, or incurred in the same manner as incurred by the corporation.

29 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
30 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
31 316.117, then that provision shall apply to the nonresident shareholder.

32 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104  
33 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
34 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture  
35 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS  
36 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee  
37 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution  
38 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy  
39 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-  
40 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-  
41 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),  
42 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS  
43 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS  
44 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643  
45 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account

1 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone  
 2 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research  
 3 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,  
 4 Oregon Laws 2013 (alternative fuel vehicle contributions), section 2, chapter 34, Oregon Laws 2022  
 5 (small forest option), and section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**  
 6 **section 2 of this 2023 Act (energy production).**

7 **SECTION 4.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section  
 8 16, chapter 115, Oregon Laws 2022, is amended to read:

9 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 10 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 11 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 12 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,  
 13 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and  
 14 315.643 and section 2, chapter 34, Oregon Laws 2022, and section 8, chapter 115, Oregon Laws 2022,  
 15 **and section 2 of this 2023 Act** (all only to the extent applicable to a corporation) and ORS chapter  
 16 317.

17 **SECTION 5.** **Section 2 of this 2023 Act applies to tax years beginning on or after January**  
 18 **1, 2022.**

19 **SECTION 6.** (1) **The Task Force on Free-Market Energy Production is established.**

20 **(2) The task force consists of 13 members appointed as follows:**

21 **(a) The President of the Senate, in consultation with the Senate Minority Leader, shall**  
 22 **appoint two voting members who are members of the public. The two members appointed**  
 23 **under this paragraph may not be from the same political party.**

24 **(b) The Speaker of the House, in consultation with the House Minority Leader, shall ap-**  
 25 **point two voting members who are members of the public. The two members appointed under**  
 26 **this paragraph may not be from the same political party.**

27 **(c) The Governor shall appoint five voting members.**

28 **(d) The following shall serve as ex officio, nonvoting members:**

29 **(A) One commissioner of the Public Utility Commission or the commissioner's designee;**

30 **(B) The Director of the State Department of Energy or the director's designee;**

31 **(C) The Director of the Department of Environmental Quality or the director's designee;**  
 32 **and**

33 **(D) The Director of the Department of Land Conservation and Development or the**  
 34 **director's designee.**

35 **(3) All voting members of the task force must be familiar with energy production regu-**  
 36 **lation in Oregon. The total of the voting membership of the task force must reflect the ge-**  
 37 **ographic diversity of this state.**

38 **(4) The task force shall review existing laws related to energy production in Oregon to**  
 39 **determine how to modify the laws to ensure that all forms of energy production are regu-**  
 40 **lated equally, based on a scientific analysis of the risks and rewards posed by each form of**  
 41 **energy production.**

42 **(5) A majority of the voting members of the task force constitutes a quorum for the**  
 43 **transaction of business.**

44 **(6) Official action by the task force requires the approval of a majority of the voting**  
 45 **members of the task force.**

1       **(7) The task force shall elect one of its members to serve as chairperson.**

2       **(8) If there is a vacancy for any cause, the appointing authority shall make an appoint-**  
3 **ment to become immediately effective.**

4       **(9) The task force shall meet at times and places specified by the call of the chairperson**  
5 **or of a majority of the voting members of the task force.**

6       **(10) The task force may adopt rules necessary for the operation of the task force.**

7       **(11) The task force shall submit a report in the manner provided by ORS 192.245, and**  
8 **may include recommendations for legislation, to an interim committee of the Legislative**  
9 **Assembly related to energy no later than September 15, 2024.**

10       **(12) The Legislative Policy and Research Office shall provide staff support to the task**  
11 **force.**

12       **(13) Members of the task force who are not members of the Legislative Assembly are not**  
13 **entitled to compensation or reimbursement for expenses and serve as volunteers on the task**  
14 **force.**

15       **(14) All agencies of state government, as defined in ORS 174.111, are directed to assist**  
16 **the task force in the performance of the duties of the task force and, to the extent permitted**  
17 **by laws relating to confidentiality, to furnish information and advice the members of the task**  
18 **force consider necessary to perform their duties.**

19       **SECTION 7.** **Section 6 of this 2023 Act is repealed on December 31, 2024.**

20       **SECTION 8.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**  
21 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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