SENATE FLOOR VERSION
April 2, 2019
AS AMENDED

ENGROSSED HOUSE
BILL NO. 1263 By: Hilbert of the House

and

Pugh of the Senate

[revenue and taxation - tax credits for electricity generated from certain zero-emission facilities - refundability - carryover - ~~effective date~~ - ~~emergency~~]

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as last amended by Section 1, Chapter 264, O.S.L. 2018 (68 O.S. Supp. 2018, Section 2357.32A), is amended to read as follows:

Section 2357.32A. A. Except as otherwise provided in subsection H of this section, for tax years beginning on or after January 1, 2003, but with respect to tax credits for eligible renewable resources described by subparagraphs b, c and d of paragraph 2 of this subsection, for tax years ending not later than December 31, 2021, there shall be allowed a credit against the tax imposed by Section 2355 of this title to a taxpayer for the taxpayer's production and sale to an unrelated person of electricity generated by zero-emission facilities located in this state. As used in this section:

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

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

a. wind,

b. moving water,

c. sun, or

d. geothermal energy.

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

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

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

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

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

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

3. With respect to credits claimed for the first time on or after July 1, 2019, or the effective date of this act, whichever date last occurs, a taxpayer may irrevocably elect to not receive a direct refund for a given tax year. Any credits not directly refunded may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years. If a taxpayer makes the irrevocable election to carry over credits for a given tax year pursuant to this paragraph, any credits remaining in the tenth year of carry forward shall be refunded at eighty-five percent (85%).

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

F. For credits generated prior to January 1, 2014, the amount of the credit allowed, but not used, shall be freely transferable at any time during the ten (10) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee, regardless of the actual tax liability of the tax credit transferor, for the relevant taxable period. The transferor initially allowed the credit and any subsequent transferees shall jointly file a copy of any written transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number or Social Security number of the parties to the transfer, the amount of the credit being transferred, the year the credit was originally allowed to the transferor, and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of the tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules that unduly restrict or hinder the transfers of such tax credit. The tax credit allowed by this section, upon the election of the taxpayer, may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of this title.

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

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

I. For tax years beginning on or after January 1, 2019, the total amount of credits authorized by this section with respect to eligible renewable resources described by subparagraphs b, c and d of paragraph 2 of subsection A of this section used to offset tax or paid as a refund shall be adjusted annually to limit the annual amount of credits to Five Hundred Thousand Dollars ($500,000.00). The Tax Commission shall annually calculate and publish a percentage by which the credits authorized by subparagraphs b, c and d of paragraph 2 of subsection A of this section shall be reduced so the total amount of credits used to offset tax or paid as a refund does not exceed Five Hundred Thousand Dollars ($500,000.00) per year. The formula to be used for the percentage adjustment shall be Five Hundred Thousand Dollars ($500,000.00) divided by the credits claimed in the second preceding year.

J. Pursuant to subsection I of this section, in the event the total tax credits authorized by this section with respect to eligible renewable resources described by subparagraphs b, c and d of paragraph 2 of subsection A of this section exceed Five Hundred Thousand Dollars ($500,000.00) in any calendar year, the Tax Commission shall permit any excess over Five Hundred Thousand Dollars ($500,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

K. Any credits authorized by this section with respect to eligible renewable resources described by subparagraphs b, c and d of paragraph 2 of subsection A of this section not used or unable to be used because of the provisions of subsection I or J of this section may be carried over until such credits are fully used.

L. The Tax Commission shall prepare an annual report and submit it to the Office of the State Secretary of Energy and Environment, the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate summarizing the amount of credits allowed pursuant to subparagraphs b, c and d of paragraph 2 of subsection A of this section. The Secretary of Energy and Environment shall submit recommendations for changes to the tax credit to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate within sixty (60) days after receipt of the report from the Oklahoma Tax Commission.

~~**SECTION 2. This act shall become effective July 1, 2019.**~~

~~**SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.**~~

COMMITTEE REPORT BY: COMMITTEE ON FINANCE
April 2, 2019 - DO PASS AS AMENDED