

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 1532

By: Montgomery of the House

and

Thompson and Bergstrom of  
the Senate

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5  
6  
7  
8 [ public finance - Incentive Evaluation Act -  
9 criteria for evaluation of incentives - effective  
10 date ]

11  
12  
13 AUTHOR: Remove Bergstrom as Senate Coauthor and replace with Kidd  
14 as Senate Coauthor

15 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
16 entire bill and insert

17 "An Act relating to revenue and taxation; amending 68  
18 O.S. 2011, Section 2357.22, as last amended by  
19 Section 12, Chapter 328, O.S.L. 2014 (68 O.S. Supp.  
20 2017, Section 2357.22), which relates to tax credits  
21 for certain clean burning motor vehicle fuel  
22 property; modifying reference to taxable years for  
23 which credit may be claimed; modifying definitions;  
24 providing tax credits for certain vehicles based on  
weight; prohibiting tax credits from reducing  
liability below zero; modifying carryover period;  
providing for cap on total credits; prescribing  
formula for computation of cap amount; imposing  
certain duty on Oklahoma Tax Commission; providing  
for adjustment to formula; and providing an effective  
date.

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

2 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.22, as  
3 last amended by Section 12, Chapter 328, O.S.L. 2014 (68 O.S. Supp.  
4 2017, Section 2357.22), is amended to read as follows:

5 Section 2357.22. A. For tax years beginning before January 1,  
6 ~~2020~~ 2024, there shall be allowed a one-time credit against the  
7 income tax imposed by Section 2355 of this title for investments in  
8 qualified clean-burning motor vehicle fuel property placed in  
9 service after December 31, 1990.

10 B. As used in this section, "qualified clean-burning motor  
11 vehicle fuel property" means:

12 1. Equipment installed to modify a motor vehicle which is  
13 propelled by gasoline or diesel fuel so that the vehicle may be  
14 propelled by a hydrogen fuel cell, compressed natural gas, liquefied  
15 natural gas or liquefied petroleum gas; provided, equipment  
16 installed on a vehicle propelled by a hydrogen fuel cell shall only  
17 be eligible for tax year 2010. The equipment covered by this  
18 paragraph must:

19 a. be new, not previously used to modify or retrofit any  
20 vehicle propelled by gasoline or diesel fuel and be  
21 installed by an alternative fuels equipment technician  
22 who is certified in accordance with the Alternative  
23 Fuels Technician Certification Act,

24

1           b. meet all Federal Motor Vehicle Safety Standards set  
2           forth in 49 CFR 571, or

3           c. for any commercial motor vehicle (CMV), follow the  
4           Federal Motor Carrier Safety Regulations or Oklahoma  
5           Intrastate Motor Carrier Regulations;

6           2. A motor vehicle originally equipped so that the vehicle may  
7 be propelled by a hydrogen fuel cell, compressed natural gas,  
8 liquefied natural gas or liquefied petroleum gas but only to the  
9 extent of the portion of the basis of such motor vehicle which is  
10 attributable to the storage of such fuel, the delivery to the engine  
11 of such motor vehicle of such fuel, and the exhaust of gases from  
12 combustion of such fuel. A motor vehicle originally equipped so  
13 that the vehicle may be propelled by a hydrogen fuel cell shall only  
14 be eligible for tax year 2010;

15           3. A motor vehicle originally equipped so that the vehicle  
16 draws propulsion energy from a battery with at least five (5)  
17 kilowatt hours of capacity, and recharged from any external source  
18 of electricity, manufactured primarily for use on public streets,  
19 roads and highways (not including a vehicle operated exclusively on  
20 a rail or rails) and which has at least four wheels and which is  
21 manufactured to be propelled exclusively by electric power and which  
22 does not have an internal combustion engine. For purposes of this  
23 paragraph, the term "qualified clean-burning motor vehicle fuel  
24 property" does not include a low-speed vehicle within the meaning

1 defined in 49 CFR 571.3, or a vehicle that is manufactured primarily  
2 for off-road use, such as primarily for use on a golf course. A  
3 motor vehicle originally equipped so that the vehicle draws  
4 propulsion energy from a battery shall only be eligible for a tax  
5 credit as provided in subsection D of this section with a gross  
6 vehicle weight rating of ten thousand (10,000) pounds or less;

7 4. Property, not including a building and its structural  
8 components, which is:

- 9 a. directly related to the delivery of compressed natural  
10 gas, liquefied natural gas or liquefied petroleum gas,  
11 or hydrogen, for commercial purposes or for a fee or  
12 charge, into the fuel tank of a motor vehicle  
13 propelled by such fuel including compression equipment  
14 and storage tanks for such fuel at the point where  
15 such fuel is so delivered but only if such property is  
16 not used to deliver such fuel into any other type of  
17 storage tank or receptacle and such fuel is not used  
18 for any purpose other than to propel a motor vehicle,  
19 or
- 20 b. a ~~metered-for-fee~~, public access recharging system for  
21 motor vehicles propelled in whole or in part by  
22 electricity. The property covered by this paragraph  
23 must be new, and must not have been previously  
24 installed or used to refuel vehicles powered by

1 compressed natural gas, liquefied natural gas or  
2 liquefied petroleum gas, hydrogen or electricity.

3 Any property covered by this paragraph which is related to the  
4 delivery of hydrogen into the fuel tank of a motor vehicle shall  
5 only be eligible for tax year 2010; or

6 ~~4.~~ 5. Property which is directly related to the compression and  
7 delivery of natural gas from a private home or residence, for  
8 noncommercial purposes, into the fuel tank of a motor vehicle  
9 propelled by compressed natural gas. The property covered by this  
10 paragraph must be new and must not have been previously installed or  
11 used to refuel vehicles powered by natural gas.

12 C. As used in this section, "motor vehicle" means a motor  
13 vehicle originally designed by the manufacturer to operate lawfully  
14 and principally on streets and highways.

15 D. The credit provided for in subsection A of this section  
16 shall be as follows:

17 1. ~~After the effective date of this act, for~~ For the qualified  
18 clean-burning motor vehicle fuel property defined in paragraph 1 ~~or,~~  
19 2 or 3 of subsection B of this section, ~~forty-five percent (45%) of~~  
20 ~~the cost of the qualified clean-burning motor vehicle fuel property~~  
21 the amount of the credit shall be as follows:

22 a. for vehicles up to or below six thousand (6,000)  
23 pounds, the credit shall be a maximum of Five Thousand  
24 Five Hundred Dollars (\$5,500.00),

- 1        b. for vehicles between six thousand one (6,001) pounds  
2        to ten thousand (10,000) pounds, the credit shall be a  
3        maximum amount of Nine Thousand Dollars (\$9,000.00),  
4        c. for vehicles of ten thousand one (10,001) pounds, but  
5        not in excess of twenty-six thousand five hundred  
6        (26,500) pounds, the credit shall be a maximum amount  
7        of Twenty-six Thousand Dollars (\$26,000.00), and  
8        d. for vehicles in excess of twenty-six thousand five  
9        hundred one (26,501) pounds, the credit shall be a  
10       maximum amount of Fifty Thousand Dollars (\$50,000.00);

11       2. For qualified clean-burning motor vehicle fuel property  
12 defined in paragraph ~~3~~ 4 of subsection B of this section, a per-  
13 location credit of ~~seventy-five percent (75%)~~ forty-five percent  
14 (45%) of the cost of the qualified clean-burning motor vehicle fuel  
15 property defined as follows:

- 16       a. for equipment installations completed and commercially  
17       available by midnight on December 31, 2018, seventy-  
18       five percent (75%) of the cost of the qualified clean-  
19       burning motor vehicle fuel property, and  
20       b. for equipment installations completed and commercially  
21       available between January 1, 2019, through December  
22       31, 2023, forty-five percent (45%) of the cost of the  
23       qualified clean-burning motor vehicle fuel property;  
24       and

1        3. For qualified clean-burning motor vehicle fuel property  
2 defined in paragraph 4 5 of subsection B of this section, a per-  
3 location credit of the lesser of fifty percent (50%) of the cost of  
4 the qualified clean-burning motor vehicle fuel property or Two  
5 Thousand Five Hundred Dollars (\$2,500.00).

6        E. The tax credit authorized pursuant to the provisions of this  
7 section shall not be used to reduce the tax liability of the  
8 taxpayer to less than zero (0).

9        F. In cases where no credit has been claimed pursuant to  
10 ~~paragraph 1 of~~ subsection D of this section by any prior owner and  
11 in which a motor vehicle is purchased by a taxpayer with qualified  
12 clean-burning motor vehicle fuel property installed by the  
13 manufacturer of such motor vehicle and the taxpayer is unable or  
14 elects not to determine the exact basis which is attributable to  
15 such property, the taxpayer may claim a credit in an amount not  
16 exceeding the lesser of ten percent (10%) of the cost of the motor  
17 vehicle or One Thousand Five Hundred Dollars (\$1,500.00).

18        ~~F.~~ G. If the tax credit allowed pursuant to ~~subsection A of~~  
19 this section exceeds the amount of income taxes due or if there are  
20 no state income taxes due on the income of the taxpayer, the amount  
21 of the credit not used as an offset against the income taxes of a  
22 taxable year may be carried forward as a credit against subsequent  
23 income tax liability for a period not to exceed ~~five (5)~~ six (6)  
24 years.

1       ~~G.~~ H. A husband and wife who file separate returns for a  
2 taxable year in which they could have filed a joint return may each  
3 claim only one-half (1/2) of the tax credit that would have been  
4 allowed for a joint return.

5       ~~H.~~ I. The Oklahoma Tax Commission is herein empowered to  
6 promulgate rules by which the purpose of this section shall be  
7 administered, including the power to establish and enforce penalties  
8 for violations thereof.

9       ~~I.~~ J. Notwithstanding the provisions of Section 2352 of this  
10 title, for the fiscal year beginning on July 1, 2014, and each  
11 fiscal year thereafter, the Tax Commission shall calculate an amount  
12 that equals five percent (5%) of the cost of qualified clean-burning  
13 motor vehicle fuel property as provided for in ~~paragraph~~ paragraphs  
14 1 and 2 of subsection ~~D~~ B of this section for tax year 2012. For  
15 each subsequent fiscal year thereafter, the Tax Commission shall  
16 perform the same computation with respect to the second tax year  
17 preceding the beginning of each subsequent fiscal year. The Tax  
18 Commission shall then transfer an amount equal to the amount  
19 calculated in this subsection from the revenue derived pursuant to  
20 the provisions of subsections ~~A, B~~ C and E of Section 2355 of this  
21 title to the Compressed Natural Gas Conversion Safety and Regulation  
22 Fund created in Section ~~13~~ 130.25 of ~~this act~~ Title 74 of the  
23 Oklahoma Statutes.

24



1       K. For tax years beginning January 1, 2019, the total amount of  
2 credits authorized by this section used to offset tax shall be  
3 adjusted annually to limit the annual amount of credits to Sixteen  
4 Million Dollars (\$16,000,000.00). The Tax Commission shall annually  
5 calculate and publish a percentage by which the credits authorized  
6 by this section shall be reduced so the total amount of credits used  
7 to offset tax does not exceed Sixteen Million Dollars  
8 (\$16,000,000.00) per year. The formula to be used for the  
9 percentage adjustment shall be Sixteen Million Dollars  
10 (\$16,000,000.00) divided by the credits claimed in the second  
11 preceding year.

12       L. Pursuant to subsection K of this section, in the event the  
13 total tax credits authorized by this section exceed Sixteen Million  
14 Dollars (\$16,000,000.00), in any tax year, the Tax Commission shall  
15 permit any excess over Sixteen Million Dollars (\$16,000,000.00) but  
16 shall factor such excess into the percentage adjustment formula for  
17 subsequent years.

18       M. The Tax Commission shall notify the Office of the State  
19 Secretary of Energy and Environment at any time when the amount of  
20 claims for credits allowed pursuant to this section reaches eighty  
21 percent (80%) of the total annual limit provided in subsection K of  
22 this section. Upon such notification, the Secretary shall provide  
23 notice to the Governor, President Pro Tempore of the Senate and  
24 Speaker of the House of Representatives.

1 SECTION 2. This act shall become effective January 1, 2019."

2  
3 Passed the Senate the 26th day of April, 2018.

4  
5 \_\_\_\_\_  
6 Presiding Officer of the Senate

7 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
8 2018.

9  
10 \_\_\_\_\_  
11 Presiding Officer of the House  
12 of Representatives

1 ENGROSSED HOUSE  
2 BILL NO. 1532

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4 Thompson of the Senate

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8 criteria for evaluation of incentives - effective  
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10

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

13 SECTION 3. AMENDATORY Section 5, Chapter 184, O.S.L.  
14 2015 (62 O.S. Supp. 2016, Section 7005), is amended to read as  
15 follows:

16 Section 7005. A. The Incentive Evaluation Commission may  
17 contract with a private company, nonprofit, or academic institution  
18 to assist with evaluation of each incentive. The Commission shall  
19 develop a scope of services for a request for proposals issued  
20 pursuant to The Oklahoma Central Purchasing Act, Section 85.1 et  
21 seq. of Title 74 of the Oklahoma Statutes, for professional services  
22 necessary to complete incentive evaluations pursuant to the  
23 Incentive Evaluation Act. The cost of such contract shall be paid  
24 by the Office of Management and Enterprise Services. No recipient

1 or potential recipient of an incentive or representative of a  
2 recipient or potential recipient shall contact the entity or  
3 individual with whom the Commission contracts pursuant to this  
4 subsection unless the entity or individual specifically requests  
5 information or documentation for purposes of the incentive  
6 evaluation process; provided, this shall not be construed to prevent  
7 participation in a public hearing conducted pursuant to subsection B  
8 of this section.

9 B. By November 1 of each year beginning in 2016, the Commission  
10 or the Commission's chosen contractor shall evaluate each incentive  
11 scheduled for review that year. The Commission or the Commission's  
12 chosen contractor shall conduct each incentive evaluation in  
13 consultation with the Oklahoma Department of Commerce division of  
14 Research and Economic Analysis Services using criteria developed  
15 pursuant to subsection D of this section. Between November 1 and  
16 November 30 of each year beginning in 2016, the Commission shall  
17 hold at least one public meeting to review, allow for public  
18 comment, and vote to approve or disapprove each incentive evaluation  
19 conducted that year. By December 15 of each year beginning in 2016,  
20 the Commission shall provide the results of each incentive  
21 evaluation in a written report to the Governor, President Pro  
22 Tempore of the Senate and Speaker of the House of Representatives.  
23 The report shall be made publicly available on the Oklahoma  
24 Department of Commerce website and *documents.ok.gov*.

1 C. Each evaluation shall include the following:

2 1. An estimate of the economic and fiscal impact of the  
3 incentive. This estimate shall take into account the following  
4 considerations in addition to other relevant factors:

5 a. the extent to which the incentive changes business  
6 behavior,

7 b. the results of the incentive for the economy of  
8 Oklahoma as a whole. This consideration includes both  
9 positive direct and indirect impacts and any negative  
10 effects on other Oklahoma businesses, and

11 c. a comparison to the results of other incentives or  
12 other economic development strategies with similar  
13 goals;

14 2. An assessment of whether adequate protections are in place  
15 to ensure the fiscal impact of the incentive does not increase  
16 substantially beyond the state's expectations in future years;

17 3. An assessment of whether the incentive is being administered  
18 effectively;

19 4. An assessment of whether the incentive is achieving its  
20 goals;

21 5. Recommendations for how Oklahoma can most effectively  
22 achieve the incentive's goals, including recommendations on whether  
23 the incentive should be retained, reconfigured or repealed; and  
24

1       6. Recommendations for any changes to state policy, rules, or  
2 statutes that would allow the incentive to be more easily or  
3 conclusively evaluated in the future. These recommendations may  
4 include changes to collection, reporting and sharing of data, and  
5 revisions or clarifications to the goal of the incentive.

6       D. Evaluation criteria shall be developed for each incentive  
7 evaluated by the Commission. Each incentive shall be evaluated  
8 using criteria specific to the individual incentive. The criteria  
9 shall be developed through the administrative rulemaking process  
10 pursuant to the Administrative Procedures Act, Section 250 et seq.  
11 of Title 75 of the Oklahoma Statutes, and codified in the  
12 administrative code of the Oklahoma Department of Commerce.

13 Evaluation criteria developed as required by this subsection shall  
14 include requirements for analysis of the salaries and other forms of  
15 compensation paid to employees of the business entity which benefits  
16 from an incentive. The information shall include salary ranges for  
17 the employees of the business entity and shall separately identify  
18 other forms of compensation for the employees of the business  
19 entity. The evaluation criteria shall include the number of jobs  
20 either created or retained as a result of the incentive and a  
21 computation of the average salary paid to employees whose jobs were  
22 either created or retained as a result of the incentive.

23       E. At the request of the Incentive Evaluation Commission, state  
24 agencies shall provide any records, information, data, or data

