

# House Bill 3163

Sponsored by Representative HOLVEY, Senator BEYER

## 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**.

Transfers administration of tax credit for biomass production or collection from State Department of Energy to State Department of Agriculture. Limits total amount of biomass tax credit allowed for animal manure that may be claimed annually by all taxpayers.

Becomes operative January 1, 2018. Applies to tax years beginning on or after January 1, 2018. Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to administration of biomass tax credit; creating new provisions; amending ORS 315.141 and 315.144; and prescribing an effective date.

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

## BIOMASS TAX CREDIT

**SECTION 1.** ORS 315.141 is amended to read:

315.141. (1) As used in this section:

(a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

(b) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been converted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct biomass energy use at the biofuel producer's site.

(c) "Biofuel producer" means a person that through activities in Oregon:

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

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

(C) Uses biomass in Oregon to produce energy.

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

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

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

(C) Agricultural residues;

(D) Offal and tallow from animal rendering;

(E) Food wastes collected as provided under ORS chapter 459 or 459A;

(F) Wood debris collected as provided under ORS chapter 459 or 459A;

(G) Wastewater solids; or

(H) Crops grown solely to be used for energy.

(e) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, in-

**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 organic arsenic or other inorganic chemical compounds or waste, other than matter described in  
2 paragraph (d) of this subsection.

3 (f) "Biomass collector" means a person that collects biomass in Oregon to be used, in Oregon,  
4 as biofuel or to produce biofuel.

5 (g) "Canola" means plants of the genus Brassica:

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

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

9 (h) "Oilseed processor" means a person that receives agricultural oilseeds and separates them  
10 into meal and oil by mechanical or chemical means.

11 (i) "Willamette Valley" means Clackamas, Linn, Marion, Multnomah, Polk, Washington and  
12 Yamhill Counties and the portion of Benton and Lane Counties lying east of the summit of the Coast  
13 Range.

14 (2) The Director of [*the State Department of Energy*] **Agriculture** may adopt rules to define cri-  
15 teria, only as the criteria apply to organic biomass, to determine additional characteristics of  
16 biomass for purposes of this section.

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

20 (A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce  
21 biofuel; or

22 (B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

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

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

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

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

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

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

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

33 (5)(a) The State Department of [*Energy*] **Agriculture** may establish by rule procedures and cri-  
34 teria for determining the amount of the tax credit to be certified under this section, consistent with  
35 ORS 469B.403. The department shall provide written certification to taxpayers that are eligible to  
36 claim the credit under this section.

37 **(b) The total amount certified for tax credits for the processing of biomass that is animal**  
38 **manure may not exceed \$5 million for all taxpayers for the tax year in which the certification**  
39 **is made.**

40 [(b)] (c) The State Department of [*Energy*] **Agriculture** may charge and collect a fee from tax-  
41 payers for certification of credits under this section. The fee may not exceed the cost to the de-  
42 partment of determining the amount of certified cost.

43 [(c)] (d) The State Department of [*Energy*] **Agriculture** shall provide to the Department of Re-  
44 venue a list, by tax year, of taxpayers for which a credit is certified under this section, upon request  
45 of the Department of Revenue.

1 (6) The amount of the credit claimed under this section for any tax year may not exceed the tax  
2 liability of the taxpayer.

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

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

9 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a  
10 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next  
11 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried  
12 forward and used in the second succeeding tax year, and likewise any credit not used in that second  
13 succeeding tax year may be carried forward and used in the third succeeding tax year, and any  
14 credit not used in that third succeeding tax year may be carried forward and used in the fourth  
15 succeeding tax year, but may not be carried forward for any tax year thereafter.

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

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

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

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

25 **SECTION 2.** ORS 315.144 is amended to read:

26 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit  
27 to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

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

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

- 35 (a) The name and address of the transferor and transferee;
- 36 (b) The amount of the tax credit that is being transferred;
- 37 (c) The amount of the tax credit that is being retained by the transferor; and
- 38 (d) Any other information required by the department.

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

41 (5) The Department of Revenue, in consultation with the State Department of [*Energy*] **Agri-**  
42 **culture**, may by rule establish procedures for the transfer of tax credits provided by this section.

43  
44 **TRANSFER**  
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1       **SECTION 3.** The duties, functions and powers of the State Department of Energy relating  
2 to the administration of the tax credit allowed for biomass under ORS 315.141 are imposed  
3 upon, transferred to and vested in the State Department of Agriculture.

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5                               **RECORDS, PROPERTY, EMPLOYEES**

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7       **SECTION 4.** (1) The Director of the State Department of Energy shall:

8               (a) Deliver to the State Department of Agriculture all records and property within the  
9 jurisdiction of the director that relate to the duties, functions and powers transferred by  
10 section 3 of this 2017 Act; and

11              (b) Transfer to the State Department of Agriculture those employees engaged primarily  
12 in the exercise of the duties, functions and powers transferred by section 3 of this 2017 Act.

13              (2) The Director of Agriculture shall take possession of the records and property, and  
14 shall take charge of the employees and employ them in the exercise of the duties, functions  
15 and powers transferred by section 3 of this 2017 Act, without reduction of compensation but  
16 subject to change or termination of employment or compensation as provided by law.

17              (3) The Governor shall resolve any dispute between the State Department of Energy and  
18 the State Department of Agriculture relating to transfers of records, property and employees  
19 under this section, and the Governor's decision is final.

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21                               **UNEXPENDED REVENUES**

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23       **SECTION 5.** (1) The unexpended balances of amounts authorized to be expended by the  
24 State Department of Energy for the biennium beginning July 1, 2017, from revenues dedi-  
25 cated, continuously appropriated, appropriated or otherwise made available for the purpose  
26 of administering and enforcing the duties, functions and powers transferred by section 3 of  
27 this 2017 Act are transferred to and are available for expenditure by the State Department  
28 of Agriculture for the biennium beginning July 1, 2017, for the purpose of administering and  
29 enforcing the duties, functions and powers transferred by section 3 of this 2017 Act.

30              (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
31 expenditures by the State Department of Energy remain applicable to expenditures by the  
32 State Department of Agriculture under this section.

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34                               **ACTION, PROCEEDING, PROSECUTION**

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36       **SECTION 6.** The transfer of duties, functions and powers to the State Department of  
37 Agriculture by section 3 of this 2017 Act does not affect any action, proceeding or prose-  
38 cution involving or with respect to the duties, functions and powers begun before and pend-  
39 ing at the time of the transfer, except that the State Department of Agriculture is  
40 substituted for the State Department of Energy in the action, proceeding or prosecution.

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42                               **LIABILITY, DUTY, OBLIGATION**

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44       **SECTION 7.** (1) Nothing in sections 3 to 9 of this 2017 Act relieves a person of a liability,  
45 duty or obligation accruing under or with respect to the duties, functions and powers

1 transferred by section 3 of this 2017 Act. The State Department of Agriculture may under-  
2 take the collection or enforcement of any such liability, duty or obligation.

3 (2) The rights and obligations of the State Department of Energy legally incurred under  
4 contracts, leases and business transactions executed, entered into or begun before the op-  
5 erative date of section 3 of this 2017 Act accruing under or with respect to the duties, func-  
6 tions and powers transferred by section 3 of this 2017 Act are transferred to the State  
7 Department of Agriculture. For the purpose of succession to these rights and obligations, the  
8 State Department of Agriculture is a continuation of the State Department of Energy and  
9 not a new authority.

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11 **RULES**  
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13 **SECTION 8.** Notwithstanding the transfer of duties, functions and powers by section 3  
14 of this 2017 Act, the rules of the State Department of Energy with respect to such duties,  
15 functions or powers that are in effect on the operative date of section 3 of this 2017 Act  
16 continue in effect until superseded or repealed by rules of the State Department of Agricul-  
17 ture. References in the rules of the State Department of Energy to the State Department  
18 of Energy or an officer or employee of the State Department of Energy are considered to be  
19 references to the State Department of Agriculture or an officer or employee of the State  
20 Department of Agriculture.

21 **SECTION 9.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
22 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in  
23 the context of the duties, functions and powers transferred by section 3 of this 2017 Act,  
24 reference is made to the State Department of Energy, or an officer or employee of the State  
25 Department of Energy, whose duties, functions or powers are transferred by section 3 of this  
26 2017 Act, the reference is considered to be a reference to the State Department of Agricul-  
27 ture or an officer or employee of the State Department of Agriculture who by this 2017 Act  
28 is charged with carrying out the duties, functions and powers.

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30 **OPERATIVE DATE**  
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32 **SECTION 10.** Sections 3 to 9 of this 2017 Act become operative on January 1, 2018.  
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34 **APPLICABILITY DATE**  
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36 **SECTION 11.** The amendments to ORS 315.141 and 315.144 by sections 1 and 2 of this 2017  
37 Act apply to tax years beginning on or after January 1, 2018.  
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39 **UNIT CAPTIONS**  
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41 **SECTION 12.** The unit captions used in this 2017 Act are provided only for the conven-  
42 ience of the reader and do not become part of the statutory law of this state or express any  
43 legislative intent in the enactment of this 2017 Act.  
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45 **EFFECTIVE DATE**

1        **SECTION 13.** This 2017 Act takes effect on the 91st day after the date on which the 2017  
2 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.  
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