

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 1416, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Mazzei

Mazzei-JCR-FS-Req#1785
4/23/2013 4:32 PM

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

FLOOR SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 1416

By: Hall, Hoskin and Sherrer of
the House

and

Mazzei, Loveless and
Brinkley of the Senate

FLOOR SUBSTITUTE

[tax credits - coal and zero emission facilities -
limiting transfer - refund - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.11, is
amended to read as follows:

Section 2357.11. A. For purposes of this section, the term
"person" means any legal business entity including limited and
general partnerships, corporations, sole proprietorships, and
limited liability companies, but does not include individuals.

B. 1. Except as provided in subsection M of this section, for
tax years beginning on or after January 1, 1993, and ending on or
before December 31, ~~2014~~ 2021, there shall be allowed a credit
against the tax imposed by Section 1803 or Section 2355 of this

1 title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for
2 every person in this state furnishing water, heat, light or power to
3 the state or its citizens, or for every person in this state burning
4 coal to generate heat, light or power for use in manufacturing
5 operations located in this state.

6 2. For tax years beginning on or after January 1, 1993, and
7 ending on or before December 31, 2005, and for the period of January
8 1, 2006, through June 30, 2006, the credit shall be in the amount of
9 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal
10 purchased by such person.

11 3. For the period of July 1, 2006 through December 31, 2006,
12 and for tax years beginning on or after January 1, 2007, and ending
13 on or before December 31, ~~2014~~ 2021, the credit shall be in the
14 amount of Two Dollars and eighty-five cents (\$2.85) per ton for each
15 ton of Oklahoma-mined coal purchased by such person.

16 4. In addition to the credit allowed pursuant to the provisions
17 of paragraph 3 of this subsection, for the period of July 1, 2006,
18 through December 31, 2006, and except as provided in subsection M of
19 this section, for tax years beginning on or after January 1, 2007,
20 and ending on or before December 31, ~~2014~~ 2021, there shall be
21 allowed a credit in the amount of Two Dollars and fifteen cents
22 (\$2.15) per ton for each ton of Oklahoma-mined coal purchased by
23 such person. The credit allowed pursuant to the provisions of this
24

1 paragraph may not be claimed or transferred prior to January 1,
2 2008.

3 C. For tax years beginning on or after January 1, 1995, and
4 ending on or before December 31, 2005, and for the period beginning
5 January 1, 2006, through June 30, 2006, there shall be allowed, in
6 addition to the credits allowed pursuant to subsection B of this
7 section, a credit against the tax imposed by Section 1803 or Section
8 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma
9 Statutes for every person in this state which:

10 1. Furnishes water, heat, light or power to the state or its
11 citizens, or burns coal to generate heat, light or power for use in
12 manufacturing operations located in this state; and

13 2. Purchases at least seven hundred fifty thousand (750,000)
14 tons of Oklahoma-mined coal in the tax year.

15 The additional credit allowed pursuant to this subsection shall
16 be in the amount of Three Dollars (\$3.00) per ton for each ton of
17 Oklahoma-mined coal purchased by such person.

18 D. Except as otherwise provided in subsection E of this section
19 and in subsection M of this section, for tax years beginning on or
20 after January 1, 2001, and ending on or before December 31, 2021,
21 there shall be allowed a credit against the tax imposed by Section
22 1803 or Section 2355 of this title or Section 624 or 628 of Title 36
23 of the Oklahoma Statutes for every person in this state primarily
24 engaged in mining, producing or extracting coal, and holding a valid

1 permit issued by the Oklahoma Department of Mines. For tax years
2 beginning on or after January 1, 2001, and ending on or before
3 December 31, 2005, and for the period beginning January 1, 2006,
4 through June 30, 2006, the credit shall be in the amount of ninety-
5 five cents (\$0.95) per ton and for the period of July 1, 2006,
6 through December 31, 2006, and for tax years beginning on or after
7 January 1, 2007, the credit shall be in the amount of Five Dollars
8 (\$5.00) for each ton of coal mined, produced or extracted in on,
9 under or through a permit in this state by such person.

10 E. In addition to the credit allowed pursuant to the provisions
11 of subsection D of this section and except as otherwise provided in
12 subsection F of this section, for tax years beginning on or after
13 January 1, 2001, and ending on or before December 31, 2005, and for
14 the period of January 1, 2006, through June 30, 2006, there shall be
15 allowed a credit against the tax imposed by Section 1803 or Section
16 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma
17 Statutes for every person in this state primarily engaged in mining,
18 producing or extracting coal, and holding a valid permit issued by
19 the Oklahoma Department of Mines in the amount of ninety-five cents
20 (\$0.95) per ton for each ton of coal mined, produced or extracted
21 from thin seams in this state by such person; provided, the credit
22 shall not apply to such coal sold to any consumer who purchases at
23 least seven hundred fifty thousand (750,000) tons of Oklahoma-mined
24 coal per year.

1 F. In addition to the credit allowed pursuant to the provisions
2 of subsection D of this section and except as otherwise provided in
3 subsection G of this section, for tax years beginning on or after
4 January 1, 2005, and ending on or before December 31, 2005, and for
5 the period of January 1, 2006, through June 30, 2006, there shall be
6 allowed a credit against the tax imposed by Section 1803 or Section
7 2355 of this title or that portion of the tax imposed by Section 624
8 or 628 of Title 36 of the Oklahoma Statutes, which is actually paid
9 to and placed into the General Revenue Fund, in the amount of
10 ninety-five cents (\$0.95) per ton for each ton of coal mined,
11 produced or extracted from thin seams in this state by such person
12 on or after July 1, 2005.

13 G. The credits provided in subsections D and E of this section
14 shall not be allowed for coal mined, produced or extracted in any
15 month in which the average price of coal is Sixty-eight Dollars
16 (\$68.00) or more per ton, excluding freight charges, as determined
17 by the Tax Commission.

18 H. The additional credits allowed pursuant to subsections B, C,
19 D and E of this section but not used shall be freely transferable
20 after January 1, 2002, but not later than December 31, 2013, by
21 written agreement to subsequent transferees at any time during the
22 five (5) years following the year of qualification; provided, the
23 additional credits allowed pursuant to the provisions of paragraph 4
24 of subsection B of this section but not used shall be freely

1 transferable after January 1, 2008, but not later than December 31,
2 2013, by written agreement to subsequent transferees at any time
3 during the five (5) years following the year of qualification. An
4 eligible transferee shall be any taxpayer subject to the tax imposed
5 by Section 1803 or Section 2355 of this title or Section 624 or 628
6 of Title 36 of the Oklahoma Statutes. The person originally allowed
7 the credit and the subsequent transferee shall jointly file a copy
8 of the written credit transfer agreement with the Tax Commission
9 within thirty (30) days of the transfer. The written agreement
10 shall contain the name, address and taxpayer identification number
11 of the parties to the transfer, the amount of credit being
12 transferred, the year the credit was originally allowed to the
13 transferring person and the tax year or years for which the credit
14 may be claimed. The Tax Commission may promulgate rules to permit
15 verification of the validity and timeliness of a tax credit claimed
16 upon a tax return pursuant to this subsection but shall not
17 promulgate any rules which unduly restrict or hinder the transfers
18 of such tax credit.

19 I. The additional credit allowed pursuant to subsection F of
20 this section but not used shall be freely transferable on or after
21 July 1, 2006, but not later than December 31, 2013, by written
22 agreement to subsequent transferees at any time during the five (5)
23 years following the year of qualification. An eligible transferee
24 shall be any taxpayer subject to the tax imposed by Section 1803 or

1 Section 2355 of this title or Section 624 or 628 of Title 36 of the
2 Oklahoma Statutes. The person originally allowed the credit and the
3 subsequent transferee shall jointly file a copy of the written
4 credit transfer agreement with the Tax Commission within thirty (30)
5 days of the transfer. The written agreement shall contain the name,
6 address and taxpayer identification number of the parties to the
7 transfer, the amount of credit being transferred, the year the
8 credit was originally allowed to the transferring person and the tax
9 year or years for which the credit may be claimed. The Tax
10 Commission may promulgate rules to permit verification of the
11 validity and timeliness of a tax credit claimed upon a tax return
12 pursuant to this subsection but shall not promulgate any rules which
13 unduly restrict or hinder the transfers of such tax credit.

14 J. Any person receiving tax credits pursuant to the provisions
15 of this section shall apply the credits against taxes payable or,
16 subject to the limitation that credits shall not be transferred
17 after December 31, 2013, shall transfer the credits as provided in
18 this section or shall receive a refund pursuant to the provisions of
19 subsection L of this section. Credits shall not be used to lower
20 the price of any Oklahoma-mined coal sold that is produced by a
21 subsidiary of the person receiving a tax credit under this section
22 to other buyers of the Oklahoma-mined coal.

23 K. ~~The~~ Except as provided by paragraph 2 of subsection L of
24 this section, the credits allowed by subsections B, C, D, E and F of

1 this section, upon election of the taxpayer, shall be treated and
2 may be claimed as a payment of tax, a prepayment of tax or a payment
3 of estimated tax for purposes of Section 1803 or 2355 of this title
4 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.

5 L. ~~Any~~ 1. With respect to credits allowed pursuant to the
6 provisions of subsections B, C, D, E and F of this section, but not
7 used in any tax year, and for which no election is made for refund
8 pursuant to paragraph 2 of this subsection, such credits may be
9 carried over in order to each of the five (5) years following the
10 year of qualification.

11 2. With respect to credits allowed pursuant to the provisions
12 of subsections B, C, D, E and F of this section which are earned but
13 not used, based upon activity occurring on or after January 1, 2014,
14 the Oklahoma Tax Commission shall refund directly to the taxpayer
15 eighty-five percent (85%) of the face amount of such credits. The
16 direct refund of the credits pursuant to this paragraph shall be
17 available to all taxpayers, including, without limitation, pass-
18 through entities and taxpayers subject to Section 2355 of this
19 title. If the pass-through entity does not file a claim for a
20 direct refund, the pass-through entity shall allocate the refund to
21 its shareholders, partners or members. The amount of any refund
22 received by the taxpayers pursuant to this paragraph shall not be
23 subject to the tax imposed by Section 2355 of this title. If a
24 pass-through entity is entitled to a credit or refund under this

paragraph, the pass-through entity shall allocate such credit or
refund 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.

M. 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. The provisions of this subsection shall cease to be operative on July 1, 2012. Beginning July 1, 2012, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2012, according to the provisions of this section.

SECTION 2. AMENDATORY 68 O.S. 2011, 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

1 January 1, 2003, there shall be allowed a credit against the tax
2 imposed by Section 2355 of this title to a taxpayer for the
3 taxpayer's production and sale to an unrelated person of electricity
4 generated by zero-emission facilities located in this state. As
5 used in this section:

6 1. "Electricity generated by zero-emission facilities" means
7 electricity that is exclusively produced by any facility located in
8 this state with a rated production capacity of one megawatt (1 mw)
9 or greater, constructed for the generation of electricity and placed
10 in operation after June 4, 2001, which utilizes eligible renewable
11 resources as its fuel source. The construction and operation of
12 such facilities shall result in no pollution or emissions that are
13 or may be harmful to the environment, pursuant to a determination by
14 the Department of Environmental Quality; and

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

- 16 a. wind,
- 17 b. moving water,
- 18 c. sun, or
- 19 d. geothermal energy.

20 B. For facilities placed in operation on or after January 1,
21 2003, and before January 1, 2007, the amount of the credit for the
22 electricity generated on or after January 1, 2003, but prior to
23 January 1, 2004, ~~the amount of the credit~~ shall be seventy-five one-
24 hundredths of one cent (\$0.0075) for each kilowatt-hour of

1 electricity generated by zero-emission facilities. For electricity
2 generated on or after January 1, 2004, but prior to January 1, 2007,
3 the amount of the credit shall be fifty one-hundredths of one cent
4 (\$0.0050) per kilowatt-hour for electricity generated by zero-
5 emission facilities. For electricity generated on or after January
6 1, 2007, but prior to January 1, 2012, the amount of the credit
7 shall be twenty-five one-hundredths of one cent (\$0.0025) per
8 kilowatt-hour of electricity generated by zero-emission facilities.
9 For facilities placed in operation on or after January 1, 2007, and
10 before January 1, ~~2016~~ 2021, the amount of the credit for the
11 electricity generated ~~by these facilities the amount of the credit~~
12 on or after January 1, 2007, but prior to January 1, 2021, shall be
13 fifty one-hundredths of one cent (\$0.0050) for each kilowatt-hour of
14 electricity generated by zero-emission facilities.

15 C. Credits may be claimed with respect to electricity generated
16 on or after January 1, 2003, during a ten-year period following the
17 date that the facility is placed in operation on or after June 4,
18 2001.

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

1 credits generated, but not used, on or after January 1, 2014, the
2 Oklahoma Tax Commissions shall refund directly to the taxpayer
3 eighty-five percent (85%) of the face amount of such credits. The
4 direct refund of the credits pursuant to this paragraph shall be
5 available to all taxpayers, including, without limitation, pass-
6 through entities and taxpayers subject to Section 2355 of this
7 title, but shall not be available to any entities falling within the
8 provisions of subsection E of this section. If the pass-through
9 entity does not file a claim for a direct refund, the pass-through
10 entity shall allocate the refund to its shareholders, partners or
11 members. The amount of any refund received by the taxpayers
12 pursuant to this paragraph shall not be subject to the tax imposed
13 by Section 2355 of this title. If a pass-through entity is entitled
14 to a credit or refund under this paragraph, the pass-through entity
15 shall allocate such credit or refund to one or more of the
16 shareholders, partners or members of the pass-through entity;
17 provided, the total of all credits refunded or allocated shall not
18 exceed the amount of the credit or refund to which the pass-through
19 entity is entitled. For the purposes of this paragraph, "pass-
20 through entity" means a corporation that for the applicable tax year
21 is treated as an S corporation under the Internal Revenue Code of
22 1986, as amended, general partnership, limited partnership, limited
23 liability partnership, trust or limited liability company that for
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1 the applicable tax year is not taxed as a corporation for federal
2 income tax purposes.

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

16 F. ~~The~~ For credits generated prior to January 1, 2014, the
17 amount of the credit allowed, but not used, shall be freely
18 transferable at any time during the ten (10) years following the
19 year of qualification. Any person to whom or to which a tax credit
20 is transferred shall have only such rights to claim and use the
21 credit under the terms that would have applied to the entity by whom
22 or by which the tax credit was transferred. The provisions of this
23 subsection shall not limit the ability of a tax credit transferee to
24 reduce the tax liability of the transferee, regardless of the actual

1 tax liability of the tax credit transferor, for the relevant taxable
2 period. The transferor initially allowed the credit and any
3 subsequent transferees shall jointly file a copy of any written
4 transfer agreement with the Oklahoma Tax Commission within thirty
5 (30) days of the transfer. The written agreement shall contain the
6 name, address and taxpayer identification number or social security
7 number of the parties to the transfer, the amount of the credit
8 being transferred, the year the credit was originally allowed to the
9 transferor, and the tax year or years for which the credit may be
10 claimed. The Tax Commission may promulgate rules to permit
11 verification of the validity and timeliness of the tax credit
12 claimed upon a tax return pursuant to this subsection but shall not
13 promulgate any rules that unduly restrict or hinder the transfers of
14 such tax credit. The tax credit allowed by this section, upon the
15 election of the taxpayer, may be claimed as a payment of tax, a
16 prepayment of tax or a payment of estimated tax for purposes of
17 Section 1803 or Section 2355 of this title.

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

1 H. No credit otherwise authorized by the provisions of this
2 section may be claimed for any event, transaction, investment,
3 expenditure or other act occurring on or after July 1, 2010, for
4 which the credit would otherwise be allowable until the provisions
5 of this subsection shall cease to be operative on July 1, 2011.
6 Beginning July 1, 2011, the credit authorized by this section may be
7 claimed for any event, transaction, investment, expenditure or other
8 act occurring on or after July 1, 2010, according to the provisions
9 of this section. Any tax credits which accrue during the period of
10 July 1, 2010, through June 30, 2011, may not be claimed for any
11 period prior to the taxable year beginning January 1, 2012. No
12 credits which accrue during the period of July 1, 2010, through June
13 30, 2011, may be used to file an amended tax return for any taxable
14 year prior to the taxable year beginning January 1, 2012.

15 SECTION 3. This act shall become effective January 1, 2014.

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