

## **Sustainability and Climate Change Law Update**

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### **Oregon Legislature Revises Energy Tax Credit Programs**

The Oregon Legislature has passed the second of two measures that will substantially revise the way the state provides tax credits for energy projects. The two bills, HB 3672 and HB 2523, divide what was once known as the Business Energy Tax Credit (“BETC”) into several programs with new caps on the size and types of credits available and, for the manufacturing program, a shift in oversight from the Oregon Department of Energy (“ODOE”) to Business Oregon. Generally, the relative winners and losers resulting from the passing of HB 3672 and HB 2523 are the following:

#### Relative Winners (in descending order):

- Incentives under the Renewable Energy Manufacturing Tax Credit Program are unaltered (\$200 million monetary cap for biennium and \$40 million cap per project), but authority for the program is shifted to Business Oregon;
- The Residential Energy Tax Credit Program (“RETC”) is largely unaltered except that ODOE is given greater discretion to reduce per-project incentives over time, and a monetary cap for third-party owned systems is imposed (but no monetary cap on homeowner-owned projects);
- The Energy Conservation part of the former BETC program narrows the scope of qualifying projects and is subject to a program monetary cap (\$30 million per biennium) and a competitive process; and
- The Energy Transportation part of the former BETC is limited to public sector and alternative fuel vehicle infrastructure projects with a program monetary cap (\$20 million per biennium).

#### Big Loser:

- The Energy Generation part of the former BETC program is severely altered, both in terms of process and in terms of monetary caps on the program (\$3 million for the biennium).

Following is a more detailed summary of key legislative changes:

- **The Manufacturing Tax Credit Program** — A project must receive its preliminary certificate by January 1, 2014, but the deadline for issuance of a final certificate is extended by two years to 2019. Unchanged features include the \$200 million monetary cap for total preliminary tax credits certified per biennium, the \$40 million total costs per project eligible for a 50 percent tax credit, and the ability to sell the tax credit to a pass-through partner. Also unchanged are the lower monetary caps for electric vehicle manufacturing projects (\$2.5 million total costs per project eligible for 50 percent tax credit). The primary difference is that ODOE will no longer issue tax credit certificates. Business Oregon will both select eligible companies and issue the tax credit certificates.
- **The RETC Program** — HB 3672 does not impose an overall monetary cap for the program, but it does impose a cap of \$10 million in tax credits issued per year for alternative energy systems that are not owned by the homeowner. Starting in 2012, alternative fuel vehicles (including electric vehicles) and most energy efficient appliances will cease to be eligible for RETC. Also, ODOE will have the authority to reduce the amount of tax credits per project based on reduced costs of systems and other market changes. The bill extends the sunset on the RETC program to January 1, 2018.
- **The Conservation Tax Credit Program** — The tax credit remains 35 percent of up to \$10 million in certified costs per project. There is a program-wide monetary cap of \$28 million for total preliminary tax credits certified per biennium. Cogeneration projects are excluded from the program until 2013. Recycling projects and alternative fuel vehicles (including electric vehicles) are permanently excluded. Also, a degree of competition is inserted, and ODOE may compare projects of similar technology types, taking into account factors such as the amount of energy saved and payback periods. Tax credit holders may sell all, but not a portion of a tax credit to a pass-through partner. A project may be eligible to receive a final tax credit under the prior BETC program if: (1) the preliminary application was filed on or before April 15, 2011; (2) the preliminary certificate is issued by ODOE before July 1, 2011; (3) the project is completed by July 1, 2014; and possibly, (4) the final certificate is issued by July 1, 2014. The bill extends the sunset on the conservation program to January 1, 2018.
- **The Transportation Tax Credit Program** — HB 3672 creates a separate category for transportation projects, which are narrowly defined as either a “public or nonprofit entity that provides transit services to members of the public” or an alternative fuel vehicle infrastructure project (formerly part of the conservation program). Alternative fuel vehicle infrastructure projects appear to include electric vehicle charging stations and are defined to “include a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles. ...” There is a declining tax credit rate starting with 25 percent of certified costs for projects receiving a preliminary certificate on or after July 1, 2011, and before January 1, 2013, and declining by 5 percent for subsequent years (20 percent for 2013, 15 percent for 2014 and 10 percent for 2015), but keeping a 35 percent rate for alternative fuel vehicle infrastructure projects (such as electric vehicle charging stations).

There is a monetary cap of \$20 million for total preliminary tax credits certified per biennium. Tax credit holders may sell the tax credit to a pass-through partner (but may not sell only a portion of the tax credit). The bill creates a sunset on transportation projects to receive a final certificate on January 1, 2016, generally and January 1, 2018, for alternative fuel vehicle infrastructure projects.

- **The Generation Tax Credit Program** — HB 3672 restructures the program for energy generation projects along the lines of the film and video tax credit program. The Department of Revenue, in cooperation with ODOE, is authorized to pre-sell via auction up to \$3 million of nontransferable tax credits per biennium. Funds from the auction are placed into a Renewable Energy Development account to be allocated by ODOE to renewable energy projects as grants of up to 35 percent of eligible project costs, capped at \$250,000 per project. A grant under this program, combined with “any other government incentives or grants available” cannot exceed 75 percent of the system costs. Eligible systems cannot exceed 35 megawatts of nameplate capacity. An applicant must apply for the grant “prior to the installation or construction” of the system. Preliminary certificates issued under the former program are eligible as described above under The Conservation Tax Credit Program. The bill extends the sunset on the conservation program to January 1, 2018.

The Governor is expected to sign both bills into law this week.

**For more information, please contact the Sustainability and Climate Change Law Practice Group at Lane Powell: [sustainability@lanepowell.com](mailto:sustainability@lanepowell.com)**

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