

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 720

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO ALTERNATIVE ENERGY RESOURCES; PROVIDING LEGISLATIVE INTENT;
2 AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW
3 SECTION 63-3029H, IDAHO CODE, TO PROVIDE A STATE INCOME TAX CREDIT FOR
4 CERTAIN RENEWABLE ENERGY RESOURCES, TO PROVIDE PROCEDURES AND TO DEFINE
5 TERMS; AMENDING SECTION 63-3067, IDAHO CODE, TO PROVIDE FOR REMITTANCE
6 OF MONEYS TO THE OFFICE OF ENERGY RESOURCES; AMENDING CHAPTER 8, TITLE
7 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-829, IDAHO CODE, TO
8 PROVIDE STANDARDS FOR CERTAIN BUILDINGS AND EQUIPMENT; PROVIDING AN
9 EFFECTIVE DATE AND PROVIDING A SUNSET CLAUSE.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to
13 recognize the state's responsibility for energy policy planning and the
14 state's responsibility to encourage the development and coordination of
15 state energy policies through the Office of Energy Resources and the Public
16 Utilities Commission. In this regard it shall be the objective of the state
17 to:

18 (1) Ensure a secure, reliable and stable statewide energy system for
19 the citizens and businesses of Idaho;

20 (2) Maintain Idaho's low-cost energy supply and ensure access to af-
21 fordable energy for all Idahoans;

22 (3) Protect Idaho's public health, safety and natural environment and
23 conserve Idaho's natural resources;

24 (4) Promote sustainable economic growth, job creation and rural eco-
25 nomic development;

26 (5) Promote the development of renewable energy resources in the state;
27 and

28 (6) Provide the means for Idaho's energy policy to adapt to changing
29 circumstances.

30 SECTION 2. That Chapter 30, Title 63, Idaho Code, be, and the same is
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
32 ignated as Section 63-3029H, Idaho Code, and to read as follows:

33 63-3029H. INCOME TAX CREDIT FOR RENEWABLE ENERGY RESOURCES. (1) As
34 used in this section:

35 (a) "High-efficiency combined heat and energy facility" means a com-
36 mercial structure, building, installation, excavation, machinery,
37 equipment or device, or an addition, reconstruction or improvement to
38 land or an existing structure, building, installation, excavation,
39 machinery, equipment or device, that is acquired, constructed or in-
40 stalled by a person in connection with the conduct of a trade or business
41 that simultaneously produces heat and electricity from a single source

1 of fuel and that meets the criteria established for a high-efficiency
2 combined heat and energy facility pursuant to chapter 8, title 67, Idaho
3 Code, by the office of energy resources.

4 (b) "Renewable energy resource" means nonfossil fuel products includ-
5 ing, but not limited to:

6 (i) Straw, forest slash, wood waste or other wastes from farm
7 or forest land, nonpetroleum plant or animal based biomass, so-
8 lar energy, wind power, hydrokinetic energy, low impact hydro, or
9 geothermal energy; or

10 (ii) A low impact hydroelectric generating facility that obtains
11 all applicable permits and licenses and complies with all state
12 and federal statutory requirements for the protection of fish and
13 wildlife and that does not exceed ten (10) megawatts of installed
14 capacity. For the purposes of receiving an income tax credit
15 pursuant to this section, low impact hydroelectric generating
16 facility means an electric generating facility utilizing water
17 for the generation of electricity, housed in existing canals, ex-
18 isting streams, ditches, creeks or rivers or existing reservoirs.

19 (c) "Renewable energy resource facility" means a commercial structure,
20 building, installation, excavation, machinery, equipment or device,
21 or an addition, reconstruction or improvement to land or an existing
22 structure, building, installation, excavation, machinery, equipment
23 or device, that is acquired, constructed or installed by a person in
24 connection with the conduct of a trade or business that is used primar-
25 ily to:

26 (i) Manufacture equipment, machinery or other products designed
27 to use a renewable energy resource to develop renewable energy
28 generation and that meets the criteria established pursuant to
29 section 67-829, Idaho Code; or

30 (ii) Generate energy from a renewable energy resource.

31 (d) "Sustainable building practices facility" means a commercial
32 structure, building, installation, excavation, machinery, equipment
33 or device, or an addition, reconstruction or improvement to land or an
34 existing structure, building, installation, excavation, machinery,
35 equipment or device, that is necessarily acquired, constructed or in-
36 stalled by a person in connection with the conduct of a trade or business
37 that incorporates one (1) or more cost savings measures.

38 (e) "Cost savings measure" means a commercial facility improvement,
39 repair or alteration to an existing or new facility, or any equipment,
40 fixture or furnishing to be added or used in any existing or new facility
41 that is designed to reduce energy consumption and energy operating
42 costs or increase the energy efficiency of facilities for their ap-
43 pointed functions that are cost effective. "Cost savings measure"
44 includes, but is not limited to, one (1) or more of the following:

45 (i) Procurement of energy supplies of all types, including elec-
46 tricity, natural gas and water;

47 (ii) Insulating the building structure or systems in the build-
48 ing;

49 (iii) Storm windows or doors, caulking or weather stripping,
50 multiglazed windows or door systems, heat-absorbing or heat-re-

1 flective glazed and coated window and door systems, additional
2 glazing, reductions in glass area or other window and door system
3 modifications that reduce energy consumption;

4 (iv) Automated or computerized energy control systems;

5 (v) Heating, ventilation or air conditioning system modifica-
6 tions or replacements;

7 (vi) Replacing or modifying lighting fixtures to increase the en-
8 ergy efficiency of the lighting system;

9 (vii) Energy recovery systems;

10 (viii) Cogeneration systems that produce steam or forms of energy
11 such as heat, as well as electricity, for use primarily within a
12 building or complex of buildings;

13 (ix) Installing new or modifying existing day lighting systems;

14 (x) Installing or modifying renewable energy and alternate en-
15 ergy technologies;

16 (xi) Building operation programs that reduce energy costs in-
17 cluding, but not limited to, computerized programs, training and
18 other similar activities;

19 (xii) Steam trap improvement programs that reduce energy costs;

20 (xiii) Devices that reduce water consumption in energy production
21 or energy facilities; and

22 (xiv) Any additional building infrastructure improvements that
23 produce energy cost savings, significantly reduce energy consump-
24 tion or increase the energy efficiency of the facilities for their
25 appointed functions and are in compliance with all applicable
26 state building codes.

27 (f) "Facility" means a high-efficiency combined heat and power facil-
28 ity, a renewable energy resource facility, or a sustainable building
29 practices facility.

30 (2) Tax credit authorized. There is hereby allowed as a credit against
31 taxes otherwise due pursuant to this chapter: The amount of the credit al-
32 lowable to an eligible taxpayer pursuant to this section shall be twenty-
33 five percent (25%) of the certified cost of the facility, and shall not ex-
34 ceed the tax liability of the taxpayer or tax credit transferee in addition
35 to other credits permitted pursuant to title 63, Idaho Code.

36 (3) The maximum amount of credit that may be claimed during any tax-
37 able year shall be seven percent (7%) of the qualified expenditure pursuant
38 to this section. If the amount of the credit provided pursuant to the pro-
39 visions of this section exceeds the amount of income taxes otherwise due on
40 the income of the taxpayer in the income tax year for which the credit is be-
41 ing claimed, the amount of the credit not used as an offset against income
42 taxes in such income tax year may be carried forward as a credit against sub-
43 sequent years' income tax liability for a period not exceeding ten (10) years
44 and shall be applied first to the earliest income tax years possible. Any
45 amount of the credit that is not used after such period shall not be refund-
46 able to the taxpayer.

47 (4) In order for a tax credit to be allowable pursuant to this section,
48 the facility must be located in Idaho, the facility must have received final
49 certification from the office of energy resources pursuant to chapter 8, ti-
50 tle 67, Idaho Code, and the taxpayer must be an eligible applicant. As used

1 in this section, an eligible applicant shall be a taxpayer who has a state in-
2 come tax liability or is an Idaho entity with no income tax liability.

3 (5) In order to receive the credit pursuant to this section, the tax-
4 payer shall make application to the tax commission stating with specificity
5 where the building or equipment will be or is located, the value of the build-
6 ing or equipment, the necessary certification from the office of energy re-
7 sources pursuant to chapter 8, title 67, Idaho Code, and a statement attested
8 by the taxpayer or agent of the taxpayer, under penalty of perjury, that the
9 foregoing is true and correct.

10 (6) No more than twenty million dollars (\$20,000,000) of the certified
11 cost of a facility may be eligible for tax credits. The director of the of-
12 fice of energy resources shall determine the dollar amount certified for any
13 facility and the priority between applications for certification based upon
14 the criteria contained in section 67-829, Idaho Code, and applicable rules
15 and standards adopted pursuant to section 67-829, Idaho Code.

16 (7) (a) Prior to erection, construction, installation, improvement,
17 repair, alteration or acquisition of a proposed facility, any person
18 may apply to the office of energy resources for preliminary certifica-
19 tion pursuant to section 67-829, Idaho Code, if the erection, construc-
20 tion, installation or acquisition of the facility is to be commenced on
21 or after January 1, 2011, the facility complies with the standards or
22 rules adopted by the director of the office of energy resources and the
23 applicant meets one (1) of the following criteria.

24 (b) The applicant is a person to whom a tax credit has been transferred
25 or the applicant will be the owner or contract purchaser of the facility
26 at the time of erection, construction, installation or acquisition
27 of the proposed facility and the applicant is the owner, contract
28 purchaser or lessee of a trade or business that plans to utilize the fa-
29 cility in connection with Idaho property or the applicant is the owner,
30 contract purchaser or lessee of a trade or business that plans to lease
31 the facility to a person who will utilize the facility in connection
32 with Idaho property.

33 (c) An application for preliminary certification shall be made in writ-
34 ing on a form prepared by the office of energy resources and shall con-
35 tain a statement that the facility meets the requirements of this sec-
36 tion.

37 (8) In applying for certification for a tax credit pursuant to subsec-
38 tion (7) of this section, the applicant shall supply a detailed description
39 of the proposed facility and its operation and information showing that the
40 facility will operate as represented in the application, information on the
41 amount by which consumption of electricity, petroleum or natural gas by the
42 applicant or the lessee of the applicant's facility will be reduced, and on
43 the amount of energy that will be produced for sale as the result of using the
44 facility or, if applicable, information about the expected level facility
45 performance, the projected costs of the facility and any other information
46 the director of the office of energy resources considers necessary. An ap-
47 plication for preliminary certification shall be accompanied by a fee. The
48 director may allow an applicant to file the preliminary application after
49 the start of erection, construction, installation or acquisition of the fa-
50 cility if the director finds filing the application before the start of errec-

1 tion, construction, installation or acquisition is inappropriate because
 2 special circumstances render filing earlier unreasonable and the facility
 3 would otherwise qualify for the tax credit pursuant to this section. A pre-
 4 liminary certification of a facility shall be applied for and issued as pre-
 5 scribed by rule of the office of energy resources.

6 (9) When claiming a credit pursuant to this section, the applicant
 7 shall supply a detailed description of the proposed facility and its op-
 8 eration and information showing that the facility will be operating as
 9 represented in the application, information on the amount by which consump-
 10 tion of electricity, petroleum or natural gas by the applicant or the lessee
 11 of the applicant's facility has been reduced, and on the amount of energy
 12 that has been produced for sale as the result of using the facility and the
 13 projected costs of the facility and any other information the director of the
 14 office of energy resources and the state tax commission considers necessary.

15 (10) Applicants without sufficient income tax liability may make ex-
 16 penditures that would qualify a taxpayer for a credit pursuant to this sec-
 17 tion and may sell the credit to a taxpayer. If an aforementioned entity that
 18 has no income tax liability wishes to be eligible for the credit, it shall
 19 file the same application a taxpayer would to qualify for the credit. If ap-
 20 proved for the credit, the entity that has no state income tax liability may
 21 sell the credit to a taxpayer. The taxpayer shall pay the entity a cash pay-
 22 ment, which amount shall be determined by the office of energy resources and
 23 shall receive the credit against income taxes as provided in this section.

24 (11) In addition to other needed rules, the state tax commission may
 25 promulgate rules prescribing, in the case of S corporations, partnerships,
 26 trusts or estates, a method of attributing the credit under this section to
 27 the shareholders, partners or beneficiaries in proportion to their share of
 28 the income from the S corporation, partnership, trust or estate.

29 SECTION 3. That Section 63-3067, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 63-3067. REVENUE RECEIVED -- STATE REFUND ACCOUNT. (1) A sum equal to
 32 the amount withheld under section 63-3035A, Idaho Code, shall be distributed
 33 fifty percent (50%) to the public school income fund to be utilized to facil-
 34 itate and provide substance abuse programs in the public school system, and
 35 fifty percent (50%) shall be distributed to the counties to be utilized for
 36 county juvenile probation services. These funds shall be distributed quar-
 37 terly to the counties based upon the percentage the population of the county
 38 bears to the population of the state as a whole.

39 (2) All moneys except as provided in subsection (1) of this section,
 40 and except as hereinafter provided, received by the state of Idaho under
 41 this act shall be deposited by the state tax commission, as received by
 42 it, with the state treasurer and shall be placed in and become a part of
 43 the general account under the custody of the state treasurer. Providing
 44 however, that an amount equal to twenty percent (20%) of the amount deposited
 45 with the state treasurer shall be placed in the "state refund account"
 46 which is hereby created for the purpose of repaying overpayments, for the
 47 purpose of remitting to counties and taxing districts for personal property
 48 exempt from taxation pursuant to section 63-602EE, Idaho Code, as provided
 49 in subsection (~~3~~4) of this section, for the purpose of remitting money to

1 the office of energy resources to implement the provisions of chapter 8,
 2 title 67, Idaho Code, as provided in subsection (3) of this section, for the
 3 purpose of depositing in the trust accounts specified in section 63-3067A,
 4 Idaho Code, such amounts as may be designated by individuals for the purpose
 5 of depositing in the Idaho ag in the classroom account an amount as may be
 6 designated by the individual receiving a refund for such overpayment, and
 7 for the purpose of paying any other erroneous receipts illegally assessed
 8 or collected, penalties collected without authority and taxes and licenses
 9 unjustly assessed, collected or which are excessive in amount. Whenever
 10 necessary for the purpose of making prompt payment of refunds, the board of
 11 examiners, upon request from the state tax commission, and after review,
 12 may authorize the state tax commission to transfer any additional specific
 13 amount from income tax collections to the "state refund account." There
 14 is appropriated out of the state refund account so much thereof as may be
 15 necessary for the payment of the refunds herein provided. Claims for, and
 16 payment of refunds under the provisions of this section shall be made in the
 17 same manner as other claims against the state of Idaho.

18 (3) Annually, an amount equal to five percent (5%) of the income tax
 19 credits eligible to be credited pursuant to section 63-3029H, Idaho Code,
 20 shall be remitted to the office of energy resources fund for the purpose of
 21 implementing the provisions of chapter 8, title 67, Idaho Code.

22 (4) Any unencumbered balance remaining in the state refund account on
 23 June 30 of each and every year in excess of the sum of one million five hundred
 24 thousand dollars (\$1,500,000) shall be transferred to the general fund and
 25 the state controller is hereby authorized and directed on such dates to make
 26 such transfers unless the board of examiners, which is hereby authorized to
 27 do so, changes the date of transfer or sum to be transferred.

28 SECTION 4. That Chapter 8, Title 67, Idaho Code, be, and the same is
 29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 30 ignated as Section 67-829, Idaho Code, and to read as follows:

31 67-829. STANDARDS. The office of energy resources shall promulgate
 32 rules to establish all of the following criteria:

33 (1) For a high-efficiency combined heat and power facility, the mini-
 34 mum performance and efficiency standards that the facility must achieve to
 35 be considered a high-efficiency combined heat and power facility.

36 (2) For a renewable energy resource facility, standards relating to
 37 the type of equipment, machinery or other products being manufactured,
 38 standards related to renewable energy generation and related performance
 39 and efficiency standards.

40 (3) For a sustainable building practices facility, traditional build-
 41 ing practice baselines in energy, water or other resource used for compar-
 42 ative purposes for use in determining whether a facility is a sustainable
 43 building practices facility.

44 SECTION 5. This act shall be in full force and effect on and after Jan-
 45 uary 1, 2011, and shall be null, void and of no force and effect on and after
 46 January 1, 2021.