

Enrolled House Bill 2172

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Environmental Quality)

CHAPTER

AN ACT

Relating to diesel engines; creating new provisions; amending ORS 327.033 and sections 28, 29, 31 and 32, chapter 618, Oregon Laws 2003; appropriating money; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 468A.

SECTION 2. The Environmental Quality Commission shall establish a goal to reduce excess lifetime risk of cancer due to exposure to diesel engine emissions to no more than one case per million individuals by 2017. In setting the goal, the commission shall include a target to substantially reduce the risk to school children from diesel engine emissions produced by Oregon school buses by the end of 2013. The Department of Environmental Quality is directed to track and report to the Legislative Assembly on the progress in meeting this goal.

SECTION 3. ORS 327.033 is amended to read:

327.033. (1) Approved transportation costs shall be estimated for the year of distribution.

(2) **In determining** approved transportation costs, **the State Board of Education:**

(a) Shall include depreciation of original cost to the **school** district of district-owned buses, not in excess of 10 percent per year;

(b) **May not deduct any moneys received by a school district to repower or retrofit, as defined in section 6 of this 2007 Act, or to replace school buses for the purpose of reducing or eliminating diesel engine emissions; and**

(c) **May not include transportation costs paid with moneys received by the school district from the Clean Diesel Engine Fund under section 10 of this 2007 Act.**

(3) **School** districts *[are required to]* shall account separately for those funds received from the State School Fund attributable to the costs included under subsection (2) of this section, and expenditure of those funds shall be limited to the acquisition of new buses or transportation equipment.

SECTION 4. The amendments to ORS 327.033 by section 3 of this 2007 Act apply to State School Fund distributions commencing with the 2007-2008 distribution.

SECTION 5. Sections 6 to 10 of this 2007 Act are added to and made a part of ORS chapter 468A.

SECTION 6. As used in sections 6 to 16 of this 2007 Act:

(1) **“Combined weight”** has the meaning given that term in ORS 825.005.

(2) **“Cost-effectiveness threshold”** means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) “Motor vehicle” has the meaning given that term in ORS 825.005.

(7) “Nonroad Oregon diesel engine” means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) “Oregon diesel engine” means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) “Public highway” has the meaning given that term in ORS 825.005.

(11) “Repower” means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) “Scrap” means to destroy and render inoperable.

(14) “Truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds.

SECTION 6a. Section 6 of this 2007 Act is amended to read:

Sec. 6. As used in sections 6 to [16] 10 of this 2007 Act:

(1) “Combined weight” has the meaning given that term in ORS 825.005.

(2) “Cost-effectiveness threshold” means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) “Motor vehicle” has the meaning given that term in ORS 825.005.

(7) “Nonroad Oregon diesel engine” means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) “Oregon diesel engine” means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) “Public highway” has the meaning given that term in ORS 825.005.

(11) “Repower” means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) "Scrap" means to destroy and render inoperable.

(14) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds.

SECTION 6b. The amendments to section 6 of this 2007 Act by section 6a of this 2007 Act become operative on January 2, 2018.

SECTION 7. (1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit, including but not limited to rules establishing the certified cost for purposes of the tax credit established in section 12 of this 2007 Act.

(2) For the purposes of subsection (1) of this section, certified cost:

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold.

SECTION 7a. Section 7 of this 2007 Act is amended to read:

Sec. 7. (1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit[, *including but not limited to rules establishing the certified cost for purposes of the tax credit established in section 12 of this 2007 Act*].

(2) For the purposes of subsection (1) of this section, certified cost:

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold.

SECTION 7b. The amendments to section 7 of this 2007 Act by section 7a of this 2007 Act become operative on January 2, 2018.

SECTION 8. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine, including but not limited to rules establishing repower or retrofit qualifications for purposes of the tax credit established in section 12 of this 2007 Act.

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a grant, loan or tax credit under section 10 or 12 of this 2007 Act has been awarded or allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the grant, loan or tax credit.

SECTION 8a. Section 8 of this 2007 Act is amended to read:

Sec. 8. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine[, *in-*

cluding but not limited to rules establishing repower or retrofit qualifications for purposes of the tax credit established in section 12 of this 2007 Act].

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a grant[,] or loan [*or tax credit*] under section 10 [*or 12*] of this 2007 Act has been awarded or allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the grant[,] or loan [*or tax credit*].

SECTION 8b. The amendments to section 8 of this 2007 Act by section 8a of this 2007 Act become operative on January 2, 2018.

SECTION 9. (1) The Clean Diesel Engine Fund is established in the State Treasury separate and distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited to the fund. The moneys in the fund are continuously appropriated to the Department of Environmental Quality to be used for the purposes described in section 10 of this 2007 Act.

(2) The Clean Diesel Engine Fund consists of:

(a) Funds appropriated by the Legislative Assembly;

(b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C. 7401 et seq., or other federal laws; and

(c) Any other revenues derived from gifts or grants given to the state for the purpose of providing financial assistance to owners or operators of diesel engines for the purpose of repowering, retrofitting or scrapping diesel engines to reduce diesel engine emissions.

SECTION 10. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel Engine Fund to award:

(a) Grants and loans to the owners and operators of Oregon diesel engines for up to 100 percent of the certified costs of qualifying retrofits as described in sections 7 and 8 of this 2007 Act;

(b) Grants and loans to the owners and operators of nonroad Oregon diesel engines for up to 25 percent of the certified costs of qualifying repowers as described in sections 7 and 8 of this 2007 Act; and

(c) Grants to the owners of Oregon diesel truck engines to scrap those engines.

(2) In determining the amount of a grant or loan under this section, the department must reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, other grants or loans, or any other public financial assistance.

(3) The department may certify third parties to perform qualifying repowers and retrofits and may contract with third parties to perform such services for the certified costs of qualifying repowers and retrofits. The department may also contract with institutions of higher education or other public bodies as defined by ORS 174.109 to train and certify third parties to perform qualifying repowers and retrofits.

(4) The department may not award a grant to scrap an Oregon diesel truck engine under subsection (1)(c) of this section unless the engine was manufactured prior to 1994 and the engine is in operating condition at the time of the grant application or, if repairs are needed, the owner demonstrates to the department's satisfaction that the engine can be repaired to an operating condition for less than its commercial scrap value. The Environmental Quality Commission shall adopt rules for a maximum grant awarded under subsection (1)(c) of this section for an engine in a heavy-duty truck and for an engine in a medium-duty truck. A grant awarded under subsection (1)(c) of this section may not be combined with any other

tax credits, grants or loans, or any other public financial assistance, to scrap an Oregon diesel truck engine.

(5) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses of the department in administering the program described in this section.

(6) The commission shall adopt rules to implement this section and section 9 of this 2007 Act, including but not limited to establishing preferences for grant and loan awards based upon percentage of engine use in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping, repowering or retrofitting an engine will benefit sensitive populations or areas with elevated concentrations of diesel particulate matter, or such other criteria as the commission may establish. The rules adopted by the commission shall reserve a portion of the financial assistance available each year for applicants that own or operate a small number of Oregon diesel engines or Oregon diesel truck engines and shall provide for simplified access to financial assistance for those applicants.

(7) The department may perform activities necessary to ensure that recipients of grants and loans from the Clean Diesel Engine Fund comply with applicable requirements. If the department determines that a recipient has not complied with applicable requirements, it may order the recipient to refund all grant or loan moneys and may impose penalties pursuant to ORS 468.140.

SECTION 11. The rules adopted by the Environmental Quality Commission pursuant to section 10 (6) of this 2007 Act, beginning on the effective date of this 2007 Act and ending on June 30, 2010, shall reserve 75 percent of the funds available for grants and loans under section 10 of this 2007 Act for Oregon diesel engines that:

(1) Will be used in Oregon for at least 75 percent of the total number of miles that the vehicle is driven during the three years following the repowering or retrofitting of the engine; or

(2) Will be used in Oregon for at least 75 percent of the total number of hours the engine is operated during the three years following the repowering or retrofitting of the engine.

SECTION 12. (1) A personal income or corporate income or excise taxpayer is allowed a credit against the taxes that are otherwise due under ORS chapter 316, 317 or 318 for the certified costs of a repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine that occurs after the effective date of this 2007 Act if:

(a) The repower or retrofit has been identified as qualifying for the credit under rules adopted by the Environmental Quality Commission under section 8 of this 2007 Act;

(b) The engine will constitute an Oregon diesel engine; and

(c) The taxpayer has obtained a tax credit cost certification from the Department of Environmental Quality under section 16 of this 2007 Act for the cost of the repower or retrofit.

(2) The maximum amount of the tax credit allowed under this section is limited to:

(a) 25 percent of the certified cost of each qualifying repower; and

(b) 50 percent of the certified cost of each qualifying retrofit.

(3) The amount of the tax credit allowed to the taxpayer under this section in any one tax year may not exceed the tax liability of the taxpayer for the tax year.

(4) Any tax credit that is allowed under this section, but limited by subsection (3) of this section, and that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability as prescribed in subsection (3) of this section for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and offset against the taxpayer's tax liability as prescribed in subsection (3) of this section for the second succeeding tax year. Any credit remaining unused in the second succeeding tax year may be carried forward and offset against the taxpayer's tax liability as prescribed in subsection (3) of this section for the third succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) The credit allowed under this section is not in lieu of any depreciation or amortization deduction for the engine to which the taxpayer otherwise may be entitled for purposes of ORS chapter 316, 317 or 318. The taxpayer's adjusted basis for determining gain or loss may not be decreased by any tax credits allowed under this section.

(6)(a) The Department of Revenue may disallow the credit allowed under this section if the department finds that the credit was obtained by fraud or misrepresentation, or if the department learns that the engine that was the subject of the qualifying repower or retrofit was destroyed by arson committed by the taxpayer, or if the engine no longer meets the requirements for obtaining the tax credit.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited, the department shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit and the taxpayer shall be denied any further credit provided under this section.

(c) The department may perform activities necessary to ensure that recipients of the tax credit comply with applicable requirements.

(7)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

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

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

(8) The taxpayer shall claim the credit on a form prescribed by the Department of Revenue containing the information required by the Department of Revenue. The taxpayer shall maintain the tax credit cost certification issued by the Department of Environmental Quality under section 16 of this 2007 Act in the records of the taxpayer for the length of time prescribed by the Department of Revenue and shall provide a copy of the cost certification to the Department of Revenue if requested.

(9) A taxpayer may not claim a credit under this section and ORS 315.304 with respect to the same diesel engine or group of diesel engines. A taxpayer may claim a credit under this section and under ORS 469.185 to 469.225 with respect to the same diesel engine or group of diesel engines if the taxpayer and diesel engines otherwise meet the requirements to be allowed a tax credit under ORS 469.185 to 469.225.

SECTION 13. (1) A person that has obtained a tax credit cost certification from the Department of Environmental Quality under section 16 of this 2007 Act may transfer the cost certification to a personal income or corporate income or excise taxpayer in exchange for consideration from the taxpayer.

(2) In order for a credit under section 12 of this 2007 Act to be claimed by a person that does not own the repowered or retrofitted engine that qualifies for the credit, the person that received the tax credit cost certification and the taxpayer that will claim the credit must jointly file a cost certification transfer notice with the Department of Revenue to transfer the cost certification to the taxpayer. The transfer notice shall be on a form prescribed by the department and shall contain any information required by the department.

(3) The cost certification transfer notice shall be filed with the Department of Revenue prior to the first tax year for which a credit will be claimed under section 12 of this 2007 Act. A transfer is not allowed under this section if the transferor has claimed any portion of the credit allowed under section 12 of this 2007 Act.

SECTION 14. Sections 12 and 13 of this 2007 Act apply to diesel engine repower and retrofit tax credit cost certifications issued in tax years beginning on or after January 1, 2008.

SECTION 15. (1) The Environmental Quality Commission shall adopt rules to implement this section and sections 12, 13 and 16 of this 2007 Act, including rules:

(a) Imposing a nonrefundable application fee of \$50 for applications for cost certification of repowers or retrofits that qualify for the tax credit allowed under section 12 of this 2007 Act.

(b) Imposing a nonrefundable application processing fee. The amount of the fee shall be the amount that in the judgment of the commission is needed for the Department of Environmental Quality to recoup its expenses in administering the tax credit cost certification under section 16 of this 2007 Act.

(2) The Environmental Quality Commission shall consult with the Department of Revenue prior to adopting or amending rules under this section.

SECTION 16. (1) A person seeking a tax credit under section 12 of this 2007 Act or a person seeking to transfer a tax credit cost certification under section 13 of this 2007 Act shall first apply to the Department of Environmental Quality for certification of the cost of a repower or retrofit of an engine that qualifies for the tax credit under section 12 of this 2007 Act.

(2) The application must contain the following information:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) A statement that the engine on which the repower or retrofit was performed is owned by the applicant and is intended to be an Oregon diesel engine;

(c) A description of the technologies used in the repower or retrofit that are sufficient for the department to determine if the repower or retrofit qualifies for the tax credit;

(d) Invoices or other documentation of the cost and payment of the repower or retrofit; and

(e) Any other information required by the department or required under rules adopted by the Environmental Quality Commission.

(3) The taxpayer shall file the application within one year following the date of the invoice for the qualifying repower or retrofit. The application may not be accepted unless the application includes payment of the nonrefundable fees imposed under rules adopted under section 15 of this 2007 Act.

(4) The department shall consider completed applications and determine if the application describes a repower or retrofit that qualifies for a tax credit under section 12 of this 2007 Act and, if qualified, the certified cost of the repower or retrofit. In determining the amount of a tax credit under this section, the department shall reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, grants, loans or any other public financial assistance. The department shall send written notice of the certified cost to the taxpayer. The department may not certify more than \$3 million of tax credits under this section during each calendar year.

(5) If the department determines that a repower or retrofit does not qualify for a tax credit under section 12 of this 2007 Act or certifies a lesser amount than was sought in the application, the taxpayer may appeal the determination as a contested case under ORS chapter 183.

(6) The department shall deposit fees collected under this section in a miscellaneous receipts account established in the State Treasury for the benefit of the department. Amounts in the account are continuously appropriated to the department for the purpose of reimbursing the department for expenses incurred in administering this section.

SECTION 16a. Sections 12 to 16 of this 2007 Act are repealed on January 2, 2018.

SECTION 17. Section 28, chapter 618, Oregon Laws 2003, is amended to read:

Sec. 28. (1) As used in this section and section 29, **chapter 618, Oregon Laws 2003** [of this 2003 Act]:

(a) "Combined weight" has the meaning given that term in ORS 825.005.

(b) "Motor vehicle" has the meaning given that term in ORS 825.005.

(c) "Truck" means a motor vehicle or combination of vehicles that has a combined weight of more than 26,000 pounds.

(2) A taxpayer who owns a truck that is registered in Oregon under the provisions of ORS chapter 803 or 826 and that has a diesel engine that was purchased in Oregon on or after [the effective date of this 2003 Act] **the effective date of this 2007 Act**, and that is certified by the federal Environmental Protection Agency to emit [oxides of nitrogen] **particulate matter** at the rate of [2.5] **0.01** grams per brake horsepower-hour or less, is allowed a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or against the taxes otherwise due under ORS chapter 317, if the taxpayer is a corporation. The total amount of the credit under this section depends on the number of trucks owned by the taxpayer prior to the purchase, as follows:

(a) 1 to 10 trucks, \$925 for each qualifying engine purchased.

(b) 11 to 50 trucks, \$705 for each qualifying engine purchased.

(c) 51 to 100 trucks, \$525 for each qualifying engine purchased.

(d) More than 100 trucks, \$400 for each qualifying engine purchased.

(3) Notwithstanding subsection (2) of this section, a taxpayer may not claim a credit under this section of more than \$80,000 for purchases in any one year.

(4) A credit may not be allowed under this section unless the taxpayer claiming the credit complies with rules adopted by the [Department of] Environmental Quality **Commission** and the Department of Revenue as provided in section 29, **chapter 618, Oregon Laws 2003** [of this 2003 Act].

(5) Except as provided under subsection (6) of this section, the credit allowed in any one year may not exceed the tax liability of the taxpayer.

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

(7)(a) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the truck to which the taxpayer otherwise may be entitled under ORS chapter 316 or 317 for the tax year.

(b) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credit allowed under this section.

(8)(a) Pursuant to the procedures for a contested case under ORS [183.310 to 183.550] **chapter 183**, the Department of Revenue may order the disallowance of the credit allowed under this section if it finds, by order, that the credit was obtained by fraud or misrepresentation.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section from and after the date that the order of disallowance becomes final.

(9) If the engine is destroyed by fire, flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection district or unit determines that the fire

was caused by arson, as described in ORS 164.315 and 164.325, by the taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the Department of Revenue. If the taxpayer is convicted of arson, the Department of Revenue shall disallow the credit in accordance with subsection (8) of this section.

(10)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

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

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

SECTION 18. Section 29, chapter 618, Oregon Laws 2003, is amended to read:

Sec. 29. (1) The [Department of] Environmental Quality **Commission, after consultation with** [and] the Department of Revenue, shall adopt rules for implementing section 28 [of this 2003 Act], **chapter 618, Oregon Laws 2003.** Rules may include but need not be limited to rules specifying procedures for application, review and approval of the tax credit and rules for issuance and use of a certificate of credit approval.

(2) The application developed under subsection (1) of this section shall include:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) The number of trucks owned by the taxpayer and the number of engines eligible for the tax credit that the taxpayer has purchased; and

(c) Any other information that the rules adopted under subsection (1) of this section may require.

(3) Applications filed in compliance with this section and section 28 [of this 2003 Act], **chapter 618, Oregon Laws 2003,** shall be approved to the extent that the total of estimated tax credits for all approved purchases of engines for the calendar year is equal to or less than [~~\$3 million~~] **\$500,000.** An application may not be approved if the addition of the amount of the tax credit to the amount of the tax credits for all approved purchases for the calendar year would exceed [~~\$3 million~~] **\$500,000.**

(4) Notwithstanding section 31 [of this 2003 Act], **chapter 618, Oregon Laws 2003,** the Department of Environmental Quality may approve applications for tax credits for qualifying engines purchased in calendar years 2004[, 2005, 2006 and 2007] **through 2011,** although the taxpayer may not claim the credit until a tax year beginning on or after January 1, 2005.

(5) The Department of Revenue may disallow, in whole or in part, a claim for credit under section 28 [of this 2003 Act], **chapter 618, Oregon Laws 2003,** upon the Department of Revenue's determination that, under section 28 [of this 2003 Act], **chapter 618, Oregon Laws 2003,** the taxpayer is not entitled to the credit or is entitled to only a portion of the amount claimed.

(6) The Department of Environmental Quality shall charge a fee of [~~\$15~~] **\$50** for each engine for which a taxpayer applies for a tax credit. The fee is payable to the department and may not be refunded to the applicant for any reason.

SECTION 19. Section 31, chapter 618, Oregon Laws 2003, is amended to read:

Sec. 31. The tax credit established in section 28 [of this 2003 Act], **chapter 618, Oregon Laws 2003,** applies to tax years beginning on and after January 1, 2005, and to engine model years 2003[, 2004, 2005, 2006 and 2007] **through 2011.**

SECTION 20. Section 32, chapter 618, Oregon Laws 2003, is amended to read:

Sec. 32. A certificate of credit approval may not be issued under section 29, **chapter 618, Oregon Laws 2003,** [of this 2003 Act] after December 31, [2007] **2011.**

SECTION 21. **The amendments to sections 28, 29, 31 and 32, chapter 618, Oregon Laws 2003, by sections 17 to 20 of this 2007 Act apply to certificates of credit approval under sec-**

tion 29, chapter 618, Oregon Laws 2003, that are issued on or after the effective date of this 2007 Act.

SECTION 22. (1) Sections 12 and 13 of this 2007 Act and section 28, chapter 618, Oregon Laws 2003, are added to and made a part of ORS chapter 315.

(2) Sections 15 and 16 of this 2007 Act and section 29, chapter 618, Oregon Laws 2003, are added to and made a part of ORS chapter 468A.

SECTION 23. This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

Passed by House May 15, 2007

Received by Governor:

Repassed by House June 25, 2007

.....M.,....., 2007

Approved:

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

Passed by Senate June 24, 2007

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2007

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Secretary of State