

B-Engrossed House Bill 2172

Ordered by the House May 10
Including House Amendments dated March 13 and May 10

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)

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.

Directs Environmental Quality Commission to establish goal to reduce diesel emissions. Requires Department of Environmental Quality to track and report progress toward goal. Encourages reduction of school bus diesel emissions by providing that moneys received by school districts to repower, retrofit or replace school bus diesel engines will not be deducted from State School Fund transportation grants.

Creates Clean Diesel Engine Fund to provide grants and loans to repower or retrofit diesel engines.

Continuously appropriates moneys in fund for grant and loan program.

Creates income tax credit for certain costs of repowering or retrofitting diesel engines in service. Extends existing tax credit for purchasing new diesel engines meeting clean diesel emissions standards to permit purchase of new diesel engines before 2012 to qualify for credit. Applies both credits to certifications issued by Department of Environmental Quality on or after effective date of Act.

Sunsets tax credits January 2, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to diesel engines; creating new provisions; amending ORS 327.033 and sections 28, 29, 31
3 and 32, chapter 618, Oregon Laws 2003; appropriating money; and prescribing an effective date.

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

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

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

12 **SECTION 3. ORS 327.033 is amended to read:**

13 327.033. (1) Approved transportation costs shall be estimated for the year of distribution.

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

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

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

20 (c) **May not include transportation costs paid with moneys received by the school district**

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 **from the Clean Diesel Engine Fund under section 10 of this 2007 Act.**

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

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

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

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

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

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

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

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

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

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

22 (7) **“Nonroad Oregon diesel engine”** means any Oregon diesel engine that was not de-
23 signed primarily to propel a motor vehicle on public highways of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (7) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed pri-
10 marily to propel a motor vehicle on public highways of this state.

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

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

17 (10) "Public highway" has the meaning given that term in ORS 825.005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **Sec. 8.** (1) The Environmental Quality Commission by rule shall establish standards for the
26 qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine[, *in-*
27 *cluding but not limited to rules establishing repower or retrofit qualifications for purposes of the tax*
28 *credit established in section 12 of this 2007 Act*].

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

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

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

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

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

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

45 (2) The Clean Diesel Engine Fund consists of:

1 (a) Funds appropriated by the Legislative Assembly;

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

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

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

9 (a) Grants and loans to the owners and operators of Oregon diesel engines for up to 100
10 percent of the certified costs of qualifying retrofits as described in sections 7 and 8 of this
11 2007 Act;

12 (b) Grants and loans to the owners and operators of nonroad Oregon diesel engines for
13 up to 25 percent of the certified costs of qualifying repowers as described in sections 7 and
14 8 of this 2007 Act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (6)(a) The Department of Revenue may disallow the credit allowed under this section if
44 the department finds that the credit was obtained by fraud or misrepresentation, or if the
45 department learns that the engine that was the subject of the qualifying repower or retrofit

1 was destroyed by arson committed by the taxpayer, or if the engine no longer meets the
2 requirements for obtaining the tax credit.

3 (b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS
4 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited, the de-
5 partment shall proceed to collect those taxes not paid by the taxpayer as a result of the prior
6 granting of the credit and the taxpayer shall be denied any further credit provided under this
7 section.

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

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

13 (b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
14 if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the
15 credit allowed by this section shall be prorated or computed in a manner consistent with ORS
16 314.085.

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

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

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

31 (10) The amount of tax credits allowed under this section during each calendar year may
32 not exceed \$3 million.

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

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

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

1 credit allowed under section 12 of this 2007 Act.

2 **SECTION 14.** Sections 12 and 13 of this 2007 Act apply to diesel engine repower and
3 retrofit tax credit cost certifications issued in tax years beginning on or after January 1,
4 2008.

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

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

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

14 (2) The Environmental Quality Commission shall consult with the Department of Re-
15 venue prior to adopting or amending rules under this section.

16 **SECTION 16.** (1) A person seeking a tax credit under section 12 of this 2007 Act or a
17 person seeking to transfer a tax credit cost certification under section 13 of this 2007 Act
18 shall first apply to the Department of Environmental Quality for certification of the cost of
19 a repower or retrofit of an engine that qualifies for the tax credit under section 12 of this
20 2007 Act.

21 (2) The application must contain the following information:

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

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

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

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

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

31 (3) The taxpayer shall file the application within one year following the date of the invoice
32 for the qualifying repower or retrofit. The application may not be accepted unless the appli-
33 cation includes payment of the nonrefundable fees imposed under rules adopted under section
34 15 of this 2007 Act.

35 (4) The department shall consider completed applications and determine if the application
36 describes a repower or retrofit that qualifies for a tax credit under section 12 of this 2007
37 Act and, if qualified, the certified cost of the repower or retrofit. In determining the amount
38 of a tax credit under this section, the department shall reduce the incremental cost of a
39 qualifying repower or retrofit by the value of any existing financial incentive that directly
40 reduces the cost of the qualifying repower or retrofit, including tax credits, grants, loans or
41 any other public financial assistance. The department shall send written notice of the certi-
42 fied cost to the taxpayer.

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

1 **chapter 183.**

2 (6) **The department shall deposit fees collected under this section in a miscellaneous re-**
3 **ceipts account established in the State Treasury for the benefit of the department. Amounts**
4 **in the account are continuously appropriated to the department for the purpose of reim-**
5 **bursing the department for expenses incurred in administering this section.**

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

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

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

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

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

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

14 (2) A taxpayer who owns a truck that is registered in Oregon under the provisions of ORS
15 chapter 803 or 826 and that has a diesel engine that was purchased in Oregon on or after [the ef-
16 fective date of this 2003 Act] **the effective date of this 2007 Act**, and that is certified by the federal
17 Environmental Protection Agency to emit [oxides of nitrogen] **particulate matter** at the rate of
18 [2.5] **0.01** grams per brake horsepower-hour or less, is allowed a credit against the taxes otherwise
19 due under ORS chapter 316, if the taxpayer is a resident individual, or against the taxes otherwise
20 due under ORS chapter 317, if the taxpayer is a corporation. The total amount of the credit under
21 this section depends on the number of trucks owned by the taxpayer prior to the purchase, as fol-
22 lows:

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

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

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

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

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

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

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

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

42 (7)(a) The credit provided by this section is not in lieu of any depreciation or amortization de-
43 duction for the truck to which the taxpayer otherwise may be entitled under ORS chapter 316 or
44 317 for the tax year.

45 (b) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by

1 any tax credit allowed under this section.

2 (8)(a) Pursuant to the procedures for a contested case under ORS [183.310 to 183.550] **chapter**
3 **183**, the Department of Revenue may order the disallowance of the credit allowed under this section
4 if it finds, by order, that the credit was obtained by fraud or misrepresentation.

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

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

12 (9) If the engine is destroyed by fire, flood, natural disaster or act of God before all of the credit
13 has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.
14 In the event of fire, if the fire chief of the fire protection district or unit determines that the fire
15 was caused by arson, as described in ORS 164.315 and 164.325, by the taxpayer or by another at the
16 taxpayer's direction, then the fire chief shall notify the Department of Revenue. If the taxpayer is
17 convicted of arson, the Department of Revenue shall disallow the credit in accordance with sub-
18 section (8) of this section.

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

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

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

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

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

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

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

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

38 (c) Any other information that the rules adopted under subsection (1) of this section may re-
39 quire.

40 (3) Applications filed in compliance with this section and section 28 [*of this 2003 Act*], **chapter**
41 **618, Oregon Laws 2003**, shall be approved to the extent that the total of estimated tax credits for
42 all approved purchases of engines for the calendar year is equal to or less than [*\$3 million*]
43 **\$500,000.** An application may not be approved if the addition of the amount of the tax credit to the
44 amount of the tax credits for all approved purchases for the calendar year would exceed [*\$3*
45 *million*] **\$500,000.**

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

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

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

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

13 **Sec. 31.** The tax credit established in section 28 [*of this 2003 Act*], **chapter 618, Oregon Laws**
14 **2003**, applies to tax years beginning on and after January 1, 2005, and to engine model years
15 2003[, 2004, 2005, 2006 and 2007] **through 2011**.

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

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

19 **SECTION 21.** **The amendments to sections 28, 29, 31 and 32, chapter 618, Oregon Laws**
20 **2003, by sections 17 to 20 of this 2007 Act apply to certificates of credit approval under sec-**
21 **tion 29, chapter 618, Oregon Laws 2003, that are issued on or after the effective date of this**
22 **2007 Act.**

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

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

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

29