

House Bill 2072

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Revenue)

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 **as introduced**.

Imposes tax on each fuel supplier and utility based on amount of carbon in carbon-based fuel that is sold by fuel supplier to consumers in state or that is used to produce carbon-generated electricity supplied by utility to consumers in state. Limits tax on certain oil and natural gas to six percent of market value of oil or natural gas.

Distributes moneys collected from tax to State Highway Fund, Common School Fund, Energy Crisis Trust Fund and Renewable Energy Resources Account.

Creates Renewable Energy Resources Account to fund development of renewable energy resources.

Appropriates moneys from General Fund to Department of Revenue and State Department of Energy for purpose of funding first year of administration of tax.

Applies to carbon-based fuel sold to consumers or used to produce carbon-generated electricity on or after January 1, 2011.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to carbon tax; creating new provisions; amending ORS 458.510; appropriating money; pre-
3 scribing an effective date; and providing for revenue raising that requires approval by a three-
4 fifths majority.

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

6 **SECTION 1. As used in sections 1 to 7 of this 2009 Act:**

7 (1) **“Carbon-based fuel” means coal, natural gas, petroleum products and any other**
8 **product used for fuel that contains carbon and emits carbon dioxide when combusted.**
9 **“Carbon-based fuel” does not include any product used for fuel that is from a resource that**
10 **is less than 1,000 years old in its natural state.**

11 (2) **“Carbon-based fuel group” means a group of carbon-based fuels that contain similar**
12 **levels of carbon.**

13 (3) **“Carbon-generated electricity” means electric energy that is produced by a carbon-**
14 **based fuel. “Carbon-generated electricity” does not include electric energy produced by a fuel**
15 **that is from a resource that is less than 1,000 years old in its natural state.**

16 (4) **“Fuel supplier” means a person that sells carbon-based fuel to consumers.**

17 (5) **“Utility” means a public utility operating under ORS chapter 757, a people’s utility**
18 **district operating under ORS chapter 261, a municipal utility operating under ORS chapter**
19 **225 or any other entity that supplies carbon-generated electricity to consumers.**

20 **SECTION 2. (1) A tax is imposed on each fuel supplier and utility at a rate of \$_____**
21 **per ton of carbon in a carbon-based fuel that is:**

22 (a) **Sold by a fuel supplier to consumers in this state; or**

23 (b) **Used to produce carbon-generated electricity that is supplied by a utility to consum-**
24 **ers in this state.**

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 (2) Notwithstanding the rate designated under subsection (1) of this section, the amount
 2 of tax imposed on oil or natural gas under this section may not exceed six percent of the
 3 market value of oil or natural gas that is described in section 3b, Article IX of the Oregon
 4 Constitution. If the total of all taxes imposed by all laws on oil or natural gas described in
 5 section 3b, Article IX of the Oregon Constitution, exceeds six percent of the market value
 6 of the oil or natural gas, the amount that is in excess because of taxes imposed by the laws
 7 of this state, other than the tax imposed by this section, shall be refunded to the taxpayer.

8 (3) The Department of Revenue shall calculate the tax liability of a fuel supplier or utility
 9 by multiplying the rate designated in subsection (1) of this section by the total amount of
 10 carbon in carbon-based fuels in each carbon-based fuel group that are:

11 (a) Sold by the fuel supplier to consumers in this state in the previous calendar year; or

12 (b) Used to produce carbon-generated electricity supplied by the utility to consumers in
 13 this state in the previous calendar year.

14 (4)(a) If a utility is unable to provide the information required for the calculation under
 15 subsection (3) of this section, the Department of Revenue shall calculate the utility's tax li-
 16 ability by multiplying the rate designated in subsection (1) of this section by the product of
 17 the average amount of carbon used in the production of one kilowatt of electricity supplied
 18 by the utility and the total number of kilowatts of electricity supplied by the utility to con-
 19 sumers in this state.

20 (b) The State Department of Energy shall calculate the average amount of carbon used
 21 in the production of one kilowatt of electricity supplied by the utility by estimating the ratio
 22 that each carbon-based fuel group contributes to the generation of the electricity. Each year,
 23 the State Department of Energy shall recalculate and report to the Department of Revenue
 24 the average amount of carbon used in the production of one kilowatt of electricity supplied
 25 by the utility to take into account any changes in the ratio of carbon-based fuel groups used
 26 in the generation of the electricity.

27 (5) The Department of Revenue and the State Department of Energy may adopt any rules
 28 necessary for the calculation and collection of the tax imposed under this section.

29 (6) The tax imposed under this section does not apply to:

30 (a) Carbon-based fuel or carbon-generated electricity that this state is prohibited from
 31 taxing under the Constitution or laws of the United States or the Constitution or laws of the
 32 State of Oregon.

33 (b) Any fuel supplier or utility that is administered by a federal agency.

34 (c) Any carbon-based fuel or carbon-generated electricity that is transported through
 35 this state but not consumed in this state.

36 **SECTION 3.** (1) Every fuel supplier and utility required to pay the tax imposed under
 37 section 2 of this 2009 Act shall file a report with the Department of Revenue on or before
 38 April 1 of each year.

39 (2) The report filed by a fuel supplier under this section shall include:

40 (a) The total amount of carbon-based fuel in each carbon-based fuel group sold by the fuel
 41 supplier to consumers in this state in the previous calendar year;

42 (b) The market value and any taxes paid in the previous calendar year for any oil or na-
 43 tural gas that is described in section 3b, Article IX of the Oregon Constitution, and sold by
 44 the fuel supplier; and

45 (c) Any other information required by the department by rule.

1 (3) The report filed by a utility under this section shall include:

2 (a) The total amount of carbon-based fuel in each carbon-based fuel group used to
 3 produce the carbon-generated electricity supplied by the utility to consumers in this state
 4 in the previous calendar year;

5 (b) The market value and any taxes paid in the previous calendar year for any oil or na-
 6 tural gas that is described in section 3b, Article IX of the Oregon Constitution, and used to
 7 produce carbon-generated electricity supplied by the utility; and

8 (c) Any other information required by the department by rule.

9 (4) If a utility is unable to provide the information required under subsection (3) of this
 10 section, the utility shall report:

11 (a) To the State Department of Energy the information required by the department by
 12 rule to make the calculations under section 2 (4) of this 2009 Act; and

13 (b) To the Department of Revenue the total number of kilowatts of electricity supplied
 14 by the utility to consumers in this state in the previous calendar year.

15 (5) Each fuel supplier and utility shall keep records, render statements, make returns
 16 and comply with rules adopted by the Department of Revenue and State Department of En-
 17 ergy for the tax imposed under section 2 of this 2009 Act.

18 **SECTION 4.** (1) On or before June 1 of each year, the Department of Revenue shall send
 19 an assessment to each fuel supplier and utility that identifies the amount of tax liability owed
 20 for the previous calendar year by the fuel supplier or utility for the tax imposed under sec-
 21 tion 2 of this 2009 Act.

22 (2) On or before July 1 of each year, each fuel supplier and utility that receives an as-
 23 sessment under subsection (1) of this section shall pay the amount of the tax liability to the
 24 department.

25 (3) If the amount paid by the fuel supplier or utility under subsection (2) of this section
 26 exceeds the amount of tax payable, the department shall refund the amount of the excess
 27 with interest at the rate established under ORS 305.220 for each month or fraction of a
 28 month from the date of payment of the excess until the date of the refund. A refund is not
 29 available to a fuel supplier or utility that fails to claim the refund within two years after the
 30 due date for the filing of the return with respect to which the claim for refund relates.

31 (4) If a fuel supplier or utility fails to pay the tax assessed against it under subsection
 32 (1) of this section, the department may enforce collection by the issuance of a distraint
 33 warrant for the collection of the delinquent amount and all penalties, interest and collection
 34 charges. The warrant shall be issued, docketed and proceeded upon in the same manner and
 35 shall have the same force and effect as is prescribed with respect to warrants for the col-
 36 lection of delinquent income taxes.

37 **SECTION 5.** Moneys received by the Department of Revenue pursuant to the tax imposed
 38 under section 2 of this 2009 Act shall be deposited in a suspense account created pursuant
 39 to ORS 293.445. Moneys in that account shall be distributed as follows:

40 (1) All moneys that are collected from motor vehicle fuel or any other product used for
 41 the propulsion of motor vehicles shall be used in the manner described in section 3a, Article
 42 IX of the Oregon Constitution.

43 (2) All moneys that are collected from natural gas or oil described in section 2 (1)(g),
 44 Article VIII of the Oregon Constitution, shall be used in the manner designated in section 2
 45 (1)(g), Article VIII of the Oregon Constitution.

1 **(3) All moneys collected from sources not described in subsection (1) or (2) of this sec-**
 2 **tion, minus any amounts the Department of Revenue or State Department of Energy may**
 3 **collect to cover costs incurred by the Department of Revenue or State Department of Energy**
 4 **in the administration of the tax, shall be deposited as follows:**

5 **(a) _____ percent to the Common School Fund described in section 2, Article VIII of**
 6 **the Oregon Constitution;**

7 **(b) _____ percent to the Energy Crisis Trust Fund established under ORS 458.510 for**
 8 **the purpose of providing low income home energy assistance; and**

9 **(c) _____ percent to the Renewable Energy Resources Account established in section**
 10 **6 of this 2009 Act for the purpose of funding the development of renewable energy resources.**

11 **SECTION 6. The Renewable Energy Resources Account is established in the State**
 12 **Treasury, separate and distinct from the General Fund. The account consists of moneys**
 13 **distributed to the account under section 5 of this 2009 Act. All moneys in the account are**
 14 **continuously appropriated to the State Department of Energy to fund the development of**
 15 **renewable energy resources, as defined in ORS 469.185.**

16 **SECTION 7. Unless the context requires otherwise, the provisions of ORS chapters 305,**
 17 **314 and 316 that relate to the audit and examination of reports and returns, confidentiality**
 18 **and disclosure of reports and returns, determination of deficiencies, assessments, claims for**
 19 **refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the**
 20 **Oregon Tax Court, and related procedures, apply to sections 1 to 7 of this 2009 Act, the same**
 21 **as if the tax were a tax imposed upon or measured by net income.**

22 **SECTION 8. ORS 458.510 is amended to read:**

23 458.510. (1) There is established an Energy Crisis Trust Fund, separate and distinct from the
 24 General Fund, in the State Treasury. As permitted by federal court decisions, federal statutory re-
 25 quirements and administrative decisions, funds from the Petroleum Violation Escrow Fund made
 26 available to the Housing and Community Services Department for the Energy Crisis Trust Fund,
 27 **funds designated to the Energy Crisis Trust Fund under section 5 of this 2009 Act** and any
 28 gift, grant, appropriation or donation for the purpose of the Energy Crisis Trust Fund shall be de-
 29 posited by the State Treasurer and credited to the Energy Crisis Trust Fund. The State Treasurer
 30 shall credit monthly to the fund any interest or other income derived from the fund or the investing
 31 of the fund. All moneys in the fund are continuously appropriated to the Housing and Community
 32 Services Department for the purpose of providing low income home energy assistance.

33 (2) If moneys are donated to the fund for low income energy assistance by a home heating fuel
 34 or energy service provider that allows its customers to contribute to the program, that money so
 35 donated shall be redistributed through the Energy Crisis Trust Fund only within the service area
 36 of that home heating fuel or energy service provider.

37 (3) The Housing and Community Services Department shall contract with a private nonprofit or
 38 public organization or agency for the distribution of moneys in the Energy Crisis Trust Fund. The
 39 department or the contractor shall administer and distribute the funds in accordance with:

40 (a) The Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.);

41 (b) The Petroleum Violation Escrow Fund regulations; and

42 (c) The recommendations of the advisory committee established in ORS 458.515.

43 **SECTION 9. For the purpose of first calculating the tax imposed under section 2 of this**
 44 **2009 Act, the State Department of Energy shall determine the percentage of carbon in each**
 45 **carbon-based fuel group and report those percentages to the Department of Revenue.**

1 **SECTION 10.** (1) In addition to and not in lieu of any other appropriation, there is ap-
2 propriated to the Department of Revenue, for the biennium beginning July 1, 2009, out of the
3 General Fund, the amount of \$_____, which may be expended for the purpose of funding
4 the first year of administration of the tax imposed under section 2 of this 2009 Act.

5 (2) In addition to and not in lieu of any other appropriation, there is appropriated to the
6 State Department of Energy, for the biennium beginning July 1, 2009, out of the General
7 Fund, the amount of \$_____, which may be expended for the purpose of assisting the De-
8 partment of Revenue in administering the first year of the tax imposed under section 2 of
9 this 2009 Act.

10 **SECTION 11.** Sections 1 to 7 of this 2009 Act and the amendments to ORS 458.510 by
11 section 8 of this 2009 Act apply to carbon-based fuel sold to consumers or used to produce
12 carbon-generated electricity on or after January 1, 2011.

13 **SECTION 12.** This 2009 Act takes effect on the 91st day after the date on which the
14 regular session of the Seventy-fifth Legislative Assembly adjourns sine die.