

House Bill 2159

Introduced and printed pursuant to House Rule 12.00. 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.

Establishes Conservation Fund to fund energy conservation projects and subsidies for energy costs of low-income individuals.

Distributes moneys collected from tax to Conservation Fund, unless other distribution required under Oregon Constitution.

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, 2017.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to carbon-based fuel; prescribing an effective date; and providing for revenue raising that
3 requires approval by a three-fifths majority.

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

SECTION 1. As used in sections 1 to 6 of this 2015 Act:

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

10 (2) **“Carbon-generated electricity” means electric energy that is produced using a**
11 **carbon-based fuel.**

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

13 (4) **“Utility” means a public utility operating under ORS chapter 757, a people’s utility**
14 **district operating under ORS chapter 261, a municipal utility operating under ORS chapter**
15 **225 or any other entity that supplies carbon-generated electricity to consumers.**

16 **SECTION 2. (1) A tax is imposed on each fuel supplier and utility at a rate of \$150 per**
17 **ton of carbon in a carbon-based fuel that is:**

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

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

21 (2) **Notwithstanding the rate designated under subsection (1) of this section, the amount**
22 **of tax imposed on oil or natural gas under this section may not exceed six percent of the**
23 **market value of oil or natural gas that is described in Article IX, section 3b, of the Oregon**
24 **Constitution. If the total of all taxes imposed by all laws on oil or natural gas described in**

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 Article IX, section 3b, of the Oregon Constitution, exceeds six percent of the market value
2 of the oil or natural gas, the amount that is in excess because of taxes imposed by the laws
3 of this state, other than the tax imposed by this section, shall be refunded to the taxpayer.

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

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

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

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

16 (b) The State Department of Energy shall calculate the average amount of carbon used
17 in the production of one kilowatt of electricity supplied by the utility based upon the pro-
18 portion that each carbon-based fuel constitutes of the total amount of carbon-based fuel used
19 in the generation of the electricity by the utility and the amount of carbon used in the pro-
20 duction of one kilowatt of electricity for each carbon-based fuel. Each year, the State De-
21 partment of Energy shall recalculate and report to the Department of Revenue the average
22 amount of carbon used in the production of one kilowatt of electricity supplied by the utility
23 to take into account any changes in the relative proportion of carbon-based fuels used in the
24 generation of the electricity by the utility.

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

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

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

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

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

35 **SECTION 3.** (1) Every fuel supplier and utility required to pay the tax imposed under
36 section 2 of this 2015 Act shall file a report with the Department of Revenue on or before
37 April 1 of each year.

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

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

41 (b) The market value of and any taxes paid for any oil or natural gas that is described
42 in Article IX, section 3b, of the Oregon Constitution, and sold by the fuel supplier to con-
43 sumers in this state in the previous calendar year; and

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

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

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

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

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

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

10 (a) To the State Department of Energy the information required by the department by
 11 rule to make the calculations under section 2 (4) of this 2015 Act; and

12 (b) To the Department of Revenue the total number of kilowatts of electricity generated
 13 using carbon-based fuel and supplied by the utility to consumers in this state in the previous
 14 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 the State Department of
 17 Energy related to the tax imposed under section 2 of this 2015 Act.

18 **SECTION 4.** (1) On or before June 1 of each year, the Department of Revenue shall send
 19 to each fuel supplier and utility an assessment that identifies the tax liability of the fuel
 20 supplier or utility for the previous calendar year for the tax imposed under section 2 of this
 21 2015 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 2015 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 Article IX, section
 42 3a, of the Oregon Constitution.

43 (2) All moneys that are collected from natural gas or oil described in Article VIII, section
 44 2 (1)(g), of the Oregon Constitution, shall be used in the manner designated in Article VIII,
 45 section 2 (1)(g), 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 to the Conservation Fund established in
 5 section 6 of this 2015 Act for the purpose of funding energy conservation and efficiency
 6 projects and low income home energy assistance programs.

7 **SECTION 6.** The Conservation Fund is established in the State Treasury, separate and
 8 distinct from the General Fund. The Conservation Fund consists of moneys distributed to the
 9 fund under section 5 of this 2015 Act. All moneys in the fund are continuously appropriated
 10 to the State Department of Energy to fund energy conservation and efficiency projects as
 11 described in ORS 468A.290 and low income home energy assistance programs as in accord-
 12 ance with the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.).

13 **SECTION 7.** Unless the context requires otherwise, the provisions of ORS chapters 305,
 14 314 and 316 that relate to the audit and examination of reports and returns, confidentiality
 15 and disclosure of reports and returns, determination of deficiencies, assessments, claims for
 16 refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the
 17 Oregon Tax Court, and related procedures, apply to sections 1 to 6 of this 2015 Act, the same
 18 as if the tax were a tax imposed upon or measured by net income.

19 **SECTION 8.** For the purpose of first calculating the tax liability of fuel suppliers and
 20 utilities under section 2 of this 2015 Act, the State Department of Energy shall determine the
 21 amount of carbon by weight in each carbon-based fuel and report those percentages to the
 22 Department of Revenue.

23 **SECTION 9.** (1) In addition to and not in lieu of any other appropriation, there is appro-
 24 priated to the Department of Revenue, for the biennium beginning July 1, 2015, out of the
 25 General Fund, the amount of \$_____, which may be expended for the purpose of funding
 26 the first year of administration of the tax imposed under section 2 of this 2015 Act.

27 (2) In addition to and not in lieu of any other appropriation, there is appropriated to the
 28 State Department of Energy, for the biennium beginning July 1, 2015, out of the General
 29 Fund, the amount of \$_____, which may be expended for the purpose of assisting the De-
 30 partment of Revenue in administering the first year of the tax imposed under section 2 of
 31 this 2015 Act.

32 **SECTION 10.** Sections 1 to 6 of this 2015 Act apply to carbon-based fuel sold to consumers
 33 in this state or used to produce carbon-generated electricity that is supplied to consumers
 34 in this state on or after January 1, 2017.

35 **SECTION 11.** This 2015 Act takes effect on the 91st day after the date on which the 2015
 36 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.