

House Bill 2138

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy and Environment)

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**.

Beginning January 1, 2018, requires certain public improvement contracts to reserve one percent of total contract price for performing repowers or retrofits of certain diesel engines used in course of performing contract. Sunsets requirement on January 2, 2030.

Requires Department of Environmental Quality to establish and maintain statewide inventory of nonroad diesel engines. Requires department to complete initial inventory no later than July 1, 2018.

Beginning January 1, 2019, requires certain nonroad diesel engines to be registered with department. Authorizes Environmental Quality Commission to adopt rules and registration fees.

Directs commission to adopt by rule diesel engine emission standards for medium-duty trucks, heavy-duty trucks and nonroad diesel engines operative January 1, 2_____. Requires commission to phase in implementation of certain standards.

Authorizes State of Oregon to receive moneys pursuant to Volkswagen Environmental Mitigation Trust Agreement, deposit moneys in Clean Diesel Engine Fund and engage in certain uses of moneys.

Repeals state preemption of local regulation of idling by primary engines in commercial vehicles. Declares emergency, effective July 1, 2017.

A BILL FOR AN ACT

1
2 Relating to diesel; creating new provisions; amending ORS 468A.795, 468A.796, 468A.799, 468A.801
3 and 468A.803 and section 12, chapter 855, Oregon Laws 2007; repealing ORS 825.615; and de-
4 claring an emergency.

5 Whereas Oregon ranks sixth highest in the nation for risks to human health from diesel
6 particulate pollution; and

7 Whereas exposure to diesel particulate pollution causes myriad health effects, including the
8 exacerbation of asthma symptoms and early death from heart disease and various cancers; and

9 Whereas children are especially vulnerable to the negative health effects of diesel particulate
10 pollution because their lungs are still in the developmental phase and they breathe, on average, 50
11 percent more air per pound of body weight than adults; and

12 Whereas the health impacts and premature deaths caused by diesel particulate pollution have
13 an annual economic impact of more than \$3 billion in this state; and

14 Whereas 17 Oregon counties have ambient levels of diesel particulate pollution that are con-
15 sidered harmful to health; and

16 Whereas the problem of diesel particulate pollution in this state is exacerbated when engines
17 are allowed to idle unnecessarily; and

18 Whereas new diesel engines and older diesel engines retrofitted with particulate filters can re-
19 duce diesel particulates by up to 95 percent as compared to diesel particulate matter emissions from
20 older, dirty diesel engines that are not retrofitted; and

21 Whereas the attrition rate of older, dirty diesel engines that are not retrofitted is too slow to
22 adequately curb emissions in a timely manner and protect public health; and

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 Whereas a strategy to shorten the timeline for conversion to the use of new diesel engines and
 2 older diesel engines retrofitted with particulate filters requires a combination of regulations and
 3 incentives; and

4 Whereas the incorporation of California’s emission standards for nonroad diesel engines into the
 5 Department of Environmental Quality’s existing air quality regulations will benefit public health;
 6 now, therefore,

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

8
 9 **ONE PERCENT FOR CLEAN DIESEL IN PUBLIC CONTRACTS**

10
 11 **SECTION 1.** Section 2 of this 2017 Act is added to and made a part of the Public Con-
 12 tracting Code.

13 **SECTION 2.** (1) As used in this section, “diesel engine” has the meaning given that term
 14 in ORS 468A.795.

15 (2) Except as provided in subsection (4) of this section, a public improvement contract
 16 for which federal funds from congestion mitigation and air quality improvement grants are
 17 a source of funding must reserve an amount equal to at least one percent of the total con-
 18 tract price for the purpose of performing qualifying repowers or retrofits, as described in
 19 ORS 468A.797, 468A.799 and 468A.803, of diesel engines that:

20 (a) Will be used in the course of performing the contract; and

21 (b) For the three years following a repower or retrofit, will undergo at least 50 percent
 22 of the diesel engine’s use in Oregon, as measured by miles driven or hours operated.

23 (3) Any amount reserved in a public improvement contract under subsection (2) of this
 24 section that remains unexpended after completion of and final payment for the public im-
 25 provement contract shall be deposited in the Clean Diesel Engine Fund.

26 (4)(a) The Environmental Quality Commission may adopt by rule minimum standards for
 27 contract specifications relating to the use of diesel engines in the course of performing a
 28 public improvement contract.

29 (b) As an alternative to meeting the requirements of subsection (2) of this section, a
 30 public improvement contract subject to subsection (2) of this section may include contract
 31 specifications that meet the minimum standards adopted by the commission by rule under
 32 this subsection.

33 **SECTION 3.** (1) Section 2 of this 2017 Act becomes operative on January 1, 2018.

34 (2) Section 2 of this 2017 Act applies to public improvement contracts advertised or so-
 35 licited on or after January 1, 2018, or, for public improvement contracts that are not adver-
 36 tised or solicited, public improvement contracts that a contracting agency enters into on or
 37 after January 1, 2018.

38 **SECTION 4.** Section 2 of this 2017 Act is amended to read:

39 **Sec. 2.** (1) As used in this section[,]:

40 (a) “Diesel engine” has the meaning given that term in ORS 468A.795.

41 (b) “Local contracting agency” does not include small special districts as defined by the
 42 Environmental Quality Commission by rule.

43 (2) Except as provided in subsection [(4)] (5) of this section, a public improvement contract [*for*
 44 *which federal funds from congestion mitigation and air quality improvement grants are a source of*
 45 *funding*] must reserve an amount equal to at least one percent of the total contract price for the

1 purpose of performing qualifying repowers or retrofits, as described in ORS 468A.797, 468A.799 and
2 468A.803, of diesel engines that:

3 (a) Will be used in the course of performing the contract; and

4 (b) For the three years following a repower or retrofit, will undergo at least 50 percent of the
5 diesel engine's use in Oregon, as measured by miles driven or hours operated.

6 **(3) Subsection (2) of this section applies only to a public improvement contract for:**

7 **(a) A public improvement for which federal funds from congestion mitigation and air
8 quality improvement grants are a source of funding; or**

9 **(b) A public improvement with a value of \$2 million or more and for which state funds
10 constitute 30 percent or more of the value of the contract if the contracting agency is:**

11 **(A) A state contracting agency; or**

12 **(B) A local contracting agency located in an area designated by the United States Office
13 of Management and Budget as a micropolitan or metropolitan statistical area with a popu-
14 lation of 10,000 or more.**

15 [(3)] **(4) Any amount reserved in a public improvement contract under subsection (2) of this
16 section that remains unexpended after completion of and final payment for the public improvement
17 contract shall be deposited in the Clean Diesel Engine Fund.**

18 [(4)(a)] **(5)(a) The Environmental Quality Commission may adopt by rule minimum standards for
19 contract specifications relating to the use of diesel engines in the course of performing a public
20 improvement contract.**

21 (b) As an alternative to meeting the requirements of subsection (2) of this section, a public im-
22 provement contract subject to subsection [(2)] **(3)** of this section may include contract specifications
23 that meet the minimum standards adopted by the commission by rule under this subsection.

24 **SECTION 5. (1) The amendments to section 2 of this 2017 Act by section 4 of this 2017
25 Act become operative on January 1, 2020.**

26 **(2) The amendments to section 2 of this 2017 Act by section 4 of this 2017 Act apply to
27 public improvement contracts advertised or solicited on or after January 1, 2020, or, if the
28 public improvement contracts are not advertised or solicited, to public improvement con-
29 tracts entered into on or after January 1, 2020.**

30 **SECTION 6. Section 2 of this 2017 Act is repealed on January 2, 2030.**

31
32 **OREGON CLEAN DIESEL PROGRAM**

33
34 **(Definitions)**

35
36 **SECTION 7. ORS 468A.795 is amended to read:**

37 468A.795. As used in ORS 468A.795 to 468A.803 and sections 11 to 16, chapter 855, Oregon Laws
38 2007:

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

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

42 (3) "Diesel engine" means a compression ignition engine.

43 (4) "Environmental Mitigation Trust Agreement" means the Environmental Mitigation
44 Trust Agreement required by the Volkswagen "Clean Diesel" Marketing, Sales Practices and
45 Products Liability Litigation partial consent decree dated October 25, 2016.

1 [(3)] (5) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit
 2 that has a combined weight that is greater than 26,000 pounds.

3 [(4)] (6) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline
 4 cost that would otherwise be incurred in the normal course of business.

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

8 [(6)] (8) “Motor vehicle” has the meaning given that term in ORS 825.005.

9 **(9) “Nonroad diesel engine” means a diesel engine of 25 horsepower or more that is not**
 10 **designed primarily to propel a motor vehicle on public highways.**

11 [(7) “Nonroad Oregon diesel engine” means any Oregon diesel engine that was not designed pri-
 12 marily to propel a motor vehicle on public highways of this state.]

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

16 [(9)] (10) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of
 17 the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the
 18 two years preceding the scrapping of the engine.

19 [(10)] (11) “Public highway” has the meaning given that term in ORS 825.005.

20 [(11)] (12) “Repower” means to scrap an old diesel engine and [replace] **substitute** it with a new
 21 engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with
 22 a minimum useful life of seven years.

23 [(12)] (13) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or tech-
 24 nology after the manufacture of the original engine. A retrofit must use the greatest degree of
 25 emissions reduction available for the particular application of the equipment retrofitted that meets
 26 the cost-effectiveness threshold.

27 [(13)] (14) “Scrap” means to destroy and render inoperable.

28 [(14)] (15) “Truck” means a motor vehicle or combination of vehicles operated as a unit that has
 29 a combined weight that is greater than 14,000 pounds.

30 **SECTION 8.** ORS 468A.795, as amended by section 6a, chapter 855, Oregon Laws 2007, is
 31 amended to read:

32 468A.795. As used in ORS 468A.795 to 468A.803:

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

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

36 (3) **“Diesel engine” means a compression ignition engine.**

37 (4) **“Environmental Mitigation Trust Agreement” means the Environmental Mitigation**
 38 **Trust Agreement required by the Volkswagen “Clean Diesel” Marketing, Sales Practices and**
 39 **Products Liability Litigation partial consent decree dated October 25, 2016.**

40 [(3)] (5) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit
 41 that has a combined weight that is greater than 26,000 pounds.

42 [(4)] (6) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline
 43 cost that would otherwise be incurred in the normal course of business.

44 [(5)] (7) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a
 45 unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000

1 pounds.

2 [(6)] (8) “Motor vehicle” has the meaning given that term in ORS 825.005.

3 (9) “Nonroad diesel engine” means a diesel engine of 25 horsepower or more that is not
4 designed primarily to propel a motor vehicle on public highways.

5 [(7) “Nonroad Oregon diesel engine” means any Oregon diesel engine that was not designed pri-
6 marily to propel a motor vehicle on public highways of this state.]

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

10 [(9)] (10) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of
11 the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the
12 two years preceding the scrapping of the engine.

13 [(10)] (11) “Public highway” has the meaning given that term in ORS 825.005.

14 [(11)] (12) “Repower” means to scrap an old diesel engine and [replace] substitute it with a new
15 engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with
16 a minimum useful life of seven years.

17 [(12)] (13) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or tech-
18 nology after the manufacture of the original engine. A retrofit must use the greatest degree of
19 emissions reduction available for the particular application of the equipment retrofitted that meets
20 the cost-effectiveness threshold.

21 [(13)] (14) “Scrap” means to destroy and render inoperable.

22 [(14)] (15) “Truck” means a motor vehicle or combination of vehicles operated as a unit that has
23 a combined weight that is greater than 14,000 pounds.

24
25 (School Buses)

26
27 **SECTION 9.** ORS 468A.796 is amended to read:

28 468A.796. All school buses with diesel engines operated in Oregon must, by January 1,
29 2_____, be:

30 (1) Retrofitted with 2007 equivalent engines and 2007 fine particulate matter capture technology
31 [by January 1, 2017]; or

32 (2) Replaced with school buses manufactured on or after January 1, 2007[, by January 1, 2025].

33 A school bus replaced under this subsection may not be used for transportation of any type.

34
35 (Nonroad Diesel Engine Inventory)

36
37 **SECTION 10.** Section 11 of this 2017 Act is added to and made a part of ORS 468A.795 to
38 468A.803.

39 **SECTION 11.** The Department of Environmental Quality shall establish and maintain a
40 statewide inventory of nonroad diesel engines used in Oregon. The inventory must identify
41 nonroad diesel engines by engine model year, horsepower and annual usage. The Environ-
42 mental Quality Commission may adopt rules necessary for implementation of this section,
43 including but not limited to rules identifying the classes of nonroad diesel engines to be in-
44 cluded in the inventory.

45 **SECTION 12.** The Department of Environmental Quality shall establish the initial inven-

1 tory of nonroad diesel engines used in Oregon required by section 11 of this 2017 Act no later
2 than July 1, 2018.

3
4 (Nonroad Diesel Engine Registration)

5
6 **SECTION 13.** Sections 14 and 15 of this 2017 Act are added to and made a part of ORS
7 468A.795 to 468A.803.

8 **SECTION 14.** (1) A person may not operate a nonroad diesel engine in this state without
9 first registering the engine with the Department of Environmental Quality under section 15
10 of this 2017 Act.

11 (2) This section does not apply to:

12 (a) Farm tractors, as defined in ORS 801.265.

13 (b) Implements of husbandry, as defined in ORS 801.310.

14 (c) Any other nonroad diesel engines exempted from the registration requirement by the
15 Environmental Quality Commission by rule.

16 **SECTION 15.** (1) The Department of Environmental Quality shall register and provide a
17 registration renewal for an increment of one year or less for a nonroad diesel engine owned
18 or operated by a person who pays the appropriate registration or renewal fee.

19 (2)(a) The department may appoint agents to register nonroad diesel engines. Agents
20 shall register nonroad diesel engines in accordance with procedures prescribed by the Envi-
21 ronmental Quality Commission by rule and shall charge and collect the fees prescribed by
22 law.

23 (b) The department may authorize an agent who is not a department employee to charge
24 a service fee of \$2, in addition to the registration fee, for the registration service performed
25 by the agent.

26 (c) The department shall supply agents with registration forms for nonroad diesel en-
27 gines.

28 (3) The commission shall establish by rule a schedule of fees for the issuance and renewal
29 of nonroad diesel engine registrations. The fees established under the schedule shall be based
30 on the costs of the department in carrying out the provisions of this section and section 14
31 of this 2017 Act.

32 (4) The fees collected under this section shall be paid into the State Treasury for deposit
33 in the Clean Diesel Engine Fund, to be used only for paying the department's expenses in
34 administering and enforcing this section and section 14 of this 2017 Act.

35 **SECTION 16.** (1) Sections 14 and 15 of this 2017 Act become operative on January 1, 2019.

36 (2) The Environmental Quality Commission and the Department of Environmental Qual-
37 ity may take any action before the operative date specified in subsection (1) of this section
38 that is necessary for the commission and the department to exercise, on and after the op-
39 erative date specified in subsection (1) of this section, all of the duties, functions and powers
40 conferred on the commission and the department by sections 14 and 15 of this 2017 Act.

41
42 (Diesel Engine Emission Standards)

43
44 **SECTION 17.** Sections 18 and 19 of this 2017 Act are added to and made a part of ORS
45 468A.795 to 468A.803.

1 **SECTION 18.** (1) The Environmental Quality Commission by rule shall establish diesel
2 engine emission standards for medium-duty trucks and heavy-duty trucks.

3 (2) The standards adopted by the commission under this section must include a schedule
4 to phase in implementation of a requirement that, by January 1, 2_____, all medium-duty
5 trucks and heavy-duty trucks operating in Oregon must have a 2010 model year or newer
6 engine.

7 (3) The schedule required by subsection (2) of this section must require that:

8 (a) By January 1, 2_____, medium-duty trucks with 1995 model year or older diesel
9 engines must be replaced with a medium-duty truck with a 2010 model year or newer engine.

10 (b) Beginning January 1, 2_____, medium-duty trucks with 1996 model year to 2009
11 model year diesel engines must be replaced with a medium-duty truck with a 2010 model year
12 or newer engine.

13 (c) Beginning January 1, 2_____, heavy-duty trucks with 1995 model year or older diesel
14 engines must be replaced with a heavy-duty truck with a 2010 model year or newer engine.

15 (d) Beginning January 1, 2_____, heavy-duty trucks with 1996 model year to 2009 model
16 year diesel engines must be retrofitted and, within eight years after the retrofit, be replaced
17 with a heavy-duty truck with a 2010 model year or newer engine.

18 (4) The schedule required by subsection (2) of this section must prioritize implementation
19 of the standards adopted by the commission in those areas of the state where diesel engine
20 emissions are of the most concern. In identifying an area where diesel engine emissions are
21 of the most concern, the commission shall rely on the following factors:

22 (a) Whether the area is a nonattainment area under the state's air pollution control
23 program or is an attainment area projected by the Department of Environmental Quality to
24 exceed air quality standards within five years;

25 (b) The prevalence of sensitive populations in the area;

26 (c) Whether the area has elevated concentrations of diesel particulate matter; and

27 (d) The area's present and projected population density.

28 (5) Rules adopted under this section must allow for owners and operators of medium-duty
29 trucks and heavy-duty trucks to meet the diesel engine emission standards through alter-
30 native compliance options that may include, but need not be limited to:

31 (a) A fleet averaging option.

32 (b) Options that provide flexibility for small fleets.

33 (c) Provisions that allow owners and operators to obtain compliance credits.

34 (d) Compliance extensions for individual trucks that meet eligibility requirements adopted
35 by the commission by rule.

36 (6) Before adopting rules under this section, the commission shall consider regulations
37 adopted by the State of California for reducing diesel engine emissions from in-use medium-
38 duty trucks and heavy-duty trucks.

39 (7) The following classes of vehicles are exempt from rules adopted under this section:

40 (a) Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.

41 (b) Farm tractors, as defined in ORS 801.265.

42 (c) Implements of husbandry, as defined in ORS 801.310.

43 (d) Motor vehicles used exclusively as training vehicles, as determined by the commission
44 by rule.

45 (e) Any other medium-duty trucks or heavy-duty trucks exempted from the diesel engine

1 emission standards by the commission by rule.

2 **SECTION 19.** (1) The Environmental Quality Commission shall adopt by rule nonroad
3 diesel engine emission standards. The standards adopted under this section, and implemen-
4 tation and enforcement of the standards, must be consistent with the requirements of sec-
5 tion 209(e) of the federal Clean Air Act (P.L. 88-206 as amended).

6 (2) Before adopting rules under this section, the commission shall consider regulations
7 adopted by the State of California for reducing nonroad diesel engine emissions.

8 **SECTION 20.** (1) Sections 18 and 19 of this 2017 Act become operative on January 1,
9 2_____.

10 (2) The Environmental Quality Commission and the Department of Environmental Qual-
11 ity may take any action before the operative date specified in subsection (1) of this section
12 that is necessary for the commission and the department to exercise, on and after the op-
13 erative date specified in subsection (1) of this section, all of the duties, functions and powers
14 conferred on the commission and the department by sections 18 and 19 of this 2017 Act.

15
16 (Clean Diesel Engine Fund Uses: Provisions Operative July 1, 2017)

17
18 **SECTION 21.** ORS 468A.801 is amended to read:

19 468A.801. (1) The Clean Diesel Engine Fund is established in the State Treasury separate and
20 distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited
21 to the fund. The moneys in the fund are continuously appropriated to the Department of Environ-
22 mental Quality to be used for the purposes described in ORS 468A.803.

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

24 (a) Funds appropriated by the Legislative Assembly;

25 (b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C.
26 7401 et seq., or other federal laws; *[and]*

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

30 (c) **Moneys paid to the State of Oregon pursuant to the Environmental Mitigation Trust**
31 **Agreement;**

32 (d) **Any other moneys received by the state for the purpose of providing financial or**
33 **technical assistance to owners or operators of diesel engines for the purpose of reducing**
34 **diesel engine emissions; and**

35 (e) **Any other moneys deposited in the fund in accordance with law.**

36 **SECTION 22.** ORS 468A.803 is amended to read:

37 468A.803. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel
38 Engine Fund to award:

39 (a) Grants and loans to the owners and operators of [*Oregon*] diesel engines for up to 100 per-
40 cent of the certified costs of qualifying retrofits as described in ORS 468A.797 and 468A.799;

41 (b) Grants and loans to the owners and operators of nonroad [*Oregon*] diesel engines for up to
42 25 percent of the certified costs of qualifying repowers as described in ORS 468A.797 and 468A.799;
43 and

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

45 *[(2) Subject to and consistent with federal law, any moneys received from the federal government*

1 *that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 (2)(b) must be used for ini-*
 2 *tiatives to reduce emissions from diesel engines. Subsections (1), (3) to (5) and (7) of this section and*
 3 *ORS 468A.797 and 468A.799 do not apply to use of moneys in the Clean Diesel Engine Fund received*
 4 *from the federal government.]*

5 [(3)] (2) In determining the amount of a grant or loan under this section, the department must
 6 reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial
 7 incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits,
 8 other grants or loans, or any other public financial assistance.

9 [(4)] (3) The department may certify third parties to perform qualifying repowers and retrofits
 10 and may contract with third parties to perform such services for the certified costs of qualifying
 11 repowers and retrofits. The department may also contract with institutions of higher education or
 12 other public bodies as defined by ORS 174.109 to train and certify third parties to perform qualifying
 13 repowers and retrofits.

14 (4) **The department may not award a grant or loan for a repower or retrofit under sub-**
 15 **section (1) of this section unless the grant or loan applicant demonstrates to the**
 16 **department's satisfaction that the resulting retrofitted diesel engine or repowered nonroad**
 17 **diesel engine will undergo at least 50 percent of its use in Oregon, as measured by miles**
 18 **driven or hours operated, for the three years following the repower or retrofit.**

19 (5) The department may not award a grant to scrap an Oregon diesel truck engine under sub-
 20 section (1)(c) of this section unless the engine was manufactured prior to 1994 and the engine is in
 21 operating condition at the time of the grant application or, if repairs are needed, the owner dem-
 22 onstrates to the department's satisfaction that the engine can be repaired to an operating condition
 23 for less than its commercial scrap value. The Environmental Quality Commission shall adopt rules
 24 for a maximum grant awarded under subsection (1)(c) of this section for an engine in a heavy-duty
 25 truck and for an engine in a medium-duty truck. A grant awarded under subsection (1)(c) of this
 26 section may not be combined with any other tax credits, grants or loans, or any other public fi-
 27 nancial assistance, to scrap an Oregon diesel truck engine.

28 (6) **Subject to and consistent with federal law, any moneys received from the federal**
 29 **government that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 (2)(b)**
 30 **must be used for initiatives to reduce diesel engine emissions. Subsections (1) to (5) of this**
 31 **section and ORS 468A.797 and 468A.799 do not apply to use of moneys in the fund received**
 32 **from the federal government.**

33 (7) **Subject to and consistent with the terms of the Environmental Mitigation Trust**
 34 **Agreement, any moneys received by the State of Oregon pursuant to the Environmental**
 35 **Mitigation Trust Agreement that are deposited in the Clean Diesel Engine Fund must be used**
 36 **by the department for activities related to reducing nitrogen oxides emissions from diesel**
 37 **engines. Subsections (1) to (5) of this section and ORS 468A.797 and 468A.799 do not apply to**
 38 **the use of moneys in the fund received pursuant to the agreement.**

39 [(6)] (8) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses
 40 of the department in administering *[the program described in this section]* **ORS 468A.795 to**
 41 **468A.803.**

42 [(7)] *The commission shall adopt rules to implement this section and ORS 468A.801, including but*
 43 *not limited to establishing preferences for grant and loan awards based upon percentage of engine use*
 44 *in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping, repow-*
 45 *ering or retrofitting an engine will benefit sensitive populations or areas with elevated concentrations*

1 of diesel particulate matter, or such other criteria as the commission may establish. The rules adopted
 2 by the commission shall reserve a portion of the financial assistance available each year for applicants
 3 that own or operate a small number of Oregon diesel engines or Oregon diesel truck engines and shall
 4 provide for simplified access to financial assistance for those applicants.]

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

9 **SECTION 23.** Section 24 of this 2017 Act is added to and made a part of ORS 468A.795 to
 10 **468A.803.**

11 **SECTION 24.** (1) The Environmental Quality Commission shall adopt rules to implement
 12 ORS 468A.801 and 468A.803, including but not limited to rules that establish preferences for
 13 awarding grants and loans under ORS 468A.803 (1) based on a percentage of diesel engine use
 14 in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping,
 15 repowering or retrofitting an engine will benefit sensitive populations or areas with elevated
 16 concentrations of diesel particulate matter, or such other criteria as the commission may
 17 establish by rule.

18 (2) Rules adopted by the commission under this section must reserve a portion of the
 19 financial assistance available each year for applicants that own or operate a small number
 20 of diesel engines or Oregon diesel truck engines and must provide for simplified access to
 21 financial assistance for those applicants.

22 (3) The Department of Environmental Quality may perform activities necessary to ensure
 23 that recipients of financial assistance from the Clean Diesel Engine Fund comply with ap-
 24 plicable requirements. If the department determines that a recipient has not complied with
 25 applicable requirements, the department may order the recipient to refund all financial as-
 26 sistance moneys and may impose penalties pursuant to ORS 468.140.

27
 28 (Clean Diesel Engine Fund Uses: Provisions Operative
 29 January 1, 2_____)
 30

31 **SECTION 25.** ORS 468A.803, as amended by section 22 of this 2017 Act, is amended to read:

32 468A.803. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel
 33 Engine Fund to award:

34 (a) Grants and loans to the owners and operators of diesel engines for up to 100 percent of the
 35 certified costs of qualifying retrofits as described in ORS 468A.797 and 468A.799;

36 (b) Grants and loans to the owners and operators of nonroad diesel engines for up to 25 percent
 37 of the certified costs of qualifying repowers as described in ORS 468A.797 and 468A.799; [and]

38 (c) Grants to the owners of Oregon diesel truck engines to scrap those engines[.]; and

39 (d) **Other financial incentives, as developed by the department by rule, for owners and**
 40 **operators of diesel engines to achieve compliance with the diesel engine emission standards**
 41 **adopted by the Environmental Quality Commission under sections 18 and 19 of this 2017 Act.**

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

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

6 (4) The department may not award a [*grant or loan for a repower or retrofit under subsection (1)*
 7 *of this section*] **grant, loan or other financial incentive under subsection (1)(a), (b) or (d) of this**
 8 **section** unless the [*grant or loan*] applicant **for a grant, loan or other financial incentive** dem-
 9 onstrates to the department's satisfaction that the resulting retrofitted diesel engine or repowered
 10 nonroad diesel engine will undergo at least 50 percent of its use in Oregon, as measured by miles
 11 driven or hours operated, for the three years following [*the repower or retrofit*] **completion of the**
 12 **activity for which the grant, loan or other financial incentive was awarded.**

13 (5) The department may not award a grant to scrap an Oregon diesel truck engine under sub-
 14 section (1)(c) of this section unless the engine was manufactured prior to 1994 and the engine is in
 15 operating condition at the time of the grant application or, if repairs are needed, the owner dem-
 16 onstrates to the department's satisfaction that the engine can be repaired to an operating condition
 17 for less than its commercial scrap value. The Environmental Quality Commission shall adopt rules
 18 for a maximum grant awarded under subsection (1)(c) of this section for an engine in a heavy-duty
 19 truck and for an engine in a medium-duty truck. A grant awarded under subsection (1)(c) of this
 20 section may not be combined with any other tax credits, grants or loans, or any other public fi-
 21 nancial assistance, to scrap an Oregon diesel truck engine.

22 (6) Subject to and consistent with federal law, any moneys received from the federal government
 23 that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 (2)(b) must be used for in-
 24 itiatives to reduce diesel engine emissions. Subsections (1) to (5) of this section and ORS 468A.797
 25 and 468A.799 do not apply to use of moneys in the fund received from the federal government.

26 (7) Subject to and consistent with the terms of the Environmental Mitigation Trust Agreement,
 27 any moneys received by the State of Oregon pursuant to the Environmental Mitigation Trust
 28 Agreement that are deposited in the Clean Diesel Engine Fund must be used by the department for
 29 activities related to reducing nitrogen oxides emissions from diesel engines. Subsections (1) to (5)
 30 of this section and ORS 468A.797 and 468A.799 do not apply to the use of moneys in the fund re-
 31 ceived pursuant to the agreement.

32 (8) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses of the
 33 department in administering ORS 468A.795 to 468A.803.

34 **SECTION 26.** Section 24 of this 2017 Act is amended to read:

35 **Sec. 24.** (1) The Environmental Quality Commission shall adopt rules to implement ORS
 36 468A.801 and 468A.803, including but not limited to rules that establish preferences for awarding:

37 (a) Grants and loans under ORS 468A.803 [(1)] **(1)(a) to (c)** based on a percentage of diesel en-
 38 gine use in Oregon, whether a grant or loan applicant will provide matching funds, whether scrap-
 39 ping, repowering or retrofitting an engine will benefit sensitive populations or areas with elevated
 40 concentrations of diesel particulate matter, or such other criteria as the commission may establish
 41 by rule[.]; **and**

42 (b) **Financial incentives under ORS 468A.803 (1)(d) based on the factors for prioritizing**
 43 **implementation of diesel engine emission standards set forth in section 18 of this 2017 Act.**

44 (2) Rules adopted by the commission under this section must reserve a portion of the financial
 45 assistance available each year for applicants that own or operate a small number of diesel engines

1 or Oregon diesel truck engines and must provide for simplified access to financial assistance for
 2 those applicants.

3 (3) The Department of Environmental Quality may perform activities necessary to ensure that
 4 recipients of financial assistance from the Clean Diesel Engine Fund comply with applicable re-
 5 quirements. If the department determines that a recipient has not complied with applicable require-
 6 ments, the department may order the recipient to refund all financial assistance moneys and may
 7 impose penalties pursuant to ORS 468.140.

8 **SECTION 27.** (1) Sections 25 and 26 of this 2017 Act become operative January 1,
 9 2_____.

10 (2) The Environmental Quality Commission and the Department of Environmental Qual-
 11 ity may take any action before the operative date specified in subsection (1) of this section
 12 that is necessary for the commission and the department to exercise, on and after the op-
 13 erative date specified in subsection (1) of this section, all of the duties, functions and powers
 14 conferred on the commission and the department by sections 25 and 26 of this 2017 Act.

15
 16 **REPEAL OF STATE PREEMPTION OF LOCAL REGULATION OF**
 17 **IDLING BY PRIMARY ENGINES IN COMMERCIAL VEHICLES**

18
 19 **SECTION 28.** ORS 825.615 is repealed.

20
 21 **CONFORMING AMENDMENTS**

22
 23
 24 **(Generally)**

25
 26 **SECTION 29.** ORS 468A.799 is amended to read:

27 468A.799. (1) The Environmental Quality Commission by rule shall establish standards for the
 28 qualifying repower of a nonroad [*Oregon*] diesel engine or retrofit of [*an Oregon*] a diesel engine,
 29 including but not limited to rules establishing repower or retrofit qualifications for purposes of the
 30 tax credit established in section 12, chapter 855, Oregon Laws 2007.

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

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

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

36 (c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit
 37 of a vehicle or engine for which a grant, loan or tax credit under ORS 468A.803 or section 12,
 38 chapter 855, Oregon Laws 2007, has been awarded or allowed, unless the repower or retrofit will
 39 reduce emissions further than the repower or retrofit funded by the grant, loan or tax credit.

40 **SECTION 30.** ORS 468A.799, as amended by section 8a, chapter 855, Oregon Laws 2007, is
 41 amended to read:

42 468A.799. (1) The Environmental Quality Commission by rule shall establish standards for the
 43 qualifying repower of a nonroad [*Oregon*] diesel engine or retrofit of [*an Oregon*] a diesel engine.

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

45 (a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent

1 compared with the baseline emissions for the relevant engine year and application;

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

4 (c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit
 5 of a vehicle or engine for which a grant or loan under ORS 468A.803 has been awarded or allowed,
 6 unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by
 7 the grant or loan.

8
 9 **(To Tax Credit Applicable to Past Tax Years)**

10
 11 **SECTION 31.** Section 12, chapter 855, Oregon Laws 2007, is amended to read:

12 **Sec. 12.** (1) A personal income or corporate income or excise taxpayer is allowed a credit
 13 against the taxes that are otherwise due under ORS chapter 316, 317 or 318 for the certified costs
 14 of a repower of a nonroad [*Oregon*] diesel engine or retrofit of [*an Oregon*] a diesel engine that oc-
 15 curs after [*the effective date of this 2007 Act*] **September 27, 2007**, if:

16 (a) The repower or retrofit has been identified as qualifying for the credit under rules adopted
 17 by the Environmental Quality Commission under [*section 8 of this 2007 Act*] **ORS 468A.799**;

18 (b) [*The engine will constitute an Oregon diesel engine*] **The repowered or retrofitted engine**
 19 **will undergo at least 50 percent of its use in Oregon, as measured by miles driven or hours**
 20 **operated, for the three years following the repower or retrofit**; and

21 (c) The taxpayer has obtained a tax credit cost certification from the Department of Environ-
 22 mental Quality under section 16 [*of this 2007 Act*], **chapter 855, Oregon Laws 2007**, for the cost
 23 of the repower or retrofit.

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

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

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

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

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

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

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

1 the tax credit.

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

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

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

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

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

17 (8) The taxpayer shall claim the credit on a form prescribed by the Department of Revenue
 18 containing the information required by the Department of Revenue. The taxpayer shall maintain the
 19 tax credit cost certification issued by the Department of Environmental Quality under section 16
 20 [of this 2007 Act], **chapter 855, Oregon Laws 2007**, in the records of the taxpayer for the length
 21 of time prescribed by the Department of Revenue and shall provide a copy of the cost certification
 22 to the Department of Revenue if requested.

23 (9) A taxpayer may not claim a credit under this section and ORS 315.304 with respect to the
 24 same diesel engine or group of diesel engines. A taxpayer may claim a credit under this section and
 25 under ORS [469.185 to 469.225] **469B.130 to 469B.169** with respect to the same diesel engine or group
 26 of diesel engines if the taxpayer and diesel engines otherwise meet the requirements to be allowed
 27 a tax credit under ORS [469.185 to 469.225] **469B.130 to 469B.169**.

28
 29 **APPROPRIATION**

30
 31 **SECTION 32.** In addition to and not in lieu of any other appropriation, there is appro-
 32 priated to the Department of Environmental Quality, for the biennium beginning July 1, 2017,
 33 out of the General Fund, the amount of \$_____ for the purpose of completing the initial
 34 inventory required by section 11 of this 2017 Act.

35
 36 **CAPTIONS**

37
 38 **SECTION 33.** The unit captions used in this 2017 Act are provided only for the conven-
 39 ience of the reader and do not become part of the statutory law of this state or express any
 40 legislative intent in the enactment of this 2017 Act.

41
 42 **EMERGENCY CLAUSE**

43
 44 **SECTION 34.** This 2017 Act being necessary for the immediate preservation of the public
 45 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect

1 **July 1, 2017.**

2