

**A-Engrossed**  
**House Bill 2269**

Ordered by the House April 17  
Including House Amendments dated April 17

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown 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.

Modifies fee schedule for sources subject to federal operating permit program under Title V of federal Clean Air Act **to include specific activity fee to fund investigation of complaints related to sources subject to federal operating permit program.**

**Requires certain air contamination sources to pay one-time supplemental fee to Department of Environmental Quality for payment of certain expenses in developing and implementing program and rules to reduce public health risks of emissions of toxic air pollutants from industrial sources. Sets forth supplemental fee to be paid based on permit type applicable to source.**

Adds grants and loans for replacements to permissible uses of moneys in Clean Diesel Engine Fund. Makes other modifications to provisions for grants and loans from fund for purpose of reducing emissions from diesel engines.

Authorizes State of Oregon to receive moneys pursuant to Volkswagen Environmental Mitigation Trust Agreement, deposit agreement moneys in Clean Diesel Engine Fund and use moneys to award grants for reducing emissions from diesel engines. Specifies allocation of grants from agreement moneys.

*[Removes requirement that certain rules adopted by Environmental Quality Commission may be applied to specific stationary source only if expressly incorporated as condition in permit.]*

Allows assessment of civil penalties for violations of certain motor vehicle emission standards by persons other than motor vehicle owners and their lessees.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to air quality; creating new provisions; amending ORS 468.140, 468A.315, 468A.795,  
3 468A.797, 468A.799, 468A.801 and 468A.803; and declaring an emergency.

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

5  
6 **TITLE V FEES**

7  
8 **SECTION 1.** ORS 468A.315 is amended to read:

9 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal  
10 operating permit program shall be based on a schedule established by rule by the Environmental  
11 Quality Commission in accordance with this section. Except for the additional fee under subsection  
12 (2)(e) of this section, this fee schedule shall be in lieu of any other fee for a permit issued under  
13 ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect  
14 costs of implementing the federal operating permit program and shall consist of:

15 (a) An emission fee per ton of each regulated pollutant emitted during the prior calendar year  
16 as determined under subsection (2) of this section, subject to annual fee increases as set forth in  
17 paragraph [(d)] (e) of this subsection. The following emission fees apply:

**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 (A) \$27 per ton emitted during the 2006 calendar year.

2 (B) \$29 per ton emitted during the 2007 calendar year.

3 (C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.

4 (b) Fees for the following specific elements of the federal operating permit program:

5 (A) Reviewing and acting upon applications for modifications to federal operating permits.

6 (B) Any activity related to permits required under ORS 468A.040 other than the federal operat-  
7 ing permit program.

8 (C) Department of Environmental Quality activities for sources not subject to the federal operat-  
9 ating permit program.

10 (D) Department review of ambient monitoring networks installed by a source.

11 (E) Other distinct department activities created by a source or a group of sources if the com-  
12 mission finds that the activities are unique and specific and that additional rulemaking is necessary  
13 and will impose costs upon the department that are not otherwise covered by federal operating  
14 permit program fees.

15 (c) A base fee for a source subject to the federal operating permit program. This base fee shall  
16 be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases  
17 as set forth in paragraph [(d)] (e) of this subsection:

18 (A) \$2,700 for the period of November 15, 2007, through November 14, 2008.

19 (B) \$2,900 for the period of November 15, 2008, through November 14, 2009.

20 (C) \$3,100 for the period of November 15, 2009, through November 14, 2010.

21 (D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual  
22 period thereafter.

23 **(d) A specific activity fee to fund the investigation of complaints related to sources sub-**  
24 **ject to the federal operating permit program. The specific activity fee shall be limited to a**  
25 **base amount of \$317 plus an additional amount equal to \$0.37 per ton of each regulated**  
26 **pollutant emitted during the prior calendar year as determined under subsection (2) of this**  
27 **section, subject to annual fee increases as set forth in paragraph (e) of this subsection.**

28 [(d)] (e) An annual increase in the fees set forth in paragraphs (a) to [(c)] (d) of this subsection  
29 by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index  
30 as of the close of the 12-month period ending on August 31, 1989, if the commission determines by  
31 rule that the increased fees are necessary to cover all reasonable direct and indirect costs of im-  
32 plementing the federal operating permit program.

33 (2)(a) The fee on emissions of regulated pollutants required under this section shall be based on  
34 the amount of each regulated pollutant emitted during the prior calendar year as documented by  
35 information provided by the source in accordance with criteria adopted by the commission or, if the  
36 source elects to pay the fee based on permitted emissions, the fee shall be based on the emission  
37 limit for the plant site of the major source.

38 (b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess  
39 of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of 7,000  
40 tons per year of all regulated pollutants for each calendar year thereafter. The department may not  
41 revise a major source's plant site emission limit due solely to payment of the fee on the basis of  
42 documented emissions.

43 (c) The commission shall establish by rule criteria for the acceptability and verifiability of in-  
44 formation related to emissions as documented, including but not limited to the use of:

45 (A) Emission monitoring;

- 1 (B) Material balances;
- 2 (C) Emission factors;
- 3 (D) Fuel use;
- 4 (E) Production data; or
- 5 (F) Other calculations.

6 (d) The department shall accept reasonably accurate information that complies with the criteria  
7 established by the commission as documentation of emissions.

8 (e) The rules adopted under this section shall require an additional fee for failure to pay, sub-  
9 substantial underpayment of or late payment of emission fees.

10 (3) The commission shall establish by rule the size fraction of total particulates subject to  
11 emission fees as particulates under this section.

12 (4) As used in this section:

13 (a) "Regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen,  
14 and sulfur dioxide; and

15 (b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June  
16 20, 2007.

17 **SECTION 2.** The amendments to ORS 468A.315 by section 1 of this 2017 Act first apply  
18 to regulated pollutants emitted during the 2016 calendar year.

19 **SECTION 2a.** (1) In addition to and not in lieu of any other fee required by law, an air  
20 contamination source that has been issued or that applies for a permit pursuant to ORS  
21 468A.040 or 468A.310, which authorizes the source to emit air contaminants during the period  
22 beginning July 1, 2017, and ending June 30, 2018, shall pay to the Department of Environ-  
23 mental Quality a one-time supplemental fee as provided in subsections (3) and (4) of this  
24 section.

25 (2) Supplemental fees collected under this section shall be deposited into the State  
26 Treasury to the credit of an account of the Department of Environmental Quality. Moneys  
27 deposited under this subsection are continuously appropriated to the department for the  
28 payment of expenses of the department and the Environmental Quality Commission in de-  
29 veloping and implementing, under ORS 468A.025 (4)(e), a program and rules to reduce the  
30 public health risks of emissions of toxic air pollutants from industrial sources.

31 (3) The one-time supplemental fee required under this section for a source subject to the  
32 federal operating permit program established pursuant to ORS 468A.310 shall be a base  
33 amount of \$1,256 plus an additional amount equal to \$9.49 per ton of each regulated pollutant  
34 emitted during the 2016 calendar year as determined under ORS 468A.315 (2).

35 (4) The one-time supplemental fee required under this section for a source subject to the  
36 following permitting requirements under ORS 468A.040 and rules adopted pursuant to ORS  
37 468A.040 shall be as follows:

38 (a) For a source subject to a permit regulating basic air contaminant discharges, a sup-  
39 plemental fee of \$68.

40 (b) For a source subject to a permit regulating general, class I, air contaminant dis-  
41 charges, a supplemental fee of \$137.

42 (c) For a source subject to a permit regulating general, class II, air contaminant dis-  
43 charges, a supplemental fee of \$246.

44 (d) For a source subject to a permit regulating general, class III, air contaminant dis-  
45 charges, a supplemental fee of \$355.

1 (e) For a source subject to a permit regulating general, class IV, air contaminant dis-  
2 charges, a supplemental fee of \$68.

3 (f) For a source subject to a permit regulating general, class V, air contaminant dis-  
4 charges, a supplemental fee of \$23.

5 (g) For a source subject to a permit regulating general, class VI, air contaminant dis-  
6 charges, a supplemental fee of \$46.

7 (h) For a source that is subject to a permit regulating simple air contaminant discharges  
8 and that qualifies to pay a low fee under rules adopted by the Environmental Quality Com-  
9 mission under ORS 468.065, a supplemental fee of \$364.

10 (i) For a source that is subject to a permit regulating simple air contaminant discharges  
11 and that qualifies to pay a high fee under rules adopted by the commission under ORS  
12 468.065, a supplemental fee of \$728.

13 (j) For a source subject to a permit regulating standard air contaminant discharges, a  
14 supplemental fee of \$1,456.

15 (5)(a) A source that has been issued, on or before the effective date of this 2017 Act, a  
16 permit under ORS 468A.040 or 468A.310 to emit air contaminants during the period beginning  
17 July 1, 2017, and ending June 30, 2018, shall pay to the Department of Environmental Quality  
18 the applicable supplemental fee required under this section no later than 30 days after the  
19 date of the invoice issued by the department for the supplemental fee.

20 (b) If, on or after the effective date of this 2017 Act, a source submits an application to  
21 the department for a permit under ORS 468A.040 or 468A.310 that, if issued by the depart-  
22 ment, would authorize the source to emit air contaminants during the period beginning July  
23 1, 2017, and ending June 30, 2018, the applicable supplemental fee required by this section  
24 shall accompany the application for the permit.

25 (6)(a) Any rule adopted under ORS 468A.315 regarding late payment of emission fees shall  
26 apply to sources described in subsection (3) of this section in the same manner applicable to  
27 sources subject to the fee schedule adopted under ORS 468A.315.

28 (b) Any rule adopted under ORS 468.065 (2) regarding late payment of emission fees shall  
29 apply to sources described in subsection (4) of this section in the same manner applicable to  
30 sources subject to the fee schedule adopted under ORS 468.065 (2) for permits issued under  
31 ORS 468A.040.

32 (7) The Department of Environmental Quality may, in the manner provided in ORS  
33 468.070, refuse to issue, suspend, revoke or refuse to renew a permit issued under ORS  
34 468A.040 or 468A.315 for failure to comply with the provisions of this section.

35  
36 **DIESEL ENGINES**

37  
38 **SECTION 3.** ORS 468A.795 is amended to read:

39 468A.795. As used in ORS 468A.795 to 468A.803 and sections 11 to 16, chapter 855, Oregon Laws  
40 2007:

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

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

44 (3) "Diesel engine" means a compression ignition engine designed primarily to propel a  
45 motor vehicle on public highways in this state.

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

4       **(5) “Equivalent equipment” means a piece of equipment that performs the same function**  
5 **and has the equivalent horsepower to a piece of equipment subject to a replacement.**

6       **(6) “Equivalent motor vehicle” means a motor vehicle that performs the same function**  
7 **and is in the same weight class as a motor vehicle subject to a replacement.**

8       [(3)] **(7) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit**  
9 **that has a combined weight that is greater than 26,000 pounds.**

10       [(4)] **(8) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline**  
11 **cost that would otherwise be incurred in the normal course of business.**

12       [(5)] **(9) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a**  
13 **unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000**  
14 **pounds.**

15       [(6)] **(10) “Motor vehicle” has the meaning given that term in ORS 825.005.**

16       [(7)] **(11) “Nonroad [Oregon] diesel engine” means [any Oregon diesel] a compression ignition**  
17 **engine that was not designed primarily to propel a motor vehicle on public highways of this state.**

18       [(8)] **(12) “Oregon diesel engine” means an engine at least 50 percent of the use of which, as**  
19 **measured by miles driven or hours operated, will occur in Oregon for the three years following the**  
20 **repowering or retrofitting of the engine.**

21       [(9)] **(13) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of**  
22 **the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the**  
23 **two years preceding the scrapping of the engine.**

24       [(10)] **(14) “Public highway” has the meaning given that term in ORS 825.005.**

25       **(15)(a) “Replacement” means:**

26       **(A) To scrap a motor vehicle powered by a diesel engine and replace the motor vehicle**  
27 **with an equivalent motor vehicle; or**

28       **(B) To scrap a piece of equipment powered by a nonroad diesel engine and replace the**  
29 **equipment with equivalent equipment.**

30       **(b) “Replacement” does not mean ordinary maintenance, repair or replacement of a diesel**  
31 **engine.**

32       [(11)] **(16) “Repower” means to scrap an old diesel engine and [replace] substitute it with a new**  
33 **engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with**  
34 **a minimum useful life of seven years.**

35       [(12)] **(17) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or tech-**  
36 **nology after the manufacture of the original engine. A retrofit must use the greatest degree of**  
37 **emissions reduction available for the particular application of the equipment retrofitted that meets**  
38 **the cost-effectiveness threshold.**

39       [(13)] *“Scrap” means to destroy and render inoperable.*

40       **(18) “Scrap” means to destroy, render inoperable and recycle.**

41       [(14)] **(19) “Truck” means a motor vehicle or combination of vehicles operated as a unit that has**  
42 **a combined weight that is greater than 14,000 pounds.**

43       **SECTION 4.** ORS 468A.795, as amended by section 6a, chapter 855, Oregon Laws 2007, is  
44 amended to read:

45       468A.795. As used in ORS 468A.795 to 468A.803:

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

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

4 (3) **“Diesel engine” means a compression ignition engine designed primarily to propel a  
5 motor vehicle on public highways in this state.**

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

9 (5) **“Equivalent equipment” means a piece of equipment that performs the same function  
10 and has the equivalent horsepower to a piece of equipment subject to a replacement.**

11 (6) **“Equivalent motor vehicle” means a motor vehicle that performs the same function  
12 and is in the same weight class as a motor vehicle subject to a replacement.**

13 [(3)] (7) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit  
14 that has a combined weight that is greater than 26,000 pounds.

15 [(4)] (8) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline  
16 cost that would otherwise be incurred in the normal course of business.

17 [(5)] (9) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a  
18 unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000  
19 pounds.

20 [(6)] (10) “Motor vehicle” has the meaning given that term in ORS 825.005.

21 [(7)] (11) “Nonroad [*Oregon*] diesel engine” means [*any Oregon diesel*] **a compression ignition  
22 engine that was not designed primarily to propel a motor vehicle on public highways of this state.**

23 [(8)] (12) “Oregon diesel engine” means an engine at least 50 percent of the use of which, as  
24 measured by miles driven or hours operated, will occur in Oregon for the three years following the  
25 repowering or retrofitting of the engine.

26 [(9)] (13) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of  
27 the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the  
28 two years preceding the scrapping of the engine.

29 [(10)] (14) “Public highway” has the meaning given that term in ORS 825.005.

30 (15)(a) **“Replacement” means:**

31 **(A) To scrap a motor vehicle powered by a diesel engine and replace the motor vehicle  
32 with an equivalent motor vehicle; or**

33 **(B) To scrap a piece of equipment powered by a nonroad diesel engine and replace the  
34 equipment with equivalent equipment.**

35 **(b) “Replacement” does not mean ordinary maintenance, repair or replacement of a diesel  
36 engine.**

37 [(11)] (16) “Repower” means to scrap an old diesel engine and [*replace*] **substitute** it with a new  
38 engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with  
39 a minimum useful life of seven years.

40 [(12)] (17) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or tech-  
41 nology after the manufacture of the original engine. A retrofit must use the greatest degree of  
42 emissions reduction available for the particular application of the equipment retrofitted that meets  
43 the cost-effectiveness threshold.

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

45 **(18) “Scrap” means to destroy, render inoperable and recycle.**

1        [(14)] (19) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has  
2 a combined weight that is greater than 14,000 pounds.

3        **SECTION 5.** ORS 468A.797 is amended to read:

4        468A.797. (1) The Environmental Quality Commission by rule shall establish standards related  
5 to the certified cost necessary to perform a qualifying **replacement**, repower or retrofit, including  
6 but not limited to rules establishing the certified cost for purposes of the tax credit established in  
7 section 12, chapter 855, Oregon Laws 2007.

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

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

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

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

15        **SECTION 6.** ORS 468A.797, as amended by section 7a, chapter 855, Oregon Laws 2007, is  
16 amended to read:

17        468A.797. (1) The Environmental Quality Commission by rule shall establish standards related  
18 to the certified cost necessary to perform a qualifying **replacement**, repower or retrofit.

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

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

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

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

26        **SECTION 7.** 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 diesel engine,]* **quali-**  
29 **fyng replacements, repowers and retrofits**, including but not limited to rules establishing re-  
30 power or retrofit qualifications for purposes of the tax credit established in section 12, chapter 855,  
31 Oregon Laws 2007.

32        (2) The standards adopted by the commission under this section must *[include]* **require, at a**  
33 **minimum:**

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

36        (a) **For the qualifying replacement of a motor vehicle powered by a diesel engine, that:**

37        (A) **The motor vehicle to be scrapped has at least three years of remaining useful life;**  
38 **and**

39        (B) **The engine model year of the equivalent motor vehicle is 2010 or newer.**

40        (b) **For the qualifying replacement of a piece of equipment powered by a nonroad diesel**  
41 **engine, that:**

42        (A) **The nonroad piece of equipment to be scrapped has at least three years of remaining**  
43 **useful life; and**

44        (B) **The equivalent equipment is powered by a nonroad diesel engine that meets or ex-**  
45 **ceeds the United States Environmental Protection Agency Tier 4 standards for nonroad die-**

1 **sel exhaust emissions.**

2 (c) **For the qualifying repower of a nonroad diesel engine, that the repower will be ac-**  
3 **complished using a higher tier engine than the engine to be scrapped, based on the United**  
4 **States Environmental Protection Agency tier standards for nonroad diesel exhaust emis-**  
5 **sions.**

6 (d) **For the qualifying retrofit of a diesel engine, a resulting reduction of diesel**  
7 **particulate matter emissions by at least 85 percent when compared with the baseline emis-**  
8 **sions for the relevant engine year and application.**

9 [(b)] (e) **That** a list of technologies approved as qualifying repowers or retrofits that have been  
10 verified by the United States Environmental Protection Agency or the California Air Resources  
11 Board[; and] **is included in the standards.**

12 (3) **The commission by rule shall establish standards for the methods of recycling used**  
13 **for scrapping a motor vehicle, nonroad piece of equipment or engine after a qualifying re-**  
14 **placement or repower.**

15 [(c)] (4) [A requirement that] A qualifying **replacement**, repower or retrofit [does] **may** not in-  
16 clude the **replacement**, repower or retrofit of a **motor vehicle, piece of equipment** or engine for  
17 which a grant, loan or tax credit under ORS 468A.803 or section 12, chapter 855, Oregon Laws 2007,  
18 has **previously** been awarded or allowed, unless the **replacement**, repower or retrofit will reduce  
19 emissions further than the **replacement**, repower or retrofit funded by the **previous** grant, loan or  
20 tax credit.

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

23 468A.799. (1) The Environmental Quality Commission by rule shall establish standards for [the  
24 *qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine*] **qualify-**  
25 **ing replacements, repowers and retrofits.**

26 (2) The standards adopted by the commission under this section must [include] **require, at a**  
27 **minimum:**

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

30 (a) **For the qualifying replacement of a motor vehicle powered by a diesel engine, that:**

31 (A) **The motor vehicle to be scrapped has at least three years of remaining useful life;**  
32 **and**

33 (B) **The engine model year of the equivalent motor vehicle is 2010 or newer.**

34 (b) **For the qualifying replacement of a piece of equipment powered by a nonroad diesel**  
35 **engine, that:**

36 (A) **The nonroad piece of equipment to be scrapped has at least three years of remaining**  
37 **useful life; and**

38 (B) **The equivalent equipment is powered by a nonroad diesel engine that meets or ex-**  
39 **ceeds the United States Environmental Protection Agency Tier 4 standards for nonroad die-**  
40 **sel exhaust emissions.**

41 (c) **For the qualifying repower of a nonroad diesel engine, that the repower will be ac-**  
42 **complished using a higher tier engine than the engine to be scrapped, based on the United**  
43 **States Environmental Protection Agency tier standards for nonroad diesel exhaust emis-**  
44 **sions.**

45 (d) **For the qualifying retrofit of a diesel engine, a resulting reduction of diesel**



1 **particulate matter emissions by at least 85 percent when compared with the baseline emis-**  
 2 **sions for the relevant engine year and application.**

3 [(b)] (e) **That** a list of technologies approved as qualifying repowers or retrofits that have been  
 4 verified by the United States Environmental Protection Agency or the California Air Resources  
 5 Board[; and] **is included in the standards.**

6 (3) **The commission by rule shall establish standards for the methods of recycling used**  
 7 **for scrapping a motor vehicle, nonroad piece of equipment or engine after a qualifying re-**  
 8 **placement or repower.**

9 [(c)] (4) [A requirement that] A qualifying **replacement**, repower or retrofit [does] **may** not in-  
 10 clude the **replacement**, repower or retrofit of a **motor vehicle, piece of equipment** or engine for  
 11 which a grant or loan under ORS 468A.803 has **previously** been awarded or allowed, unless the  
 12 **replacement**, repower or retrofit will reduce emissions further than the **replacement**, repower or  
 13 retrofit funded by the **previous** grant or loan.

14 **SECTION 9.** ORS 468A.801 is amended to read:

15 468A.801. (1) The Clean Diesel Engine Fund is established in the State Treasury separate and  
 16 distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited  
 17 to the fund. The moneys in the fund are continuously appropriated to the Department of Environ-  
 18 mental Quality to be used for the purposes described in ORS 468A.803.

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

20 (a) Funds appropriated by the Legislative Assembly;

21 (b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C.  
 22 7401 et seq., or other federal laws; [and]

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

26 (c) **Moneys paid to the State of Oregon pursuant to the Environmental Mitigation Trust**  
 27 **Agreement; and**

28 (d) **Any other moneys deposited in the fund from any source.**

29 **SECTION 10.** ORS 468A.803 is amended to read:

30 468A.803. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel  
 31 Engine Fund to award:

32 (a) **Grants and loans to the owners and operators of motor vehicles powered by diesel**  
 33 **engines, and equipment powered by nonroad diesel engines, for up to 25 percent of the cer-**  
 34 **tified costs of qualifying replacements as described in ORS 468A.797 and 468A.799;**

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

37 [(b)] (c) Grants and loans to the owners and operators of nonroad [Oregon] diesel engines for  
 38 up to 25 percent of the certified costs of qualifying repowers as described in ORS 468A.797 and  
 39 468A.799; and

40 [(c)] (d) Grants to the owners of Oregon diesel truck engines to scrap those engines.

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

1       **(2) The Environmental Quality Commission by rule may set grant or loan award rates**  
 2 **at a percentage that is greater than a percentage allowed under subsection (1) of this sec-**  
 3 **tion, provided that the grant or loan assistance will not exceed the cost-effectiveness**  
 4 **threshold, if the higher percentage award rate would:**

5       **(a) Benefit sensitive populations or areas with elevated concentrations of diesel**  
 6 **particulate matter; or**

7       **(b) Otherwise increase participation by those categories of owners or operators.**

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

12       (4) The department may certify third parties to perform qualifying **replacements**, repowers and  
 13 retrofits and may contract with third parties to perform such services for the certified costs of  
 14 qualifying **replacements**, repowers and retrofits. The department may also contract with insti-  
 15 tutions of higher education or other public bodies as defined by ORS 174.109 to train and certify  
 16 third parties to perform qualifying **replacements**, repowers and retrofits.

17       **(5) The department may not award a grant or loan for a replacement, repower or retrofit**  
 18 **under subsection (1) of this section unless the grant or loan applicant demonstrates to the**  
 19 **department's satisfaction that the resulting equivalent motor vehicle, equivalent equipment,**  
 20 **repowered nonroad diesel engine or retrofitted diesel engine will undergo at least 50 percent**  
 21 **of its use in Oregon, as measured by miles driven or hours operated, for the three years**  
 22 **following the replacement, repower or retrofit.**

23       [(5)] **(6) The department may not award a grant to scrap an Oregon diesel truck engine under**  
 24 **subsection (1)[(c)] of this section unless the engine was manufactured prior to 1994 and the engine**  
 25 **is in operating condition at the time of the grant application or, if repairs are needed, the owner**  
 26 **demonstrates to the department's satisfaction that the engine can be repaired to an operating con-**  
 27 **dition for less than its commercial scrap value. The Environmental Quality Commission shall adopt**  
 28 **rules for a maximum grant awarded under subsection (1)[(c)] of this section for an engine in a**  
 29 **heavy-duty truck and for an engine in a medium-duty truck. A grant awarded under subsection**  
 30 **(1)[(c)] of this section may not be combined with any other tax credits, grants or loans, or any other**  
 31 **public financial assistance, to scrap an Oregon diesel truck engine.**

32       **(7) Subject to and consistent with federal law, any moneys received from the federal**  
 33 **government that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 (2)(b)**  
 34 **must be used for initiatives to reduce emissions from diesel engines. Subsections (1) to (6)**  
 35 **of this section and ORS 468A.797 and 468A.799 do not apply to use of moneys in the fund re-**  
 36 **ceived from the federal government.**

37       **(8) Subject to and consistent with the terms of the Environmental Mitigation Trust**  
 38 **Agreement, any moneys received by the State of Oregon pursuant to the agreement that are**  
 39 **deposited in the Clean Diesel Engine Fund must be used by the department to award grants**  
 40 **for the purpose of reducing nitrogen oxides emissions from diesel engines. Subsections (1)**  
 41 **to (7) of this section and ORS 468A.797 and 468A.799 do not apply to use of moneys in the**  
 42 **fund received pursuant to the agreement. To the extent authorized by the agreement, the**  
 43 **department shall allocate moneys awarded pursuant to this subsection among:**

44       **(a) Owners and operators of school buses powered by diesel engines for 30 percent of**  
 45 **certified replacement costs beginning with the oldest diesel powered school buses in the state**

1 and proceeding until at least 450 buses have been replaced; and

2 (b) Owners and operators of the following categories of motor vehicles powered by diesel  
3 engines, subject to the preferences for grant awards established under section 12 (1)(b) of  
4 this 2017 Act:

5 (A) Drayage trucks.

6 (B) Delivery trucks.

7 (C) Waste hauling trucks.

8 (D) Transit buses.

9 (E) Vehicles owned and operated by the federal government or a local government.

10 (9) The department may not award a grant under subsection (8) of this section to the  
11 owner or operator of a motor vehicle powered by a diesel engine unless the following criteria  
12 are met:

13 (a) Use of the motor vehicle has occurred in Oregon during the year preceding the date  
14 of the grant.

15 (b) The motor vehicle is authorized for use in this state.

16 (c) For the three years following the receipt of a grant award, at least 50 percent of the  
17 motor vehicle use for which the owner or operator received the grant will occur in Oregon,  
18 as measured by miles driven or hours operated.

19 (d) The grant will not exceed the cost-effectiveness threshold where, notwithstanding  
20 ORS 468A.795, the "cost-effectiveness threshold" for purposes of this paragraph means the  
21 cost in dollars per ton of diesel particulate and nitrogen oxides reduced, as established by  
22 rule of the commission.

23 (e) Any other criteria the department deems necessary to ensure that a grant award will  
24 result in reducing emissions from diesel engines in this state.

25 [(6)] (10) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses  
26 of the department in administering the program described in [this section] ORS 468A.795 to  
27 468A.803.

28 [(7) *The commission shall adopt rules to implement this section and ORS 468A.801, including but  
29 not limited to establishing preferences for grant and loan awards based upon percentage of engine use  
30 in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping, repow-  
31 ering or retrofitting an engine will benefit sensitive populations or areas with elevated concentrations  
32 of diesel particulate matter, or such other criteria as the commission may establish. The rules adopted  
33 by the commission shall reserve a portion of the financial assistance available each year for applicants  
34 that own or operate a small number of Oregon diesel engines or Oregon diesel truck engines and shall  
35 provide for simplified access to financial assistance for those applicants.*]

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

40 **SECTION 11.** Section 12 of this 2017 Act is added to and made a part of ORS 468A.795 to  
41 468A.803.

42 **SECTION 12.** (1) The Environmental Quality Commission shall adopt rules to implement  
43 ORS 468A.801 and 468A.803, including but not limited to rules that establish preferences for  
44 awarding:

45 (a) Grants and loans under ORS 468A.803 (1) based upon a percentage of diesel engine use

1 in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping,  
2 replacement, repowering or retrofitting an engine will benefit sensitive populations or areas  
3 with elevated concentrations of diesel particulate matter, or such other criteria as the  
4 commission may establish; and

5 (b) Grants under ORS 468A.803 (8)(b) based upon the estimated number of vehicles in  
6 each category, estimated emission reduction benefits by category measured in tons per year  
7 relative to the costs of achieving those benefits, or such other criteria as the commission  
8 may establish.

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

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

18  
19 **PENALTIES FOR VIOLATING**  
20 **MOTOR VEHICLE EMISSIONS STANDARDS**

21  
22 **SECTION 13.** ORS 468.140 is amended to read:

23 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the  
24 following shall incur a civil penalty for each day of violation in the amount prescribed by the  
25 schedule adopted under ORS 468.130:

26 (a) The terms or conditions of any permit required or authorized by law and issued by the De-  
27 partment of Environmental Quality or a regional air quality control authority.

28 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to  
29 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A  
30 and 468B.

31 (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued  
32 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755  
33 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.

34 (d) Any term or condition of a variance granted by the commission or department pursuant to  
35 ORS 467.060.

36 (e) Any rule or standard or order of a regional authority adopted or issued under authority of  
37 ORS 468A.135.

38 (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related  
39 to the financial assurance requirement under ORS 468B.390.

40 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

41 (3)(a) In addition to any other penalty provided by law, any person who intentionally or  
42 negligently causes or permits the discharge of oil or hazardous material into the waters of the state  
43 or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into  
44 the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the  
45 amount of \$100,000 for each violation.

1 (b) In addition to any other penalty provided by law, the following persons shall incur a civil  
2 penalty not to exceed the amount of \$25,000 for each day of violation:

3 (A) Any person who violates the terms or conditions of a permit authorizing waste discharge  
4 into the air or waters of the state.

5 (B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040,  
6 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters  
7 468, 468A and 468B relating to air or water pollution.

8 (C) Any person who violates the provisions of a rule adopted or an order issued under ORS  
9 459A.590.

10 (4) In addition to any other penalty provided by law, any person who violates the provisions of  
11 ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of vio-  
12 lation.

13 (5) *[Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission*  
14 *standards which]* **Notwithstanding subsection (1)(c) and (e) of this section, motor vehicle**  
15 **owners and their lessees shall not incur a civil penalty for any violation of motor vehicle**  
16 **emission standards that** are not violations of standards for control of noise emissions.

17 (6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided  
18 by law, any person who intentionally or negligently causes or permits open field burning contrary  
19 to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed  
20 by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned.  
21 Any amounts collected by the department pursuant to this subsection shall be deposited with the  
22 State Treasurer to the credit of the General Fund and shall be available for general governmental  
23 expense. As used in this subsection, "open field burning" does not include propane flaming of mint  
24 stubble.

25  
26 **CAPTIONS**

27  
28 **SECTION 14. The unit captions used in this 2017 Act are provided only for the conven-**  
29 **ience of the reader and do not become part of the statutory law of this state or express any**  
30 **legislative intent in the enactment of this 2017 Act.**

31  
32 **EMERGENCY CLAUSE**

33  
34 **SECTION 15. This 2017 Act being necessary for the immediate preservation of the public**  
35 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
36 **on its passage.**

37 \_\_\_\_\_