

# House Bill 2269

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 **as introduced**.

Modifies fee schedule for sources subject to federal operating permit program under Title V of federal Clean Air Act.

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.025, 468A.315,  
3 468A.795, 468A.797, 468A.799, 468A.801 and 468A.803 and section 12, chapter 855, Oregon Laws  
4 2007; and declaring an emergency.

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

## TITLE V FEES

6  
7  
8  
9 **SECTION 1.** ORS 468A.315 is amended to read:

10 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal  
11 operating permit program shall be based on a schedule established by rule by the Environmental  
12 Quality Commission in accordance with this section. Except for the additional fee under subsection  
13 [(2)(e)] **(3)(c)** of this section, this fee schedule shall be in lieu of any other fee for a permit issued  
14 under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and  
15 indirect costs of implementing the federal operating permit program and shall consist of:

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

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

20 [*(B) \$29 per ton emitted during the 2007 calendar year.*]

21 [*(C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.*]

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

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

24 (B) Any activity related to permits required under ORS 468A.040 other than the federal operat-

**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 ing permit program.

2 (C) Department of Environmental Quality activities for sources not subject to the federal oper-  
 3 ating permit program.

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

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

9 (c) A base fee for a source subject to the federal operating permit program. *[This base fee shall*  
 10 *be no]* **The base fee may not be more than \$\_\_\_\_\_ for the period of November 15, 2017,**  
 11 **through November 14, 2018, and for each annual period thereafter.** *[the fees set forth in sub-*  
 12 *paragraphs (A) to (D) of this paragraph, subject to increases as set forth in paragraph (d) of this*  
 13 *subsection:]*

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

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

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

17 [(D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual  
 18 period thereafter.]

19 (d) An annual increase in the fees set forth in paragraphs (a) to (c) of this subsection by the  
 20 percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index as of the  
 21 close of the 12-month period ending on August 31, 1989, if the commission determines by rule that  
 22 the increased fees are necessary to cover all reasonable direct and indirect costs of implementing  
 23 the federal operating permit program.

24 (2)(a) The fee on emissions of regulated pollutants required under this section *[shall]* **must** be  
 25 based on the amount of each regulated pollutant emitted during the prior calendar year as docu-  
 26 mented by information provided by the source in accordance with criteria adopted by the commis-  
 27 sion or, if the source elects to pay the fee based on permitted emissions, the fee shall be based on  
 28 the emission limit for the plant site of the major source.

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

34 [(c)] **(3)(a)** The commission shall establish by rule criteria for the acceptability and verifiability  
 35 of information related to emissions as documented, including but not limited to the use of:

36 (A) Emission monitoring;

37 (B) Material balances;

38 (C) Emission factors;

39 (D) Fuel use;

40 (E) Production data; or

41 (F) Other calculations.

42 [(d)] **(b)** The department shall accept reasonably accurate information that complies with the  
 43 criteria established by the commission as documentation of emissions.

44 [(e)] **(c)** The rules adopted under this section *[shall]* **must** require an additional fee for failure  
 45 to pay, substantial underpayment of or late payment of emission fees.

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

[4] (5) As used in this section:

(a) "Regulated pollutant" means particulates, volatile organic compounds, [oxides of nitrogen] **nitrogen oxides**, and sulfur dioxide; and

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

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

**DIESEL ENGINES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(14)(a) "Replacement" means:**

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

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

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

7       [(11)] **(15)** “Repower” means to scrap an old diesel engine and [replace] **substitute** it with a new  
 8 engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with  
 9 a minimum useful life of seven years.

10       [(12)] **(16)** “Retrofit” means to equip a diesel engine with new emissions-reducing parts or tech-  
 11 nology after the manufacture of the original engine. A retrofit must use the greatest degree of  
 12 emissions reduction available for the particular application of the equipment retrofitted that meets  
 13 the cost-effectiveness threshold.

14       [(13)] **(17)** “Scrap” means to destroy and render inoperable.

15       [(14)] **(18)** “Truck” means a motor vehicle or combination of vehicles operated as a unit that has  
 16 a combined weight that is greater than 14,000 pounds.

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

19       468A.795. As used in ORS 468A.795 to 468A.803:

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

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

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

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

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

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

32       [(3)] **(7)** “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit  
 33 that has a combined weight that is greater than 26,000 pounds.

34       [(4)] **(8)** “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline  
 35 cost that would otherwise be incurred in the normal course of business.

36       [(5)] **(9)** “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a  
 37 unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000  
 38 pounds.

39       [(6)] **(10)** “Motor vehicle” has the meaning given that term in ORS 825.005.

40       [(7)] **(11)** “Nonroad [Oregon] diesel engine” means [any Oregon diesel] **a compression ignition**  
 41 **engine that was not designed primarily to propel a motor vehicle on public highways of this state.**

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

45       [(9)] **(12)** “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of

1 the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the  
 2 two years preceding the scrapping of the engine.

3 [(10)] (13) "Public highway" has the meaning given that term in ORS 825.005.

4 (14)(a) "Replacement" means:

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

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

9 (b) "Replacement" does not mean ordinary maintenance, repair or replacement of a diesel  
 10 engine.

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

14 [(12)] (16) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or tech-  
 15 nology after the manufacture of the original engine. A retrofit must use the greatest degree of  
 16 emissions reduction available for the particular application of the equipment retrofitted that meets  
 17 the cost-effectiveness threshold.

18 [(13)] (17) "Scrap" means to destroy and render inoperable.

19 [(14)] (18) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has  
 20 a combined weight that is greater than 14,000 pounds.

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

22 468A.797. (1) The Environmental Quality Commission by rule shall establish standards related  
 23 to the certified cost necessary to perform a qualifying **replacement**, repower or retrofit, including  
 24 but not limited to rules establishing the certified cost for purposes of the tax credit established in  
 25 section 12, chapter 855, Oregon Laws 2007.

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

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

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

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

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

35 468A.797. (1) The Environmental Quality Commission by rule shall establish standards related  
 36 to the certified cost necessary to perform a qualifying **replacement**, repower or retrofit.

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

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

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

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

44 **SECTION 7.** ORS 468A.799 is amended to read:

45 468A.799. (1) The Environmental Quality Commission by rule shall establish standards for *the*

1 *qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine,]* **quali-**  
 2 **fyng replacements, repowers and retrofits**, including but not limited to rules establishing re-  
 3 power or retrofit qualifications for purposes of the tax credit established in section 12, chapter 855,  
 4 Oregon Laws 2007.

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

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

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

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

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

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

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

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

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

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

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

30 [*(c)*] **(3) [A requirement that]** A qualifying **replacement**, repower or retrofit [*does*] **may** not in-  
 31 clude the **replacement**, repower or retrofit of a **motor vehicle, piece of equipment** or engine for  
 32 which a grant, loan or tax credit under ORS 468A.803 or section 12, chapter 855, Oregon Laws 2007,  
 33 has **previously** been awarded or allowed, unless the **replacement**, repower or retrofit will reduce  
 34 emissions further than the **replacement**, repower or retrofit funded by the **previous** grant, loan or  
 35 tax credit.

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

38 468A.799. (1) The Environmental Quality Commission by rule shall establish standards for [*the*  
 39 *qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine*] **qualify-**  
 40 **ing replacements, repowers and retrofits.**

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

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

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

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

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

4 (b) For the qualifying replacement of a piece of equipment powered by a nonroad diesel  
 5 engine, that:

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

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

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

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

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

21 [(c)] (3) [A requirement that] A qualifying **replacement**, repower or retrofit [does] **may** not in-  
 22 clude the **replacement**, repower or retrofit of a **motor vehicle, piece of equipment** or engine for  
 23 which a grant or loan under ORS 468A.803 has **previously** been awarded or allowed, unless the  
 24 **replacement**, repower or retrofit will reduce emissions further than the **replacement**, repower or  
 25 retrofit funded by the **previous** grant or loan.

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

27 468A.801. (1) The Clean Diesel Engine Fund is established in the State Treasury separate and  
 28 distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited  
 29 to the fund. The moneys in the fund are continuously appropriated to the Department of Environ-  
 30 mental Quality to be used for the purposes described in ORS 468A.803.

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

32 (a) Funds appropriated by the Legislative Assembly;

33 (b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C.  
 34 7401 et seq., or other federal laws; [and]

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

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

40 (d) **Any other moneys received by the state for the purpose of providing financial and**  
 41 **technical assistance to owners or operators of diesel engines for the purpose of reducing**  
 42 **emissions from diesel engines.**

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

44 468A.803. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel  
 45 Engine Fund to award:

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

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

6       [(b)] **(c)** Grants and loans to the owners and operators of nonroad [Oregon] diesel engines for  
 7 up to 25 percent of the certified costs of qualifying repowers as described in ORS 468A.797 and  
 8 468A.799; and

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

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

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

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

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

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

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

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

37       [(5)] **(6)** The department may not award a grant to scrap an Oregon diesel truck engine under  
 38 subsection (1)[(c)] of this section unless the engine was manufactured prior to 1994 and the engine  
 39 is in operating condition at the time of the grant application or, if repairs are needed, the owner  
 40 demonstrates to the department's satisfaction that the engine can be repaired to an operating con-  
 41 dition for less than its commercial scrap value. The Environmental Quality Commission shall adopt  
 42 rules for a maximum grant awarded under subsection (1)[(c)] of this section for an engine in a  
 43 heavy-duty truck and for an engine in a medium-duty truck. A grant awarded under subsection  
 44 (1)[(c)] of this section may not be combined with any other tax credits, grants or loans, or any other  
 45 public financial assistance, to scrap an Oregon diesel truck engine.

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

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

13       (a) Owners and operators of school buses powered by diesel engines for 30 percent of  
 14 certified replacement costs beginning with the oldest diesel powered school buses in the state  
 15 and proceeding until at least 450 buses have been replaced; and

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

19           (A) Drayage trucks.

20           (B) Delivery trucks.

21           (C) Waste hauling trucks.

22           (D) Transit buses.

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

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

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

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

32       (d) The grant will not exceed the cost-effectiveness threshold where, notwithstanding  
 33 ORS 468A.795, the “cost-effectiveness threshold” for purposes of this paragraph means the  
 34 cost in dollars per ton of diesel particulate and nitrogen oxides reduced, as established by  
 35 rule of the commission.

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

38       [(6)] (10) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses  
 39 of the department in administering the program described in [this section] ORS 468A.795 to  
 40 468A.803.

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

1 *by the commission shall reserve a portion of the financial assistance available each year for applicants*  
 2 *that own or operate a small number of Oregon diesel engines or Oregon diesel truck engines and shall*  
 3 *provide for simplified access to financial assistance for those applicants.]*

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

8 **SECTION 11. Section 12 of this 2017 Act is added to and made a part of ORS 468A.795 to**  
 9 **468A.803.**

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

13 **(a) Grants and loans under ORS 468A.803 (1) based upon a percentage of diesel engine use**  
 14 **in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping,**  
 15 **replacement, repowering or retrofitting an engine will benefit sensitive populations or areas**  
 16 **with elevated concentrations of diesel particulate matter, or such other criteria as the**  
 17 **commission may establish; and**

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

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

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

31  
 32 **RULES FOR STATIONARY SOURCE EMISSIONS**

33  
 34 **SECTION 13. ORS 468A.025 is amended to read:**

35 **468A.025. (1) By rule the Environmental Quality Commission may establish areas of the state**  
 36 **and prescribe the degree of air pollution or air contamination that may be permitted therein, as air**  
 37 **purity standards for such areas.**

38 **(2) In determining air purity standards, the commission shall consider the following factors:**

39 **(a) The quality or characteristics of air contaminants or the duration of their presence in the**  
 40 **atmosphere which may cause air pollution in the particular area of the state;**

41 **(b) Existing physical conditions and topography;**

42 **(c) Prevailing wind directions and velocities;**

43 **(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;**

44 **(e) Possible chemical reactions between air contaminants or between such air contaminants and**  
 45 **air gases, moisture or sunlight;**

1 (f) The predominant character of development of the area of the state, such as residential, highly  
 2 developed industrial area, commercial or other characteristics;

3 (g) Availability of air-cleaning devices;

4 (h) Economic feasibility of air-cleaning devices;

5 (i) Effect on normal human health of particular air contaminants;

6 (j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

7 (k) Extent of danger to property in the area reasonably to be expected from any particular air  
 8 contaminants;

9 (L) Interference with reasonable enjoyment of life by persons in the area which can reasonably  
 10 be expected to be affected by the air contaminants;

11 (m) The volume of air contaminants emitted from a particular class of air contamination source;

12 (n) The economic and industrial development of the state and continuance of public enjoyment  
 13 of the state's natural resources; and

14 (o) Other factors which the commission may find applicable.

15 (3) The commission may establish air quality standards including emission standards for the  
 16 entire state or an area of the state. The standards shall set forth the maximum amount of air pol-  
 17 lution permissible in various categories of air contaminants and may differentiate between different  
 18 areas of the state, different air contaminants and different air contamination sources or classes  
 19 thereof.

20 (4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a)  
 21 as it pertains to the highest and best practicable treatment and control of emissions from stationary  
 22 sources through the adoption of rules:

23 (a) To require specific permit conditions for the operation and maintenance of pollution control  
 24 equipment to the extent the Department of Environmental Quality considers the permit conditions  
 25 necessary to insure that pollution control equipment is operated and maintained at the highest  
 26 reasonable efficiency and effectiveness level.

27 (b) To require typically achievable control technology for new, modified and existing sources of  
 28 air contaminants or precursors to air contaminants for which ambient air quality standards are es-  
 29 tablished, to the extent emission units at the source are not subject to other emission standards for  
 30 a particular air contaminant and to the extent the department determines additional controls on  
 31 such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

32 (c) To require controls necessary to achieve ambient air quality standards or prevent significant  
 33 impairment of visibility in areas designated by the commission for any source that is a substantial  
 34 cause of any exceedance or projected exceedance in the near future of national ambient air quality  
 35 standards or visibility requirements.

36 (d) To require controls necessary to meet applicable federal requirements for any source.

37 (e) Applicable to a source category, contaminant or geographic area necessary to protect public  
 38 health or welfare for air contaminants not otherwise regulated by the commission or as necessary  
 39 to address the cumulative impact of sources on air quality.

40 *[(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a*  
 41 *specific stationary source only through express incorporation as a permit condition in the permit for*  
 42 *the source.]*

43 *[(6)]* (5) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this  
 44 section shall be construed to limit the authority of the commission to adopt rules, except rules ad-  
 45 dressing the highest and best practicable treatment and control.

1 [(7)] (6) As used in this section, “typically achievable control technology” means the emission  
 2 limit established on a case-by-case basis for a criterion contaminant from a particular emission unit  
 3 in accordance with rules adopted under subsection (4) of this section. For an existing source, the  
 4 emission limit established shall be typical of the emission level achieved by emission units similar  
 5 in type and size. For a new or modified source, the emission limit established shall be typical of the  
 6 emission level achieved by recently installed, well controlled new or modified emission units similar  
 7 in type and size. Typically achievable control technology determinations shall be based on informa-  
 8 tion known to the department. In making the determination, the department shall take into consid-  
 9 eration pollution prevention, impacts on other environmental media, energy impacts, capital and  
 10 operating costs, cost effectiveness and the age and remaining economic life of existing emission  
 11 control equipment. The department may consider emission control technologies typically applied to  
 12 other types of emission units if such technologies can be readily applied to the emission unit. If an  
 13 emission limitation is not feasible, the department may require a design, equipment, work practice  
 14 or operational standard or a combination thereof.

15  
 16 **PENALTIES FOR VIOLATING**  
 17 **MOTOR VEHICLE EMISSIONS STANDARDS**  
 18

19 **SECTION 14.** ORS 468.140 is amended to read:

20 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the  
 21 following shall incur a civil penalty for each day of violation in the amount prescribed by the  
 22 schedule adopted under ORS 468.130:

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

25 (b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to  
 26 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A  
 27 and 468B.

28 (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued  
 29 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  
 30 and 783.625 to 783.640 and ORS chapter 467 and ORS chapters 468, 468A and 468B.

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

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

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

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

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

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

45 (A) Any person who violates the terms or conditions of a permit authorizing waste discharge

1 into the air or waters of the state.

2 (B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040,  
 3 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS chapters  
 4 468, 468A and 468B relating to air or water pollution.

5 (C) Any person who violates the provisions of a rule adopted or an order issued under ORS  
 6 459A.590.

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

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

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

22  
 23 **CONFORMING AMENDMENTS TO TAX CREDIT**  
 24 **APPLICABLE TO PAST TAX YEARS**  
 25

26 **SECTION 15.** Section 12, chapter 855, Oregon Laws 2007, is amended to read:

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

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

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

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

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

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

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

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

44 (4) Any tax credit that is allowed under this section, but limited by subsection (3) of this section,  
 45 and that is not used by the taxpayer in a particular tax year may be carried forward and offset

1 against the taxpayer's tax liability as prescribed in subsection (3) of this section for the next suc-  
 2 ceeding tax year. Any credit remaining unused in the next succeeding tax year may be carried  
 3 forward and offset against the taxpayer's tax liability as prescribed in subsection (3) of this section  
 4 for the second succeeding tax year. Any credit remaining unused in the second succeeding tax year  
 5 may be carried forward and offset against the taxpayer's tax liability as prescribed in subsection (3)  
 6 of this section for the third succeeding tax year, but may not be carried forward for any tax year  
 7 thereafter.

8 (5) The credit allowed under this section is not in lieu of any depreciation or amortization de-  
 9 duction for the engine to which the taxpayer otherwise may be entitled for purposes of ORS chapter  
 10 316, 317 or 318. The taxpayer's adjusted basis for determining gain or loss may not be decreased by  
 11 any tax credits allowed under this section.

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

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

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

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

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

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

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

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

43  
 44 **CAPTIONS**  
 45

