

Requested by Representative BENTZ

**PROPOSED AMENDMENTS TO
HOUSE BILL 3386**

1 On page 1 of the printed bill, delete lines 5 through 28 and delete pages
2 2 through 6 and insert:

3 **“SECTION 1. (1) Sections 2 and 4 to 7 of this 2017 Act are added to
4 and made a part of ORS chapter 468A.**

5 **“(2) ORS 468A.275 is added to and made a part of sections 2 to 7 of
6 this 2017 Act.**

7 **“SECTION 2. As used in sections 2 to 7 of this 2017 Act:**

8 **“(1) ‘Biodiesel’ means a motor vehicle fuel consisting of mono-alkyl
9 esters of long chain fatty acids derived from vegetable oils, animal fats
10 or other nonpetroleum resources, not including palm oil.**

11 **“(2) ‘Compliance credit’ means an instrument issued by a compli-
12 ance credit generator that may be used by a regulated party in place
13 of a credit to demonstrate compliance with the low carbon fuel stan-
14 dards.**

15 **“(3) ‘Compliance credit generator’ means a nongovernmental entity
16 that has entered into an agreement with the Department of Environ-
17 mental Quality to issue compliance credits.**

18 **“(4) ‘Credit’ means a unit of measure, expressed in metric tons of
19 carbon dioxide equivalent that is generated when the carbon intensity
20 of a fuel that is produced, imported, dispensed or used in Oregon is
21 less than the applicable low carbon fuel standard.**

1 “(5) ‘Deficit’ means a unit of measure, expressed in metric tons of
2 carbon dioxide equivalent, that is generated when the carbon intensity
3 of a fuel that is produced, imported, dispensed or used in Oregon ex-
4 ceeds the applicable low carbon fuel standard.

5 “(6) ‘Greenhouse gas’ has the meaning given that term in ORS
6 468A.210.

7 “(7) ‘Low carbon fuel standards’ means standards adopted by the
8 Environmental Quality Commission by rule under ORS 468A.275 for the
9 reduction of greenhouse gas emissions, on average, per unit of fuel
10 energy.

11 “(8) ‘Motor vehicle’ has the meaning given that term in ORS
12 801.360.

13 “(9) ‘Regulated party’ means a person responsible for complying
14 with the low carbon fuel standards.

15 “SECTION 3. ORS 468A.275 is amended to read:

16 “468A.275. [(1) As used in this section:]

17 “[(a) ‘Greenhouse gas’ has the meaning given that term in ORS 468A.210.]

18 “[(b) ‘Low carbon fuel standards’ means standards for the reduction of
19 greenhouse gas emissions, on average, per unit of fuel energy.]

20 “[(c) ‘Motor vehicle’ has the meaning given that term in ORS 801.360.]

21 “[(2)(a)] (1) The Environmental Quality Commission shall adopt by rule
22 low carbon fuel standards for gasoline, diesel and fuels used as substitutes
23 for gasoline or diesel.

24 “[(b)] (2) The commission may adopt the following related to the stan-
25 dards, including but not limited to:

26 “[(A)] (a) A schedule to phase in implementation of the standards in a
27 manner that reduces the average amount of greenhouse gas emissions per
28 unit of fuel energy of the fuels by 10 percent below 2010 levels by the year
29 2025 or by a later date if the commission determines that an extension is
30 appropriate to implement the standards;

1 “[(B)] **(b)** Standards for greenhouse gas emissions attributable to the fuels
2 throughout their lifecycles, including but not limited to emissions from the
3 production, storage, transportation and combustion of the fuels and from
4 changes in land use associated with the fuels;

5 “[(C)] **(c)** Provisions allowing the use of all types of low carbon fuels to
6 meet the low carbon fuel standards, including but not limited to biofuels,
7 biogas, natural gas, liquefied petroleum gas, gasoline, diesel, hydrogen and
8 electricity;

9 “[(D)] **(d)** Standards for the issuance of deferrals, established with ade-
10 quate lead time, as necessary to ensure adequate fuel supplies;

11 “[(E)] **(e)** Exemptions for fuels that are used in volumes below thresholds
12 established by the commission;

13 “[(F)] **(f)** Standards, specifications, testing requirements and other meas-
14 ures as needed to ensure the quality of fuels produced in accordance with
15 the low carbon fuel standards, including but not limited to the requirements
16 of ORS 646.910 to 646.923 and administrative rules adopted by the State De-
17 partment of Agriculture for motor fuel quality; and

18 “[(G)] **(g)** Adjustments to the amounts of greenhouse gas emissions per
19 unit of fuel energy assigned to fuels for combustion and drive train effi-
20 ciency.

21 “[(c)] **(3)** Before adopting standards under this section, the commission
22 shall consider the low carbon fuel standards of other states[, *including but*
23 *not limited to Washington,*] for the purpose of determining schedules and
24 goals for the reduction of the average amount of greenhouse gas emissions
25 per unit of fuel energy and the default values for these reductions for ap-
26 plicable fuels.

27 “[(d)] *The commission shall adopt by rule provisions for managing and*
28 *containing the costs of compliance with the standards, including but not lim-*
29 *ited to provisions to facilitate compliance with the standards by ensuring that*
30 *persons may obtain credits for fuels used as substitutes for gasoline or diesel*

1 *and by creating opportunities for persons to trade credits.]*

2 “[(e)] (4) The commission shall exempt from the standards any person who
3 imports in a calendar year less than 500,000 gallons of gasoline and diesel
4 fuel, in total. Any fuel imported by persons that are related or share common
5 ownership or control shall be aggregated together to determine whether a
6 person is exempt under this [paragraph] **subsection.**

7 “[(f)(A) *The commission by rule shall prohibit fuels that contain biodiesel*
8 *from being considered an alternative fuel under these standards unless the fuel*
9 *meets the following standards:]*

10 “[i) *Fuel that consists entirely of biodiesel, designated as B100, shall*
11 *comply with ASTM D 6751 and shall have an oxidation stability induction*
12 *period of not less than eight hours as determined by the test method described*
13 *in European standard EN 15751; and]*

14 “[ii) *Fuel that consists of a blend of diesel fuel and between 6 and 20*
15 *volume percent biodiesel, and designated as biodiesel blends B6 to B20, shall*
16 *comply with ASTM D 7467 and shall have an oxidation stability induction*
17 *period of not less than 20 hours as determined by the test method described*
18 *in European standard EN 15751.]*

19 “[B) *The commission may adopt rules different from those required under*
20 *subparagraph (A) of this paragraph if an ASTM or EN standard applicable*
21 *to biodiesel is approved or amended after March 12, 2015, or if the commission*
22 *finds that different rules are necessary due to changes in technology or fuel*
23 *testing or production methods.]*

24 “[C) *As used in this subsection, ‘biodiesel’ means a motor vehicle fuel*
25 *consisting of mono-alkyl esters of long chain fatty acids derived from vegetable*
26 *oils, animal fats or other nonpetroleum resources, not including palm oil.]*

27 “[(3) *In adopting rules under this section, the Environmental Quality*
28 *Commission shall evaluate:]*

29 “[a) *Safety, feasibility, net reduction of greenhouse gas emissions and*
30 *cost-effectiveness;]*

1 “[(b) *Potential adverse impacts to public health and the environment, in-*
2 *cluding but not limited to air quality, water quality and the generation and*
3 *disposal of waste in this state;*]

4 “[(c) *Flexible implementation approaches to minimize compliance costs;*
5 *and*]

6 “[(d) *Technical and economic studies of comparable greenhouse gas emis-*
7 *sions reduction measures implemented in other states and any other studies*
8 *as determined by the commission.*]

9 “[(4)(a) *The provisions of this section do not apply to fuel that is demon-*
10 *strated to have been used in any of the following:*]

11 “[(A) *Motor vehicles registered as farm vehicles under the provisions of*
12 *ORS 805.300.*]

13 “[(B) *Farm tractors, as defined in ORS 801.265.*]

14 “[(C) *Implements of husbandry, as defined in ORS 801.310.*]

15 “[(D) *Motor trucks, as defined in ORS 801.355, used primarily to transport*
16 *logs.*]

17 “[(E) *Motor vehicles that are not designed primarily to transport persons*
18 *or property, that are operated on highways only incidentally, and that are used*
19 *primarily for construction work.*]

20 “[(F) *Watercraft.*]

21 “[(G) *Railroad locomotives.*]

22 “[(b) *The Environmental Quality Commission shall by rule adopt standards*
23 *for persons to qualify for the exemptions provided in this subsection.*]

24 “**SECTION 4. (1) The Environmental Quality Commission by rule**
25 **shall prohibit fuel that contain biodiesel from being considered an al-**
26 **ternative fuel under the low carbon fuel standards adopted under ORS**
27 **468A.275 unless the fuel meets the following standards:**

28 “(a) **Fuel that consists entirely of biodiesel, designated as B100,**
29 **shall comply with ASTM D 6751 and shall have an oxidation stability**
30 **induction period of not less than eight hours as determined by the test**

1 method described in European standard EN 15751; and

2 “(b) Fuel that consists of a blend of diesel fuel and between 6 and
3 20 volume percent biodiesel, and designated as biodiesel blends B6 to
4 B20, shall comply with ASTM D 7467 and shall have an oxidation sta-
5 bility induction period of not less than 20 hours as determined by the
6 test method described in European standard EN 15751.

7 “(2) The commission may adopt rules different from those required
8 under subsection (1) of this section if an ASTM or EN standard appli-
9 cable to biodiesel is approved or amended after March 12, 2015, or if
10 the commission finds that different rules are necessary due to changes
11 in technology or fuel testing or production methods.

12 “SECTION 5. (1) In order to facilitate compliance with the low
13 carbon fuel standards adopted under ORS 468A.275, the Environmental
14 Quality Commission shall adopt by rule a program in which:

15 “(a) Regulated parties generate deficits and may reconcile the defi-
16 cits, and thus be in compliance with the low carbon fuel standards for
17 a compliance period, by obtaining credits; and

18 “(b) Persons shall have opportunities to trade credits.

19 “(2) The program adopted by the Environmental Quality Commis-
20 sion under this section must include provisions for managing and
21 containing the costs of compliance with the low carbon fuel standards.
22 Provisions required by this subsection must include, but need not be
23 limited to, provisions for regulated parties to purchase compliance
24 credits from compliance credit generators, and to use purchased com-
25 pliance credits to demonstrate compliance with the low carbon fuel
26 standards. Provisions relating to compliance credits must provide that:

27 “(a) Compliance credits may not be banked; and

28 “(b) Compliance credits may not be traded.

29 “SECTION 6. (1) Under the program adopted by the Environmental
30 Quality Commission pursuant to section 5 of this 2017 Act, a nongov-

1 **ernmental entity may not participate as a compliance credit generator**
2 **unless the Department of Environmental Quality and the nongovern-**
3 **mental entity enter into an agreement. The agreement entered into**
4 **under this section must require the compliance credit generator to:**

5 **“(a) Offer for transfer to regulated parties an unlimited quantity**
6 **of compliance credits.**

7 **“(b) Transfer compliance credits at a price of \$75 per compliance**
8 **credit.**

9 **“(c) Use funds received through the transfer of compliance credits**
10 **for:**

11 **“(A) Providing grants to Oregon’s post-secondary institutions of**
12 **education to research, in partnership with manufacturers, low carbon**
13 **intensity transportation technology;**

14 **“(B) Establishing and managing a revolving loan fund to provide**
15 **loans for the manufacture of products in Oregon that will reduce**
16 **transportation-related greenhouse gas emissions;**

17 **“(C) Providing grants to school districts that do not provide trans-**
18 **portation to students on school buses, as defined in ORS 801.460, for**
19 **the costs incurred to provide transportation to students on a com-**
20 **mercial bus operated by a city or county, a mass transit district es-**
21 **tablished under ORS 267.010 to 267.390 or a transportation district**
22 **established under ORS 267.510 to 267.650; or**

23 **“(D) Establishing and managing a rebate program to provide re-**
24 **bates to low income persons for the purchase in this state of alterna-**
25 **tive fuel or zero-emission vehicles, under which an alternative fuel or**
26 **zero-emission vehicle for which a person receives a rebate must be:**

27 **“(i) Registered in this state; and**

28 **“(ii) Used to replace a motor vehicle powered by a combustion en-**
29 **gine.**

30 **“(d) Regularly provide the commission with timely and detailed in-**

1 **formation on the activities under paragraph (c) of this subsection that**
2 **the compliance credit generator has funded in whole or in part by**
3 **funds received by the compliance credit generator through the transfer**
4 **of compliance credits.**

5 **“(e) Include on the governing body of the compliance credit gener-**
6 **ator an ex officio member designated by the department, who shall**
7 **also serve on the compliance credit generator’s nominating committee**
8 **for filling governing body vacancies.**

9 **“(f) Allow the department to inspect, after providing notice, any**
10 **financial record related to the activities under paragraph (c) of this**
11 **subsection that are funded in whole or in part by funds received by the**
12 **compliance credit generator through the transfer of compliance cred-**
13 **its.**

14 **“(g) Arrange, during the term of the agreement, to be audited by**
15 **the Secretary of State or an independent auditor selected by the Sec-**
16 **retary of State, and provide to the department all records related to**
17 **the audit.**

18 **“(h) Ensure that each officer of the compliance credit generator and**
19 **each member of the governing body of the compliance credit genera-**
20 **tor:**

21 **“(A) Files with the department on or before April 15 of each year**
22 **a statement disclosing the economic interests of the officer or member**
23 **that contains the same information as a statement of economic in-**
24 **terest described in ORS 244.060;**

25 **“(B) At meetings of the governing body of the compliance credit**
26 **generator, declares any actual conflict of interest or potential conflict**
27 **of interest, as those terms are defined in ORS 244.020, whenever an**
28 **actual conflict of interest or potential conflict of interest arises; and**

29 **“(C) At meetings of the governing body of the compliance credit**
30 **generator, abstains from participating in any discussion or decision-**

1 making process involving an actual conflict of interest as defined in
2 ORS 244.020.

3 “(2) An agreement entered into under this section must be for a
4 term that does not exceed one year, but may be renewed upon the
5 expiration of a term.

6 “(3) The department shall post all information received by the de-
7 partment pursuant to this section on a website of the department.

8 “(4) On or before February 1 of each year, the department shall
9 report to the appropriate interim committees of the Legislative As-
10 sembly, in the manner required by ORS 192.245, a summary of all ac-
11 tivities by compliance credit generators under subsection (1)(c) of this
12 section that are funded in whole or in part by funds received through
13 the transfer of compliance credits, and an estimate of the greenhouse
14 gas emissions reduced through the activities, expressed in metric tons
15 of carbon dioxide equivalent.

16 “(5) The commission may adopt rules to implement this section.

17 **“SECTION 7. (1) In adopting rules under sections 2 to 7 of this 2017**
18 **Act, the Environmental Quality Commission shall evaluate:**

19 “(a) Safety, feasibility, net reduction of greenhouse gas emissions
20 and cost-effectiveness;

21 “(b) Potential adverse impacts to public health and the environ-
22 ment, including but not limited to air quality, water quality and the
23 generation and disposal of waste in this state;

24 “(c) Flexible implementation approaches to minimize compliance
25 costs; and

26 “(d) Technical and economic studies of comparable greenhouse gas
27 emissions reduction measures implemented in other states and any
28 other studies as determined by the commission.

29 “(2)(a) The provisions of sections 2 to 7 of this 2017 Act do not apply
30 to fuel that is demonstrated to have been used in any of the following:

1 **“(A) Motor vehicles registered as farm vehicles under the provisions**
2 **of ORS 805.300.**

3 **“(B) Farm tractors, as defined in ORS 801.265.**

4 **“(C) Implements of husbandry, as defined in ORS 801.310.**

5 **“(D) Motor trucks, as defined in ORS 801.355, used primarily to**
6 **transport logs.**

7 **“(E) Motor vehicles that are not designed primarily to transport**
8 **persons or property, that are operated on highways only incidentally,**
9 **and that are used primarily for construction work.**

10 **“(F) Watercraft.**

11 **“(G) Railroad locomotives.**

12 **“(b) The commission shall by rule adopt standards for persons to**
13 **qualify for the exemptions provided in this subsection.**

14 **“SECTION 8. If the provisions of sections 2 and 4 to 7 of this 2017**
15 **Act and the amendments to ORS 468A.275 by section 3 of this 2017 Act**
16 **relating to the receipt of funds by compliance credit generators for the**
17 **transfer of compliance credits are, on or before January 1, 2021,**
18 **judicially declared to impose a tax or excise levied on, with respect to,**
19 **or measured by the storage, withdrawal, use, sale, distribution,**
20 **importation or receipt of motor vehicle fuel or any other product used**
21 **for the propulsion of motor vehicles, that is subject to the provisions**
22 **of Article IX, section 3a, of the Oregon Constitution, then:**

23 **“(1) Section 2 of this 2017 Act is repealed and section 9 of this 2017**
24 **Act is enacted in lieu thereof;**

25 **“(2) Section 5 of this 2017 Act is repealed and sections 10 and 11 of**
26 **this 2017 Act are enacted in lieu thereof; and**

27 **“(3) Section 6 of this 2017 Act is repealed.**

28 **“SECTION 9. As used in sections 2 to 7 of this 2017 Act:**

29 **“(1) ‘Biodiesel’ means a motor vehicle fuel consisting of mono-alkyl**
30 **esters of long chain fatty acids derived from vegetable oils, animal fats**

1 or other nonpetroleum resources, not including palm oil.

2 “(2) ‘Compliance credit’ means an instrument issued by the De-
3 partment of Environmental Quality that may be used by a regulated
4 party in place of a credit to demonstrate compliance with the low
5 carbon fuel standards.

6 “(3) ‘Credit’ means a unit of measure, expressed in metric tons of
7 carbon dioxide equivalent that is generated when the carbon intensity
8 of a fuel that is produced, imported, dispensed or used in Oregon is
9 less than the applicable low carbon fuel standard.

10 “(4) ‘Deficit’ means a unit of measure, expressed in metric tons of
11 carbon dioxide equivalent, that is generated when the carbon intensity
12 of a fuel that is produced, imported, dispensed or used in Oregon ex-
13 ceeds the applicable low carbon fuel standard.

14 “(5) ‘Greenhouse gas’ has the meaning given that term in ORS
15 468A.210.

16 “(6) ‘Low carbon fuel standards’ means standards adopted by the
17 Environmental Quality Commission by rule under ORS 468A.275 for the
18 reduction of greenhouse gas emissions, on average, per unit of fuel
19 energy.

20 “(7) ‘Motor vehicle’ has the meaning given that term in ORS
21 801.360.

22 “(8) ‘Regulated party’ means a person responsible for complying
23 with the low carbon fuel standards.

24 **SECTION 10.** (1) In order to facilitate compliance with the low
25 carbon fuel standards adopted under ORS 468A.275, the Environmental
26 Quality Commission shall adopt by rule a program in which:

27 “(a) Regulated parties generate deficits and may reconcile the defi-
28 cits, and thus be in compliance with the low carbon fuel standards for
29 a compliance period, by obtaining credits; and

30 “(b) Persons shall have opportunities to trade credits.

1 “(2) The program adopted by the Environmental Quality Commis-
2 sion under this section must include provisions for managing and
3 containing the costs of compliance with the low carbon fuel standards.
4 Provisions required by this subsection must include, but need not be
5 limited to, provisions for the use of compliance credits to demonstrate
6 compliance with the low carbon fuel standards. Provisions for the use
7 of compliance credits must provide that compliance credits:

8 “(a) May not be banked;

9 “(b) May not be traded;

10 “(c) May be transferred only to regulated parties by the Department
11 of Environmental Quality; and

12 “(d) May be transferred only at a price of \$75 per compliance credit.

13 “(3) Funds received by the department for the transfer of compli-
14 ance credits to regulated parties shall be paid to the State Treasurer
15 to be deposited into the Transportation Emissions Reduction Account
16 established in the State Highway Fund.

17 “SECTION 11. The Transportation Emissions Reduction Account is
18 established in the State Highway Fund. Interest earned by the account
19 shall be credited to the account. Moneys in the account are contin-
20 uously appropriated to the Department of Transportation to be used
21 only to carry out programs, projects or activities to reduce
22 transportation-related greenhouse gas emissions in this state as those
23 programs, projects or activities relate to the construction, recon-
24 struction, improvement, repair, maintenance, operation and use of
25 public highways, roads, streets and roadside rest areas as allowed by
26 Article IX, section 3a, of the Oregon Constitution.

27 “SECTION 12. (1) It is the intent of the Legislative Assembly that
28 the provisions of sections 2 and 4 to 7 of this 2017 Act and the
29 amendments to ORS 468A.275 by section 3 of this 2017 Act relating to
30 the receipt of funds by compliance credit generators for the transfer

1 of compliance credits do not constitute a tax or excise subject to the
2 provisions of Article IX, section 3a, of the Oregon Constitution.

3 “(2) Jurisdiction is conferred on the Supreme Court to determine
4 whether the provisions of sections 2 and 4 to 7 of this 2017 Act and the
5 amendments to ORS 468A.275 by section 3 of this 2017 Act, as they re-
6 late to the receipt of funds by compliance credit generators for the
7 transfer of compliance credits, constitute a tax or excise subject to the
8 provisions of Article IX, section 3a, of the Oregon Constitution.

9 “(3) A person that is or that will be adversely affected by the pro-
10 visions of sections 2 and 4 to 7 of this 2017 Act and the amendments
11 to ORS 468A.275 by section 3 of this 2017 Act relating to the receipt of
12 funds by compliance credit generators for the transfer of compliance
13 credits may institute a proceeding for review by filing with the Su-
14 preme Court a petition that meets the following requirements:

15 “(a) The petition must be filed on or before January 1, 2018.

16 “(b) The petition must include the following:

17 “(A) A statement of the basis of the challenge; and

18 “(B) A statement and supporting affidavit showing how the
19 petitioner is or will be adversely affected.

20 “(4) The petitioner shall serve a copy of the petition by registered
21 or certified mail upon the Department of Environmental Quality, the
22 Attorney General and the Governor.

23 “(5) Proceedings for review under this section shall be given priority
24 over all other matters before the Supreme Court.

25 “(6) In the event that the Supreme Court determines that there are
26 factual issues in the petition, the Supreme Court may appoint a special
27 master to hear evidence and to prepare recommended findings of fact.

28 “SECTION 13. If a judicial determination is made that any moneys
29 that have been received by a nongovernmental entity through the
30 transfer of compliance credits under an agreement with the Depart-

1 **ment of Environmental Quality under section 6 of this 2017 Act would,**
2 **if retained, be subject to the provisions of Article IX, section 3a, of the**
3 **Oregon Constitution, the funds shall be returned to the person from**
4 **which they were received.**

5 **“SECTION 14. (1) Sections 1, 2 and 4 to 7 of this 2017 Act and the**
6 **amendments to ORS 468A.275 by section 3 of this 2017 Act become op-**
7 **erative on January 1, 2018.**

8 **“(2) The Environmental Quality Commission and the Department**
9 **of Environmental Quality may take any action before the operative**
10 **date specified in subsection (1) of this section that is necessary for the**
11 **commission or the department to exercise, on and after the operative**
12 **date specified in subsection (1) of this section, all of the duties, func-**
13 **tions and powers conferred on the commission and the department by**
14 **sections 1, 2 and 4 to 7 of this 2017 Act and the amendments to ORS**
15 **468A.275 by section 3 of this 2017 Act.**

16 **“SECTION 15. This 2017 Act takes effect on the 91st day after the**
17 **date on which the 2017 regular session of the Seventy-ninth Legislative**
18 **Assembly adjourns sine die.”**

19
