

House Bill 3440

Sponsored by Representative KOTEK

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**.

Increases amount of estimate of revenues that will be received from other than corporate taxes for biennium beginning July 1, 2017. Provides for distribution of difference between amount of revenues actually collected and amount of revenues estimated after adjournment of 2017 regular session. Requires use of moneys by Department of Transportation for design and construction of Interstate 205: Stafford Road to State Highway 213 Project. Requires equal distribution of remaining balance to Clean Diesel Engine Fund and Zero Emission Fund.

Modifies distribution formula for amounts in Clean Diesel Engine Fund. Establishes advisory committee to advise Environmental Quality Commission in adopting rules for awarding of grants and loans from Clean Diesel Engine Fund. Establishes Zero Emission Fund for purpose of supporting and constructing infrastructure for zero emission or low emission vehicles. Requires annual audit of Clean Diesel Engine Fund and Zero Emission Fund by Secretary of State.

Provides for return to personal income taxpayers of surplus revenues over adjusted estimate amount if constitutional threshold exceeded.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to revenue estimates; creating new provisions; amending ORS 468A.803 and 468A.807; de-
3 claring an emergency; and providing for revenue estimate modification that requires approval
4 by a two-thirds majority.

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

6 **SECTION 1. Pursuant to Article IX, section 14 (6)(a), of the Oregon Constitution, the**
7 **Legislative Assembly increases the amount of the estimate of revenues that will be received**
8 **from other than corporate income and excise taxes, as described in Article IX, section 14 (4),**
9 **of the Oregon Constitution, for the biennium beginning July 1, 2017, to \$19,224,951,000.**

10 **SECTION 2. (1) Except as provided in subsection (2) of this section, any positive differ-**
11 **ence between the actual amount of revenues collected from other than corporate income and**
12 **excise taxes, as described in Article IX, section 14 (4), of the Oregon Constitution, for the**
13 **biennium beginning July 1, 2017, and the estimate of revenues made for that biennium pur-**
14 **suant to Article IX, section 14 (1), of the Oregon Constitution, shall be distributed as follows:**

15 (a) **\$260 million to the Department of Transportation for design and construction of the**
16 **Interstate 205: Stafford Road to State Highway 213 Project, formerly known as the Interstate**
17 **205 Abernethy Bridge Project, as developed under chapter 750, Oregon Laws 2017; and**

18 (b) **After the distribution required in paragraph (a) of this subsection, the balance shall**
19 **be evenly distributed between the Clean Diesel Engine Fund established in ORS 468A.801 and**
20 **the Zero Emission Fund established in section 3 of this 2019 Act.**

21 (2) **If the actual amount of revenues collected from other than corporate excise and in-**
22 **come taxes for the biennium beginning July 1, 2017, exceeds the amount of the adjusted es-**
23 **timate made in section 1 of this 2019 Act by two percent or more:**

24 (a) **The difference between the actual amount of revenues collected and the adjusted es-**

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 **estimate in section 1 of this 2019 Act shall be returned to personal income taxpayers in the**
 2 **manner provided in ORS 291.349; and**

3 **(b) The difference between the adjusted estimate in section 1 of this 2019 Act and the**
 4 **estimate made for the biennium beginning July 1, 2017, pursuant to Article IX, section 14 (1),**
 5 **of the Oregon Constitution, shall be distributed as provided in subsection (1) of this section.**

6 **SECTION 3. (1) The Zero Emission Fund is established in the State Treasury, separate**
 7 **and distinct from the General Fund. Interest earned by the Zero Emission Fund shall be**
 8 **credited to the fund. Moneys in the fund are continuously appropriated to the Oregon De-**
 9 **partment of Administrative Services for the purpose of supporting the development and**
 10 **construction of infrastructure for zero emission or low emission vehicles. The department**
 11 **by rule, and in consultation with the Department of Transportation, the State Department**
 12 **of Energy and the Department of Environmental Quality, shall establish policies for the dis-**
 13 **tribution of the moneys in the fund.**

14 **(2) The Secretary of State shall conduct an annual audit of the fund to ensure appropri-**
 15 **ate use of the moneys in the fund.**

16 **SECTION 4. No later than June 30, 2020, the Oregon Department of Administrative Ser-**
 17 **vices shall adopt rules, as provided in section 3 of this 2019 Act, for the distribution of**
 18 **moneys in the Zero Emission Fund established in section 3 of this 2019 Act.**

19 **SECTION 5. ORS 468A.803 is amended to read:**

20 **468A.803. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel**
 21 **Engine Fund to award:**

22 **(a) Grants and loans to the owners and operators of motor vehicles powered by diesel engines,**
 23 **and equipment powered by nonroad diesel engines, for [up to 25 percent of the] certified costs of**
 24 **qualifying replacements as described in ORS 468A.797 and 468A.799;**

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

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

29 **(d) Grants to the owners of Oregon diesel truck engines to scrap those engines.**

30 **(2) The Environmental Quality Commission [by rule may set grant or loan award rates at a per-**
 31 **centage that is greater than a percentage allowed under subsection (1) of this section, provided that the**
 32 **grant or loan assistance will not exceed the cost-effectiveness threshold, if the higher percentage award**
 33 **rate would:]**

34 **[(a) Benefit sensitive populations or areas with elevated concentrations of diesel particulate matter;**
 35 **or]**

36 **[(b) Otherwise increase participation by those categories of owners or operators.] shall by rule set**
 37 **the percentage of certified costs for which a grant or loan may be awarded under subsection**
 38 **(1) of this section. In adopting rules under this subsection, the commission shall be advised**
 39 **by the advisory committee required under ORS 468A.807.**

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

44 **(4) The department may certify third parties to perform qualifying replacements, repowers and**
 45 **retrofits and may contract with third parties to perform such services for [the] certified costs of**

1 qualifying replacements, repowers and retrofits. The department may also contract with institutions
2 of higher education or other public bodies as defined by ORS 174.109 to train and certify third parties
3 to perform qualifying replacements, repowers and retrofits.

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

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

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

24 (8) Any moneys received by the State of Oregon pursuant to a voluntary written agreement or
25 a settlement approved in an administrative or judicial proceeding that are deposited in the Clean
26 Diesel Engine Fund must be used by the department for activities consistent with the terms and
27 conditions of the agreement or settlement. Subsections (1) to (6) of this section and ORS 468A.797
28 and 468A.799 do not apply to the use of moneys in the fund received pursuant to this subsection.

29 (9) Except as provided in subsection (8) of this section, the department may use the moneys in
30 the Clean Diesel Engine Fund to pay expenses of the department in administering the program de-
31 scribed in ORS 468A.795 to 468A.807.

32 **SECTION 6.** ORS 468A.807 is amended to read:

33 468A.807. (1) The Environmental Quality Commission shall adopt rules necessary to implement
34 ORS 468A.795 to 468A.807.

35 (2) Rules adopted under this section must include, but need not be limited to, rules that establish
36 preferences for awarding grants and loans under ORS 468A.803 (1) based upon:

37 (a) A percentage of diesel engine use in Oregon;

38 (b) Whether a grant or loan applicant will provide matching funds;

39 (c) Whether scrapping, replacement, repowering or retrofitting an engine will benefit sensitive
40 populations or areas with elevated concentrations of diesel particulate matter; or

41 (d) Other criteria as the commission may establish.

42 **(3) The commission shall appoint an advisory committee composed of the following seven**
43 **members to make recommendations to the commission for rules adopted pursuant to this**
44 **section and ORS 468A.803 (2):**

45 **(a) One member of the public who is an elected official of a government entity having**

1 jurisdiction in an area with elevated concentrations of diesel particulate matter;

2 (b) Two members of the public who represent organizations concerned with the impacts
3 of diesel emissions on health and communities;

4 (c) One member of the public who represents the trucking or freight industry;

5 (d) One member of the public who represents a business that operates equipment that
6 is likely to be powered by diesel engines;

7 (e) One member of the public who represents contractors or businesses that retain the
8 services of subcontractors that operate motor vehicles or equipment powered by diesel en-
9 gines; and

10 (f) One member of the public who represents environmental justice communities.

11 [(3)] (4) Rules adopted by the commission under this section must reserve a portion of the fi-
12 nancial assistance available each year for applicants that own or operate a small number of diesel
13 engines or Oregon diesel truck engines and must provide for simplified access to financial assistance
14 for those applicants.

15 [(4)] (5) The Department of Environmental Quality may perform activities necessary to ensure
16 that recipients of grants and loans from the Clean Diesel Engine Fund comply with applicable re-
17 quirements. If the department determines that a recipient has not complied with applicable require-
18 ments, the department may order the recipient to refund all grant or loan moneys and may impose
19 penalties pursuant to ORS 468.140.

20 **SECTION 7. Rules adopted by the Environmental Quality Commission as required by the**
21 **amendments to ORS 468A.803 and 468A.807 by sections 5 and 6 of this 2019 Act must first**
22 **become operative no later than June 30, 2020.**

23 **SECTION 8. Section 9 of this 2019 Act is added to and made a part of ORS 468A.795 to**
24 **468A.807.**

25 **SECTION 9. The Secretary of State shall conduct an annual audit of the Clean Diesel**
26 **Engine Fund pursuant to ORS 297.210. The scope of the audit may not include an audit of the**
27 **use of moneys described in ORS 468A.803 (7) and (8).**

28 **SECTION 10. This 2019 Act being necessary for the immediate preservation of the public**
29 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
30 **on its passage.**

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