

A-Engrossed
House Bill 4139

Ordered by the House February 23
Including House Amendments dated February 23

Sponsored by Representative RAYFIELD; Representative POWER (Presession filed.)

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.

Requires Department of Transportation to establish [*pilot*] program to reduce greenhouse gas emissions [*by means of replacing or substituting certain materials used in constructing or maintaining state transportation system with other materials that enable greenhouse gas emission reductions, or by means of other appropriate measures*] **that assesses greenhouse gas emissions attributable to certain covered materials department uses in construction and maintenance activities for state's transportation system, conducts life cycle assessments for selected set of construction and maintenance activities and devises strategies for reducing greenhouse gas emissions.** Specifies required scope and content of [*pilot*] program.

Requires [*bids and proposals for designated demonstration projects within pilot program to include*] **department, in making procurements in connection with program, to require contractors to submit environmental product declarations before installing covered materials.** Specifies exceptions. **Prohibits department from using environmental product declarations to rank or score bid or proposal before January 1, 2027. Requires department to establish grant program to assist bidders and proposers in preparing or submitting environmental product declarations.**

Requires department to establish technical advisory committee and specifies matters on which committee will advise department.

Requires department to report annually to Oregon Transportation Commission and interim committee of Legislative Assembly related to transportation concerning implementation of [*pilot*] program.

[*Sunset December 31, 2030.*]

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to reductions of greenhouse gas emissions in the state's transportation system; and pre-
3 scribing an effective date.

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

5 **SECTION 1. (1) As used in this section and sections 2 and 3 of this 2022 Act:**

6 (a) **"Bidder"** has the meaning given that term in ORS 279A.010.

7 (b) **"Covered materials"** means:

8 (A) **Concrete, including ready mix concrete, shotcrete, precast concrete and concrete**
9 **masonry units;**

10 (B) **Asphalt paving mixtures;**

11 (C) **Steel, including rebar, reinforcing steel and structural steel, hot-rolled sections, hol-**
12 **low sections, plate steel and cold-formed steel; and**

13 (D) **Other materials the Department of Transportation designates by rule after consul-**
14 **tation with the technical advisory committee.**

15 (c) **"Emergency"** has the meaning given that term in ORS 279A.010.

16 (d) **"Environmental product declaration"** means a product-specific label developed in ac-

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 cordance with rules the department adopts that are based on ISO Standard 14025 and on in-
2 dependently verified life cycle assessment data, life cycle inventory and analysis data or
3 information modules in accordance with the ISO 14040 series of standards.

4 (e) "Procurement" has the meaning given that term in ORS 279A.010.

5 (f) "Proposer" has the meaning given that term in ORS 279A.010.

6 (g) "Public contract" has the meaning given that term in ORS 279A.010.

7 (h) "Public Contracting Code" has the meaning given that term in ORS 279A.010.

8 (i) "Technical advisory committee" means the committee described in section 2 of this
9 2022 Act.

10 (2)(a) The department, not later than December 31, 2025, shall establish a program for
11 greenhouse gas reduction that:

12 (A) Assesses the greenhouse gas emissions attributable to covered materials the depart-
13 ment uses in the department's construction and maintenance activities for the state's
14 transportation system;

15 (B) Conducts life cycle assessments of a selected set of the department's construction
16 and maintenance activities; and

17 (C) Devises strategies for reducing greenhouse gas emissions that include, but are not
18 limited to, improving pavement and bridge conditions.

19 (b) In establishing the program described in paragraph (a) of this subsection, the de-
20 partment shall identify and disclose in any reports the department produces all relevant
21 measurement difficulties, deficiencies in needed data, assumptions, uncertainties, technolog-
22 ical limitations, costs associated with assessment and implementation and any other relevant
23 limitations of methodology, practice or implementation.

24 (c) In devising the strategies described in paragraph (a)(C) of this subsection, the de-
25 partment, at a minimum, shall consider and evaluate:

26 (A) Advancements in materials and engineering as applied to greenhouse gas emission
27 reduction;

28 (B) Regional variability in the quality and durability of aggregates and other components
29 of covered materials;

30 (C) The types and effects of fuels available for use in manufacturing, transporting and
31 using covered materials;

32 (D) The quality and performance of the covered materials; and

33 (E) Any other factors that the department, in consultation with the technical advisory
34 committee, deems relevant and useful.

35 (d) The department shall conduct the assessments and devise the strategies described in
36 paragraph (a) of this subsection separately for each of the state's five transportation regions,
37 accounting for differences among the regions with respect to the availability of covered ma-
38 terials, fuel and other necessary resources and the quantity of covered materials the de-
39 partment uses or plans to use.

40 (3)(a) In procuring covered materials for the program described in subsection (2)(a) of
41 this section, the department shall require contractors to submit environmental product
42 declarations before the contractor installs the covered materials, unless the department:

43 (A) Procures the covered materials on an emergency basis;

44 (B) Determines that a relevant product category rule does not exist;

45 (C) Determines that requiring an environmental product declaration will reduce compe-

1 titition for public contracts or otherwise contravene the requirements of the Public Con-
2 tracting Code;

3 (D) Determines that requiring an environmental product declaration would unreasonably
4 affect the department's specifications or requirements for covered materials or impair the
5 department's construction or maintenance activities;

6 (E) Determines that an environmental product declaration is not necessary to measure
7 or quantify greenhouse gas emissions; or

8 (F) Determines after consultation with the technical advisory committee that other
9 considerations outweigh the need for requiring environmental product declarations or that
10 a construction or maintenance activity would use less than a threshold amount of covered
11 materials. The department, in consultation with the technical advisory committee, shall
12 specify the threshold amount by rule.

13 (b) Notwithstanding paragraph (a) of this subsection, in procuring asphalt paving mix-
14 tures, the department may allow contractors to submit environmental product declarations
15 within a reasonable time after executing a public contract for constructing roads or acquir-
16 ing materials or within the time required for an environmental product declaration provider
17 to prepare the environmental product declaration, but not later than the date on which the
18 contractor completes performance of the public contract.

19 (c) The department may not use an environmental product declaration as a consideration
20 in ranking or scoring a bid or proposal before January 1, 2027, but thereafter may consider
21 environmental product declarations if the department determines that doing so is beneficial
22 and if, after consulting with the technical advisory committee, construction contractors,
23 material suppliers and other stakeholders, the department devises a scoring methodology
24 that ensures fairness among bidders and proposers.

25 (4)(a) In order to assist bidders or proposers to prepare or submit environmental product
26 declarations required under this section, the department by rule shall establish a program
27 to extend grants to bidders or proposers that require financial assistance to prepare envi-
28 ronmental product declarations.

29 (b) Before establishing a program under this subsection, the department shall submit a
30 request for funding to the Legislative Assembly in an amount that the department estimates
31 would be necessary to provide the grants described in this subsection. The department shall
32 deposit any funding the department receives into a designated account within the
33 department's operating account and shall keep records of disbursements from the account.
34 Any moneys the department does not award as grants must revert to the General Fund upon
35 the termination of the program.

36 (c) The department by rule shall establish criteria for eligibility for grants under this
37 subsection and shall specify the maximum amount of each grant on the basis of available
38 funding.

39 **SECTION 2.** (1) The Department of Transportation shall establish a technical advisory
40 committee to assist the department with issues related to implementing the program de-
41 scribed in section 1 of this 2022 Act.

42 (2) Members of the technical advisory committee must include, but need not be limited
43 to, representatives from the Department of Transportation and the Department of Environ-
44 mental Quality, from construction firms engaged in transportation construction and main-
45 tenance, from suppliers of covered materials, from construction and material supplier

1 industry associations, from workers in construction or manufacturing industries, from en-
2 vironmental organizations and from institutions of higher education.

3 (3) The technical advisory committee shall:

4 (a) Recommend quantities of covered materials below which the Department of Trans-
5 portation need not require an environmental product declaration.

6 (b) Advise the department as needed to prepare the reports required under section 3 of
7 this 2022 Act.

8 (c) Advise and guide the department concerning:

9 (A) The extent to which environmental product declarations are available or are in de-
10 velopment;

11 (B) Which of the department's construction and maintenance activities are appropriate
12 for inclusion in the program described in section 1 (2) of this 2022 Act;

13 (C) The time within which a bidder or proposer must submit an environmental product
14 declaration and any related information;

15 (D) How to properly analyze or interpret an environmental product declaration;

16 (E) The content of and criteria for devising, adopting and implementing the strategies
17 described in section 1 (2)(a)(C) of this 2022 Act;

18 (F) Potential changes to the design or implementation of the program described in sec-
19 tion 1 of this 2022 Act in light of technological advances and the need to maintain reasonable
20 competition for public contracts; and

21 (G) Other matters the technical advisory committee deems necessary to achieve the
22 goals of the program.

23 (4) The technical advisory committee may recommend to the department additional ma-
24 terials for designation as covered materials.

25 (5) A majority of the members of the technical advisory committee constitutes a quorum
26 for the transaction of business.

27 (6) The technical advisory committee shall elect two of the members of the technical
28 advisory committee to serve as cochairpersons.

29 (7) The department shall appoint a replacement for any vacancy on the technical advisory
30 committee. The replacement must become immediately effective upon appointment.

31 (8) The technical advisory committee must meet at least four times within each calendar
32 year at times and places specified by the call of the chairperson, of a majority of the mem-
33 bers of the technical advisory committee or of the Director of Transportation.

34 (9) The department shall provide staff support to the technical advisory committee.

35 (10) Members of the technical advisory committee are not entitled to compensation or
36 reimbursement for expenses and serve as volunteers on the technical advisory committee.

37 **SECTION 3.** The Department of Transportation, after establishing the program described
38 in section 1 of this 2022 Act, shall report annually not later than December 31 of each cal-
39 endar year to the Oregon Transportation Commission and an interim committee of the Leg-
40 islative Assembly related to transportation concerning the progress of the program and
41 related matters. The department shall prepare the reports in consultation with the technical
42 advisory committee and the reports, at a minimum, must include:

43 (1) A description of the department's efforts to design and implement the program, an
44 evaluation of the department's success in reducing greenhouse gas emissions by means of
45 environmental product declarations and recommendations as to whether to continue or ex-

1 **pand the program; and**

2 **(2) Any other matters the department, in consultation with the technical advisory com-**
3 **mittee, deems relevant, material or important to highlight or recommend to the commission**
4 **or the Legislative Assembly.**

5 **SECTION 4. This 2022 Act takes effect on the 91st day after the date on which the 2022**
6 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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