

# Enrolled House Bill 4139

Sponsored by Representative RAYFIELD; Representatives DEXTER, EVANS, FAHEY, GRAYBER, HELM, HOLVEY, HOY, KROPF, MOORE-GREEN, NELSON, NOBLE, NOSSE, OWENS, PHAM, POWER, REARDON, REYNOLDS, SALINAS, SANCHEZ, WILLIAMS (Presession filed.)

CHAPTER .....

AN ACT

Relating to reductions of greenhouse gas emissions in the state’s transportation system; and prescribing an effective date.

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

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

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

(b) **“Covered materials” means:**

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

(B) **Asphalt paving mixtures;**

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

(D) **Other materials the Department of Transportation designates by rule after consultation with the technical advisory committee.**

(e) **“Emergency” has the meaning given that term in ORS 279A.010.**

(d) **“Environmental product declaration” means a product-specific label developed in accordance with rules the department adopts that are based on ISO Standard 14025 and on independently verified life cycle assessment data, life cycle inventory and analysis data or information modules in accordance with the ISO 14040 series of standards.**

(e) **“Procurement” has the meaning given that term in ORS 279A.010.**

(f) **“Proposer” has the meaning given that term in ORS 279A.010.**

(g) **“Public contract” has the meaning given that term in ORS 279A.010.**

(h) **“Public Contracting Code” has the meaning given that term in ORS 279A.010.**

(i) **“Technical advisory committee” means the committee described in section 2 of this 2022 Act.**

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

(A) **Assesses the greenhouse gas emissions attributable to covered materials the department uses in the department’s construction and maintenance activities for the state’s transportation system;**

(B) **Conducts life cycle assessments of a selected set of the department’s construction and maintenance activities; and**

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

(b) In establishing the program described in paragraph (a) of this subsection, the department shall identify and disclose in any reports the department produces all relevant measurement difficulties, deficiencies in needed data, assumptions, uncertainties, technological limitations, costs associated with assessment and implementation and any other relevant limitations of methodology, practice or implementation.

(c) In devising the strategies described in paragraph (a)(C) of this subsection, the department, at a minimum, shall consider and evaluate:

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

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

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

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

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

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

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

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

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

(C) Determines that requiring an environmental product declaration will reduce competition for public contracts or otherwise contravene the requirements of the Public Contracting Code;

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

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

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

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

(c) The department may not use an environmental product declaration as a consideration in ranking or scoring a bid or proposal before January 1, 2027, but thereafter may consider environmental product declarations if the department determines that doing so is beneficial and if, after consulting with the technical advisory committee, construction contractors,

material suppliers and other stakeholders, the department devises a scoring methodology that ensures fairness among bidders and proposers.

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

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

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

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

(2) Members of the technical advisory committee must include, but need not be limited to, representatives from the Department of Transportation and the Department of Environmental Quality, from construction firms engaged in transportation construction and maintenance, from suppliers of covered materials, from construction and material supplier industry associations, from workers in construction or manufacturing industries, from environmental organizations and from institutions of higher education.

(3) The technical advisory committee shall:

(a) Recommend quantities of covered materials below which the Department of Transportation need not require an environmental product declaration.

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

(c) Advise and guide the department concerning:

(A) The extent to which environmental product declarations are available or are in development;

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

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

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

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

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

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

(4) The technical advisory committee may recommend to the department additional materials for designation as covered materials.

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

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

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

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

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

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

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

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

(2) Any other matters the department, in consultation with the technical advisory committee, deems relevant, material or important to highlight or recommend to the commission or the Legislative Assembly.

**SECTION 4.** (1) The Medium and Heavy-Duty Electrification Charging Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Medium and Heavy-Duty Electrification Charging Fund must be credited to the Medium and Heavy-Duty Electrification Charging Fund.

(2) Moneys in the Medium and Heavy-Duty Electrification Charging Fund consist of amounts donated to the fund, amounts appropriated or otherwise transferred to the fund by the Legislative Assembly, other amounts deposited to the fund from any public or private source and interest earned by the fund.

(3) Moneys in the Medium and Heavy-Duty Electrification Charging Fund are continuously appropriated to the Department of Environmental Quality for a grant program to support medium and heavy-duty zero emission vehicle charging and fueling infrastructure projects authorized under ORS 468.035.

(4) Not more than 10 percent of the moneys in the Medium and Heavy-Duty Electrification Charging Fund in each biennium may be expended to pay the department's expenses, or the expenses of any other person the department hires or with which the department contracts, to administer the grant program.

**SECTION 5.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (7), chapter 442, Oregon Laws 2021, for the biennium ending June 30, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received as reimbursements from the United States Department of Transportation, but excluding lottery funds and federal funds not described in section 2, chapter 442, Oregon Laws 2021, for special programs is increased by \$236,219 for greenhouse gas emissions analysis and reduction.

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

**Passed by House March 2, 2022**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Dan Rayfield, Speaker of House

**Passed by Senate March 3, 2022**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2022

**Approved:**

.....M.,....., 2022

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2022

.....  
Shemia Fagan, Secretary of State