

House Bill 3386

Sponsored by Representative BENTZ

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**.

Requires Environmental Quality Commission to adopt by rule program for facilitating compliance with low carbon fuel standards. Requires program to include certain provisions for managing and containing costs of compliance with low carbon fuel standards.

Requires Department of Environmental Quality to hold credit clearance market in any low carbon fuel standards compliance year during which certain events occur. Sets forth certain requirements for administration of credit clearance market.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to low carbon fuel standards; creating new provisions; amending ORS 468A.275; and pre-
3 scribing an effective date.

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

5 **SECTION 1. (1) Sections 2 and 4 to 8 of this 2017 Act are added to and made a part of**
6 **ORS chapter 468A.**

7 **(2) ORS 468A.275 is added to and made a part of sections 2 to 8 of this 2017 Act.**

8 **SECTION 2. As used in sections 2 to 8 of this 2017 Act:**

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

12 **(2) "Broker" means a person who is not a regulated party or credit generator and who**
13 **voluntarily registers to participate in the program adopted by the Environmental Quality**
14 **Commission under section 5 of this 2017 Act in order to facilitate credit generation and to**
15 **trade credits with regulated parties, credit generators and other brokers.**

16 **(3) "Credit" means a unit of measure, expressed in metric tons of carbon dioxide equiv-**
17 **alent that is generated when the carbon intensity of a fuel that is produced, imported, dis-**
18 **persed or used in Oregon is less than the applicable clean fuel standard.**

19 **(4) "Credit generator" means a person eligible to generate credits by providing fuels for**
20 **use in Oregon with carbon intensities less than the applicable clean fuel standard.**

21 **(5) "Deficit" means a unit of measure, expressed in metric tons of carbon dioxide equiv-**
22 **alent, that is generated when the carbon intensity of a fuel that is produced, imported, dis-**
23 **persed or used in Oregon exceeds the applicable clean fuel standard.**

24 **(6) "Greenhouse gas" has the meaning given that term in ORS 468A.210.**

25 **(7) "Low carbon fuel standards" means standards adopted by the commission by rule**
26 **under ORS 468A.275 for the reduction of greenhouse gas emissions, on average, per unit of**
27 **fuel energy.**

28 **(8) "Motor vehicle" has the meaning given that term in ORS 801.360.**

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 **(9) “Regulated party” means a person responsible for complying with the low carbon fuel**
 2 **standards.**

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

4 468A.275. *[(1) As used in this section:]*

5 *[(a) “Greenhouse gas” has the meaning given that term in ORS 468A.210.]*

6 *[(b) “Low carbon fuel standards” means standards for the reduction of greenhouse gas emissions,*
 7 *on average, per unit of fuel energy.]*

8 *[(c) “Motor vehicle” has the meaning given that term in ORS 801.360.]*

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

11 *[(b)]* **(2)** The commission may adopt the following related to the standards, including but not
 12 limited to:

13 *[(A)]* **(a)** A schedule to phase in implementation of the standards in a manner that reduces the
 14 average amount of greenhouse gas emissions per unit of fuel energy of the fuels by 10 percent below
 15 2010 levels by the year 2025 or by a later date if the commission determines that an extension is
 16 appropriate to implement the standards;

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

20 *[(C)]* **(c)** Provisions allowing the use of all types of low carbon fuels to meet the low carbon fuel
 21 standards, including but not limited to biofuels, biogas, natural gas, liquefied petroleum gas, gaso-
 22 line, diesel, hydrogen and electricity;

23 *[(D)]* **(d)** Standards for the issuance of deferrals, established with adequate lead time, as neces-
 24 sary to ensure adequate fuel supplies;

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

27 *[(F)]* **(f)** Standards, specifications, testing requirements and other measures as needed to ensure
 28 the quality of fuels produced in accordance with the low carbon fuel standards, including but not
 29 limited to the requirements of ORS 646.910 to 646.923 and administrative rules adopted by the State
 30 Department of Agriculture for motor fuel quality; and

31 *[(G)]* **(g)** Adjustments to the amounts of greenhouse gas emissions per unit of fuel energy as-
 32 signed to fuels for combustion and drive train efficiency.

33 *[(c)]* **(3)** Before adopting standards under this section, the commission shall consider the low
 34 carbon fuel standards of other states^[, including but not limited to Washington,] for the purpose of
 35 determining schedules and goals for the reduction of the average amount of greenhouse gas emis-
 36 sions per unit of fuel energy and the default values for these reductions for applicable fuels.

37 *[(d)]* *The commission shall adopt by rule provisions for managing and containing the costs of com-*
 38 *pliance with the standards, including but not limited to provisions to facilitate compliance with the*
 39 *standards by ensuring that persons may obtain credits for fuels used as substitutes for gasoline or*
 40 *diesel and by creating opportunities for persons to trade credits.]*

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

45 *[(f)(A)]* *The commission by rule shall prohibit fuels that contain biodiesel from being considered an*

1 *alternative fuel under these standards unless the fuel meets the following standards:]*

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

5 *[(ii) Fuel that consists of a blend of diesel fuel and between 6 and 20 volume percent biodiesel, and*
6 *designated as biodiesel blends B6 to B20, shall comply with ASTM D 7467 and shall have an*
7 *oxidation stability induction period of not less than 20 hours as determined by the test method de-*
8 *scribed in European standard EN 15751.]*

9 *[(B) The commission may adopt rules different from those required under subparagraph (A) of this*
10 *paragraph if an ASTM or EN standard applicable to biodiesel is approved or amended after March*
11 *12, 2015, or if the commission finds that different rules are necessary due to changes in technology or*
12 *fuel testing or production methods.]*

13 *[(C) As used in this subsection, "biodiesel" means a motor vehicle fuel consisting of mono-alkyl*
14 *esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum re-*
15 *sources, not including palm oil.]*

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

17 *[(a) Safety, feasibility, net reduction of greenhouse gas emissions and cost-effectiveness;]*

18 *[(b) Potential adverse impacts to public health and the environment, including but not limited to*
19 *air quality, water quality and the generation and disposal of waste in this state;]*

20 *[(c) Flexible implementation approaches to minimize compliance costs; and]*

21 *[(d) Technical and economic studies of comparable greenhouse gas emissions reduction measures*
22 *implemented in other states and any other studies as determined by the commission.]*

23 *[(4)(a) The provisions of this section do not apply to fuel that is demonstrated to have been used*
24 *in any of the following:]*

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

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

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

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

29 *[(E) Motor vehicles that are not designed primarily to transport persons or property, that are op-*
30 *erated on highways only incidentally, and that are used primarily for construction work.]*

31 *[(F) Watercraft.]*

32 *[(G) Railroad locomotives.]*

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

35 **SECTION 4. (1) The Environmental Quality Commission by rule shall prohibit fuels that**
36 **contain biodiesel from being considered an alternative fuel under the low carbon fuel stan-**
37 **dards adopted under ORS 468A.275 unless the fuel meets the following standards:**

38 **(a) Fuel that consists entirely of biodiesel, designated as B100, shall comply with ASTM**
39 **D 6751 and shall have an oxidation stability induction period of not less than eight hours as**
40 **determined by the test method described in European standard EN 15751; and**

41 **(b) Fuel that consists of a blend of diesel fuel and between 6 and 20 volume percent**
42 **biodiesel, and designated as biodiesel blends B6 to B20, shall comply with ASTM D 7467 and**
43 **shall have an oxidation stability induction period of not less than 20 hours as determined by**
44 **the test method described in European standard EN 15751.**

45 **(2) The commission may adopt rules different from those required under subsection (1)**

1 of this section if an ASTM or EN standard applicable to biodiesel is approved or amended
 2 after March 12, 2015, or if the commission finds that different rules are necessary due to
 3 changes in technology or fuel testing or production methods.

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

7 (a) Regulated parties generate deficits and may reconcile the deficits, and thus be in
 8 compliance with the low carbon fuel standards for a compliance period, by obtaining credits;

9 (b) Regulated parties and credit generators may obtain credits for fuels used as substi-
 10 tutes for gasoline or diesel; and

11 (c) Persons shall have opportunities to trade credits.

12 (2) Under the program required by this section:

13 (a) A regulated party may carry forward a deficit to the next compliance period without
 14 penalty if the regulated party's net deficit balance at the end of a compliance period, after
 15 application of all credits held by the regulated party, is 10 percent or less than the total
 16 number of deficits that the regulated party generated for the compliance period;

17 (b) Except as provided under subsection (3) of this section, credits may not expire; and

18 (c) The Department of Environmental Quality shall:

19 (A) Publish monthly credit trading volumes and prices; and

20 (B) Annually evaluate credit prices for the price impact to consumers.

21 (3) If the program adopted by rule pursuant to this section allows for brokers to partic-
 22 ipate in the program, brokers may not hold credits for more than one calendar year. If a
 23 credit held subject to this subsection is not sold or disposed of within the time required by
 24 this subsection, the credit shall expire.

25 **SECTION 6.** (1) The program adopted by the Environmental Quality Commission under
 26 section 5 of this 2017 Act must include provisions for managing and containing the costs of
 27 compliance with the low carbon fuel standards.

28 (2) Provisions required by this section must include, but need not be limited to:

29 (a) A process by which the commission shall, for a period not to exceed six months unless
 30 a longer period is determined necessary by the commission, suspend compliance with the low
 31 carbon fuel standard applicable during the compliance year and, during the suspension pe-
 32 riod, require regulated parties to comply with the low carbon fuel standard that was appli-
 33 cable during the immediately previous calendar year, beginning on the date that the
 34 Department of Environmental Quality determines that:

35 (A) The average price of credits being traded pursuant to the program has increased
 36 more than 25 percent within a one-month period or more than 40 percent over the course
 37 of a period of two consecutive months; or

38 (B) The average price of credits has exceeded \$200 per metric ton of carbon dioxide
 39 equivalent; and

40 (b) Provisions for a credit clearance market mechanism pursuant to section 7 of this 2017
 41 Act.

42 (3) The department shall conduct a quarterly analysis of the total number of tradable
 43 credits held by all participants in the program. If the department determines that the total
 44 number of tradable credits available during the applicable compliance year will be equal to
 45 105 percent or less of the number of credits forecasted to be necessary to facilitate full

1 compliance within the program during the next applicable compliance year, the department
2 shall, within 30 days after a determination under this subsection is made:

3 (a) Engage in an analysis of credit availability for future compliance; and

4 (b) Based on the analysis required by this subsection, develop and make recommen-
5 dations to the commission on potential necessary changes to the low carbon fuel standards
6 in order to facilitate full compliance within the program during future compliance periods.

7 **SECTION 7.** (1)(a) The Department of Environmental Quality shall hold a credit clearance
8 market for any compliance year within the program adopted under section 5 of this 2017 Act
9 in which a regulated party indicates in the regulated party's annual compliance report that
10 the regulated party's net deficit balance at the end of the compliance period, after application
11 of all credits held by the regulated party, is more than 10 percent of the total number of
12 deficits that the regulated party is responsible for reconciling during the compliance period.
13 A regulated party described by this paragraph is required to participate in the credit clear-
14 ance market.

15 (b) If a regulated party has a net deficit balance at the end of a compliance period, after
16 application of all credits held by the regulated party, that is less than 10 percent of the total
17 number of deficits that the regulated party is responsible for reconciling during the compli-
18 ance period, the regulated party shall indicate in the regulated party's annual compliance
19 report whether it will comply with the program by either:

20 (A) Participating in a credit clearance market; or

21 (B) Carrying forward the deficit, pursuant to section 5 of this 2017 Act.

22 (2) For purposes of administering a credit clearance market required by this section, the
23 department shall:

24 (a) Allow any regulated party or credit generator that holds excess credits during the
25 compliance period to voluntarily participate in the credit clearance market as a seller by
26 pledging a specified number of credits for sale in the market.

27 (b) Require any broker that holds credits during the compliance period to participate in
28 the credit clearance market as a seller by pledging all credits held by the broker for sale in
29 the market.

30 (c) Require each regulated party participating as a purchaser to purchase credits in the
31 credit clearance market to purchase the specified number of the total pledged credits that
32 the department has determined are that regulated party's pro rata share of the pledged
33 credits.

34 (d) Require all sellers to agree to sell pledged credits at a price that may not exceed \$200
35 per metric ton of carbon dioxide equivalent.

36 (e) Require all transactions within the credit clearance market to be completed within
37 30 days after the date that the credit clearance market opens.

38 (f) Allow for participating regulated parties that continue to have a deficit balance for
39 the compliance period after the credit clearance market is closed to carry over any remain-
40 ing deficits into the next compliance year without penalty.

41 (3)(a) If the department is required to hold a credit clearance market for two consecutive
42 compliance periods, the Environmental Quality Commission shall, for a period not to exceed
43 six months unless a longer period is determined necessary by the commission, suspend
44 compliance with the low carbon fuel standard applicable during the next following compliance
45 year and, during the suspension period, require regulated parties to comply with the low

1 carbon fuel standard that was applicable during the last compliance year for which a credit
 2 clearance market was not required to be held.

3 (b) Within 60 days after the date that the suspension period under this subsection begins,
 4 the department shall:

5 (A) Complete an analysis of credit availability for future compliance; and

6 (B) Based on the analysis required by this subsection, develop and make recommen-
 7 dations to the commission on potential necessary changes to the low carbon fuel standards
 8 in order to facilitate full compliance within the program during future compliance periods.

9 (4) Notwithstanding any other law, information furnished to the department related to
 10 the compliance status of a regulated party required to participate in a credit clearance
 11 market held pursuant to this section shall be maintained as confidential.

12 **SECTION 8.** (1) In adopting rules under sections 2 to 8 of this 2017 Act, the Environ-
 13 mental Quality Commission shall evaluate:

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

15 (b) Potential adverse impacts to public health and the environment, including but not
 16 limited to air quality, water quality and the generation and disposal of waste in this state;

17 (c) Flexible implementation approaches to minimize compliance costs; and

18 (d) Technical and economic studies of comparable greenhouse gas emissions reduction
 19 measures implemented in other states and any other studies as determined by the commis-
 20 sion.

21 (2)(a) The provisions of sections 2 to 8 of this 2017 Act do not apply to fuel that is dem-
 22 onstrated to have been used in any of the following:

23 (A) Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.

24 (B) Farm tractors, as defined in ORS 801.265.

25 (C) Implements of husbandry, as defined in ORS 801.310.

26 (D) Motor trucks, as defined in ORS 801.355, used primarily to transport logs.

27 (E) Motor vehicles that are not designed primarily to transport persons or property, that
 28 are operated on highways only incidentally, and that are used primarily for construction
 29 work.

30 (F) Watercraft.

31 (G) Railroad locomotives.

32 (b) The commission shall by rule adopt standards for persons to qualify for the ex-
 33 emptions provided in this subsection.

34 **SECTION 9.** (1) Sections 1, 2 and 4 to 8 of this 2017 Act and the amendments to ORS
 35 468A.275 by section 3 of this 2017 Act become operative on January 1, 2018.

36 (2) The Environmental Quality Commission and the Department of Environmental Qual-
 37 ity may take any action before the operative date specified in subsection (1) of this section
 38 that is necessary for the commission or the department to exercise, on and after the oper-
 39 ative date specified in subsection (1) of this section, all of the duties, functions and powers
 40 conferred on the commission and the department by sections 1, 2 and 4 to 8 of this 2017 Act
 41 and the amendments to ORS 468A.275 by section 3 of this 2017 Act.

42 **SECTION 10.** This 2017 Act takes effect on the 91st day after the date on which the 2017
 43 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.