

A-Engrossed
House Bill 4003

Ordered by the House February 19
Including House Amendments dated February 19

Sponsored by Representatives NOSSE, GREENLICK, SALINAS; Representatives BARNHART, GORSEK, HELM, HERNANDEZ, HOLVEY, KENY-GUYER, KOTEK, MALSTROM, MARSH, PILUSO, POWER, REARDON, SANCHEZ, SOLLMAN, Senators DEMBROW, FREDERICK, MONROE, TAYLOR (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 certain public improvement contracts to meet certain requirements related to use of diesel engines in course of performing public improvement contract.

Requires Environmental Quality Commission to adopt indirect source review program by rule.

Requires certain nonroad diesel engines to be registered with Department of Environmental Quality. Authorizes commission to adopt rules and registration fees.

Directs commission to adopt by rule diesel engine emission standards for medium-duty trucks, heavy-duty trucks and nonroad diesel engines. Requires commission to phase in implementation of certain standards.

Makes certain provisions operative January 1, 2019.

Authorizes additional uses of moneys received by state pursuant to Volkswagen Environmental Mitigation Trust Agreement.

Repeals state preemption of local regulation of idling by primary engines in commercial vehicles.

Takes effect July 1, 2018.

A BILL FOR AN ACT

1
2 Relating to engine emissions; creating new provisions; amending ORS 468A.805 and 468A.807; re-
3 pealing ORS 825.615; and prescribing an effective date.

4 Whereas exposure to diesel particulate pollution causes myriad health effects, including the
5 exacerbation of asthma symptoms and early death from heart disease and various cancers; and

6 Whereas children are especially vulnerable to the negative health effects of diesel particulate
7 pollution because their lungs are still in the developmental phase and they breathe, on average, 50
8 percent more air per pound of body weight than adults; and

9 Whereas environmental justice communities, meaning communities of color and environmentally
10 overburdened, underserved and low-income communities, bear a disproportionate burden of exposure
11 to diesel pollution; and

12 Whereas the health impacts and premature deaths caused by diesel particulate pollution have
13 an annual economic impact of more than \$3 billion in this state; and

14 Whereas 23 Oregon counties have total concentrations of ambient levels of diesel particulate
15 matter that are considered harmful to health; and

16 Whereas the problem of diesel particulate pollution in this state is exacerbated when engines
17 are allowed to idle unnecessarily; and

18 Whereas new diesel engines and older diesel engines retrofitted with particulate filters can re-
19 duce diesel particulates by up to 95 percent as compared to diesel particulate matter emissions from
20 older, dirty diesel engines that are not retrofitted; and

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 Whereas the attrition rate of older, dirty diesel engines that are not retrofitted is too slow to
2 adequately curb emissions in a timely manner and protect public health; and

3 Whereas a strategy to shorten the timeline for conversion to the use of new diesel engines and
4 older diesel engines retrofitted with particulate filters requires a combination of regulations and
5 incentives; and

6 Whereas the incorporation of California's emission standards for nonroad diesel engines into the
7 Department of Environmental Quality's existing air quality regulations will benefit public health;
8 now, therefore,

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

10
11 **CLEAN DIESEL IN PUBLIC CONTRACTS**
12

13 **SECTION 1.** Section 2 of this 2018 Act is added to and made a part of the Public Con-
14 tracting Code.

15 **SECTION 2.** (1) As used in this section, "diesel engine" has the meaning given that term
16 in ORS 468A.795.

17 (2) This section applies only:

18 (a) To a public improvement contract for a public improvement with a value of \$2 million
19 or more and for which state funds constitute 30 percent or more of the value of the contract;
20 and

21 (b) If the contracting agency for the public improvement contract is:

22 (A) A state contracting agency; or

23 (B) A local contracting agency located in an area designated by the United States Office
24 of Management and Budget as a micropolitan or metropolitan statistical area with a popu-
25 lation of 10,000 or more.

26 (3) Except as provided in subsection (5) of this section, a public improvement contract
27 must reserve an amount equal to at least one percent of the total contract price for the
28 purpose of performing qualifying replacements, repowers or retrofits, as described in ORS
29 468A.797, 468A.799 and 468A.803, of diesel engines that:

30 (a) Will be used in the course of performing the contract; and

31 (b) For the three years following a repower or retrofit, will undergo at least 50 percent
32 of the diesel engine's use in Oregon, as measured by miles driven or hours operated.

33 (4) Any amount reserved in a public improvement contract under subsection (3) of this
34 section that remains unexpended after completion of and final payment for the public im-
35 provement contract shall be deposited in the Clean Diesel Engine Fund.

36 (5)(a) The Environmental Quality Commission may adopt by rule minimum standards for
37 contract specifications relating to the use of diesel engines in the course of performing a
38 public improvement contract.

39 (b) As an alternative to meeting the requirements of subsection (3) of this section, a
40 public improvement contract subject to this section may include contract specifications that
41 meet the minimum standards adopted by the commission by rule under this subsection.

42 **SECTION 3.** Section 2 of this 2018 Act applies to public improvement contracts advertised
43 or solicited on or after January 1, 2019, or, for public improvement contracts that are not
44 advertised or solicited, public improvement contracts that a contracting agency enters into
45 on or after January 1, 2019.

INDIRECT SOURCE RULES

SECTION 4. Section 5 of this 2018 Act is added to and made a part of ORS chapter 468A.

SECTION 5. (1) For purposes of this section, “indirect source” means a facility, building, structure, installation, real property, road or highway that attracts, or may attract, mobile sources of air contaminants.

(2) The Environmental Quality Commission shall adopt by rule an indirect source review program. The program adopted under this section must identify indirect sources subject to the program and must include, but need not be limited to:

(a) Provisions for the facility-by-facility review of new, modified and existing indirect sources of air contaminants; and

(b) Provisions for requiring measures necessary to ensure, or assist in ensuring, that a new, modified or existing indirect source subject to the indirect source review program will not attract mobile sources of air contaminants, the emissions from which would cause or contribute to concentrations of air contaminants commonly associated with diesel engine emissions that:

(A) Exceed any national ambient air quality standard; or

(B) Prevent maintenance of any national ambient air quality standard.

(3) Provisions adopted under subsection (2)(b) of this section must include, but need not be limited to, requirements for an indirect source subject to the indirect source review program to develop and administer a pollution reduction plan for reducing mobile source emissions resulting from the use of the indirect source.

SECTION 6. Section 5 of this 2018 Act applies to:

(1) Indirect sources in existence before, on and after January 1, 2019;

(2) A new indirect source for which construction will commence on or after January 1, 2019; and

(3) An existing indirect source for which commencement of a modification will occur on or after January 1, 2019.

NONROAD DIESEL ENGINE REGISTRATION

SECTION 7. Sections 8 and 9 of this 2018 Act are added to and made a part of ORS 468A.795 to 468A.807.

SECTION 8. (1) A person may not operate a nonroad diesel engine in this state without first registering the engine with the Department of Environmental Quality under section 9 of this 2018 Act.

(2) This section does not apply to:

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

(b) Farm tractors, as defined in ORS 801.265.

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

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

SECTION 9. (1) The Department of Environmental Quality shall register and provide a registration renewal for an increment of one year or less for a nonroad diesel engine owned or operated by a person who pays the appropriate registration or renewal fee.

(2)(a) The department may appoint agents to register nonroad diesel engines. Agents

1 shall register nonroad diesel engines in accordance with procedures prescribed by the Envi-
2 ronmental Quality Commission by rule and shall charge and collect the fees prescribed by
3 law.

4 (b) The department may authorize an agent who is not a department employee to charge
5 a service fee of \$2, in addition to the registration fee, for the registration service performed
6 by the agent.

7 (c) The department shall supply agents with registration forms for nonroad diesel en-
8 gines.

9 (3) The commission shall establish by rule a schedule of fees for the issuance and renewal
10 of nonroad diesel engine registrations. The fees established under the schedule shall be based
11 on the costs of the department in carrying out the provisions of this section and section 8
12 of this 2018 Act.

13 (4) The fees collected under this section shall be paid into the State Treasury for deposit
14 in the Clean Diesel Engine Fund, to be used only for paying the department's expenses in
15 administering and enforcing this section and section 8 of this 2018 Act.

16
17 **DIESEL ENGINE EMISSION STANDARDS**

18
19 **SECTION 10.** Sections 11 and 12 of this 2018 Act are added to and made a part of ORS
20 468A.795 to 468A.807.

21 **SECTION 11.** (1) The Environmental Quality Commission by rule shall establish diesel
22 engine emission standards for medium-duty trucks and heavy-duty trucks.

23 (2) The standards adopted by the commission under this section must require that:

24 (a) On and after January 1, 2019, a medium-duty truck or heavy-duty truck operating in
25 Oregon may not be replaced with a truck with a 2006 model year or older engine; and

26 (b) By January 1, 2029, all medium-duty trucks and heavy-duty trucks operating in
27 Oregon must have a 2007 model year or newer engine.

28 (3) Rules adopted under this section must allow for owners and operators of medium-duty
29 trucks and heavy-duty trucks to meet the diesel engine emission standards through alter-
30 native compliance options that may include, but need not be limited to:

31 (a) A fleet averaging option.

32 (b) Options that provide flexibility for small fleets.

33 (c) Provisions that allow owners and operators to obtain compliance credits.

34 (d) Compliance extensions for individual trucks that meet eligibility requirements adopted
35 by the commission by rule.

36 (e) Compliance through retrofitting with exhaust controls that reduce diesel particulate
37 emissions by at least 85 percent when compared with the baseline emissions for the relevant
38 engine year and application.

39 (4) Before adopting rules under this section, the commission shall consider regulations
40 adopted by the State of California for reducing diesel engine emissions from in-use medium-
41 duty trucks and heavy-duty trucks.

42 (5) The following classes of vehicles are exempt from rules adopted under this section:

43 (a) Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.

44 (b) Farm tractors, as defined in ORS 801.265.

45 (c) Implements of husbandry, as defined in ORS 801.310.

1 (d) Motor vehicles used exclusively as training vehicles, as determined by the commission
2 by rule.

3 (e) Any other medium-duty trucks or heavy-duty trucks exempted from the diesel engine
4 emission standards by the commission by rule.

5 **SECTION 12.** (1) The Environmental Quality Commission shall adopt by rule nonroad
6 diesel engine emission standards.

7 (2) Except as may be required by subsection (3) of this section, the standards must in-
8 clude, but need not be limited to, standards that prohibit, beginning on January 1, 2019, the
9 addition to a fleet of a nonroad piece of equipment that is powered by a nonroad diesel engine
10 that does not meet or exceed certain tier standards for nonroad diesel exhaust emissions as
11 adopted by the United States Environmental Protection Agency.

12 (3) The standards adopted under this section, and implementation and enforcement of the
13 standards, must be consistent with the requirements of section 209(e) of the federal Clean
14 Air Act (P.L. 88-206 as amended).

15 (4) Before adopting rules under this section, the commission shall consider regulations
16 adopted by the State of California for reducing nonroad diesel engine emissions.

17
18 **ENVIRONMENTAL MITIGATION TRUST**
19 **AGREEMENT FUNDS, USES**
20

21 **SECTION 13.** ORS 468A.805 is amended to read:

22 468A.805. (1) Subject to and consistent with ORS 468A.803 (8) and with the terms of the Envi-
23 ronmental Mitigation Trust Agreement, any moneys received by the State of Oregon pursuant to the
24 agreement that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 must be used
25 by the Department of Environmental Quality to award grants for the purpose of reducing nitrogen
26 oxides emissions from diesel engines.

27 (2)(a) To the extent authorized by the agreement, the department shall allocate moneys awarded
28 pursuant to subsection (1) of this section first to award grants to owners and operators of school
29 buses to reduce emissions from at least 450 school buses powered by diesel engines operating in this
30 state.

31 (b) In awarding grants under this subsection, the department shall begin by awarding grants to
32 owners and operators of school buses powered by diesel engines that are of the median model year
33 of school buses powered by diesel engines operating in this state, and shall proceed to award grants
34 for school buses powered by diesel engines through the adjoining model years until the requirements
35 of paragraph (a) of this subsection are met. A grant may be awarded under this subsection for any
36 school bus powered by a diesel engine within the control of an owner or operator that meets the
37 following conditions:

38 (A) The school bus has at least three years of remaining useful life;

39 (B) Use of the school bus has occurred in Oregon during the year preceding the date of the
40 grant; and

41 (C) For the three years following receipt of a grant award, use of the school bus to which the
42 owner or operator applies the grant will occur in Oregon.

43 (c) The grant amount per school bus awarded under this paragraph shall be for:

44 (A) \$50,000 or 30 percent of the cost to purchase a school bus that meets minimum standards
45 adopted by the State Board of Education under ORS 820.100 for the applicable class or type of

1 school bus, whichever is less; or

2 (B) Up to 100 percent of the cost to retrofit a school bus with emissions-reducing parts or
3 technology that results in a reduction of diesel particulate matter emissions by at least 85 percent
4 when compared with the baseline emissions for the relevant engine year and application.

5 **(3)(a) After awarding grants as required by subsection (2) of this section and to the ex-**
6 **tent authorized by the agreement, the department shall allocate moneys awarded pursuant**
7 **to subsection (1) of this section among owners and operators of the following categories of**
8 **motor vehicles powered by diesel engines, subject to the preferences for grant awards es-**
9 **tablished under ORS 468A.807 and paragraph (b) of this subsection:**

10 (A) Drayage trucks.

11 (B) Delivery trucks.

12 (C) Waste hauling trucks.

13 (D) Transit buses.

14 (E) Vehicles owned and operated by a local government.

15 (F) Airport ground support equipment.

16 (b) Notwithstanding any contrary rule adopted by the Environmental Quality Commission
17 under ORS 468A.807 (2), the department shall give first preference for awarding grants under
18 this subsection to owners and operators that will use the grants to reduce nitrogen oxides
19 emissions from diesel engines operated in environmental justice communities or communi-
20 ties of color.

21 (c) The department may not award a grant under this subsection to the owner or oper-
22 ator of a motor vehicle powered by a diesel engine unless the following criteria are met:

23 (A) Use of the motor vehicle has occurred in Oregon during the year preceding the date
24 of the grant.

25 (B) The motor vehicle is authorized for use in this state.

26 (C) For the three years following the receipt of a grant award, at least 50 percent of the
27 motor vehicle use for which the owner or operator received the grant will occur in Oregon,
28 as measured by miles driven or hours operated.

29 (D) The grant will not exceed the cost-effectiveness threshold where, notwithstanding
30 ORS 468A.795, the "cost-effectiveness threshold" for purposes of this paragraph means the
31 cost in dollars per ton of diesel particulate and nitrogen oxides reduced, as established by
32 rule of the commission.

33 (E) Any other criteria the department deems necessary to ensure that a grant award
34 will result in a reduction in emissions from diesel engines in this state.

35 [(3)] (4) Except for awarding grants pursuant to [subsection (2)] subsections (2) and (3) of this
36 section, the department may not award grants from the moneys described under subsection (1) of
37 this section without prior approval by the Legislative Assembly by law.

38 **SECTION 14.** ORS 468A.807 is amended to read:

39 468A.807. (1) The Environmental Quality Commission shall adopt rules necessary to implement
40 ORS 468A.795 to 468A.807.

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

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

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

45 (c) Whether scrapping, replacement, repowering or retrofitting an engine will benefit sensitive

1 populations or areas with elevated concentrations of diesel particulate matter; or

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

3 (3)(a) Rules adopted by the commission under this section must reserve a portion of the financial
4 assistance available each year:

5 (A) For applicants that own or operate a small number of diesel engines or Oregon diesel truck
6 engines; and

7 (B) For applicants that are businesses owned by women and by members of minority
8 groups.

9 (b) The rules must provide for simplified access to financial assistance for [*those applicants*] the
10 applicants described in this subsection.

11 (4) The Department of Environmental Quality may perform activities necessary to ensure that
12 recipients of grants and loans from the Clean Diesel Engine Fund comply with applicable require-
13 ments. If the department determines that a recipient has not complied with applicable requirements,
14 the department may order the recipient to refund all grant or loan moneys and may impose penalties
15 pursuant to ORS 468.140.

16
17 **REPEAL OF STATE PREEMPTION OF LOCAL REGULATION OF**
18 **IDLING BY PRIMARY ENGINES IN COMMERCIAL VEHICLES**

19
20 **SECTION 15. ORS 825.615 is repealed.**

21
22 **OPERATIVE DATE**

23
24 **SECTION 16. (1) Sections 1 to 12 of this 2018 Act become operative January 1, 2019.**

25 (2) The Environmental Quality Commission and the Department of Environmental Qual-
26 ity may adopt rules or take any actions before the operative date specified in subsection (1)
27 of this section that are necessary to enable the commission and the department, on and after
28 the operative date specified in subsection (1) of this section, to carry out the provisions of
29 section 1 to 12 of this 2018 Act.

30
31 **CAPTIONS**

32
33 **SECTION 17. The unit captions used in this 2018 Act are provided only for the conven-
34 ience of the reader and do not become part of the statutory law of this state or express any
35 legislative intent in the enactment of this 2018 Act.**

36
37 **EFFECTIVE DATE**

38
39 **SECTION 18. This 2018 Act takes effect on July 1, 2018.**