

HOUSE AMENDMENTS TO HOUSE BILL 4139

By JOINT COMMITTEE ON TRANSPORTATION

February 23

- 1 On page 1 of the printed bill, delete lines 5 through 25 and delete pages 2 through 5 and insert:
2 **“SECTION 1. (1) As used in this section and sections 2 and 3 of this 2022 Act:**
3 **“(a) ‘Bidder’ has the meaning given that term in ORS 279A.010.**
4 **“(b) ‘Covered materials’ means:**
5 **“(A) Concrete, including ready mix concrete, shotcrete, precast concrete and concrete**
6 **masonry units;**
7 **“(B) Asphalt paving mixtures;**
8 **“(C) Steel, including rebar, reinforcing steel and structural steel, hot-rolled sections,**
9 **hollow sections, plate steel and cold-formed steel; and**
10 **“(D) Other materials the Department of Transportation designates by rule after consul-**
11 **tation with the technical advisory committee.**
12 **“(c) ‘Emergency’ has the meaning given that term in ORS 279A.010.**
13 **“(d) ‘Environmental product declaration’ means a product-specific label developed in ac-**
14 **cordance with rules the department adopts that are based on ISO Standard 14025 and on in-**
15 **dependently verified life cycle assessment data, life cycle inventory and analysis data or**
16 **information modules in accordance with the ISO 14040 series of standards.**
17 **“(e) ‘Procurement’ has the meaning given that term in ORS 279A.010.**
18 **“(f) ‘Proposer’ has the meaning given that term in ORS 279A.010.**
19 **“(g) ‘Public contract’ has the meaning given that term in ORS 279A.010.**
20 **“(h) ‘Public Contracting Code’ has the meaning given that term in ORS 279A.010.**
21 **“(i) ‘Technical advisory committee’ means the committee described in section 2 of this**
22 **2022 Act.**
23 **“(2)(a) The department, not later than December 31, 2025, shall establish a program for**
24 **greenhouse gas reduction that:**
25 **“(A) Assesses the greenhouse gas emissions attributable to covered materials the de-**
26 **partment uses in the department’s construction and maintenance activities for the state’s**
27 **transportation system;**
28 **“(B) Conducts life cycle assessments of a selected set of the department’s construction**
29 **and maintenance activities; and**
30 **“(C) Devises strategies for reducing greenhouse gas emissions that include, but are not**
31 **limited to, improving pavement and bridge conditions.**
32 **“(b) In establishing the program described in paragraph (a) of this subsection, the de-**
33 **partment shall identify and disclose in any reports the department produces all relevant**
34 **measurement difficulties, deficiencies in needed data, assumptions, uncertainties, technolog-**
35 **ical limitations, costs associated with assessment and implementation and any other relevant**

1 limitations of methodology, practice or implementation.

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

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

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

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

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

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

13 “(d) The department shall conduct the assessments and devise the strategies described
14 in paragraph (a) of this subsection separately for each of the state’s five transportation re-
15 gions, accounting for differences among the regions with respect to the availability of cov-
16 ered materials, fuel and other necessary resources and the quantity of covered materials the
17 department uses or plans to use.

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

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

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

23 “(C) Determines that requiring an environmental product declaration will reduce com-
24 petition for public contracts or otherwise contravene the requirements of the Public Con-
25 tracting Code;

26 “(D) Determines that requiring an environmental product declaration would unreason-
27 ably affect the department’s specifications or requirements for covered materials or impair
28 the department’s construction or maintenance activities;

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

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

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

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

1 tractors, material suppliers and other stakeholders, the department devises a scoring meth-
2 odology that ensures fairness among bidders and proposers.

3 “(4)(a) In order to assist bidders or proposers to prepare or submit environmental prod-
4 uct declarations required under this section, the department by rule shall establish a pro-
5 gram to extend grants to bidders or proposers that require financial assistance to prepare
6 environmental product declarations.

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

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

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

20 “(2) Members of the technical advisory committee must include, but need not be limited
21 to, representatives from the Department of Transportation and the Department of Environ-
22 mental Quality, from construction firms engaged in transportation construction and main-
23 tenance, from suppliers of covered materials, from construction and material supplier
24 industry associations, from workers in construction or manufacturing industries, from en-
25 vironmental organizations and from institutions of higher education.

26 “(3) The technical advisory committee shall:

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

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

31 “(c) Advise and guide the department concerning:

32 “(A) The extent to which environmental product declarations are available or are in de-
33 velopment;

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

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

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

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

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

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

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

3 “(5) A majority of the members of the technical advisory committee constitutes a quo-
4 rum for the transaction of business.

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

7 “(7) The department shall appoint a replacement for any vacancy on the technical advi-
8 sory committee. The replacement must become immediately effective upon appointment.

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

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

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

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

21 “(1) A description of the department’s efforts to design and implement the program, an
22 evaluation of the department’s success in reducing greenhouse gas emissions by means of
23 environmental product declarations and recommendations as to whether to continue or ex-
24 pand the program; and

25 “(2) Any other matters the department, in consultation with the technical advisory
26 committee, deems relevant, material or important to highlight or recommend to the com-
27 mission or the Legislative Assembly.

28 “SECTION 4. This 2022 Act takes effect on the 91st day after the date on which the 2022
29 regular session of the Eighty-first Legislative Assembly adjourns sine die.”