

House Bill 4139

Sponsored by Representative RAYFIELD (Pre-session 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 **as introduced**.

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. Specifies required scope and content of pilot program.

Requires bids and proposals for designated demonstration projects within pilot program to include environmental product declarations. Specifies exceptions.

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 and reinforcing steel and structural steel, including hot-rolled**
12 **sections, hollow 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 measurement of the**
17 **life cycle environmental impact of a product from the point of raw material extraction to the**
18 **point of manufacture, calculated in accordance with rules the Department of Environmental**
19 **Quality adopts with reference to ISO 14040 and ISO 14044 environmental management stan-**
20 **dards.**

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

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

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

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

25 (i) **"Technical advisory committee" means the committee described in section 2 of this**

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 **2022 Act.**

2 **(2)(a) The Department of Transportation, not later than December 2025, shall establish**
 3 **a pilot program for greenhouse gas reduction that:**

4 **(A) Establishes and quantifies a baseline of greenhouse gas emissions attributable to**
 5 **covered materials the Department of Transportation uses in construction and maintenance**
 6 **projects for the state’s transportation system, using a methodology and standards the De-**
 7 **partment of Environmental Quality specifies by rule;**

8 **(B) Conducts a life cycle assessment of covered materials the Department of Transpor-**
 9 **tation currently uses in construction and maintenance projects for the state’s transportation**
 10 **system and a separate life cycle assessment of potential replacements or substitutes for**
 11 **covered materials that the Department of Transportation could consider using in con-**
 12 **struction and maintenance projects for the purpose of reducing greenhouse gas emissions;**

13 **(C) Devises measures for reducing greenhouse gas emissions at least in part by using**
 14 **replacement or substitute covered materials with lower levels of greenhouse gas emissions**
 15 **in place of covered materials with higher levels of greenhouse gas emissions, but also, where**
 16 **feasible, by developing alternative construction techniques, sourcing materials closer to work**
 17 **sites and adopting other innovative practices that can aid in reducing greenhouse gas emis-**
 18 **sions;**

19 **(D) Designates a set of construction and maintenance projects the Department of**
 20 **Transportation may use as demonstrations of the effectiveness of using replacement or**
 21 **substitute covered materials and other measures described in subparagraph (C) of this par-**
 22 **agraph to reduce greenhouse gas emissions;**

23 **(E) Quantifies the amount of greenhouse gas reductions attributable to using replace-**
 24 **ment or substitute covered materials and other measures in the projects the Department**
 25 **of Transportation designates under subparagraph (D) of this paragraph, using the same**
 26 **methods and standards the Department of Transportation used to establish a baseline for**
 27 **greenhouse gas emissions under subparagraph (A) of this paragraph; and**

28 **(F) Estimates the time required to implement the measures described in subparagraph**
 29 **(C) of this paragraph and the expected amount of greenhouse gas reductions that will result**
 30 **from the measures, along with the time within which detectable reductions might occur.**

31 **(b) In establishing the baseline described in paragraph (a)(A) of this subsection and the**
 32 **greenhouse gas reductions described in paragraph (a)(E) of this subsection, the Department**
 33 **of Transportation shall identify and disclose in any reports the department produces all rel-**
 34 **evant measurement difficulties, deficiencies in needed data, technological limitations, costs**
 35 **associated with measurement and any other relevant limitations of methodology or practice.**

36 **(c) In devising the measures described in paragraph (a)(C) of this subsection, the De-**
 37 **partment of Transportation, at a minimum, shall consider and evaluate:**

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

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

42 **(C) The types and effects of fuels used in manufacturing, transporting and using covered**
 43 **materials; and**

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

1 (d) The Department of Transportation shall establish the baselines, conduct the evalu-
 2 ations and quantifications and devise the measures described in paragraph (a) of this sub-
 3 section separately for each of the state's five transportation regions, accounting for
 4 differences among the regions with respect to the availability of covered materials, fuel and
 5 other necessary resources.

6 (3)(a) In procuring covered materials for the demonstration projects the Department of
 7 Transportation designates under subsection (2)(a)(D) of this section, the department shall
 8 require bidders and proposers to submit environmental product declarations with all re-
 9 sponses to invitations to bid or requests for proposals unless the department:

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

11 (B) Determines in writing that an environmental product declaration is not available for
 12 the covered material;

13 (C) Determines in writing that requiring an environmental product declaration will re-
 14 duce competition for public contracts or otherwise contravene the requirements of the Pub-
 15 lic Contracting Code;

16 (D) Determines in writing that requiring an environmental product declaration would
 17 unreasonably affect the department's specifications or requirements for covered materials;

18 (E) Determines in writing that an environmental product declaration is not necessary to
 19 measure or quantify greenhouse gas emissions as described in this section; or

20 (F) Determines after consultation with the technical advisory committee that other
 21 considerations outweigh the need for requiring environmental product declarations.

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

28 (c) The department shall evaluate a bidder's or proposer's submission of an environ-
 29 mental product declaration as a matter of the bidder's or the proposer's responsiveness un-
 30 der the department's rules, but may not use the environmental product declaration as a
 31 consideration in ranking or scoring a bid or proposal unless the department determines in
 32 writing, after consulting with the technical advisory committee, that using environmental
 33 product declarations for ranking or scoring bids or proposals will not unreasonably reduce
 34 competition among bidders or proposers.

35 (4)(a) In order to assist bidders or proposers to prepare or submit environmental product
 36 declarations required under this section, the department by rule shall establish a program
 37 to extend grants to bidders or proposers that are certified as a disadvantaged business en-
 38 terprise, a minority-owned business, a woman-owned business, a business that a service-
 39 disabled veteran owns or an emerging small business under ORS 200.055.

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

1 the termination of the pilot program.

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

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

8 (2) The department shall determine the membership and qualifications of the technical
9 advisory committee by rule.

10 (3) The technical advisory committee shall:

11 (a) Recommend quantities of covered materials below which the department need not
12 require an environmental product declaration.

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

15 (c) Advise the department concerning:

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

18 (B) Characteristics that are appropriate for designating a demonstration project under
19 section 1 (2)(a)(D) of this 2022 Act;

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

22 (D) How to properly analyze or interpret an environmental product declaration in the
23 context of the need to reduce greenhouse gas emissions under the pilot program described
24 in section 1 of this 2022 Act;

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

27 (F) Potential changes to the design or implementation of the pilot program described in
28 section 1 of this 2022 Act in light of technological advances and the need to maintain rea-
29 sonable competition for public contracts; and

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

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

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

36 (6) The technical advisory committee shall strive to reach consensus on all matters the
37 technical advisory committee considers, but official action by the technical advisory com-
38 mittee requires at least the approval of a majority of the members of the technical advisory
39 committee.

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

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

44 (9) The technical advisory committee must meet at least four times within each calendar
45 year at times and places specified by the call of the chairperson, of a majority of the mem-

1 **bers of the technical advisory committee or of the Director of Transportation.**

2 **(10) The technical advisory committee may adopt rules necessary for the operation of the**
3 **technical advisory committee.**

4 **(11) The department shall provide staff support to the technical advisory committee.**

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

7 **SECTION 3.** The Department of Transportation, after establishing the pilot program de-
8 scribed in section 1 of this 2022 Act, shall report annually not later than December 31 of each
9 calendar year to the Oregon Transportation Commission and an interim committee of the
10 Legislative Assembly related to transportation concerning the progress of the pilot program
11 and related matters. The reports, at a minimum, must include:

12 **(1) A comprehensive description of the department's efforts to design and implement the**
13 **pilot program, an evaluation of the department's success in reducing greenhouse gas emis-**
14 **sions by means of the pilot program and recommendations as to whether to continue or ex-**
15 **pend the pilot program;**

16 **(2) Specific data concerning:**

17 **(a) The total number and value of contracts the department awards in connection with**
18 **the pilot program;**

19 **(b) The total number and value of subcontracts that contractors awarded to contractors**
20 **and suppliers incorporated or headquartered outside the United States;**

21 **(c) The dollar value of any covered materials the department procured in connection with**
22 **the pilot program that were manufactured or otherwise sourced from outside the United**
23 **States;**

24 **(d) All waivers of requirements for sourcing materials within the United States that the**
25 **department granted in connection with the pilot program; and**

26 **(e) The total dollar value of all covered materials the department procured in connection**
27 **with the pilot program; and**

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

31 **SECTION 4.** Sections 1 to 3 of this 2022 Act are repealed on December 31, 2030.

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

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