

House Bill 3040

Sponsored by Representative HOLVEY (at the request of Frank Vignola)

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**.

Imposes fee on each fuel supplier and utility based on amount of carbon dioxide to be emitted upon consumption of carbon-based fuel, when carbon-based fuel is sold by fuel supplier to consumers in state or is used to produce carbon-generated electricity supplied by utility to consumers in state. Limits fee on certain oil and natural gas to six percent of market value of oil or natural gas.

Distributes moneys collected from fee to State Highway Fund, Common School Fund, Energy Crisis Trust Fund and Renewable Energy Resources Account.

Creates Renewable Energy Resources Account. Continuously appropriates moneys in account to State Department of Energy to fund development of renewable energy resources.

Appropriates moneys from General Fund to Department of Revenue and State Department of Energy for purpose of funding first year of administration of fee.

Applies to carbon-based fuel sold to consumers or used to produce carbon-generated electricity on or after January 1, 2007.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to carbon dioxide emissions; creating new provisions; amending ORS 458.510; appropriating
3 money; prescribing an effective date; and providing for revenue raising that requires approval
4 by a three-fifths majority.

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

SECTION 1. As used in sections 1 to 7 of this 2005 Act:

6
7 (1) **“Carbon-based fuel” means coal, natural gas, petroleum products and any other**
8 **product used for fuel that contains carbon and emits carbon dioxide when combusted.**

9 **“Carbon-based fuel” does not include any product used for fuel that is from a resource that**
10 **is less than 1,000 years old in its natural state.**

11 (2) **“Carbon-based fuel group” means a group of carbon-based fuels that contain similar**
12 **levels of carbon.**

13 (3) **“Carbon-generated electricity” means electric energy that is produced by a carbon-**
14 **based fuel. “Carbon-generated electricity” does not include electric energy produced by a fuel**
15 **that is from a resource that is less than 1,000 years old in its natural state.**

16 (4) **“Fee” means the carbon dioxide emissions fee imposed under section 2 of this 2005**
17 **Act.**

18 (5) **“Fuel supplier” means a person that sells carbon-based fuel to consumers.**

19 (6) **“Stored carbon dioxide emissions” means the amount of carbon dioxide that is stored**
20 **within a quantity of carbon-based fuel and that will be released into the environment upon**
21 **consumption of the carbon-based fuel.**

22 (7) **“Utility” means a public utility operating under ORS chapter 757, a people’s utility**
23 **district operating under ORS chapter 261, a municipal utility operating under ORS chapter**
24 **225 or any other entity that supplies carbon-generated electricity to consumers.**

25 **SECTION 2. (1) A carbon dioxide emissions fee is imposed on each fuel supplier 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 utility at a rate of \$_____ per ton of stored carbon dioxide emissions in a carbon-based fuel
 2 that is:

3 (a) Sold by a fuel supplier to consumers in this state; or

4 (b) Used to produce carbon-generated electricity that is supplied by a utility to consum-
 5 ers in this state.

6 (2) Notwithstanding the rate designated under subsection (1) of this section, the amount
 7 of the fee imposed on oil or natural gas under this section may not exceed six percent of the
 8 market value of oil or natural gas that is described in section 3b, Article IX of the Oregon
 9 Constitution. If the total of all taxes and fees described in section 3b, Article IX of the
 10 Oregon Constitution, exceeds six percent of the market value of the oil or natural gas, the
 11 amount that is in excess because of taxes and fees imposed by the laws of this state, other
 12 than the fee imposed by this section, shall be refunded to the taxpayer.

13 (3) The Department of Revenue shall calculate the fee liability of a fuel supplier or utility
 14 by multiplying the rate designated in subsection (1) of this section by the total amount of
 15 stored carbon dioxide emissions in carbon-based fuels in each carbon-based fuel group that
 16 are:

17 (a) Sold by the fuel supplier to consumers in this state in the previous calendar year; or

18 (b) Used to produce carbon-generated electricity supplied by the utility to consumers in
 19 this state in the previous calendar year.

20 (4)(a) If a utility is unable to provide the information required for the calculation under
 21 subsection (3) of this section, the Department of Revenue shall calculate the utility's fee li-
 22 ability by multiplying the rate designated in subsection (1) of this section by the product of
 23 the average amount of stored carbon dioxide emissions used in the production of one kilowatt
 24 of electricity supplied by the utility and the total number of kilowatts of electricity supplied
 25 by the utility to consumers in this state.

26 (b) The State Department of Energy shall calculate the average amount of stored carbon
 27 dioxide emissions used in the production of one kilowatt of electricity supplied by the utility
 28 by estimating the ratio that each carbon-based fuel group contributes to the generation of
 29 the electricity. Each year, the State Department of Energy shall recalculate the average
 30 amount of stored carbon dioxide emissions used in the production of one kilowatt of elec-
 31 tricity supplied by the utility to take into account any changes in the ratio of carbon-based
 32 fuel groups used in the generation of the electricity and shall report the recalculated value
 33 to the Department of Revenue.

34 (5) The Department of Revenue and the State Department of Energy may adopt any rules
 35 necessary for the calculation and collection of the fee imposed under this section.

36 (6) The fee imposed under this section does not apply to:

37 (a) Carbon-based fuel or carbon-generated electricity that this state is prohibited from
 38 taxing under the Constitution or laws of the United States or the Constitution or laws of the
 39 State of Oregon.

40 (b) Any fuel supplier or utility that is administered by a federal agency.

41 (c) Carbon-based fuel or carbon-generated electricity that is transported through this
 42 state but not consumed in this state.

43 **SECTION 3.** (1) Each fuel supplier and utility required to pay the fee imposed under
 44 section 2 of this 2005 Act shall file a report with the Department of Revenue on or before
 45 April 1 of each year.

1 (2) The report filed by a fuel supplier under this section shall include:

2 (a) The total amount of carbon-based fuel in each carbon-based fuel group sold by the fuel
3 supplier to consumers in this state in the previous calendar year;

4 (b) The market value and any taxes paid in the previous calendar year for any oil or na-
5 tural gas as described in section 3b, Article IX of the Oregon Constitution, and sold by the
6 fuel supplier; and

7 (c) Any other information required by the department by rule.

8 (3) The report filed by a utility under this section shall include:

9 (a) The total amount of carbon-based fuel in each carbon-based fuel group used to
10 produce the carbon-generated electricity supplied by the utility to consumers in this state
11 in the previous calendar year;

12 (b) The market value and any taxes paid in the previous calendar year for any oil or na-
13 tural gas as described in section 3b, Article IX of the Oregon Constitution, and used to
14 produce carbon-generated electricity supplied by the utility; and

15 (c) Any other information required by the department by rule.

16 (4) If a utility is unable to provide the information required under subsection (3) of this
17 section, the utility shall report:

18 (a) To the State Department of Energy the information required by the department by
19 rule to make the calculations under section 2 (4)(b) of this 2005 Act; and

20 (b) To the Department of Revenue the total number of kilowatts of electricity supplied
21 by the utility to consumers in this state in the previous calendar year.

22 (5) Each fuel supplier and utility shall keep records, render statements, make returns
23 and comply with rules adopted by the Department of Revenue and the State Department of
24 Energy for the fee imposed under section 2 of this 2005 Act.

25 **SECTION 4.** (1) On or before June 1 of each year, the Department of Revenue shall send
26 an assessment to each fuel supplier and utility that identifies the amount owed for the pre-
27 vious calendar year by the fuel supplier or utility for the fee imposed under section 2 of this
28 2005 Act.

29 (2) On or before July 1 of each year, each fuel supplier and utility that receives an as-
30 sessment under subsection (1) of this section shall pay the amount of the fee liability to the
31 department.

32 (3) If the amount paid by the fuel supplier or utility under subsection (2) of this section
33 exceeds the amount of tax payable, the department shall refund the amount of the excess
34 with interest at the rate established under ORS 305.220 for each month or fraction of a
35 month from the date of the payment of the excess until the date of the refund. A refund is
36 not available to a fuel supplier or utility that fails to claim the refund within two years after
37 the due date for the filing of the tax return with respect to which the claim for refund re-
38 lates.

39 (4) If a fuel supplier or utility fails to pay the fee assessed against it under subsection
40 (1) of this section, the department may enforce collection by the issuance of a distraint
41 warrant for the collection of the delinquent amount and all penalties, interest and collection
42 charges. The warrant shall be issued, docketed and proceeded upon in the same manner and
43 shall have the same force and effect as is prescribed with respect to warrants for the col-
44 lection of delinquent income taxes.

45 **SECTION 5.** Moneys received by the Department of Revenue pursuant to the fee imposed

1 under section 2 of this 2005 Act shall be deposited in a suspense account created pursuant
 2 to ORS 293.445. Moneys in that account shall be distributed as follows:

3 (1) All moneys that are collected from motor vehicle fuel or any other product used for
 4 the propulsion of motor vehicles shall be used in the manner described in section 3a, Article
 5 IX of the Oregon Constitution.

6 (2) All moneys that are collected from natural gas or oil described in section 3b, Article
 7 IX of the Oregon Constitution, shall be used in the manner designated in section 2 (1)(g),
 8 Article VIII of the Oregon Constitution.

9 (3) All moneys collected from sources not described in subsection (1) or (2) of this sec-
 10 tion, minus any amounts the Department of Revenue or the State Department of Energy
 11 may collect to cover costs incurred by the Department of Revenue or the State Department
 12 of Energy in the administration of the fee, shall be deposited as follows:

13 (a) _____ percent to the Common School Fund described in section 2, Article VIII of
 14 the Oregon Constitution;

15 (b) _____ percent to the Energy Crisis Trust Fund established under ORS 458.510 for
 16 the purpose of providing low income home energy assistance; and

17 (c) _____ percent to the Renewable Energy Resources Account established in section
 18 6 of this 2005 Act for the purpose of funding the development of renewable energy resources.

19 **SECTION 6.** The Renewable Energy Resources Account is established in the State
 20 Treasury, separate and distinct from the General Fund. The account shall consist of moneys
 21 distributed to the account under section 5 of this 2005 Act. All moneys in the account are
 22 continuously appropriated to the State Department of Energy to fund the development of
 23 renewable energy resources, as defined in ORS 469.185.

24 **SECTION 7.** Unless the context requires otherwise, the provisions of ORS chapters 305,
 25 314 and 316 that relate to the audit and examination of reports and returns, confidentiality
 26 and disclosure of reports and returns, determination of deficiencies, assessments, claims for
 27 refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the
 28 Oregon Tax Court, and related procedures, apply to sections 1 to 7 of this 2005 Act, the same
 29 as if the fee imposed under section 2 of this 2005 Act were a tax imposed upon or measured
 30 by net income.

31 **SECTION 8.** ORS 458.510 is amended to read:

32 458.510. (1) There is established an Energy Crisis Trust Fund, separate and distinct from the
 33 General Fund, in the State Treasury. As permitted by federal court decisions, federal statutory re-
 34 quirements and administrative decisions, funds from the Petroleum Violation Escrow Fund made
 35 available to the Housing and Community Services Department for the Energy Crisis Trust Fund,
 36 **funds designated to the Energy Crisis Trust Fund under section 5 of this 2005 Act** and any
 37 gift, grant, appropriation or donation for the purpose of the Energy Crisis Trust Fund shall be de-
 38 posited by the State Treasurer and credited to the Energy Crisis Trust Fund. The State Treasurer
 39 shall credit monthly to the fund any interest or other income derived from the fund or the investing
 40 of the fund. All moneys in the fund are continuously appropriated to the Housing and Community
 41 Services Department for the purpose of providing low income home energy assistance.

42 (2) If moneys are donated to the fund for low income energy assistance by a home heating fuel
 43 or energy service provider that allows its customers to contribute to the program, that money so
 44 donated shall be redistributed through the Energy Crisis Trust Fund only within the service area
 45 of that home heating fuel or energy service provider.

1 (3) The Housing and Community Services Department shall contract with a private nonprofit or
2 public organization or agency for the distribution of moneys in the Energy Crisis Trust Fund. The
3 department or the contractor shall administer and distribute the funds in accordance with:

- 4 (a) The Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.);
- 5 (b) The Petroleum Violation Escrow Fund regulations; and
- 6 (c) The recommendations of the advisory committee established in ORS 458.515.

7 **SECTION 9.** For the purpose of first calculating the fee imposed under section 2 of this
8 2005 Act, the State Department of Energy shall determine the percentage of carbon in each
9 carbon-based fuel group and report those percentages to the Department of Revenue.

10 **SECTION 10.** (1) In addition to and not in lieu of any other appropriation, there is ap-
11 propriated to the Department of Revenue, for the biennium beginning July 1, 2005, out of the
12 General Fund, the amount of \$_____, which may be expended for the purpose of funding
13 the first year of administration of the fee imposed under section 2 of this 2005 Act.

14 (2) In addition to and not in lieu of any other appropriation, there is appropriated to the
15 State Department of Energy, for the biennium beginning July 1, 2005, out of the General
16 Fund, the amount of \$_____, which may be expended for the purpose of assisting the De-
17 partment of Revenue in administering the first year of the fee imposed under section 2 of
18 this 2005 Act.

19 **SECTION 11.** Sections 1 to 7 of this 2005 Act and the amendments to ORS 458.510 by
20 section 8 of this 2005 Act apply to stored carbon dioxide emissions within carbon-based fuel
21 sold to consumers or used to produce carbon-generated electricity on or after January 1,
22 2007.

23 **SECTION 12.** This 2005 Act takes effect on the 91st day after the date on which the
24 regular session of the Seventy-third Legislative Assembly adjourns sine die.
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