

House Bill 2874

Sponsored by COMMITTEE ON REVENUE

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 tax on each fuel supplier and utility based on amount of carbon in carbon-based fuel that is sold by fuel supplier to consumers in state or that is used to produce carbon-generated electricity supplied by utility to consumers in state. Limits tax on certain oil and natural gas to six percent of market value of oil or natural gas.

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

Creates Renewable Energy Resources Account 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 tax.

Applies to carbon-based fuel sold to consumers or used to produce carbon-generated electricity on or after January 1, 2015.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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

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

SECTION 1. As used in sections 1 to 6 of this 2013 Act:

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

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

(2) **“Carbon-generated electricity” means electric energy that is produced using a carbon-based fuel.**

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

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

SECTION 2. (1) A tax is imposed on each fuel supplier and utility at a rate of \$_____ per ton of carbon in a carbon-based fuel that is:

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

(b) **Used to produce carbon-generated electricity that is supplied by a utility to consumers in this state.**

(2) **Notwithstanding the rate designated under subsection (1) of this section, the amount of tax imposed on oil or natural gas under this section may not exceed six percent of the market value of oil or natural gas that is described in Article IX, section 3b, of the Oregon Constitution. If the total of all taxes imposed by all laws on oil or natural gas described in**

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 Article IX, section 3b, of the Oregon Constitution, exceeds six percent of the market value
 2 of the oil or natural gas, the amount that is in excess because of taxes imposed by the laws
 3 of this state, other than the tax imposed by this section, shall be refunded to the taxpayer.

4 (3) The Department of Revenue shall calculate the tax liability of a fuel supplier or utility
 5 by multiplying the rate designated in subsection (1) of this section by the total amount of
 6 carbon in carbon-based fuels that are:

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

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

10 (4)(a) If a utility is unable to provide the information required for the calculation under
 11 subsection (3) of this section, the Department of Revenue shall calculate the utility's tax li-
 12 ability by multiplying the rate designated in subsection (1) of this section by the product of
 13 the average amount of carbon used in the production of one kilowatt of electricity supplied
 14 by the utility and the total number of kilowatts of electricity supplied by the utility to con-
 15 sumers in this state.

16 (b) The State Department of Energy shall calculate the average amount of carbon used
 17 in the production of one kilowatt of electricity supplied by the utility based upon the pro-
 18 portion that each carbon-based fuel constitutes of the total amount of carbon-based fuel used
 19 in the generation of the electricity by the utility and the amount of carbon used in the pro-
 20 duction of one kilowatt of electricity for each carbon-based fuel. Each year, the State De-
 21 partment of Energy shall recalculate and report to the Department of Revenue the average
 22 amount of carbon used in the production of one kilowatt of electricity supplied by the utility
 23 to take into account any changes in the relative proportion of carbon-based fuels used in the
 24 generation of the electricity by the utility.

25 (5) The Department of Revenue and the State Department of Energy may adopt any rules
 26 necessary for the calculation of tax liability and the collection of the tax imposed under this
 27 section.

28 (6) The tax imposed under this section does not apply to:

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

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

33 (c) Any carbon-based fuel or carbon-generated electricity that is transported through
 34 this state, or produced in this state, but not consumed in this state.

35 **SECTION 3.** (1) Every fuel supplier and utility required to pay the tax imposed under
 36 section 2 of this 2013 Act shall file a report with the Department of Revenue on or before
 37 April 1 of each year.

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

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

41 (b) The market value of and any taxes paid for any oil or natural gas that is described
 42 in Article IX, section 3b, of the Oregon Constitution, and sold by the fuel supplier to con-
 43 sumers in this state in the previous calendar year; and

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

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

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

3 (b) The market value of and any taxes paid for any oil or natural gas that is described
 4 in Article IX, section 3b, of the Oregon Constitution, and used to produce carbon-generated
 5 electricity supplied by the utility to consumers in this state in the previous calendar year;
 6 and

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

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

10 (a) To the State Department of Energy the information required by the department by
 11 rule to make the calculations under section 2 (4) of this 2013 Act; and

12 (b) To the Department of Revenue the total number of kilowatts of electricity generated
 13 using carbon-based fuel and supplied by the utility to consumers in this state in the previous
 14 calendar year.

15 (5) Each fuel supplier and utility shall keep records, render statements, make returns
 16 and comply with rules adopted by the Department of Revenue and the Department of Energy
 17 related to the tax imposed under section 2 of this 2013 Act.

18 **SECTION 4.** (1) On or before June 1 of each year, the Department of Revenue shall send
 19 to each fuel supplier and utility an assessment that identifies the tax liability of the fuel
 20 supplier or utility for the previous calendar year for the tax imposed under section 2 of this
 21 2013 Act.

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

25 (3) If the amount paid by the fuel supplier or utility under subsection (2) of this section
 26 exceeds the amount of tax payable, the department shall refund the amount of the excess
 27 with interest at the rate established under ORS 305.220 for each month or fraction of a
 28 month from the date of payment of the excess until the date of the refund. A refund is not
 29 available to a fuel supplier or utility that fails to claim the refund within two years after the
 30 due date for the filing of the return with respect to which the claim for refund relates.

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

37 **SECTION 5.** Moneys received by the Department of Revenue pursuant to the tax imposed
 38 under section 2 of this 2013 Act shall be deposited in a suspense account created pursuant
 39 to ORS 293.445. Moneys in that account shall be distributed as follows:

40 (1) All moneys that are collected from motor vehicle fuel or any other product used for
 41 the propulsion of motor vehicles shall be used in the manner described in Article IX, section
 42 3a, of the Oregon Constitution.

43 (2) All moneys that are collected from natural gas or oil described in Article VIII, section
 44 2 (1)(g), of the Oregon Constitution, shall be used in the manner designated in Article VIII,
 45 section 2 (1)(g), of the Oregon Constitution.

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

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

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

9 **(c) _____ percent to the Renewable Energy Resources Account established in section**
 10 **6 of this 2013 Act for the purpose of funding the development of renewable energy resources.**

11 **SECTION 6. The Renewable Energy Resources Account is established in the State**
 12 **Treasury, separate and distinct from the General Fund. The account consists of moneys**
 13 **distributed to the account under section 5 of this 2013 Act. All moneys in the account are**
 14 **continuously appropriated to the State Department of Energy to fund the development of**
 15 **renewable energy resources, as defined in ORS 469B.130.**

16 **SECTION 7. Unless the context requires otherwise, the provisions of ORS chapters 305,**
 17 **314 and 316 that relate to the audit and examination of reports and returns, confidentiality**
 18 **and disclosure of reports and returns, determination of deficiencies, assessments, claims for**
 19 **refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the**
 20 **Oregon Tax Court, and related procedures, apply to sections 1 to 6 of this 2013 Act, the same**
 21 **as if the tax were a tax imposed upon or measured by net income.**

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

23 458.510. (1) There is established an Energy Crisis Trust Fund, separate and distinct from the
 24 General Fund, in the State Treasury. As permitted by federal court decisions, federal statutory re-
 25 quirements and administrative decisions, funds from the Petroleum Violation Escrow Fund made
 26 available to the Housing and Community Services Department for the Energy Crisis Trust Fund,
 27 **funds designated to the Energy Crisis Trust Fund under section 5 of this 2013 Act** and any
 28 gift, grant, appropriation or donation for the purpose of the Energy Crisis Trust Fund shall be de-
 29 posited by the State Treasurer and credited to the Energy Crisis Trust Fund. The State Treasurer
 30 shall credit monthly to the fund any interest or other income derived from the fund or the investing
 31 of the fund. All moneys in the fund are continuously appropriated to the Housing and Community
 32 Services Department for the purpose of providing low income home energy assistance.

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

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

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

43 **SECTION 9. For the purpose of first calculating the tax liability of fuel suppliers and**
 44 **utilities under section 2 of this 2013 Act, the State Department of Energy shall determine the**
 45 **amount of carbon by weight in each carbon-based fuel and report those percentages to the**

1 Department of Revenue.

2 **SECTION 10.** (1) In addition to and not in lieu of any other appropriation, there is ap-
3 propriated to the Department of Revenue, for the biennium beginning July 1, 2013, out of the
4 General Fund, the amount of \$_____, which may be expended for the purpose of funding
5 the first year of administration of the tax imposed under section 2 of this 2013 Act.

6 (2) In addition to and not in lieu of any other appropriation, there is appropriated to the
7 State Department of Energy, for the biennium beginning July 1, 2013, out of the General
8 Fund, the amount of \$_____, which may be expended for the purpose of assisting the De-
9 partment of Revenue in administering the first year of the tax imposed under section 2 of
10 this 2013 Act.

11 **SECTION 11.** Sections 1 to 7 of this 2013 Act apply to carbon-based fuel sold to consumers
12 in this state or used to produce carbon-generated electricity that is supplied to consumers
13 in this state on or after January 1, 2015.

14 **SECTION 12.** This 2013 Act takes effect on the 91st day after the date on which the 2013
15 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

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