

Agenda Item C

Effect of Sunset

October 7, 2010



Excerpt from HB2186 (2009)

SECTION 8. Sections 6 and 7 of this 2009 Act are repealed on December 31, 2015.

SECTION 9. (1) The Department of Environmental Quality shall report on the implementation of sections 3 and 6 of this 2009 Act to:

(a) The interim legislative committees on environment and natural resources on or before December 31, 2010; and

(b) The Seventy-sixth, Seventy-seventh and Seventy-eighth Legislative Assemblies in the manner provided by ORS 192.245.

(2) The reports required under subsection (1) of this section must contain a description of:...

(d) The anticipated effects of the December 31, 2015, repeal of sections 6 and 7 of this 2009 Act on the availability of low carbon fuels and the development of biofuels production facilities and electric vehicle infrastructure in Oregon.

Advisory Committee Objective:

Pursuant to HB2186, the authority to implement a Low Carbon Fuel Standard in Oregon will sunset on December 31, 2015 unless that sunset is lifted by the Oregon Legislature. The sunset was added to HB2186 to ensure the legislature has an opportunity to review the details of the LCFS program and the final outcome of DEQ's rulemaking process. DEQ intends to propose and adopt rules for the LCFS program in 2011, with a compliance schedule presumably through 2022. Section 9(d) of HB2186 directs DEQ to report to the legislature on the possible effects of the December 31, 2015, repeal of the low carbon fuels standards. This includes considering the potential consequences and effects of a low carbon fuel standard (or absence of a LCFS) on the availability of low carbon fuels and the development of biofuels production facilities and electric vehicle infrastructure in Oregon. DEQ does not intend to propose legislation in 2011 to lift the sunset, since the rules will not be adopted until after the 2011 session.

DEQ is seeking committee input on a series of questions that would help inform our report to the legislature on this issue. Our economic analysis will also help provide information on these effects.

Questions: Effect of Sunset

- 1. Implementation and Enforcement:** The first practical consequence of the sunset is that DEQ would be unable to implement or enforce the LCFS program after December 31, 2015 unless the program is reauthorized by the legislature. The standards and compliance obligation for

regulated parties would cease to exist on January 1, 2016. This would mean that DEQ could invest resources in program outreach and technical assistance, develop compliance verification methods and program infrastructure to serve only a 4 year program period (2012-2015). As a practical matter, DEQ would likely not impose any reporting or compliance obligations until such time as the sunset is lifted.

- *Are there any committee comments?*

2. In-State Biofuels Production: DEQ's fuels assessment and compliance scenarios anticipate the growing capacity in Oregon to produce bio-fuels. Presumably, bio-fuels production, both inside and outside of Oregon, will grow in response to the federal renewable fuel standards. Absent an Oregon low carbon fuel standard, one might still expect some continued growth in Oregon's Biofuels industry; however, it also seems reasonable to expect that the existence of an Oregon LCFS would be a significant incentive to increase the production capacity of Oregon's existing Biofuels facilities and attract new biofuels production.

Presumably, the uncertainty of a program sunset in 2015 would be a significant obstacle to attracting new investment in Biofuels production. Any delay in development of new Biofuels capacity could contribute to a deficit in low carbon fuel supply in later years of the program (if reauthorized), since it likely takes several years to develop, finance, and construct a Biofuels production facility. Such a delay in building Oregon's biofuels capacity could make it much more difficult for regulated parties to meet the standards, resulting in higher compliance costs, and possibly triggering compliance deferrals and/or deferrals under the consumer cost safety net.

- *What are the Committee's thoughts on how the existence or absence of an Oregon LCFS could affect future investment in Oregon's Biofuels industry?*
- *What are the Committee's thoughts on how the existence or absence of an Oregon LCFS could affect Oregon's agricultural sector, or other sectors that could potentially provide feedstock for fuels production?*
- *Is there any relevant information or data DEQ should be aware of to help inform our LCFS report?*

3. Low Carbon Fuel Credits: Any low carbon fuel credits developed and banked in the initial years of the program would become unnecessary, and of no value, if the program sunsets at the end of 2015.

- *Are there any committee comments?*

4. Electric Vehicle Infrastructure:

DEQ's fuels assessment and compliance scenarios anticipate the growing desire and capacity in Oregon to use electric vehicles, both in urban and rural areas of the state. Many initiatives are currently underway to increase the use of EV's in Oregon, and the PUC has initiated an investigation into how the current regulatory landscape for utilities may need to evolve to accommodate increased EV use. Increased EV use will be driven by both customer demand, and by the Oregon Low Emission Vehicle program, which requires zero emission vehicles as part of the overall mix of new low emission vehicles sold in Oregon.

The existence of a LCFS program would likely increase the incentive to expand the EV population in Oregon. In addition, electricity used for transportation fuel can be used to generate low carbon fuel credits which can then be sold to a regulated party.

Presumably, a LCFS program sunset in 2015 would remove this additional incentive for EV development; however, EV deployment in the state would continue due to other initiatives.

- *What are the Committee's thoughts on how the existence or absence of an Oregon LCFS could affect future development of EV's and EV infrastructure? This could include any effects a LCFS program could have on the regulatory landscape for utilities, and/or the technical infrastructure needed to handle increased EV use in the state.*
- *Is there any relevant information or data DEQ should be aware of to help inform our LCFS report?*

Other

- *Are there specific questions we should evaluate when reviewing the economic impact analysis that could help inform DEQ's report on the effect of the sunset?*
- *Are there other questions or ideas DEQ should address in its reports to the legislature?*