SUMMARY

Establishes Carbon Policy Office within Oregon Department of Administrative Services and directs Director of Carbon Policy Office to adopt Oregon Climate Action Program by rule.

Modifies statewide greenhouse gas emissions reduction goals.

Establishes Joint Committee on Climate Action.

Establishes purposes of Oregon Climate Action Program and provisions for investment of moneys received by state as proceeds from auctions conducted under program. Requires program to place cap on greenhouse gas emissions that are regulated emissions and provide market-based mechanism for covered entities to demonstrate compliance with program. Sets forth certain other requirements for program and for rules adopted by Director of Carbon Policy Office related to program. Establishes certain funds. Sets forth requirements for uses of moneys deposited in funds.

Authorizes Public Utility Commission to allow rate or rate schedule to include differential rates or to reflect amounts for programs that enable public utilities to assist low-income residential customers.

Transfers duties, functions and powers of Environmental Quality Commission and Department of Environmental Quality related to greenhouse gas reporting to Carbon Policy Office. Amends greenhouse gas reporting statute.

Repeals Energy Facility Siting Council carbon dioxide emissions standards. Includes provisions for treatment of site certificate conditions affected by repeal of carbon dioxide emissions standards.


Provides for expedited review of certain questions on Act to Supreme Court upon petition by adversely affected party.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to greenhouse gas emissions; creating new provisions; amending

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

STATEWIDE GREENHOUSE GAS EMISSIONS REDUCTION GOALS

SECTION 1. ORS 468A.205 is amended to read:

468A.205. (1) The Legislative Assembly declares that it is the [policy] goal of this state to achieve a reduction in greenhouse gas emissions levels in Oregon: [reduce greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction goals:]

[(a) By 2010, arrest the growth of Oregon’s greenhouse gas emissions and begin to reduce greenhouse gas emissions.]

[(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.]

[(c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.] (a) To at least 45 percent below 1990 emissions levels by 2035; and

(b) To at least 80 percent below 1990 emissions levels by 2050.

(2) The Legislative Assembly declares that it is the policy of this state for state and local governments, businesses, nonprofit organizations and individual residents to prepare for the effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming.

(3) This section does not create any additional regulatory authority for an agency of the executive department as defined in ORS 174.112.

JOINT COMMITTEE ON CLIMATE ACTION

SECTION 2. (1) There is established the Joint Committee on Cli-
mate Action.

(2) The joint committee consists of members of the Senate appointed by the President of the Senate and members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) The President of the Senate and the Speaker of the House of Representatives shall each appoint one cochair for the joint committee with the duties and powers necessary for the performance of the functions of the offices as the President and the Speaker determine.

(4) The joint committee has a continuing existence and may meet, act and conduct its business during sessions of the Legislative Assembly or any recess thereof and in the interim between sessions.

(5) The term of a member shall expire upon the date of the convening of the odd-numbered year regular session of the Legislative Assembly next following the commencement of the member's term.

(6)(a) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(b) When a vacancy occurs in the membership of the joint committee in the interim between odd-numbered year regular sessions, until the vacancy is filled:

(A) The membership of the joint committee shall be considered not to include the vacant position for the purpose of determining whether a quorum is present; and

(B) A majority of the remaining members constitutes a quorum.

(7)(a) Members of the joint committee shall receive an amount equal to that authorized under ORS 171.072 from funds appropriated to the Legislative Assembly for each day spent in the performance of their duties as members of the joint committee or any subcommittee of the joint committee in lieu of reimbursement for in-state travel expenses.

(b) Notwithstanding paragraph (a) of this subsection, when engaged
in out-of-state travel, members shall be entitled to receive their actual and necessary expenses in lieu of the amount authorized by this subsection. Payment shall be made from funds appropriated to the Legislative Assembly.

(8) The joint committee may not transact business unless a quorum is present. Except as provided in subsection (6)(b)(B) of this section, a quorum consists of a majority of joint committee members from the House of Representatives and a majority of joint committee members from the Senate.

(9) Action by the joint committee requires the affirmative vote of a majority of joint committee members from the House of Representatives and a majority of joint committee members from the Senate.

(10) The joint committee may adopt rules necessary for the operation of the joint committee.

(11) The Legislative Policy and Research Director may employ persons necessary for the performance of the functions of the joint committee. The director shall fix the duties and amounts of compensation of the employees. The joint committee shall use the services of continuing legislative staff, without employing additional persons, to the greatest extent practicable.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the joint committee in the performance of the duties of the joint committee and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the joint committee consider necessary to perform their duties.

SECTION 3. (1) The Joint Committee on Climate Action shall:

(a) Provide general legislative oversight of policy related to climate, including but not limited to the Oregon Climate Action Program established under sections 8 to 26 of this 2019 Act;

(b) Examine and prioritize expenditures and investments of state proceeds from auctions conducted under section 21 of this 2019 Act;
and

(c) Make recommendations related to the expenditures and investments of state proceeds from auctions conducted under section 21 of this 2019 Act to the Joint Committee on Ways and Means.

(2) In developing recommendations under subsection (1)(c) of this section, the Joint Committee on Climate Action shall consider the recommendations for the expenditures and investments of state proceeds from auctions conducted under section 21 of this 2019 Act that are contained in:

(a) The biennial expenditure reports and audit report required by sections 38 and 39 of this 2019 Act;

(b) The biennial climate action investment plan required by section 40 of this 2019 Act; and

(c) The recommendations of the Environmental Justice Task Force required by section 41 of this 2019 Act.

CARBON POLICY OFFICE ESTABLISHED


(2) The office shall:

(a) Coordinate state actions toward achieving reductions in greenhouse gas emissions in accordance with ORS 468A.205 and other statutes, rules and policies that govern the state’s or state agencies’ actions to reduce greenhouse gas emissions; and

(b) Carry out the duties, functions and powers committed to the office under sections 8 to 26 and 38 to 40 of this 2019 Act and ORS 468A.280 and other statutes, rules or policies that commit functions to the Carbon Policy Office.

(3) The office may advise, consult and cooperate with other agencies of the state, political subdivisions, other states or the federal govern-
ment, with respect to any proceedings and all matters pertaining to
the reduction of greenhouse gas emissions levels in Oregon.

(4) The office may employ personnel, including specialists and con-
sultants, purchase materials and supplies and enter into contracts
necessary to carry out the purposes set forth in sections 8 to 26 and
38 to 40 of this 2019 Act and ORS 468A.280.

SECTION 5. Director. (1) The Carbon Policy Office is under the
supervision and control of a director, who is responsible for the per-
formance of the duties, functions and powers of the office.

(2) The Governor shall appoint the Director of the Carbon Policy
Office, subject to confirmation by the Senate in the manner prescribed
in ORS 171.562 and 171.565. The director holds office at the pleasure of
the Governor.

(3) The director may adopt rules in accordance with ORS chapter
183 to exercise and carry out the duties, functions and powers com-
mitted to the Carbon Policy Office under sections 8 to 26 and 38 to 40
of this 2019 Act and ORS 468A.280 and other statutes, rules or policies
that commit functions to the Carbon Policy Office.

(4) The director shall be paid a salary as provided by law or, if not
so provided, as prescribed by the Governor.

(5) Subject to the approval of the Governor, the director may or-
organize and reorganize the administrative structure of the office as the
director considers appropriate to properly conduct the work of the of-
office.

(6) The director may divide the functions of the office into admin-
istrative divisions. Subject to the approval of the Governor, the direc-
tor may appoint an individual to administer each division. The
administrator of each division serves at the pleasure of the director
and is not subject to the provisions of ORS chapter 240. Each individ-
ual appointed under this subsection must be well qualified by technical
training and experience in the functions to be performed by the indi-
vidual.

(7) Subject to any applicable provisions of ORS chapter 240, the director shall appoint all subordinate officers and employees of the office, prescribe their duties and fix their compensation.

SECTION 6. Civil penalties. (1) In addition to any other liability or penalty provided by law, the Director of the Carbon Policy Office may impose a civil penalty not to exceed $_________ on a person for any of the following:

(a) A violation of any provision of sections 8 to 26 of this 2019 Act.

(b) A violation of any rule adopted by the director under sections 8 to 26 of this 2019 Act.

(2) Civil penalties under this section must be imposed in the manner provided by ORS 183.745.

(3) All civil penalties recovered under this section must be paid into the State Treasury and credited to the Oregon Climate Action Program Operating Fund and may be used only pursuant to section 26 (3) of this 2019 Act.

OREGON CLIMATE ACTION PROGRAM

(Statement of Purpose)

SECTION 7. (1) The Legislative Assembly finds and declares that the purposes of sections 7 to 41 of this 2019 Act are:

(a) To achieve a reduction in total levels of regulated emissions under sections 8 to 26 of this 2019 Act to at least 45 percent below 1990 emissions levels by 2035 and to achieve a reduction in total regulated emissions levels to at least 80 percent below 1990 emissions levels by 2050;

(b) To promote greenhouse gas emissions sequestration and mitigation;

(c) To promote adaptation and resilience by natural and working
lands, fish and wildlife resources, communities and the economy in the face of climate change and ocean acidification; and

(d) To provide assistance to households, businesses and workers impacted by the transition in this state to an economic system that allows for the State of Oregon to achieve the greenhouse gas reduction goals set forth in ORS 468A.205.

(2) Sections 7 to 41 of this 2019 Act and the rules adopted pursuant to sections 7 to 41 of this 2019 Act:

(a) May not be interpreted to limit the authority of any state agency to adopt and implement measures to reduce greenhouse gas emissions; and

(b) Shall be interpreted in a manner consistent with federal law.

(Greenhouse Gas Cap and Market-Based Compliance Mechanism)

SECTION 8. Definitions. As used in sections 8 to 26 of this 2019 Act:

(1) “Aggregation” means an approach for qualifying and quantifying offset projects that allows for the grouping together of two or more geographically or temporally separate activities that result in reductions or removals of greenhouse gases in a similar manner.

(2) “Allowance” means a tradable authorization to emit one metric ton of carbon dioxide equivalent.

(3) “Annual allowance budget” means the number of allowances available to be allocated during one year of the Oregon Climate Action Program.

(4) “Carbon dioxide equivalent” means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on considerations including but not limited to the best available science, including information from the Intergovernmental Panel on Climate Change.

(5) “Compliance instrument” means one allowance or one offset
credit that may be used to fulfill a compliance obligation.

(6) “Compliance obligation” means the quantity of regulated emissions for which a covered entity must submit compliance instruments to the Carbon Policy Office during a compliance period.

(7) “Consumer-owned utility” has the meaning given that term in ORS 757.270.

(8) “Covered entity” means a person that is designated by the office as subject to the Oregon Climate Action Program.

(9) “Direct environmental benefits in this state” means:

(a) A reduction in or avoidance of emissions of any air contaminant in this state other than a greenhouse gas;

(b) A reduction in or avoidance of pollution of any of the waters of the state, as the terms “pollution” and “the waters of the state” are defined in ORS 468B.005; or

(c) An improvement in the health of natural and working lands in this state.

(10) “Electric company” has the meaning given that term in ORS 757.600.

(11) “Electricity service supplier” has the meaning given that term in ORS 757.600.

(12) “Electric system manager” includes any entity that, as needed, operates or markets electricity generating facilities, or purchases wholesale electricity to manage the load for wholesale or retail electricity customers within a balancing authority area that is at least partially located in Oregon, including but not limited to the following types of entities:

(a) Electric companies.

(b) Electricity service suppliers.

(c) Consumer-owned utilities.

(d) The Bonneville Power Administration.

(e) Electric generation and transmission cooperatives.
(13) “General market participant” means a person that:
   (a) Is a registered entity;
   (b) Is not a covered entity or an opt-in entity; and
   (c) Intends to purchase, hold, sell or voluntarily surrender compliance instruments.
(14) “Greenhouse gas” includes, but is not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.
(15) “Impacted community” means a community most at risk of being disproportionately impacted by climate change as designated by the office under section 20 of this 2019 Act.
(16) “Indian trust lands” means lands within the State of Oregon held in trust by the United States for the benefit of an Indian tribe or individual Indians.
(17) “Natural and working lands” means:
   (a) Land that is actively used by an agricultural owner or operator for an agricultural operation that includes, but need not be limited to, active engagement in farming or ranching;
   (b) Land producing forest products;
   (c) Lands consisting of forests, grasslands, deserts, freshwater and riparian systems, wetlands, coastal and estuarine areas, watersheds, wildlands or wildlife habitat;
   (d) Lands used for recreational purposes such as parks, urban and community forests, trails, greenbelts and other similar open space land; or
   (e) Indian trust lands.
(18) “Natural gas utility” means a natural gas utility regulated by the Public Utility Commission under ORS chapter 757.
(19) “Offset credit” means a tradable credit generated through an offset project that represents a greenhouse gas emissions reduction or removal of one metric ton of carbon dioxide equivalent.
“Offset project” means a project that reduces or removes greenhouse gas emissions that are not regulated emissions.

“Opt-in entity” means a person that is not designated as a covered entity by the office and that voluntarily chooses to participate in the Oregon Climate Action Program as if the entity were a covered entity.

“Oregon Climate Action Program” means the program adopted by rule by the Director of the Carbon Policy Office under section 9 (1) of this 2019 Act.

“Person” includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof and the federal government and any agencies thereof.

“Registered entity” means a covered entity, opt-in entity or general market participant that has successfully registered to participate in the Oregon Climate Action Program.

“Regulated emissions” means the verified greenhouse gas emissions reported by or assigned to a covered entity or opt-in entity under ORS 468A.280 that the office determines by rule are greenhouse gas emissions regulated under sections 8 to 26 of this 2019 Act.

“Surrender” means to transfer a compliance instrument to the office:

(a) To satisfy a compliance obligation or an adjusted compliance obligation; or

(b) On a voluntary basis.

SECTION 9. Adoption of program; general provisions. (1)(a) The Director of the Carbon Policy Office shall adopt an Oregon Climate Action Program by rule in accordance with the provisions of sections 8 to 26 of this 2019 Act. The program shall:

(A) Place a cap on the total anthropogenic greenhouse gas emissions that are regulated emissions through setting annual allowance
(B) Provide a market-based mechanism for covered entities to demonstrate compliance with the program.

(b)(A) The annual allowance budget for 2021 shall be a number of allowances equal to baseline emissions as calculated under paragraph (c) of this subsection.

(B) Beginning in 2022 and for each following year until and including 2035, the amount of allowances available in each annual allowance budget shall decline by a constant amount as necessary to accomplish a reduction in total regulated emissions levels to at least 45 percent below 1990 emissions levels by 2035.

(C) Beginning in 2036 and for each following year until and including 2050, the amount of allowances available in each annual allowance budget shall decline by a constant amount as necessary to accomplish a reduction in total regulated emissions levels to at least 80 percent below 1990 emissions levels by 2050.

(c) The office shall calculate baseline emissions to be equal to the three-year average of the total, expressed in tons of carbon dioxide equivalent, anthropogenic greenhouse gas emissions attributable to all persons that the office designates to be covered entities under the program, using greenhouse gas emissions information from the three most recent years prior to 2021 for which greenhouse gas emissions information is available and verified by the office. The office may exclude from the calculation of baseline emissions those greenhouse gas emissions during the three most recent years prior to 2021 that would not have been regulated emissions if the Oregon Climate Action Program had been in effect during the time that the greenhouse gas emissions occurred.

(2) Subject to section 10 of this 2019 Act, the office shall designate persons as covered entities as follows:

(a) Except as provided in paragraph (b) of this subsection, the office
shall designate a person in control of one or more air contamination
sources for which a permit is issued pursuant to ORS 468.065, 468A.040
or 468A.155 as a covered entity if the annual regulated emissions at-
tributable to the air contamination sources meet or exceed 25,000
metric tons of carbon dioxide equivalent.
(b) For the purpose of regulating anthropogenic emissions of
greenhouse gasses attributable to the generation of electricity in this
state, the office shall designate a person in control of one or more air
contamination sources for which a permit is issued pursuant to ORS
468.065, 468A.040 or 468A.155 as a covered entity if the industry de-
scription and code under the North American Industry Classification
System that is listed in the permit for the air contamination sources
is fossil fuel electric power generation, regardless of whether the an-
nual regulated emissions attributable to the air contamination sources
meet or exceed 25,000 metric tons of carbon dioxide equivalent.
(c) The office shall designate an electric system manager as a cov-
ered entity for the purpose of addressing annual regulated emissions
from outside this state that are attributable to the generation of
electricity that the electric system manager schedules for delivery and
consumption in this state, including wholesale market purchases for
which the energy source for the electricity is not known, and ac-
counting for transmission and distribution line losses.
(d) The office shall designate a natural gas marketer as a covered
entity for the purpose of addressing annual regulated emissions that
are attributable to the combustion of natural gas that is sold by the
natural gas marketer for use in this state by persons that are not
designated as covered entities under paragraph (a) or (b) of this sub-
section.
(e) The office shall designate a natural gas utility as a covered en-
tity for the purpose of addressing annual regulated emissions that are
attributable to the combustion of natural gas that the natural gas
utility imports, sells or distributes for use in this state and that are
not emissions accounted for through the regulation of air contam-
ination sources under paragraph (a) or (b) of this subsection or natural
gas marketers under paragraph (d) of this subsection.

(f) The office shall designate as covered entities persons not de-
scribed in paragraphs (d) and (e) of this subsection that produce in
Oregon, or import into Oregon, fuel that is sold or distributed for use
in this state, as necessary to address regulated emissions that are at-
tributable to the combustion of the fuel.

(3) The director shall adopt rules for the market-based compliance
mechanism required by subsection (1) of this section that include, but
need not be limited to:

(a) Criteria for the allocation of allowances pursuant to sections 14
to 18 of this 2019 Act;
(b) Standards, pursuant to section 19 of this 2019 Act, for offset
projects and for covered entities and opt-in entities to use offset
credits;
(c) Rules for the administration of auctions of allowances pursuant
to section 21 of this 2019 Act;
(d) Rules allowing for the trading of compliance instruments;
(e) Rules allowing registered entities to bank and carry forward al-
lowances;
(f) Rules prohibiting the borrowing of allowances from future an-
nual allowance budgets;
(g) Rules allowing opt-in entities and general market participants
to participate in the market-based compliance mechanism; and
(h) Compliance periods, standards for calculating compliance obli-
gations and procedures for covered entities to demonstrate compliance
with their compliance obligations.

(4)(a) The office shall require a covered entity or opt-in entity to
surrender to the office a quantity of compliance instruments equal to
the covered entity’s or opt-in entity’s compliance obligation no later than the surrender date specified by the director by rule or order.

(b) For purposes of determining the compliance obligation for a covered entity that is an electric system manager, electricity scheduled by the electric system manager that is generated from a renewable energy resource and acquired without acquiring the renewable energy certificate associated with the electricity shall be considered to have the emissions attributes of the underlying renewable energy resource.

(c) In addition to any penalty provided by law, rules adopted by the director shall require a covered entity or opt-in entity that fails to timely surrender to the office a sufficient quantity of compliance instruments to meet a compliance obligation to surrender to the office a number of compliance instruments that is in addition to the entity’s compliance obligation.

(5)(a) All covered entities, opt-in entities and general market participants must register as registered entities to participate in the Oregon Climate Action Program.

(b) The director shall adopt by rule registration requirements and any additional requirements necessary for registered entities to participate in auctions administered pursuant to section 21 of this 2019 Act.

SECTION 10. Exemptions and exclusions. (1) The Carbon Policy Office shall exempt from regulation as a covered entity under sections 8 to 26 of this 2019 Act:

(a) A land disposal site, if the land disposal site was closed before the effective date of this 2019 Act and is closed and maintained in compliance with ORS 459.268.

(b) A cogeneration facility, as defined in ORS 758.505, that is owned or operated by a public university listed in ORS 352.002 or by the Oregon Health and Science University established under ORS 353.020.
(2) The office shall exclude from regulated emissions under sections 8 to 26 of this 2019 Act:

(a) Methane emissions from a landfill that are demonstrated to have been recaptured and used for the generation of renewable energy including but not limited to electricity, transportation fuels or heat.

(b) Greenhouse gas emissions from the direct combustion of municipal solid waste to generate renewable energy including but not limited to electricity, transportation fuels or heat.

(c) Greenhouse gas emissions attributable to an air contamination source described in section 9 (2)(b) of this 2019 Act that are attributable to the generation in this state of electricity that is:

(A) Delivered to and consumed in another state, accounting for transmission and distribution line losses; and

(B) For which the capital and fuel costs associated with the generation are included in the rates of a multistate jurisdictional electric company that are charged to the electricity customers in a state other than Oregon.

(d) Greenhouse gas emissions from the combustion of fuel that is demonstrated to have been used as aviation fuel or as fuel in watercraft or railroad locomotives.

(e) Greenhouse gas emissions attributable to a consumer-owned utility if the three-year average of the annual greenhouse gas emissions attributable to electricity that is scheduled, by the consumer-owned utility or by an electric generation and transmission cooperative, for the consumer-owned utility to deliver for consumption in this state is less than 25,000 metric tons of carbon dioxide equivalent.

(3) For purposes of section 9 (2)(f) of this 2019 Act, the office may exempt from designation as a covered entity any person that imports in a calendar year less than a de minimis amount of gasoline and diesel fuel, in total, as determined by the office by rule. Gasoline and
diesel fuel imported by persons that are related or share common
ownership or control shall be aggregated in determining whether a
person may be exempted under this subsection. The emissions attrib-
utable to a person that is exempt from designation as a covered entity
under this section shall be excluded from regulated emissions under
sections 8 to 26 of this 2019 Act.

SECTION 11. Temporary exclusion for certain emissions. (1) Annual
verified greenhouse gas emissions reported or assigned under ORS
468A.280 that are emissions of hydrofluorocarbons, perfluorocarbons,
sulfur hexafluoride, nitrogen trifluoride or other fluorinated
greenhouse gases generated during semiconductor and related device
manufacturing are excluded from regulated emissions.

(2)(a) Nothing in this section may be interpreted to exclude from
regulated emissions the greenhouse gas emissions other than the
emissions described in subsection (1) of this section from covered en-
tities engaged in processes identified by industry description and code
in the North American Industry Classification System as Semicon-
derator and Related Device Manufacturing, code 334413.

(b) Nothing in this section may be interpreted to prevent a covered
entity engaged in processes identified by industry description and code
in the North American Industry Classification System as Semicon-
derator and Related Device Manufacturing, code 334413, from receiving
allowances by direct distribution at no cost pursuant to sections 14 and
18 of this 2019 Act for the manufacture of goods through emissions-
intensive, trade-exposed processes.

SECTION 12. Repeal of temporary exclusion. Section 11 of this 2019
Act is repealed on January 2, 2026.

SECTION 13. Report on temporary exclusion. No later than Sep-
tember 15, 2024, the Carbon Policy Office shall conduct research and
submit a report, in the manner provided by ORS 192.245, to the Joint
Committee on Climate Action regarding the exclusion provided in
section 11 of this 2019 Act. The purpose of the report is to provide recommendations, which may include recommendations for legislation, on the anticipated effects of the January 2, 2026, repeal of section 11 of this 2019 Act and on whether to modify the January 2, 2026, repeal date provided in section 12 of this 2019 Act. In carrying out the provisions of this section, the office shall research and report on:

(1) Whether the semiconductor and related device manufacturing industry in Oregon is reducing greenhouse gas emissions through the implementation of best practices based on guidance for semiconductor perfluoro-compound emission reduction issued by the World Semiconductor Council;

(2) The number of jurisdictions where large semiconductor manufacturers are located that have adopted a carbon pricing mechanism and the number of those jurisdictions that require semiconductor manufacturers to comply with the carbon pricing mechanism;

(3) The trade exposure of semiconductor manufacturers worldwide;

(4) The cost and economic impacts of repealing the exclusion provided under section 11 of this 2019 Act; and

(5) The environmental impacts of repealing the exclusion provided under section 11 of this 2019 Act.

SECTION 14. Allocation of allowances, generally. (1) The Carbon Policy Office shall allocate a percentage of allowances from each annual allowance budget to be distributed directly into an allowance price containment reserve.

(2) The office may allocate a percentage of allowances from each annual allowance budget to be distributed directly into a voluntary renewable electricity generation reserve. The Director of the Carbon Policy Office shall adopt rules for the distribution of allowances from the reserve for voluntary renewable electricity generated by generating facilities that begin operations on or after January 1, 2021.

(3) The office shall allocate allowances for direct distribution at no
cost to covered entities that are electric companies subject to rules adopted under section 15 of this 2019 Act.

(4) The office shall allocate allowances for direct distribution at no cost to covered entities that are electric system managers pursuant to section 16 of this 2019 Act.

(5) The office shall allocate a percentage of allowances from each annual allowance budget to be distributed directly into an electricity price containment reserve. Allowances may be distributed from the electricity price containment reserve only when the distribution is necessary to protect electricity ratepayers from cost increases associated with unexpected increases in regulated emissions attributable to an electric system manager that are outside of the control of the electric system manager, including but not limited to unexpected increases in regulated emissions due to hydroelectric power generation variability. The director shall adopt by rule a process for electric system managers to apply for direct distribution at no cost of allowances from the electricity price containment reserve.

(6) The office shall allocate allowances for direct distribution at no cost to covered entities that are natural gas utilities subject to rules adopted under section 17 of this 2019 Act.

(7) In order to mitigate leakage and pursuant to section 18 of this 2019 Act, the office shall allocate allowances for direct distribution at no cost to covered entities and opt-in entities that are engaged in emissions-intensive, trade-exposed processes.

(8) The office shall allocate a percentage of allowances from each annual allowance budget to be distributed directly into an emissions-intensive, trade-exposed process reserve account. Allowances in the emissions-intensive, trade-exposed process reserve account may be distributed only to covered entities and opt-in entities described in, and pursuant to rules adopted by the director under, section 18 (6) and (7) of this 2019 Act.
(9) After making all allocations provided for in subsections (1) to (8) of this section, the office shall:
(a) Allocate all remaining allowances in the annual allowance budget to be distributed to an auction holding account for auction pursuant to section 21 of this 2019 Act; and
(b) Distribute the annual allowance budget pursuant to the allocations made under this section.

SECTION 15. Direct distribution of allowances for electric companies. The Director of the Carbon Policy Office shall adopt rules for allocating allowances for direct distribution at no cost to covered entities that are electric companies. Rules adopted under this section must allow for an electric company to use allowances directly distributed under this section to meet compliance obligations associated with generation of electricity to serve the load of the electric company's retail electricity consumers in Oregon, subject to the approval of the Public Utility Commission. The rules must include provisions necessary to implement direct distributions of allowances to electric companies as follows:
(1) For the purpose of aligning the effects of sections 8 to 26 of this 2019 Act with the trajectory of emissions reductions by electric companies resulting from the requirements of ORS 469A.005 to 469A.210 and 757.518, the direct distribution to an electric company during calendar year 2021 and for each calendar year until and including 2030 must represent an amount equal to 100 percent of the electric company's forecast emissions associated with the generation of electricity to serve the load of the electric company's retail electricity consumers in Oregon for the calendar year for which the allowances are directly distributed. For purposes of this subsection, forecast emissions must be based on information contained in the most recent integrated resource plan filed by the electric company and acknowledged by order by the Public Utility Commission or in any updates to

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the integrated resource plan filed by the electric company with the
commission, as of January 1, 2021.

(2) Beginning in 2031 and for each following year until and including
2050, the direct distribution to an electric company under this section
must decline from the amount of allowances allocated to the electric
compny in 2030 by a constant amount proportionate to the decline in
the amount of allowances available in annual allowance budgets pursuant to section 9 (1)(b) of this 2019 Act.

SECTION 16. Direct distribution of allowances for certain electric
system managers. (1) The Carbon Policy Office shall allocate allow-
ances for direct distribution at no cost to covered entities that are
electric system managers other than electric companies as follows:

(a) The direct distribution to an electric system manager under this
subsection during calendar year 2021 shall represent an amount equal
to 100 percent of the covered emissions that are:

(A) Forecast for 2021, based on representative years, to be attrib-
utable to electricity scheduled by the electric system manager for final
delivery by consumer-owned utilities for consumption in this state;
and

(B) Not exempt from regulation under section 10 (2)(e) of this 2019
Act.

(b) Beginning in 2022 and for each subsequent calendar year until
and including 2050, the direct distribution received by an electric sys-
tem manager for emissions described in paragraph (a) of this sub-
section shall decline annually by a constant amount proportionate to
the decline in the amount of allowances available in annual allowance
budgets pursuant to section 9 (1)(b) of this 2019 Act.

(2) Proceeds from the sale by a consumer-owned utility of allow-
ances distributed at no cost under this section must be used by the
consumer-owned utility for the benefit of ratepayers, consistent with
the purposes stated in section 7 of this 2019 Act and as further required
by the governing body of the consumer-owned utility.

(3) The governing body of a consumer-owned utility that receives or sells directly distributed allowances under this section shall, no later than September 15 of each even-numbered year, submit a report to the Joint Committee on Climate Action on the use by the consumer-owned utility of the directly distributed allowances. The report must include, but not be limited to, a description of the uses by the consumer-owned utility of proceeds from the sale of allowances distributed to the consumer-owned utility under this section.

SECTION 17. Direct distribution of allowances for natural gas utilities. (1) The Director of the Carbon Policy Office shall adopt rules for allocating allowances for direct distribution at no cost to covered entities that are natural gas utilities. Rules adopted under this section must allow for a natural gas utility to be directly distributed allowances at no cost in an amount equal to the covered emissions attributable to the provision of natural gas service to the natural gas utility’s low-income residential customers. By January 1 of the first year of each compliance period, the Carbon Policy Office shall determine, after consultation with the Public Utility Commission, the quantity of allowances to allocate directly to a natural utility over the course of the compliance period.

(2) Rules adopted under this section must allow for natural gas utilities to, subject to the approval of the office, use allowances directly distributed under this section to minimize the impacts of sections 8 to 26 of this 2019 Act on low-income residential customers through actions that may include, but need not be limited to, meeting compliance obligations associated with serving the load of the natural gas utility’s retail customers in Oregon.

SECTION 18. Direct distribution of allowances for covered entities and opt-in entities engaged in emissions-intensive, trade-exposed processes. (1) The Carbon Policy Office shall allocate allowances for direct
distribution at no cost to a covered entity or an opt-in entity, if the
covered entity or opt-in entity is a person in control of one or more
air contamination sources designated as a covered entity under section
9 of this 2019 Act and engaged in the manufacture of goods through
one or more of the following emissions-intensive, trade-exposed pro-
cesses, as identified by industry description and code in the North
American Industry Classification System:
(a) Cement Manufacturing, code 327310.
(b) Other Crushed and Broken Stone Mining and Quarrying, code 212319.
(c) Frozen Fruit, Juice and Vegetable Manufacturing, code 311411.
(d) Frozen Specialty Food Manufacturing, code 311412.
(e) Dried and Dehydrated Food Manufacturing, code 311423.
(f) Iron and Steel Mills and Ferroalloy Manufacturing, code 331110.
(g) Other Basic Inorganic Chemical Manufacturing, code 325180.
(h) All Other Plastics Product Manufacturing, code 326199.
(i) Mineral Wool Manufacturing, code 327993.
(j) Polystyrene Foam Product Manufacturing, code 326140.
(k) Glass Container Manufacturing, code 327213.
(l) Ethyl Alcohol Manufacturing, code 325193.
(m) Reconstituted Wood Product Manufacturing, code 321219.
(n) Gypsum Product Manufacturing, code 327420.
(o) Pulp Mills, code 322110.
(p) Paper (Except Newsprint) Mills, code 322121.
(q) Paperboard Mills, code 322130.
(r) Semiconductor and Related Device Manufacturing, code 334413.
(2) A covered entity or opt-in entity that is a fossil fuel distribution
and storage facility or infrastructure, or an electric generating unit,
may not receive allowances at no cost under this section and section
14 of this 2019 Act.
(3) The annual allocation of allowances for direct distribution at
no cost to a covered entity or opt-in entity described in subsection (1) of this section shall be a number of allowances equal to the sum total of the annual good-specific emissions calculations for the goods manufactured by the covered entity or opt-in entity, multiplied by:

(a) During calendar year 2021, 100 percent; and
(b) Beginning in 2022 and for each following year until and including 2050, a percentage that is adjusted annually, as set forth in a schedule adopted by the Director of the Carbon Policy Office by rule. The schedule required by this subsection shall result in the amount of annual allowance allocations that a covered entity or opt-in entity may receive under this section and section 14 of this 2019 Act in each year declining annually by a constant amount proportionate to the decline in the amount of allowances available in annual allowance budgets pursuant to section 9 (1)(b) of this 2019 Act.

(4) The annual good-specific emissions calculation for a good manufactured by a covered entity or opt-in entity shall be the product of:

(a) The benchmark for the good, as calculated pursuant to subsection (5) of this section; and

(b) The covered entity’s or opt-in entity’s output of the good during the calendar year prior to the calendar year in which the annual allocation of allowances will be directly distributed.

(5)(a) The office shall calculate either a sector benchmark or a facility benchmark, as applicable pursuant to this subsection, for each good manufactured in this state by a covered entity or opt-in entity through an emissions-intensive, trade-exposed process described in subsection (1) of this subsection in which the covered entity or opt-in entity was engaged on or before the operative date of sections 8 to 26 of this 2019 Act. In order to implement the requirements of this section, the director shall adopt by rule:

(A) A means for attributing a covered entity’s or opt-in entity’s greenhouse gas emissions to the manufacture of individual goods; and
(B) Requirements for covered entities and opt-in entities to provide any pertinent records necessary for the office to verify the output data used to calculate benchmarks pursuant to this paragraph.

(b) For a good manufactured in this state through an emissions-intensive, trade-exposed process by three or more covered entities and opt-in entities, the office shall calculate a sector benchmark for the good by:

(A) Calculating the sum total of the three-year averages of the totals, expressed in tons of carbon dioxide equivalent, of greenhouse gas emissions attributable to manufacture of the good in this state by each of the covered entities and opt-in entities in this state that manufactures the good, using greenhouse gas emissions information from the three most recent years prior to 2021 for which verified greenhouse gas emissions information is available for the covered entities and opt-in entities and verified by the office; and

(B) Dividing the number calculated under subparagraph (A) of this paragraph by the sum total of the three-year averages of the totals of the annual output of the good in this state by each covered entity or opt-in entity in this state that manufactures the good, using output data for the covered entities and opt-in entities from the three most recent years prior to 2021.

(c) For a good manufactured in this state by one or two covered entities and opt-in entities, the office shall calculate a separate, facility benchmark for the good for each covered entity or opt-in entity that manufactures the good by:

(A) Calculating the three-year average of the total, expressed in tons of carbon dioxide equivalent, of greenhouse gas emissions attributable to manufacture of the good in this state each year by the covered entity or opt-in entity, using greenhouse gas emissions information from the three most recent years prior to 2021 for which verified greenhouse gas emissions information is available and verified
by the office; and

(B) Dividing the number calculated under subparagraph (A) of this paragraph by the three-year average of the total annual output of the good in this state by the covered entity or opt-in entity, using output data from the three most recent years prior to 2021.

(6)(a) The director shall adopt by rule a process for covered entities and opt-in entities described in this section to apply to the office for an adjustment to the allocation of allowances for direct distribution at no cost that the covered entity or opt-in entity may receive. The office may grant an adjustment based only on either:

(A) A significant change in the greenhouse gas emissions attributable to the manufacture of an individual good or goods in this state by a covered entity or opt-in entity based on a finding by the office that an adjustment is necessary to accommodate for changes to the manufacturing process that have a material impact on emissions; or

(B) Significant changes to a covered entity’s or opt-in entity’s external competitive environment that result in a significant increase in leakage risk.

(b) Rules adopted under this subsection:

(A) May provide for the director to contract with an external third-party expert to assist the office in making individual adjustment determinations on applications received from covered entities and opt-in entities; and

(B) May not allow for a covered entity or opt-in entity to apply for an adjustment based on paragraph (a)(B) of this subsection until one year prior to the close of the second compliance period for which the covered entity or opt-in entity must meet a compliance obligation.

(c) The office may use only one of the following methods for adjusting the allocation of allowances for direct distribution at no cost to a covered entity or opt-in entity under this subsection:

(A) Temporarily continuing to apply in the calculation conducted
for the covered entity or opt-in entity under subsection (3) of this section, for a period of years to be determined by the office, the scheduled percentage under subsection (3)(b) of this section that was applicable during the year prior to the year in which the covered entity or opt-in entity applied for the adjustment, such that the annual allowance allocation received by the covered entity or opt-in entity does not decline during the adjustment period; or

(B) Temporarily modifying from the schedule required under subsection (3)(b) of this section, in each year for a period of years to be determined by the office, the annual percentage to be applied in the calculation conducted for the covered entity or opt-in entity under subsection (3) of this section, such that the annual allowance allocation received by the covered entity or opt-in entity during the adjustment period annually declines at rate that is less than the rate by which the allocation would have declined pursuant to the schedule.

(7)(a) The director shall adopt by rule a process for determining whether allowances may be allocated for direct distribution at no cost to mitigate leakage to a covered entity or opt-in entity that:

(A) Begins manufacturing a good or goods in this state after the operative date of sections 8 to 26 of this 2019 Act; and

(B) Manufactures the good or goods through an emissions-intensive, trade-exposed process that is not listed in subsection (1) of this section.

(b) The director shall hire or contract with a third-party organization to assist the office in gathering data and conducting analyses as necessary to make determinations under this subsection.

(c) Rules adopted under this subsection:

(A) May allow for the office to assign a good manufactured by a covered entity or opt-in entity described in this subsection a temporary benchmark and to adjust the temporary benchmark after the close of the first compliance period for which the covered entity or
opt-in entity must meet a compliance obligation;

(B) Must be consistent with the process for calculating benchmarks under subsection (5) of this section; and

(C) May allow for a covered entity or opt-in entity that manufactures goods through a process that is not listed in subsection (1) of this section to receive an allocation of allowances for direct distribution at no cost to mitigate leakage, if the office finds that the process is an emissions-intensive, trade-exposed process.

(8) No later than November 1 of the year following the end of every second compliance period, the office shall provide a report to the Joint Committee on Climate Action, in the manner provided in ORS 192.245, on the benchmarks established pursuant to subsections (5) and (7) of this section. The report may include recommendations for legislation. The report shall assess:

(a) The emissions intensity and trade exposure of the industries listed in subsection (1) of this section and any other industries allocated allowances for direct distribution at no cost under subsection (7) of this section;

(b) The emissions reduction opportunities available to the industries described in paragraph (a) of this subsection; and

(c) Whether the conclusions of the assessments required under paragraphs (a) and (b) of this subsection warrant an adjustment to the benchmarks developed pursuant to subsections (5) and (7) of this section, and thus an adjustment to the allocation of allowances calculated using the benchmarks.

SECTION 19. Offset projects. (1) Offset projects:

(a) Must be located in the United States or in a jurisdiction with which the State of Oregon has entered into a linkage agreement pursuant to section 24 of this 2019 Act;

(b) Must not be otherwise required by law; and

(c) Must result in greenhouse gas emissions reductions or removals
that:

(A) Are real, permanent, quantifiable, verifiable and enforceable;

and

(B) Are in addition to greenhouse gas emissions reductions or re-
movals otherwise required by law and any other greenhouse gas
emissions reductions or removals that would otherwise occur.

(2)(a) A total of no more than eight percent of a covered entity’s
compliance obligation may be met by surrendering offset credits. A
total of no more than four percent of a covered entity’s compliance
obligation may be met by surrendering offset credits that are sourced
from offset projects that do not provide direct environmental benefits
in this state.

(b) The Director of the Carbon Policy Office may by rule adopt ad-
ditional restrictions on the number of offset credits that may be sur-
rendered by a covered entity that is an air contamination source that
is geographically located in an impacted community if:

(A) The geographic area within which the air contamination source
is located is also a nonattainment area or an attainment area
projected by the Department of Environmental Quality to exceed air
quality standards within five years and the air contamination source
substantially contributes to or causes the nonattainment or projected
nonattainment of air quality standards; or

(B) The air contamination source is in violation of the terms or
conditions of any permit required or authorized under ORS chapter
468A and issued by the Department of Environmental Quality or a re-
regional air quality control authority formed under ORS 468A.105.

(3) In adopting rules governing offset projects and covered entities’
use of offset credits, the director shall:

(a) Take into consideration standards, rules or protocols for offset
projects and offset credits established by other states, provinces and
countries with programs comparable to the Oregon Climate Action
(b) Encourage opportunities for the development of offset projects in this state by adopting offset protocols that may include, but need not be limited to:

(A) Protocols that make use of aggregation or other mechanisms to reduce transaction costs related to the development of offset projects; and

(B) Protocols for the development of offset projects that result in the reduction of methane emissions related to agricultural operations;

(c) Consult with and consider the recommendations of the State Department of Agriculture, the State Board of Forestry, the Environmental Justice Task Force, the Oregon Watershed Enhancement Board and other relevant state agencies;

(d) Adopt by rule a process for the Carbon Policy Office to investigate and invalidate issued offset credits as necessary to uphold the environmental integrity of the Oregon Climate Action Program; and

(e) Adopt by rule provisions for the office to withhold up to three percent of the offset credits issued for each offset project and deposit the withheld offset credits in an offset integrity account. Offset credits deposited in the offset integrity account established by rule under this paragraph may be used to replace offset credits that are invalidated pursuant to rules adopted under paragraph (d) of this subsection.

(4) The director shall appoint a compliance offsets protocol advisory committee to aid and advise the office in adopting and updating rules governing offset projects and covered entities’ use of offset credits. The advisory committee shall provide guidance to the office in developing and updating offset protocols for the purposes of increasing offset projects with direct environmental benefits in this state while prioritizing offset projects that benefit impacted communities, Indian tribes and natural and working lands. The director shall appoint at least one member to the advisory committee from each of the follow-
ing groups:
(a) Scientists;
(b) Public health experts;
(c) Carbon market experts;
(d) Representatives of Indian tribes;
(e) Environmental justice advocates;
(f) Labor and workforce representatives;
(g) Forestry experts;
(h) Agriculture experts;
(i) Environmental advocates;
(j) Conservation advocates; and
(k) Dairy experts.

SECTION 20. Methodology for designating impacted communities.
(1) The Director of the Carbon Policy Office, by rule and in consulta-
tion with the Portland State University Population Research Center,
the Oregon Health Authority and other relevant state agencies and
local agencies and officials, shall designate impacted communities by
census tract. The Carbon Policy Office shall designate impacted com-
munities based on a methodology that takes into consideration ge-
ographic, socioeconomic, historic disadvantage, public health and
environmental hazard criteria. The office may designate as impacted
communities areas that include, but are not limited to:
(a) Areas with above average concentrations of low-income house-
holds, historically disadvantaged households, high unemployment,
high linguistic isolation, low levels of homeownership, high rent bur-
den, sensitive populations or residents with low levels of educational
attainment.
(b) Areas disproportionately affected by environmental pollution
and other hazards that can lead to negative public health effects, ex-
posure or environmental degradation.
(2) The methodology required by this section must give greater
weight to those criteria that the office determines are the most accurate predictors of vulnerability to the impacts of climate change and ocean acidification.

(3) The office shall review and update the methodology required by this section and the designation of impacted communities a minimum of once every five years.

SECTION 21. Auctions. (1) Except as provided in subsection (7) of this section, auctions of allowances are open to registered entities.

(2) The Carbon Policy Office shall hold auctions at least annually.

(3) The office may engage:

(a) A qualified, independent auction administrator to administer auctions; or

(b) A qualified financial services administrator to conduct financial transactions related to the auction.

(4) The office shall issue notice for an upcoming auction prior to the auction.

(5) The office shall:

(a) Set an auction floor price for 2021 and a schedule for the floor price to increase by a fixed percentage over inflation each calendar year.

(b) Set an allowance price containment reserve floor price for 2021 and a schedule for the allowance price containment reserve floor price to increase by a fixed percentage over inflation each calendar year.

(c) Set a hard price ceiling for 2021 and a schedule for the hard price ceiling to increase by a fixed percentage over inflation each calendar year, and adopt rules for making an unlimited amount of allowances available for auction upon exceedance of the hard price ceiling.

(d) Take actions to minimize the potential for market manipulation and to guard against bidder collusion, including but not limited to specifying as holding limits the maximum number of allowances that may be held for use or trade by a registered entity at any time.
(6) In setting the auction floor price, allowance price containment reserve floor price and hard price ceiling and adopting rules as required by subsection (5) of this section, the office shall consider:

(a) Prevailing prices for carbon in other jurisdictions; and

(b) Setting price requirements in a manner that enables the state to pursue linkage agreements pursuant to section 24 of this 2019 Act with other jurisdictions.

(7) Reserve auctions of allowances from the allowance price containment reserve shall be conducted separately from the auction of other allowances for the purpose of addressing high costs of compliance instruments. Allowances unsold at a reserve auction must be made available again at future reserve auctions. General market participants may not participate in reserve auctions.

(8) The proceeds of an auction shall be transferred to the State Treasurer to be deposited in the Auction Proceeds Distribution Fund established under section 22 of this 2019 Act.

SECTION 22. Auction Proceeds Distribution Fund. (1) The Auction Proceeds Distribution Fund is established in the State Treasury, separate and distinct from the General Fund.

(2) The Auction Proceeds Distribution Fund shall consist of moneys transferred to the fund under section 21 of this 2019 Act. Interest earned by the fund shall be credited to the fund.

(3) The Carbon Policy Office shall certify the amount of moneys available for distribution in the Auction Proceeds Distribution Fund and distribute the moneys as follows:

(a) All moneys that constitute revenues described in Article IX, section 3a, of the Oregon Constitution, must be transferred to the Transportation Decarbonization Investments Account established in section 32 of this 2019 Act;

(b) All moneys that constitute revenues described in Article VIII, section 2 (1)(g), of the Oregon Constitution, must be transferred to the
Common School Fund; and

(c) Moneys remaining after the transfers under paragraphs (a) and (b) of this subsection shall be transferred to the Climate Investments Fund established in section 30 of this 2019 Act.

SECTION 23. Market activity reports. The Carbon Policy Office shall, no later than six months after the close of each compliance period, submit a report in the manner provided by ORS 192.245 to the Joint Committee on Climate Action detailing activity during the compliance period under the market-based compliance mechanism adopted by the Director of the Carbon Policy Office by rule under section 9 of this 2019 Act. A market activity report required by this section must include, but need not be limited to, aggregated information on the following for the compliance period:

(1) The number of allowances bought and sold at each auction held and all auction prices, including the floor and ceiling prices, for the allowances bought and sold at each auction;

(2) The beginning and ending balances of all allowance reserves held by the office, including but not limited to auction holding accounts and the allowance price containment reserve;

(3) The regulated emissions reductions achieved during the compliance period and progress made toward achieving a reduction in total regulated emissions levels to at least 45 percent below 1990 levels by 2035 and a reduction in total regulated emissions levels to at least 80 percent below 1990 emissions levels by 2050; and

(4) The estimated impacts of the Oregon Climate Action Program on fuel, electricity and natural gas prices in Oregon.

SECTION 24. Linkage with market-based compliance mechanisms in other jurisdictions. (1) In adopting and implementing rules under sections 8 to 26 of this 2019 Act, the Director of the Carbon Policy Office shall:

(a) Consider market-based compliance mechanisms designed to re-
duce greenhouse gas emissions in other jurisdictions; and

(b) Provide for implementation of the Oregon Climate Action Pro-
gram in a manner that:

(A) Avoids double counting of emissions or emissions reductions;
and

(B) Enables the state to pursue linkage agreements pursuant to this
section with other jurisdictions.

(2) The State of Oregon may not link the market-based compliance
mechanism established pursuant to sections 8 to 26 of this 2019 Act and
rules adopted under sections 8 to 26 of this 2019 Act with the market-
based compliance mechanism of any other jurisdiction unless the di-
rector notifies the Governor that the director intends to link the
market-based compliance mechanism and the Governor makes the
following findings:

(a) The jurisdiction with which the director proposes to enter an
agreement to link has adopted program requirements for greenhouse
gas reductions that are equivalent to or stricter than those required
by sections 8 to 26 of this 2019 Act;

(b) Under the proposed linkage agreement, the State of Oregon is
able to enforce sections 8 to 26 of this 2019 Act against any person
subject to regulation under sections 8 to 26 of this 2019 Act and against
any person located within the linking jurisdiction to the maximum
extent permitted under the United States and Oregon Constitutions;

(c) The proposed linkage agreement provides for enforcement of
applicable laws by the Carbon Policy Office or by the linking jurisdic-
tion of program requirements that are equivalent to or stricter than
those required by sections 8 to 26 of this 2019 Act; and

(d) The proposed linkage agreement and any related engagement
by the State of Oregon of an independent organization to provide ad-
ministrative or technical services to support the implementation of
sections 8 to 26 of this 2019 Act will not impose any significant liability
on the state or any state agency for any failure associated with the
linkage.

(3) The Governor shall issue findings pursuant to subsection (2) of
this section within 45 days of receiving a notice from the director that
the director intends to link the market-based compliance mechanism
and shall provide the findings to the Legislative Assembly. The Gov-
ernor, in making the findings, shall consider the advice of the Attor-
ney General. Findings issued pursuant to subsection (2) of this section
are not subject to judicial review.

SECTION 25. Rulemaking advisory committee. The Governor shall
appoint a nine-member advisory committee to advise the Director of
the Carbon Policy Office in adopting rules under sections 8 to 26 of this
2019 Act. The advisory committee shall consist of persons impacted by
or otherwise interested in the Oregon Climate Action Program.

SECTION 26. Operating fund. (1) The Oregon Climate Action Pro-
gram Operating Fund is established in the State Treasury, separate
and distinct from the General Fund. Moneys in the Oregon Climate
Action Program Operating Fund are continuously appropriated to the
Oregon Department of Administrative Services for use by the Carbon
Policy Office in the performance of functions the office is statutorily
required or authorized to perform under sections 8 to 26 and 38 to 40
of this 2019 Act and ORS 468A.280.

(2) The Oregon Climate Action Program Operating Fund shall con-
sist of:

(a) Moneys appropriated or otherwise transferred to the fund by the
Legislative Assembly; and
(b) Other moneys deposited in the fund from any source.

(3) Civil penalties deposited in the fund under section 6 of this 2019
Act shall be deposited in a separate subaccount created in the Oregon
Climate Action Program Operating Fund and must be used only for:

(a) Administering the enforcement of sections 8 to 26 of this 2019
Act or rules adopted under sections 8 to 26 of this 2019 Act; or
(b) Providing technical assistance to covered entities and opt-in
entities.

INVESTMENT OF STATE PROCEEDS FROM OREGON
CLIMATE ACTION PROGRAM AUCTIONS
(General Provisions)

SECTION 27. Definitions. As used in sections 27 to 41 of this 2019
Act:
(1) “Impacted community” has the meaning given that term in
section 8 of this 2019 Act.
(2) “Metropolitan planning organization” has the meaning given
that term in ORS 197.629.
(3) “Natural and working lands” has the meaning given that term
in section 8 of this 2019 Act.
(4) “Regional transportation plan” has the meaning given that term
in ORS 184.899.

SECTION 28. Severability. If an allocation of moneys for a partic-
ular purpose by the Legislative Assembly under sections 27 to 41 of this
2019 Act is determined by a court to be inconsistent with law, the al-
location is hereby declared independent and severable and the inva-
validity, if any, of any part or feature of the allocation shall not affect
or render the remainder of the allocations by the Legislative Assembly
under sections 27 to 41 of this 2019 Act invalid or inoperative.

(Climate Investments Fund;
Transportation Decarbonization Investments Account)

SECTION 29. Moneys deposited in Climate Investments Fund and
Transportation Decarbonization Investments Account; general direc-
(1) Moneys deposited in the Climate Investments Fund and moneys deposited in the Transportation Decarbonization Investments Account shall be allocated in a manner consistent with:

(a) The purposes set forth in section 7 of this 2019 Act; and
(b) The requirements of the Oregon Constitution.

(2) In addition to meeting the requirements set forth in subsection (1) of this section, allocations from the Climate Investments Fund and the Transportation Decarbonization Investments Account shall, to the maximum extent feasible, cost-effective and consistent with law:

(a) Prioritize projects that benefit impacted communities.
(b) Complement efforts to achieve and maintain local air quality.
(c) Provide opportunities for Indian tribes, members of impacted communities and businesses owned by women or members of minority groups to participate in and benefit from statewide efforts to reduce greenhouse gas emissions, including technical assistance for minority or women owned businesses, nonprofit organizations and other community institutions that serve or represent most impacted communities or low income households.
(d) Make use of domestically produced products.
(e) Promote low carbon economic development opportunities and the creation of jobs that sustain living wages.
(f) Provide assistance to help households, businesses and workers transition to an economic system that allows for the State of Oregon to achieve the greenhouse gas emissions reduction goals set forth in ORS 468A.205.

SECTION 30. Climate Investments Fund. (1) The Climate Investments Fund is established in the State Treasury, separate and distinct from the General Fund. The Climate Investments Fund shall consist of moneys deposited in the fund under section 22 of this 2019 Act. Interest earned by the fund shall be credited to the fund.

(2) Moneys in the Climate Investments Fund may be used only for
projects, programs and activities that further the purposes set forth in section 7 of this 2019 Act.

(3) The Legislative Assembly shall allocate the moneys deposited in the fund subject to sections 29 and 31 of this 2019 Act. Of the moneys deposited in the fund each biennium:

(a) Ten percent shall be allocated for projects, programs or activities that benefit Indian tribes;

(b) A percentage that may not exceed ________ percent shall be allocated for deposit in the Oregon Climate Action Program Operating Fund established in section 26 of this 2019 Act; and

(c) No less than $________ shall be allocated for deposit in the Just Transition Fund established in section 35 of this 2019 Act.

SECTION 31. Uses of Climate Investments Fund. Moneys may be allocated from the Climate Investments Fund for investments that may include, but need not be limited to, any of the following:

(1) Funding to reduce greenhouse gas emissions or promote adaptation or resiliency through energy efficiency and energy conservation in buildings, low-income weatherization and support of affordable housing that is transit oriented or located near employment centers.

(2) Funding to reduce greenhouse gas emissions through electrical grid decarbonization efforts, including but not limited to investments in energy generation from renewable resources, distributed energy resources, transmission and storage projects for renewable energy, demand response, community solar projects and other community-scale renewable energy projects.

(3) Funding to reduce greenhouse gas emissions associated with transportation, including but not limited to investments in transportation electrification, transit, fuel and energy efficiency in vessels powered by marine engines and roadside landscape management efforts that promote carbon sequestration.

(4) Funding to support planning or implementation of planning by
local governments and metropolitan planning organizations for reducing greenhouse gas emissions or promoting carbon sequestration, adaptation or resilience.

(5) Funding to reduce greenhouse gas emissions, support greenhouse gas sequestration or support adaptation or resiliency through investments in natural and working lands, including but not limited to investments in agricultural or forestry practices, or the manufacture of forest products, that serve to reduce greenhouse gas emissions or promote carbon sequestration, restoration of tidal marsh or intertidal areas of estuaries, irrigation efficiency projects, riparian zone restoration projects, methane emissions reduction or recovery projects and biomass pyrolysis projects.

(6) Funding to facilitate the development in Oregon of clean energy infrastructure or technologies, low carbon infrastructure or technologies, carbon capture and storage or carbon-free infrastructure and technologies.

(7) Funding for air contamination sources for which a permit is issued pursuant to ORS 468.065, 468A.040 or 468A.155 to reduce greenhouse gas emissions.

(8) Funding to assist Oregon businesses and industries in reducing greenhouse gas emissions through the adoption of more emissions-efficient equipment and processes.

(9) Funding to strengthen the resilience of fish, wildlife and ecosystems in the face of climate change through investments in projects, including but not limited to projects involving instream flow acquisition and protection, fish barrier removal, habitat restoration and enhancement and protection of wildlife corridors, coldwater refugia areas and species strongholds.

SECTION 32. Transportation Decarbonization Investments Account.

(1) The Transportation Decarbonization Investments Account is established as a separate account within the State Highway Fund. In-
terest earned by the Transportation Decarbonization Investments
Account shall be credited to the account. Moneys in the account must
be distributed by the Department of Transportation as provided in this
section.

(2) The account shall consist of moneys deposited in the account
under section 22 of this 2019 Act.

(3) Moneys deposited in the account may be used only:
(a) As authorized by Article IX, section 3a, of the Oregon Consti-
tution; and
(b) For activities that further the purposes set forth in section 7
of this 2019 Act.

(4) The Legislative Assembly shall allocate the moneys deposited in
the account subject to sections 29 and 33 of this 2019 Act.

SECTION 33. Uses of Transportation Decarbonization Investments
Account. (1) In allocating moneys from the Transportation
Decarbonization Investments Account, the Legislative Assembly shall,
to the extent feasible and consistent with law, seek to invest in:
(a) Programs, projects or activities by state agencies, local govern-
ments or metropolitan planning organizations that are consistent
with, or that complement, investments described in section 31 of this
2019 Act;
(b) The implementation of land use and transportation scenarios
required to be adopted by metropolitan service districts under section
37, chapter 865, Oregon Laws 2009, and that have been approved by the
Land Conservation and Development Commission; and
(c) The planning, development and implementation of land use and
transportation scenarios by local governments and metropolitan plan-
ning organizations in accordance with the guidelines established by
the Department of Transportation and the Department of Land Con-
ervation and Development under ORS 184.893.

(2) Improvements funded by moneys deposited in the Transporta-
tion Decarbonization Investments Account shall, to the greatest extent practicable, serve to conserve, restore, preserve and enhance natural resources adjacent to the improvements through the procurement and installation of Oregon and native nursery stock. The requirements of this subsection shall be implemented in a manner designed to minimize soil erosion, reduce storm water runoff volume and velocity, and to promote water conservation and natural ecosystem resiliency in the face of climate change.

(3) A project, program or activity that is eligible to be funded by moneys deposited in the Transportation Decarbonization Investments Account may also be eligible to receive funding through the allocation of moneys deposited in the Climate Investments Fund for those portions of the project, program or activity that may not be constitutionally funded by revenues described in Article IX, section 3a (1), of the Oregon Constitution.

SECTION 34. Construction projects funded by certain auction proceeds; requirements. (1) If a construction project is funded in whole or in part by moneys allocated by the Legislative Assembly from the Climate Investments Fund or the Transportation Decarbonization Investments Account, the primary contractor participating in the construction project:

(a) Shall participate in an apprenticeship program registered with the State Apprenticeship and Training Council;

(b) May not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works;

(c) Must demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers’ Compensation Division, the Building Codes Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services; and
(d) Must demonstrate a history of compliance with federal and state wage and hour laws.

(2) A farm labor contractor, as defined in ORS 658.405, may not receive moneys allocated by the Legislative Assembly from the Climate Investments Fund or the Transportation Decarbonization Investments Account unless the farm labor contractor is in compliance with all licensing and any other requirements or regulations imposed upon farm labor contractors pursuant to ORS 658.405 to 658.503.

(3)(a) The Oregon Department of Administrative Services shall adopt model rules that specify labor, workforce and contracting procedures for all state agencies to use in administering funds for projects that are funded in whole or in part by moneys allocated by the Legislative Assembly from the Climate Investments Fund or the Transportation Decarbonization Investments Account. The department shall adopt the rules in accordance with ORS chapter 183.

(b) Model rules adopted under this subsection shall require the use of a project labor agreement for large construction projects funded as described in paragraph (a) of this subsection. For all other construction projects funded as described in paragraph (a) of this subsection, the model rules shall establish measurable, enforceable goals for the training and hiring of persons who are members of impacted communities and for contracting with businesses that are owned or operated by members of impacted communities.

(c) The model rules shall promote best practices in procurement and contracting.

(d)(A) The model rules shall require that, in each contract awarded for a construction project funded as described in paragraph (a) of this subsection, steel, iron, coatings for steel and iron and manufactured products that the contractor purchases for the project and that become part of a permanent structure be produced in the United States.

(B) The requirement in subparagraph (A) of this paragraph shall
not apply if the administering agency finds that:

(i) The requirement is inconsistent with the public interest;

(ii) Steel, iron, coatings for steel and iron and manufactured products required for the project are not produced in the United States in sufficient and reasonably available quantities and with satisfactory quality; or

(iii) The requirement set forth in subparagraph (A) of this paragraph will increase the costs of the project, exclusive of labor costs involved in final assembly for manufactured products, by 25 percent or more.

(C) Notwithstanding a finding by the administering agency under paragraph (d)(B) of this subsection, a contractor shall spend at least 75 percent of the total amount the contractor spends in connection with the construction project on steel, iron, coatings for steel and iron and manufactured products that become part of a permanent structure to purchase steel, iron, coatings for steel and iron and manufactured products that are produced in the United States.

(e) Before adopting or amending a rule under this subsection, the department shall consult with representatives of labor and workforce equity and contractor equity, and other knowledgeable persons.

(4) A state agency charged with administering funds for construction projects that are funded in whole or in part by moneys deposited in the Climate Investments Fund or the Transportation Decarbonization Investments Account may not adopt the administering agency’s own rules for labor, workforce and contracting procedures related to administering funds allocated from the Climate Investments Fund or the Transportation Decarbonization Investments Account.

(Just Transition)
SECTION 35. (1) The Just Transition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Just Transition Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Higher Education Coordinating Commission to be distributed pursuant to the Just Transition Program established under section 36 of this 2019 Act.

(2) The Just Transition Fund shall consist of moneys deposited in the fund under section 30 of this 2019 Act.

(3)(a) Of the moneys deposited in the fund each biennium, the commission shall set aside 50 percent of the funds in a reserve account.

(b) The commission shall continue to credit the reserve account in the manner required under this subsection until the balance in the reserve account is the lesser of:

(A) An amount that, in the commission's determination, is adequate for the purposes specified in paragraph (c) of this subsection;

or

(B) $______.

(c) The reserve account shall be maintained and used by the commission only to fund programs or activities that provide financial support for workers dislocated or adversely affected by climate change or climate change policies.

SECTION 36. (1) The Higher Education Coordinating Commission, in consultation with the Employment Department and other interested state agencies, shall establish a Just Transition Program for the purpose of distributing moneys deposited in the Just Transition Fund.

(2) Moneys distributed through the Just Transition Program shall be distributed to:

(a) Support economic diversification, job creation, job training and other employment services;

(b) Provide financial support for workers dislocated or adversely
affected by climate change or climate change policies;
(c) Provide mental health services for workers dislocated or ad-
versely affected by climate change or climate change policies; or
(d) Consistent with the purposes set forth in section 7 of this 2019
Act, provide other related workforce support to communities in this
state that are adversely affected by climate change or climate change
policies.

(3) The commission shall seek to develop and implement the Just
Transition Program in a manner that is consistent with and comple-
mentary to other local, state and federal programs, policies and in-
centives that serve to carry out the activities described in subsection
(2) of this section, including but not limited to activities undertaken
by the commission under ORS 660.318. The Just Transition Program
may include, but need not be limited to, a competitive grant program.

(4) The commission may adopt rules necessary for the adminis-
tration of the Just Transition Program, including but not limited to
rules that set standards for awarding grants.

(5) A grant program adopted under this section may:
(a) Encourage, but not require, a grant applicant to provide
matching funds for completion of the project, program or activity for
which a grant is awarded; and
(b) Allow a grant applicant to appeal to the commission for reeval-
uation of any determination of grant funding.

(6) The commission may perform activities necessary to ensure that
recipients of moneys distributed from the Just Transition Fund comply
with applicable requirements. If the commission determines that a
recipient has not complied with applicable requirements, the commis-
sion may order the recipient to refund all moneys distributed from the
fund. Moneys refunded pursuant to this subsection shall be credited
to the fund.

[46]
(Common School Fund)

SECTION 37. Moneys deposited in the Common School Fund under section 22 of this 2019 Act are continuously appropriated to the Department of State Lands to be used in a manner that:

(1) Is consistent with the requirements of the Oregon Constitution; and

(2) Carries out the purposes set forth in section 7 of this 2019 Act.

(Distribution of Auction Proceeds; Reporting; Recommendations)

SECTION 38. Biennial expenditure reporting; audit. (1) All agencies of the executive department as defined in ORS 174.112, counties, cities and all other public and private entities receiving moneys allocated from the Climate Investments Fund shall annually report to the Carbon Policy Office on the expenditure of the moneys received and the results of the expenditures. No later than January 1 of each even-numbered year, the office shall deliver a biennial report, in the manner provided in ORS 192.245, to the Governor and the Joint Committee on Climate Action describing investments from the Climate Investments Fund and the results of those investments in carrying out the purposes set forth in section 7 of this 2019 Act.

(2) All agencies of the executive department, counties, cities and all other public and private entities receiving moneys allocated from the Transportation Decarbonization Investments Account shall annually report to the Department of Transportation on expenditure of the moneys received and the results of the expenditures. No later than January 1 of each even-numbered year, the department shall deliver a biennial report, in the manner provided in ORS 192.245, to the Governor and the Joint Committee on Climate Action describing investments from the Transportation Decarbonization Investments Account.
and the results of those investments in carrying out the purposes set forth in section 7 of this 2019 Act.

SECTION 39. Biennial expenditure audit. (1) The Carbon Policy Office and the Department of Transportation jointly shall select an independent third-party organization to prepare a biennial audit of:
(a) All programs, projects or activities funded by moneys from the Climate Investments Fund; and
(b) All programs, projects or activities funded by moneys from the Transportation Decarbonization Investments Account.

(2) The Carbon Policy Office and the Department of Transportation shall provide for the audit report prepared by the third-party organization under this section to be transmitted, together with the reports required under section 38 of this 2019 Act, to the Governor and to the Joint Committee on Climate Action.

SECTION 40. Biennial climate action investment plan; preparation.
(1) No later than June 1 of each even-numbered year and in the manner provided in ORS 192.245, the Carbon Policy Office shall deliver a biennial climate action investment plan to the Environmental Justice Task Force, the Governor and the Joint Committee on Climate Action. The purpose of the plan is to present recommendations, including recommendations for legislation, on the best opportunities available to the state during the next biennial budget period to make expenditures and investments of state proceeds from auctions conducted under section 21 of this 2019 Act that:
(a) Are consistent with the requirements of the Oregon Constitution;
(b) Carry out the purposes set forth in section 7 of this 2019 Act; and
(c) Are consistent with the provisions of sections 29, 30, 31, 32 and 33 of this 2019 Act.

(2) The recommendations contained in the plan required by this
section must be based on consideration of the best scientific and economic information available at the time of the preparation of the plan.

(3) In preparing the plan, the office shall consult with:

(a) The Department of Transportation, the Public Utility Commission, the Environmental Justice Task Force and any other relevant agencies of the executive department as defined in ORS 174.112;

(b) Representatives of Indian tribes; and

(c) The citizens’ advisory committee required by subsection (4) of this section.

(4) The Director of the Carbon Policy Office shall convene a citizens’ advisory committee to assist the office in developing the biennial climate action investment plan required by this section. The members of the committee must reflect the geographic, socioeconomic, racial and cultural diversity of the State of Oregon.

SECTION 41. Environmental Justice Task Force review of biennial climate action investment plan; report. The Environmental Justice Task Force shall review and develop recommendations in response to the biennial climate action investment plan required under section 40 of this 2019 Act and shall, no later than August 1 of each even-numbered year and in the manner provided in ORS 192.245, deliver a report on the task force’s recommendations to the Governor and the Joint Committee on Climate Action.

PROVISIONS RELATED TO THE PUBLIC UTILITY COMMISSION

SECTION 42. Sections 43 and 44 of this 2019 Act are added to and made a part of ORS chapter 757.

SECTION 43. (1) As used in this section:

(a) “Electric company” has the meaning given that term in ORS 757.600.

(b) “Natural gas utility” means a natural gas utility regulated by
the Public Utility Commission under this chapter.

(2) The Public Utility Commission shall require proceeds received by an electric company or natural gas utility from the sale of allowances directly distributed at no cost under sections 14, 15 and 17 of this 2019 Act:

(a) To be spent by the electric company or natural gas utility within the service territory of the electric company or natural gas utility; and

(b) To be used only for activities that serve to reduce greenhouse gas emissions or provide energy assistance to the electric company’s or natural gas utility’s retail customers, consistent with the purposes of sections 7 to 41 of this 2019 Act as set forth in section 7 of this 2019 Act.

(3) Subject to subsection (2) of this section, an electric company or natural gas utility shall prioritize the use of auction proceeds for energy assistance programs, including:

(a) Rate design based solutions;

(b) Bill assistance, weatherization, energy efficiency, transportation electrification measures and grid modernization; and

(c) Participation by low-income residential customers in conservation programs that further reduce the out-of-pocket costs for energy efficiency measures.

(4) The Public Utility Commission shall, pursuant to ORS 756.040 and after consultation with the Housing and Community Services Department, adopt rules for the implementation and enforcement of this section.

SECTION 44. The Public Utility Commission may, in such manner as the commission considers proper, allow a rate or rate schedule of a public utility to include differential rates or to reflect amounts for programs that enable the public utility to assist low-income residential customers. Rates or rate schedules allowed under this section must minimize the shifting of costs to ratepayers that do not qualify for
low-income assistance.

BIENNIAL STATEWIDE ENERGY BURDEN REPORT

SECTION 45. No later than November 1 of every even-numbered year, the Housing and Community Services Department and the State Department of Energy shall jointly transmit to the Governor and the Legislative Assembly a biennial statewide energy burden report. The Housing and Community Services Department and the State Department of Energy shall jointly adopt rules for gathering data necessary to prepare the report. In adopting rules under this section, the Housing and Community Services Department and the State Department of Energy shall consult with consumer-owned utilities as defined in ORS 757.600.

GREENHOUSE GAS EMISSIONS REGISTRATION AND REPORTING
(Transfer of Duties Related to Greenhouse Gas Reporting Program)

SECTION 46. Transfer. The duties, functions and powers of the Environmental Quality Commission and the Department of Environmental Quality relating to ORS 468A.280 and rules adopted pursuant to ORS 468A.280 are imposed upon, transferred to and vested in the Carbon Policy Office.

SECTION 47. Records, property, employees. (1) The Director of the Department of Environmental Quality shall:

(a) Deliver to the Carbon Policy Office all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 46 of this 2019 Act; and

(b) Transfer to the Carbon Policy Office those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 46 of this 2019 Act.
(2) The Director of the Carbon Policy Office shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 46 of this 2019 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the Department of Environmental Quality and the Carbon Policy Office relating to transfers of records, property and employees under this section, and the Governor’s decision is final.

SECTION 48. Unexpended revenues. (1) The unexpended balances of amounts authorized to be expended by the Environmental Quality Commission or the Department of Environmental Quality for the biennium beginning July 1, 2019, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 46 of this 2019 Act are transferred to and are available for expenditure by the Carbon Policy Office for the biennium beginning July 1, 2019, for the purpose of administering and enforcing the duties, functions and powers transferred by section 46 of this 2019 Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Department of Environmental Quality remain applicable to expenditures by the Carbon Policy Office under this section.

SECTION 49. Action, proceeding, prosecution. The transfer of duties, functions and powers to the Carbon Policy Office by section 46 of this 2019 Act does not affect any action, proceeding or prosecution involving or with respect to the duties, functions and powers begun before and pending at the time of the transfer, except that the Carbon Policy Office is substituted for the Environmental Quality Commission.
or the Department of Environmental Quality, as appropriate, in the
action, proceeding or prosecution.

SECTION 50. Liability, duty, obligation. (1) Nothing in sections 46
to 52 of this 2019 Act relieves a person of a liability, duty or obligation
accruing under or with respect to the duties, functions and powers
transferred by section 46 of this 2019 Act. The Carbon Policy Office
may undertake the collection or enforcement of any such liability,
duty or obligation.

(2) The rights and obligations of the Environmental Quality Com-
mision or the Department of Environmental Quality legally incurred
under contracts, leases and business transactions executed, entered
into or begun before the operative date of section 46 of this 2019 Act
accruing under or with respect to the duties, functions and powers
transferred by section 46 of this 2019 Act are transferred to the Carbon
Policy Office. For the purpose of succession to these rights and obli-
gations, the Carbon Policy Office is a continuation of the Environ-
mental Quality Commission or the Department of Environmental
Quality, as appropriate, and not a new authority.

SECTION 51. Rules. (1) Notwithstanding the transfer of duties,
functions and powers by section 46 of this 2019 Act, the rules of the
Environmental Quality Commission with respect to such duties, func-
tions or powers that are in effect on the operative date of section 46
of this 2019 Act continue in effect until superseded or repealed by rules
of the Carbon Policy Office. References in the rules of the Environ-
mental Quality Commission to the Environmental Quality Commission
are considered to be references to the Director of the Carbon Policy
Office. References in the rules of the Environmental Quality Com-
mision to the Department of Environmental Quality or an officer or
employee of the Department of Environmental Quality are considered
to be references to the Carbon Policy Office or an officer or employee
of the Carbon Policy Office.
(2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 46 of this 2019 Act, reference is made to the Environmental Quality Commission, with relation to the duties, functions or powers transferred by section 46 of this 2019 Act, the reference is considered to be a reference to the Director of the Carbon Policy Office for purposes of being charged by the terms of this 2019 Act with carrying out the duties, functions and powers.

(3) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 46 of this 2019 Act, reference is made to the Department of Environmental Quality, or an officer of employee of the Department of Environmental Quality, whose duties, functions or powers are transferred by section 46 of this 2019 Act, the reference is considered to be a reference to the Carbon Policy Office or an officer or employee of the Carbon Policy Office who by this 2019 Act is charged with carrying out the duties, functions and powers.

(Housekeeping in ORS)

SECTION 52. Notwithstanding any other provision of law, ORS 468A.280 shall not be considered to have been added to or made a part of ORS chapter 468A for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that series.

(Amendments to Statutes)

SECTION 53. ORS 468A.280 is amended to read:
468A.280. (1) [In addition to any registration and reporting that may be required under ORS 468A.050, the Environmental Quality Commission by rule may require registration and reporting by:] As used in this section:

(a) “Air contamination source” has the meaning given that term in ORS 468A.005.

(b) “Greenhouse gas” has the meaning given that term in section 8 of this 2019 Act.

(2) The Director of the Carbon Policy Office by rule may require registration and reporting of information necessary to determine greenhouse gas emissions by:

(a) A person in control of an air contamination source of any class for which registration and reporting is required under ORS 468A.050.

[(a)] (b) Any person who imports, sells, allocates or distributes electricity for use in this state [electricity, the generation of which emits greenhouse gases].

[(b)] (c) Any person who imports, sells or distributes for use in this state fossil fuel that generates greenhouse gases when combusted.

(3) A person required to register and report under subsection (2) of this section shall register with the Carbon Policy Office and make reports containing information that the director by rule may require that is relevant to determining and verifying greenhouse gas emissions. The director may by rule require the person to provide an audit by an independent and disinterested party to verify that the greenhouse gas emissions information reported by the person is true and accurate.

[(2)] (4) Rules adopted by the [commission] director under this section for electricity that is imported, sold, allocated or distributed for use in this state may require reporting of information necessary to determine greenhouse gas emissions from generating facilities used to produce the electricity and related electricity transmission line losses.

[(3)(a)] (5)(a) The [commission] director shall allow consumer-owned
utilities, as defined in ORS 757.270, to comply with reporting requirements imposed under this section by the submission of a report prepared by a third party. A report submitted under this paragraph may include information for more than one consumer-owned utility, but must include all information required by the [commission] director for each individual utility.

(b) For the purpose of determining greenhouse gas emissions related to electricity purchased from the Bonneville Power Administration by a consumer-owned utility, as defined in ORS 757.270, the [commission] director may require only that the utility report:

(A) The number of megawatt-hours of electricity purchased by the utility from the Bonneville Power Administration, segregated by the types of contracts entered into by the utility with the Bonneville Power Administration; and

(B) The percentage of each fuel or energy type used to produce electricity purchased under each type of contract.

[(4)(a)] [(6)(a)] Rules adopted by the [commission] director pursuant to this section for electricity that is purchased, imported, sold, allocated or distributed for use in this state by an electric company, as defined in ORS 757.600, must be limited to the reporting of:

(A) The generating facility fuel type and greenhouse gas emissions emitted from generating facilities owned or operated by the electric company;

(B) The megawatt-hours of electricity generated by the electric company for use in this state;

[(B)] (C) Greenhouse gas emissions emitted from transmission equipment owned or operated by the electric company;

[(C)] (D) The number of megawatt-hours of electricity purchased by the electric company for use in this state, including information, if known, on:

(i) The seller of the electricity to the electric company; and

(ii) The original generating facility fuel type or types; and

[(D)] (E) An estimate of the amount of greenhouse gas emissions, using default greenhouse gas emissions factors established by the commission by
rule,] attributable to:

(i) Electricity purchases made by a particular seller to the electric company;

(ii) Electricity purchases from an unknown origin or from a seller who is unable to identify the original generating facility fuel type or types;

(iii) Electricity purchases for which a renewable energy certificate under ORS 469A.130 has been issued but subsequently transferred or sold to a person other than the electric company;

(iv) Electricity transmitted for others by the electric company; and

(v) Total energy losses from electricity transmission and distribution equipment owned or operated by the electric company.

(b) Pursuant to paragraph (a) of this subsection, a multijurisdictional electric company may rely upon a cost allocation methodology approved by the Public Utility Commission for reporting emissions allocated in this state.

[(5)] (7) Rules adopted by the [commission] director under this section for fossil fuel that is imported, sold or distributed for use in this state may require reporting of the type and quantity of the fuel and any additional information necessary to determine the [carbon content] greenhouse gas emissions associated with the use or combustion of the fuel. [For the purpose of determining greenhouse gas emissions related to liquefied petroleum gas, the commission shall allow reporting using publications or submission of data by the American Petroleum Institute but may require reporting of such other information necessary to achieve the purposes of the rules adopted by the commission under this section.]

[(6)] (8) To an extent that is consistent with the purposes of the rules adopted by the [commission] director under this section, the [commission] director shall minimize the burden of the reporting required under this section by:

(a) Allowing concurrent reporting of information that is also reported to another state agency;

(b) Allowing electronic reporting;
(c) Allowing use of good engineering practice calculations in reports, or
of emission factors published by the United States Environmental Protection
Agency;
(d) Establishing thresholds for the amount of specific greenhouse gases
that may be emitted or generated without reporting;
(e) Requiring reporting by the fewest number of persons in a fuel dis-
tribution system that will allow the [commission] director to acquire the
information needed by the [commission] director; or
(f) Other appropriate means and procedures determined by the [commis-
sion] director.

[(7) As used in this section, “greenhouse gas” has the meaning given that
term in ORS 468A.210.]

(9) The office may require a person for which registration and re-
porting is required under subsection (2) of this section to provide any
pertinent records related to verification of greenhouse gas emissions
in order to determine compliance with and to enforce this section and
rules adopted pursuant to this section.

(10) If a person required to register and report under subsection (2)
of this section fails to submit a report under this section, the office
may develop an assigned emissions level for the person if necessary for
the purpose of regulating persons under sections 8 to 26 of this 2019
Act.

(11)(a) By rule the director may establish a schedule of fees for
registration and reporting under this section. Before establishing fees
pursuant to this subsection, the director shall consider the total fees
for each person subject to registration and reporting under this sec-
tion.

(b) The director shall limit the fees established under this sub-
section to the anticipated cost of developing, implementing and ana-
lyzing data collected under greenhouse gas emissions registration and
reporting programs.
ENERGY FACILITY CARBON DIOXIDE EMISSIONS STANDARDS
(Repeal of Carbon Dioxide Emissions Standards)

SECTION 54. ORS 469.503 is amended to read:
469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(1) The facility complies with the applicable standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet.

(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions,
and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rulemaking record:

(A) Promote facility fuel efficiency;

(B) Promote efficiency in the resource mix;

(C) Reduce net carbon dioxide emissions;

(D) Promote cogeneration that reduces net carbon dioxide emissions;

(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;

(F) Minimize transaction costs;

(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;

(H) Allow either the applicant or third parties to implement offsets;

(I) Be attainable and economically achievable for various types of power plants;

(J) Promote public participation in the selection and review of offsets;

(K) Promote prompt implementation of offset projects;

(L) Provide for monitoring and evaluation of the performance of offsets; and

(M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure
that the predicted carbon dioxide emissions are not exceeded on a new and
clean basis. For any remaining emissions reduction necessary to meet the ap-
pllicable standard, the applicant may elect to use any of subparagraphs (A) to
(D) of this paragraph, or any combination thereof. The council shall determine
the amount of carbon dioxide or other greenhouse gas emissions reduction that
is reasonably likely to result from the applicant's offsets and whether the re-
sulting net carbon dioxide emissions meet the applicable carbon dioxide emis-
sions standard. For purposes of determining the net carbon dioxide emissions,
the council shall by rule establish the global warming potential of each
greenhouse gas based on a generally accepted scientific method, and convert
any greenhouse gas emissions to a carbon dioxide equivalent. Unless otherwise
provided by the council by rule, the global warming potential of methane is
23 times that of carbon dioxide, and the global warming potential of nitrous
oxide is 296 times that of carbon dioxide. If the council or a court on judicial
review concludes that the applicant has not demonstrated compliance with the
applicable carbon dioxide emissions standard under subparagraphs (A), (B)
or (D) of this paragraph, or any combination thereof, and the applicant has
agreed to meet the requirements of subparagraph (C) of this paragraph for any
deficiency, the council or a court shall find compliance based on such agree-
ment.]

[(A) The facility will sequentially produce electrical and thermal energy
from the same fuel source, and the thermal energy will be used to displace
another source of carbon dioxide emissions that would have otherwise contin-
ued to occur, in which case the council shall adopt site certificate conditions
ensuring that the carbon dioxide emissions reduction will be achieved.]

[(B) The applicant or a third party will implement particular offsets, in
which case the council may adopt site certificate conditions ensuring that the
proposed offsets are implemented but shall not require that predicted levels of
avoidance, displacement or sequestration of greenhouse gas emissions be
achieved. The council shall determine the quantity of greenhouse gas emissions
reduction that is reasonably likely to result from each of the proposed offsets]
based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset.]

[(i) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction will be achieved by the offset;]

[(ii) The ability of the council to determine the actual quantity of greenhouse gas emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and]

[(iii) The extent to which the reduction of greenhouse gas emissions would occur in the absence of the offsets.]

[(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of offsets and the council’s finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease

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the monetary offset rate no more than 50 percent in any two-year period.]

[(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.]

[(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.]

[(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:]

[(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement off-
The qualified organization shall assess offsets for their potential to qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first $500,000 of the offset funds and 4.286 percent of any offset funds in excess of $500,000. This amount shall not be less than $50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the State Department of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the se-
lection is not consistent with criteria established by the council. The site cer-
tificate holder shall contract to implement the selected offsets within 18 months
after commencing construction of the facility unless good cause is shown re-
quiring additional time. The contracts shall obligate the expenditure of at least
85 percent of the offset funds for the implementation of offsets. No more than
15 percent of the offset funds may be spent on monitoring, evaluation and
enforcement of the contract to implement the selected offsets. The council’s
criteria for selection of offsets shall be based on the criteria set forth in para-
graphs (b)(C) and (c)(B) of this subsection and may also consider the costs of
particular types of offsets in relation to the expected benefits of such offsets.
The council’s criteria shall not require the site certificate holder to select
particular offsets, and shall allow the site certificate holder a reasonable range
of choices in selecting offsets. In addition, notwithstanding any other provision
of this section, the site certificate holder’s financial liability for implementa-
tion, monitoring, evaluation and enforcement of offsets pursuant to this sub-
section shall be limited to the amount of any offset funds not already
contractually obligated. Nonperformance, negligence or misconduct by the en-
tity or entities implementing, monitoring or evaluating the selected offset shall
not be a basis for revocation of the site certificate or any other enforcement
action by the council with respect to the site certificate holder.]

[(C) Every qualified organization that has received funds under this para-
graph shall, at five-year intervals beginning on the date of receipt of such
funds, provide the council with the information the council requests about the
qualified organization’s performance. The council shall evaluate the informa-
tion requested and, based on such information, shall make any recommend-
dations to the Legislative Assembly that the council deems appropriate.]

[(e) As used in this subsection:]  
[(A) “Adjusted to ISO conditions” means carbon dioxide emissions and net
electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per
square inch atmospheric pressure and 60 percent humidity.]  

[(B) “Base load gas plant” means a generating facility that is fueled by
natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.]

[(C) “Carbon dioxide equivalent” means the global warming potential of a greenhouse gas reflected in units of carbon dioxide.]  

[(D) “Fossil-fueled power plant” means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.]  

[(E) “Generating facility” means those energy facilities that are defined in ORS 469.300 (11)(a)(A), (B) and (D).]  

[(F) “Global warming potential” means the determination of the atmospheric warming resulting from the release of a unit mass of a particular greenhouse gas in relation to the warming resulting from the release of the equivalent mass of carbon dioxide.]  

[(G) “Greenhouse gas” means carbon dioxide, methane and nitrous oxide.]  

[(H) “Gross carbon dioxide emissions” means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.]  

[(I) “Net carbon dioxide emissions” means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.]  

[(J) “New and clean basis” means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results
adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.]

[(K) “Nongenerating facility” means those energy facilities that are defined in ORS 469.300 (11)(a)(C) and (E) to (I).]

[(L) “Offset” means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions.]

[(M) “Offset funds” means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.]

[(N) “Qualified organization” means an entity that:

(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

(iv) Has made available on an annual basis, beginning after the first year
of operation, a signed opinion of an independent certified public accountant stating that the qualified organization’s use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;]

[(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and]

[(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.]

[(3)] (2) Except as provided in ORS 469.504 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

[(4)] (3) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

SECTION 55. ORS 469.501 is amended to read:

469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

(a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.

(b) Seismic hazards.

(c) Areas designated for protection by the state or federal government,
including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

(d) The financial ability and qualifications of the applicant.

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(h) The accumulation, storage, disposal and transportation of nuclear waste.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for proposed nongenerating facilities [as defined in ORS 469.503], consistent with the state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities [as defined in ORS 469.503].

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

(n) Soil protection.

[o] For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503
(2) The council may adopt exemptions from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state’s energy policy set forth in ORS 469.010 and 469.310.

(3)(a) The council may issue a site certificate for a facility that does not meet one or more of the applicable standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet.

(b) The council by rule shall specify the criteria by which the council makes the determination described in paragraph (a) of this subsection.

(4) Notwithstanding subsection (1) of this section, the council may not impose any standard developed under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for an energy facility producing power from wind, solar or geothermal energy. However, the council may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

(Transitional Provisions)


(2) Any provision in a site certificate or amended site certificate for a generating facility issued before January 1, 2021, requiring the holder to demonstrate the need for the facility shall cease to be enforceable
on January 1, 2021.

(3) Any site certificate amendment approved by the council on or after January 1, 2021, shall remove from the site certificate being amended all conditions and provisions rendered unenforceable by subsections (1) and (2) of this section. Notwithstanding ORS 469.405 or any council rule, the contested case hearing on a site certificate amendment subject to this subsection may not include hearing on amendments necessary to comply with this subsection. The provisions of the council’s order relevant to compliance with this subsection is not subject to judicial review.

SECTION 57. The Energy Facility Siting Council shall, no later than January 1, 2022, complete rulemaking to amend or repeal any rules adopted by the council relating to the application of a carbon dioxide emissions standard to generating facilities or nongenerating facilities as necessary to bring the rules of the council into compliance with the amendments to ORS 469.501 (o) and 469.503 by sections 54 and 55 of this 2019 Act and the provisions of section 56 of this 2019 Act.

SECTION 58. (1) As used in this section and section 59 of this 2019 Act, “qualified organization” has the meaning given that term in ORS 469.503 (2)(e)(N) (2017 Edition).

(2) On or after the operative date of this section and the amendments to ORS 469.503 by section 54 of this 2019 Act and in accordance with the provisions of ORS 469.503 (2)(d) (2017 Edition), a qualified organization that, before the operative date of this section and the amendments to ORS 469.503 by section 54 of this 2019 Act, received payment of offset funds pursuant to ORS 469.503 (2)(c)(C) (2017 Edition):

(a) Shall use at least 80 percent of the offset funds for contracts to implement offsets and assess offsets for their potential to qualify in, generate credits in or reduce obligations in other regulatory settings;

(b) May use up to 20 percent of the offset funds for monitoring,
evaluating, administering and enforcing contracts to implement offsets; and

(c) Shall, at five-year intervals beginning on the date of the receipt of the offset funds and ending the year after the year that the qualified organization in no longer involved in the investment of offset funds received pursuant to ORS 469.503 (2)(c)(C) (2017 Edition), provide the Energy Facility Siting Council with the information the council requests about the qualified organization’s performance. The council shall evaluate the information requested and, based on the information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

SECTION 59. Section 58 of this 2019 Act is repealed on the date that the Legislative Counsel receives written notice from the Energy Facility Siting Council that the council has confirmed that all qualified organizations that received payment of offset funds pursuant to ORS 469.503 (2)(c)(C) (2017 Edition) have ceased to be involved in the investment of the offset funds.

(Repeal)

SECTION 60. ORS 469.409 is repealed.

(Conforming Amendments)

SECTION 61. ORS 469.300 is amended to read:

469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

(1) “Applicant” means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) “Application” means a request for approval of a particular site or sites
for the construction and operation of an energy facility or the construction
and operation of an additional energy facility upon a site for which a cer-
tificate has already been issued, filed in accordance with the procedures es-
tablished pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and
469.992.

(3) “Associated transmission lines” means new transmission lines con-
structed to connect an energy facility to the first point of junction of such
transmission line or lines with either a power distribution system or an
interconnected primary transmission system or both or to the Northwest
Power Grid.

(4) “Average electric generating capacity” means the peak generating ca-
pacity of the facility divided by one of the following factors:

(a) For wind facilities, 3.00;
(b) For geothermal energy facilities, 1.11; or
(c) For all other energy facilities, 1.00.

(5) “Combustion turbine power plant” means a thermal power plant con-
sisting of one or more fuel-fired combustion turbines and any associated
waste heat combined cycle generators.

(6) “Construction” means work performed on a site, excluding surveying,
exploration or other activities to define or characterize the site, the cost of
which exceeds $250,000.

(7) “Council” means the Energy Facility Siting Council established under
ORS 469.450.

(8) “Department” means the State Department of Energy created under
ORS 469.030.

(9) “Director” means the Director of the State Department of Energy ap-
pointed under ORS 469.040.

(10) “Electric utility” means persons, regulated electrical companies,
people’s utility districts, joint operating agencies, electric cooperatives,
municipalities or any combination thereof, engaged in or authorized to en-
gage in the business of generating, supplying, transmitting or distributing
electric energy.

(11)(a) “Energy facility” means any of the following:

(A) An electric power generating plant with a nominal electric generating
capacity of 25 megawatts or more, including but not limited to:

(i) Thermal power;

(ii) Combustion turbine power plant; or

(iii) Solar thermal power plant.

(B) A nuclear installation as defined in this section.

(C) A high voltage transmission line of more than 10 miles in length with
a capacity of 230,000 volts or more to be constructed in more than one city
or county in this state, but excluding:

(i) Lines proposed for construction entirely within 500 feet of an existing
corridor occupied by high voltage transmission lines with a capacity of
230,000 volts or more; and

(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000
volts along the same right of way.

(D) A solar photovoltaic power generation facility using more than:

(i) 100 acres located on high-value farmland as defined in ORS 195.300;

(ii) 100 acres located on land that is predominantly cultivated or that, if
not cultivated, is predominantly composed of soils that are in capability
classes I to IV, as specified by the National Cooperative Soil Survey operated
by the Natural Resources Conservation Service of the United States De-
partment of Agriculture; or

(iii) 320 acres located on any other land.

(E) A pipeline that is:

(i) At least six inches in diameter, and five or more miles in length, used
for the transportation of crude petroleum or a derivative thereof, liquefied
natural gas, a geothermal energy form in a liquid state or other fossil energy
resource, excluding a pipeline conveying natural or synthetic gas;

(ii) At least 16 inches in diameter, and five or more miles in length, used
for the transportation of natural or synthetic gas, but excluding:
(I) A pipeline proposed for construction of which less than five miles of
the pipeline is more than 50 feet from a public road, as defined in ORS
368.001; or

(II) A parallel or upgraded pipeline up to 24 inches in diameter that is
constructed within the same right of way as an existing 16-inch or larger
pipeline that has a site certificate, if all studies and necessary mitigation
conducted for the existing site certificate meet or are updated to meet cur-
rent site certificate standards; or

(iii) At least 16 inches in diameter and five or more miles in length used
to carry a geothermal energy form in a gaseous state but excluding a pipeline
used to distribute heat within a geothermal heating district established un-
der ORS chapter 523.

(F) A synthetic fuel plant which converts a natural resource including,
but not limited to, coal or oil to a gas, liquid or solid product intended to
be used as a fuel and capable of being burned to produce the equivalent of
two billion Btu of heat a day.

(G) A plant which converts biomass to a gas, liquid or solid product, or
combination of such products, intended to be used as a fuel and if any one
of such products is capable of being burned to produce the equivalent of six
billion Btu of heat a day.

(H) A storage facility for liquefied natural gas constructed after Septem-
ber 29, 1991, that is designed to hold at least 70,000 gallons.

(I) A surface facility related to an underground gas storage reservoir that,
at design injection or withdrawal rates, will receive or deliver more than 50
million cubic feet of natural or synthetic gas per day, or require more than
4,000 horsepower of natural gas compression to operate, but excluding:

(i) The underground storage reservoir;

(ii) The injection, withdrawal or monitoring wells and individual wellhead
equipment; and

(iii) An underground gas storage reservoir into which gas is injected
solely for testing or reservoir maintenance purposes or to facilitate the sec-
ondary recovery of oil or other hydrocarbons.

(J) An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal or wind energy at a single energy facility or within a single energy generation area.

(b) “Energy facility” does not include a hydroelectric facility or an energy facility under paragraph (a)(A)(iii) or (D) of this subsection that is established on the site of a decommissioned United States Air Force facility that has adequate transmission capacity to serve the energy facility.

(12) “Energy generation area” means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more. An “energy generation area” for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(13) “Extraordinary nuclear occurrence” means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property off-site.

(14) “Facility” means an energy facility together with any related or supporting facilities.

(15) “Generating facility” means those energy facilities that are
defined in subsection (11)(a)(A), (B) and (D) of this section.

[(15)] (16) “Geothermal reservoir” means an aquifer or aquifers containing
a common geothermal fluid.

[(16)] (17) “Local government” means a city or county.

[(17)] (18) “Nominal electric generating capacity” means the maximum net
electric power output of an energy facility based on the average temperature,
barometric pressure and relative humidity at the site during the times of the
year when the facility is intended to operate.

(19) “Nongenerating facility” means those energy facilities that are
defined in subsection (11)(a)(C) and (E) to (I) of this section.

[(18)] (20) “Nuclear incident” means any occurrence, including an ex-
traordinary nuclear occurrence, that results in bodily injury, sickness, dis-
 ease, death, loss of or damage to property or loss of use of property due to
the radioactive, toxic, explosive or other hazardous properties of source ma-
terial, special nuclear material or by-product material as those terms are
defined in ORS 453.605.

[(19)] (21) “Nuclear installation” means any power reactor, nuclear fuel
fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for
radioactive waste, and any facility handling that quantity of fissionable ma-
terials sufficient to form a critical mass. “Nuclear installation” does not in-
clude any such facilities that are part of a thermal power plant.

[(20)] (22) “Nuclear power plant” means an electrical or any other facility
using nuclear energy with a nominal electric generating capacity of 25
megawatts or more, for generation and distribution of electricity, and asso-
ciated transmission lines.

[(21)] (23) “Person” means an individual, partnership, joint venture, pri-
 vate or public corporation, association, firm, public service company, poli-
tical subdivision, municipal corporation, government agency, people’s utility
district, or any other entity, public or private, however organized.

[(22)] (24) “Project order” means the order, including any amendments,
issued by the State Department of Energy under ORS 469.330.
“Radioactive waste” means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, “radioactive waste” does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

“Related or supporting facilities” means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. “Related or supporting facilities” does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

“Site” means any proposed location of an energy facility and related or supporting facilities.

“Site certificate” means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.

“Thermal power plant” means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled,
geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. “Thermal power plant” includes a nuclear-fueled thermal power plant that has ceased to operate.

[28] (30) “Transportation” means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

[29] (31) “Underground gas storage reservoir” means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous substances. “Underground gas storage reservoir” includes a pool as defined in ORS 520.005.

[30] (32) “Utility” includes:

(a) A person, a regulated electrical company, a people’s utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

[31] (33) “Waste disposal facility” means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, “temporary storage” includes storage of radioactive waste on the site of a nuclear-fueled thermal
power plant for which a site certificate has been issued until a permanent
storage site is available by the federal government.

SECTION 62. ORS 469.310 is amended to read:

469.310. In the interests of the public health and the welfare of the people
of this state, it is the declared public policy of this state that the siting,
construction and operation of energy facilities shall be accomplished in a
manner consistent with protection of the public health and safety and in
compliance with the energy policy and air, water, solid waste, land use and
other environmental protection policies of this state. It is, therefore, the
purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to
exercise the jurisdiction of the State of Oregon to the maximum extent per-
mitted by the United States Constitution and to establish in cooperation
with the federal government a comprehensive system for the siting, moni-
toring and regulating of the location, construction and operation of all en-
ergy facilities in this state. It is furthermore the policy of this state,
notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS
469.020, that the need for new generating facilities, as defined in ORS
469.503, is sufficiently addressed by reliance on competition in the market
rather than by consideration of cost-effectiveness and shall not be a matter
requiring determination by the Energy Facility Siting Council in the siting
of a generating facility, as defined in ORS 469.503.

SECTION 63. ORS 469.373 is amended to read:

469.373. (1) Notwithstanding the expedited review process established
pursuant to ORS 469.370, an applicant may apply under the provisions of this
section for expedited review of an application for a site certificate for an
energy facility if the energy facility:

(a) Is a combustion turbine energy facility fueled by natural gas or is a
reciprocating engine fueled by natural gas, including an energy facility that
uses petroleum distillate fuels for backup power generation;

(b) Is a permitted or conditional use allowed under an applicable local
acknowledged comprehensive plan, land use regulation or federal land use
plan, and is located:

(A) At or adjacent to an existing energy facility; or
(B)(i) At, adjacent to or in close proximity to an existing industrial use; and
(ii) In an area currently zoned or designated for industrial use;
(c)(A) Requires no more than three miles of associated transmission lines or three miles of new natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines; or
(B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in the locating of associated transmission lines or new natural gas pipelines outside of existing rights of way;
(d) Requires no new water right or water right transfer; and
(e) Provides funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reduction in emissions as specified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by the energy facility for the life of the energy facility; and]
(f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment permit, if needed, within the expedited review process time frame and has written confirmation from the wastewater facility permit holder that the additional wastewater load will be accommodated by the facility without resulting in a significant thermal increase in the facility effluent or without requiring any changes to the wastewater facility National Pollutant Discharge Elimination System permit;
(B) Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:
(i) The municipal corporation has included, or intends to include, the
process wastewater load from the energy facility in an application for a National Pollutant Discharge Elimination System permit; and

(ii) All conditions required of the energy facility to allow the discharge of process wastewater from the energy facility will be satisfied; or

(C) Obtains a National Pollutant Discharge Elimination System or water pollution control facility permit for process wastewater disposal, supplies evidence to support a finding that the discharge can likely be permitted within the expedited review process time frame and that the discharge will not require:

(i) A new National Pollutant Discharge Elimination System permit, except for a storm water general permit for construction activities; or

(ii) A change in any effluent limit or discharge location under an existing National Pollutant Discharge Elimination System or water pollution control facility permit.

(2) An applicant seeking expedited review under this section shall submit documentation to the State Department of Energy, prior to the submission of an application for a site certificate, that demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this section.

The department shall determine, within 14 days of receipt of the documentation, on a preliminary, nonbinding basis, whether the energy facility qualifies for expedited review.

(3) If the department determines that the energy facility preliminarily qualifies for expedited review, the applicant may submit an application for expedited review. Within 30 days after the date that the application for expedited review is submitted, the department shall determine whether the application is complete. If the department determines that the application is complete, the application shall be deemed filed on the date that the department sends the applicant notice of its determination. If the department determines that the application is not complete, the department shall notify the applicant of the deficiencies in the application and shall deem the application filed on the date that the department determines that the application [82]
is complete. The department or the council may request additional information from the applicant at any time.

(4) The State Department of Energy shall send a copy of a filed application to the Department of Environmental Quality, the Water Resources Department, the State Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agriculture, the Department of Land Conservation and Development, the Public Utility Commission and any other state agency, city, county or political subdivision of the state that has regulatory or advisory responsibility with respect to the proposed energy facility. The State Department of Energy shall send with the copy of the filed application a notice specifying that:

(a) In the event the council issues a site certificate for the energy facility, the site certificate will bind the state and all counties, cities and political subdivisions in the state as to the approval of the site, the construction of the energy facility and the operation of the energy facility, and that after the issuance of a site certificate, all permits, licenses and certificates addressed in the site certificate must be issued as required by ORS 469.401 (3); and

(b) The comments and recommendations of state agencies, counties, cities and political subdivisions concerning whether the proposed energy facility complies with any statute, rule or local ordinance that the state agency, county, city or political subdivision would normally administer in determining whether a permit, license or certificate required for the construction or operation of the energy facility should be approved will be considered only if the comments and recommendations are received by the department within a reasonable time after the date the application and notice of the application are sent by the department.

(5) Within 90 days after the date that the application was filed, the department shall issue a draft proposed order setting forth:

(a) A description of the proposed energy facility;

(b) A list of the permits, licenses and certificates that are addressed in
the application and that are required for the construction or operation of the
proposed energy facility;

(c) A list of the statutes, rules and local ordinances that are the standards
and criteria for approval of any permit, license or certificate addressed in
the application and that are required for the construction or operation of the
proposed energy facility; and

(d) Proposed findings specifying how the proposed energy facility complies
with the applicable standards and criteria for approval of a site certificate.

(6) The council shall review the application for site certification in the
manner set forth in subsections (7) to (10) of this section and shall issue a
site certificate for the facility if the council determines that the facility,
with any required conditions to the site certificate, will comply with:

(a) The requirements for expedited review as specified in this section;

(b) The standards adopted by the council pursuant to ORS 469.501 (1)(a),
(c) to (e), (g), (h) and (L) to [(o)] (n);

(c) The requirements of ORS 469.503 [(3)] (2); and

(d) The requirements of ORS 469.504 (1)(b).

(7) Following submission of an application for a site certificate, the
council shall hold a public informational meeting on the application. Fol-
lowing the issuance of the proposed order, the council shall hold at least one
public hearing on the application. The public hearing shall be held in the
area affected by the energy facility. The council shall mail notice of the
hearing at least 20 days prior to the hearing. The notice shall comply with
the notice requirements of ORS 197.763 (2) and shall include, but need not
be limited to, the following:

(a) A description of the energy facility and the general location of the
energy facility;

(b) The name of a department representative to contact and the telephone
number at which people may obtain additional information;

(c) A statement that copies of the application and proposed order are
available for inspection at no cost and will be provided at reasonable cost;
and

(d) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record, with sufficient specificity to afford the decision maker an opportunity to respond to the issue, will preclude consideration of the issue, by the council or by a court on judicial review of the council’s decision.

(8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present additional written evidence, arguments or testimony regarding the application. In the alternative, prior to the conclusion of the hearing, the applicant may request a contested case hearing on the application. If the applicant requests an opportunity to present written evidence, arguments or testimony, the council shall leave the record open for that purpose only for a period not to exceed 14 days after the date of the hearing. Following the close of the record, the department shall prepare a draft final order for the council. If the applicant requests a contested case hearing, the council may grant the request if the applicant has shown good cause for a contested case hearing. If a request for a contested case hearing is granted, subsections (9) to (11) of this section do not apply, and the application shall be considered under the same contested case procedures used for a nonexpedited application for a site certificate.

(9) The council shall make its decision based on the record and the draft final order prepared by the department. The council shall, within six months of the date that the application is deemed filed:

(a) Grant the application;
(b) Grant the application with conditions;
(c) Deny the application; or
(d) Return the application to the site certification process required by ORS 469.320.

(10) If the application is granted, the council shall issue a site certificate pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this
section, the council may impose conditions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based on those standards.

(11) Judicial review of the approval or rejection of a site certificate by the council under this section shall be as provided in ORS 469.403.

SECTION 64. ORS 469.405 is amended to read:

469.405. (1) A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403.

(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law, the land use approval by an affected local government of a proposed amendment to a facility and the recommendation of the special advisory group of applicable substantive criteria shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to show compliance with the statewide planning goals by demonstrating that the facility has received local land use approval, the provisions of this section shall apply only to proposed projects for which the land use approval by the local government occurs after the date an application for amendment is submitted to the State Department of Energy.

(3) An amendment to a site certificate is not required for a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline will connect to a council certified surface facility related to an underground gas storage reservoir or to a council certified gas pipeline, whether the proposed pipeline is to be located inside or outside the site of a council certified facility, the certificate holder must obtain, prior to construction, the approval of the department for the construction, operation and retirement of the proposed pipeline. The department shall approve such a proposed pipeline if the pipeline meets applicable council substantive

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standards. Notwithstanding ORS 469.503 [(3)] (2), the department may not
review the proposed pipeline for compliance with other state standards.
Notwithstanding ORS 469.503 [(4)] (3), or any council rule addressing com-
pliance with land use standards, the department shall not review such a
proposed pipeline for compliance with land use requirements. Notwithstand-
ing ORS 469.401 (3), the approval by the department of such pipeline shall
not bind any state or local agency. The council may adopt appropriate pro-
cedural rules for the department review. The department shall issue an order
approving or rejecting the proposed pipeline. Judicial review of a depart-
ment order under this section shall be as provided in ORS 469.403.

SECTION 65. ORS 469.407 is amended to read:

469.407. (1) A recipient may by amendment of its application for a site
certificate or by amendment of its site certificate increase the capacity of the
facility if the Energy Facility Siting Council finds that:

   (a) The facility will satisfy the conditions of the 500-megawatt exemption,
   unless modified by the council;

   (b) The enlarged facility does not exceed 500 megawatts and meets the
   applicable carbon dioxide standard provided for in ORS 469.503 (2) (2017
   Edition) for any increase in capacity beyond the capacity of the
   500-megawatt exemption; and

   (c) The enlarged facility meets all other applicable council standards.

(2) A recipient is deemed to meet any applicable need standard and carbon
dioxide emissions standard for the nominal generating capacity of the
500-megawatt exemption provided that the recipient satisfies the conditions
of the 500-megawatt exemption, unless the council modifies the conditions.

(3) As used in this section:

   (a) “Recipient” means any base load gas plant, as defined in ORS 469.503
   (2017 Edition), determined by the council to have the lowest net monetized
   air emissions among the applicants participating in a contested case pro-
   ceeding.

   (b) “500-megawatt exemption” means the council order in which a recipi-
ent was determined to have the lowest net monetized air emissions.

**SECTION 66.** ORS 469.504 is amended to read:

469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 [(4)] (3) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The Energy Facility Siting Council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government’s acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining
to an exception process goal, the council may take an exception to a goal if
the council finds:

(a) The land subject to the exception is physically developed to the extent
that the land is no longer available for uses allowed by the applicable goal;
(b) The land subject to the exception is irrevocably committed as de-
dscribed by the rules of the Land Conservation and Development Commission
to uses not allowed by the applicable goal because existing adjacent uses and
other relevant factors make uses allowed by the applicable goal impractica-
ble; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal
should not apply;
(B) The significant environmental, economic, social and energy conse-
quences anticipated as a result of the proposed facility have been identified
and adverse impacts will be mitigated in accordance with rules of the council
applicable to the siting of the proposed facility; and
(C) The proposed facility is compatible with other adjacent uses or will
be made compatible through measures designed to reduce adverse impacts.

(3) If compliance with applicable substantive local criteria and applicable
statutes and state administrative rules would result in conflicting conditions
in the site certificate or amended site certificate, the council shall resolve
the conflict consistent with the public interest. A resolution may not result
in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate
compliance with the statewide planning goals under subsection (1)(a) or (b)
of this section. The applicant shall make the election on or before the date
specified by the council by rule.

(5) Upon request by the State Department of Energy, the special advisory
group established under ORS 469.480 shall recommend to the council, within
the time stated in the request, the applicable substantive criteria under
subsection (1)(b)(A) of this section. If the special advisory group does not
recommend applicable substantive criteria within the time established in the
department’s request, the council may either determine and apply the appli-
cable substantive criteria under subsection (1)(b) of this section or determine
compliance with the statewide planning goals under subsection (1)(b)(B) or
(C) of this section. If the special advisory group recommends applicable
substantive criteria for an energy facility described in ORS 469.300 or a re-
lated or supporting facility that does not pass through more than one local
government jurisdiction or more than three zones in any one jurisdiction, the
council shall apply the criteria recommended by the special advisory group.
If the special advisory group recommends applicable substantive criteria for
an energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or
supporting facility that passes through more than one jurisdiction or more
than three zones in any one jurisdiction, the council shall review the re-
commended criteria and determine whether to evaluate the proposed facility
against the applicable substantive criteria recommended by the special advi-
sory group, against the statewide planning goals or against a combination
of the applicable substantive criteria and statewide planning goals. In mak-
ing its determination, the council shall consult with the special advisory
group and shall consider:

(a) The number of jurisdictions and zones in question;
(b) The degree to which the applicable substantive criteria reflect local
government consideration of energy facilities in the planning process; and
(c) The level of consistency of the applicable substantive criteria from the
various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not
require an applicant for a site certificate to comply with any rules or pro-
grams adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government
shall amend its comprehensive plan and land use regulations as necessary
to reflect the decision of the council pertaining to a site certificate or
amended site certificate.

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(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government’s land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group’s recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

(9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

**SECTION 67.** ORS 469.505 is amended to read:

469.505. (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the federal government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council’s review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.

(2) Before resolving any conflicting conditions in site certificates or amended site certificates under ORS 469.503 [(3)] (2) and 469.504, the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict
SECTION 68. ORS 526.786 is amended to read:

526.786. (1) The State Board of Forestry may develop administrative rules that define principles and standards relating to the creation, measurement, accounting, marketing, verifying, registering, transferring and selling of forestry carbon offsets from nonfederal forestlands.

(2) Rules adopted by the board under this section shall set standards to ensure that in order to be marketed, registered, transferred or sold, a forestry carbon offset must be created as a result of forest management activities that:

(a) Have the effect of increasing carbon storage on forestlands as measured by a forestry carbon offset accounting system;

(b) Would not otherwise occur but for the carbon storage objective; and

(c) Provide environmental, social and economic benefits for Oregon and its citizens, including but not limited to, protection or enhancement of long term timber supplies, native fish and wildlife habitat and water quality.

(3) Rules adopted by the board under this section shall establish principles to ensure that the forestry carbon offset accounting system shall:

(a) Account for relevant sources of carbon dioxide emission debits and credits for carbon storage or sequestration;

(b) Account for the duration and permanence of the carbon dioxide storage or emission reductions;

(c) Include provisions for establishing the appropriate baseline for projects, practices, rotation ages, harvest schedules and ownership from which measured carbon dioxide emission debits, and credits for carbon storage or sequestration are made;

(d) Account for other relevant and measurable greenhouse gas consequences, specifically credits and debits expressed as a carbon dioxide emissions equivalent, when establishing baselines or otherwise as appropriate;

(e) Account for the specific forest management practices used on-site and include provisions for monitoring carbon dioxide emission debits and credits.
for carbon storage or sequestration, from the implementation of specific practices;

(f) Account for continuing carbon dioxide emission debits, and credits for carbon storage or sequestration, based on the end product use of harvested biomass;

(g) Account for environmental, social and economic benefits of forestry carbon offsets and ensure that practices with unsustainable, long term consequences are not used to create forestry carbon offsets;

(h) Allow for public access to information in monitoring reports; and

(i) Encourage third-party verification of forestry carbon offsets.

(4) Rules adopted by the board under this section may address qualifications for persons and agencies that provide third-party verification and registration of forestry carbon offsets.

(5) Rules adopted by the board under this section shall be developed with the assistance of an advisory committee appointed by the board. The advisory committee shall consist of at least nine persons and shall contain:

(a) Persons from businesses, governmental agencies and nongovernmental organizations with knowledge and experience in the accounting of greenhouse gas emissions, sequestration and storage;

(b) At least one person from a nongovernmental forestry conservation organization;

(c) At least one nonindustrial private forest landowner or a representative of an organization that represents nonindustrial private forest landowners;

(d) One representative of the State Department of Energy;

(e) One representative of the State Department of Fish and Wildlife, or a designee of the State Department of Fish and Wildlife;

(f) One representative of the Department of Environmental Quality, or a designee of the Department of Environmental Quality;

(g) At least one representative from [a qualified organization, as defined in ORS 469.503] a nonprofit organization that sells voluntary and compliance offsets from greenhouse gas reduction projects; and
(h) At least one representative from the State Forestry Department who shall serve as the secretary to the advisory committee.

EXPEDITED JUDICIAL REVIEW TO SUPREME COURT; EXPIRATION

SECTION 69. (1) It is the intent of the Legislative Assembly that the provisions of this 2019 Act relating to the receipt of moneys by the state through the sale of allowances by auction under section 21 of this 2019 Act do not render this 2019 Act a bill for raising revenue subject to the provisions of Article IV, sections 18 and 25 (2), of the Oregon Constitution.

(2) Original jurisdiction is conferred on the Supreme Court to determine whether this 2019 Act is a bill for raising revenue subject to the provisions of Article IV, sections 18 and 25 (2), of the Oregon Constitution.

(3) Any person adversely affected or aggrieved by the provisions of section 21 this 2019 Act may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition must be filed on or before January 1, 2020.

(b) The petition must include the following:

(A) A statement of the basis of the challenge; and

(B) A statement and supporting affidavit showing how the petitioner is or will be adversely affected or aggrieved.

(4) The petitioner shall serve a copy of the petition by registered or certified mail upon the Oregon Department of Administrative Services, the Oregon Director of the Carbon Policy Office, the Attorney General and the Governor.

(5) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.
(6) In the event that the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

SECTION 70. (1) It is the intent of the Legislative Assembly that certain revenue from the auctions conducted under section 21 of this 2019 Act is subject to the provisions of Article IX, section 3a, of the Oregon Constitution.

(2) Original jurisdiction is conferred on the Supreme Court to determine whether auctions conducted under section 21 of this 2019 Act impose:

(a) A tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; or

(b) A tax or excise levied on the ownership, operation or use of motor vehicles.

(3) A person that is or that will be adversely affected by the provisions of section 21 of this 2019 Act may institute a proceeding for review by filing with the Supreme Court a petition that meets the following requirements:

(a) The petition must be filed on or before January 1, 2020.

(b) The petition must include the following:

(A) A statement of the basis of the challenge; and

(B) A statement and supporting affidavit showing how the petitioner is or will be adversely affected.

(4) The petitioner shall serve a copy of the petition by registered or certified mail upon the Oregon Department of Administrative Services, the Director of the Carbon Policy Office, the Attorney General and the Governor.

(5) Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

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(6) In the event that the Supreme Court determines that there are factual issues in the petition, the Supreme Court may appoint a special master to hear evidence and to prepare recommended findings of fact.

APPROPRIATIONS

SECTION 71. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Department of Administrative Services, for the biennium beginning July 1, 2019, out of the General Fund, the amount of $________ for use by the Carbon Policy Office in the development and implementation of the Oregon Climate Action Program pursuant to sections 8 to 26 of this 2019 Act and for the implementation of sections 7, 38 to 40 and 46 to 52 of this 2019 Act and the amendments to ORS 468A.280 by section 53 of this 2019 Act.

SECTION 72. In addition to and not in lieu of any other appropriation, there is appropriated to the Environmental Justice Task Force, for the biennium beginning July 1, 2019, out of the General Fund, the amount of $________, which may be expended for compensation and expenses incurred by members of the task force who are not members of the Legislative Assembly in the manner and amounts provided for in ORS 292.495, and for provision by the Governor of clerical and administrative staff support to the task force.

OPERATIVE DATE

SECTION 73. (1) Sections 4 to 52 and 56 to 59 of this 2019 Act, the amendments to statutes by sections 53, 54, 55 and 61 to 68 of this 2019 Act and the repeal of ORS 469.409 by section 60 of this 2019 Act become operative on January 1, 2021.

(2) The Director of the Carbon Policy Office, the Carbon Policy Office, the Public Utility Commission, the Housing and Community Ser-
vices Department, the State Department of Energy, the Oregon Department of Administrative Services, the Environmental Quality Commission, the Department of Environmental Quality and the Governor may adopt rules or take any actions before the operative date specified in subsection (1) of this section that are necessary to enable the Director of the Carbon Policy Office, the Carbon Policy Office, the Public Utility Commission, the Housing and Community Services Department, the State Department of Energy, the Oregon Department of Administrative Services, the Environmental Quality Commission, the Department of Environmental Quality and the Governor, on and after the operative date specified in subsection (1) of this section, to carry out the provisions of sections 4 to 52 and 56 to 59 of this 2019 Act, the amendments to statutes by sections 53, 54, 55 and 61 to 68 of this 2019 Act and the repeal of ORS 469.409 by section 60 of this 2019 Act.

REPORTS AND REVIEWS

SECTION 74. On or before September 15, 2020, the Oregon Department of Administrative Services shall report on the actions being taken to prepare for implementation of sections 8 to 26 of this 2019 Act to the Joint Committee on Climate Action.

SECTION 75. On or before September 15, 2031, the Carbon Policy Office shall conduct a review and provide a report to the Joint Committee on Climate Action in the manner provided by ORS 192.245 on the implementation of section 19 of this 2019 Act and rules adopted under section 19 of this 2019 Act. The report may include recommendations for legislation. The review and report must:

1. Assess the implementation of laws, policies and protocols for offset projects and the use of offset credits by covered entities; and

2. Make determinations and recommendations regarding whether
changes to laws, policies or protocols are necessary or advisable to
address any negative impacts or to best align the laws, policies or
protocols with the purposes set forth in section 7 of this 2019 Act.

CAPTIONS

SECTION 76. The unit and section captions used in this 2019 Act
are provided only for the convenience of the reader and do not become
part of the statutory law of this state or express any legislative intent
in the enactment of this 2019 Act.

EMERGENCY CLAUSE

SECTION 77. This 2019 Act being necessary for the immediate
preservation of the public peace, health and safety, an emergency is
declared to exist, and this 2019 Act takes effect on its passage.

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