PROPOSED AMENDMENTS TO
HOUSE BILL 2020

On page 1 of the printed bill, line 2, after the second semicolon delete the rest of the line and lines 3 and 4 and insert “amending ORS 468A.205, 468A.280, 469.300, 469.310, 469.373, 469.405, 469.407, 469.501, 469.503, 469.504, 469.505, 526.005, 526.725, 530.050 and 530.500 and section 12, chapter 751, Oregon Laws 2009; repealing ORS 469.409, 526.780, 526.783, 526.786 and 526.789; and declaring an emergency.

“Whereas climate change and ocean acidification caused by greenhouse gas emissions are having significant detrimental effects on public health and on Oregon’s economic vitality, natural resources and environment; and

“Whereas the diverse impacts of climate change and ocean acidification include increasingly devastating wildfires, communities overwhelmed by deadly smoke, drinking water compromised by algal blooms, a rise in sea levels resulting in flooding and the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and food sources, extreme weather events, severe harm to this state’s agriculture, forestry and tourism industries, and an increase in the incidences of infectious diseases, asthma and other human health-related problems; and

“Whereas climate change has a disproportionate effect on fish and wildlife populations, many of which require specific habitat conditions and are therefore particularly vulnerable to warmer temperatures, modified precipitation patterns, diminished snowpack, ocean acidification and other ef-
effects of climate change; and

“Whereas climate change has a disproportionate effect on impacted communities, such as Indian tribes, rural communities, workers, low-income households and people of color, who typically have fewer resources for adapting to climate change and are therefore the most vulnerable to displacement, adverse health effects, job loss, property damage and other effects of climate change; and

“Whereas the world’s leading climate scientists, including those in the Oregon Climate Change Research Institute, predict that these serious impacts of climate change will worsen if prompt action is not taken to curb emissions; and

“Whereas in the absence of effective federal engagement, it is the responsibility of the individual states, deemed to be the laboratories of progress, to take immediate leadership actions to address climate change and ocean acidification; and

“Whereas by joining together with other leadership jurisdictions similarly resolved to address climate change and ocean acidification, Oregon will help encourage other states, the federal government and the international community to act; and

“Whereas by exercising a leadership role in addressing climate change and ocean acidification, Oregon will position its economy, technology centers, financial institutions and businesses to benefit from the national and international efforts that must occur to reduce greenhouse gas emissions; and

“Whereas Oregon’s forests and other natural and working lands are among the world’s most productive carbon sinks, providing many other important ecological, social and economic benefits, and Oregon’s sequestration strategies can play an enormous and unique role in the global effort to combat climate change; and

“Whereas after many years of study, debate and discussion, the State of
Oregon is prepared to design and implement a carbon pricing program that balances mitigation, sequestration, adaptation and transition strategies to benefit Oregon’s economy and help achieve the state’s agreed-upon greenhouse gas emission reduction goals; and

“Whereas Oregon’s emissions reduction policies must be designed to protect climate impacted communities and promote the resiliency of these communities through providing opportunities for job creation and training, investments in infrastructure and economic development and increased utilization of clean energy technologies; and

“Whereas vehicle electrification and investment in lower-carbon transportation infrastructure can increase energy security and resilience in the face of climate change; and

“Whereas the carbon pricing program must support a just economic transition to a clean energy future by protecting the existing workforce and creating new pathways to employment through workforce development in clean energy, energy efficiency, adaptation and carbon sequestration sectors; and

“Whereas the carbon pricing program must address manufacturing leakage to ensure a level playing field between in-state and out-of-state companies and prevent jobs from leaving this state to emit elsewhere; and

“Whereas the carbon pricing program must respect the rights and ability of Indian tribes to exercise their stewardship and sovereign authority over their sovereign trust lands and resources; and

“Whereas a key strategy in promoting net reductions of atmospheric carbon dioxide and adapting to climate change is preserving and maintaining the resilient, healthy function of this state’s forests and other natural and working lands; and

“Whereas it is the intent of the Legislative Assembly to obtain reductions in greenhouse gas emissions through a comprehensive suite of existing and future measures that include a legally binding, market-based carbon pricing...
mechanism, and that must lay out a predictable pathway to success, be flexible and adaptable to changing circumstances, be based on best available science, recognize the benefit of Oregon’s natural and working lands in reducing carbon, and be designed to reduce emissions and to successfully transition to a clean energy economy with benefits available to all Oregonians; and

“Whereas linkage with other jurisdictions will create efficiencies, spur innovation and create simplicity for businesses, and can be balanced with the ability to maintain Oregon’s authority over its carbon reduction, sequestration and adaptation activities; and

“Whereas any resources generated by the carbon pricing program must be invested to maximize multiple cobenefits aligned with the program’s goals in an efficient and cost-effective manner overseen by the Legislative Assembly and inclusive of communities throughout Oregon to ensure statewide benefits; and

“Whereas the benefits and effectiveness of any investments must be evaluated through regular and rigorous third-party auditing; and

“Whereas the Legislative Assembly must maintain transparent oversight of program design, implementation, evaluation and subsequent decision-making; now, therefore,”.

Delete lines 6 through 18 and delete pages 2 through 55 and insert:

“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 anthropogenic 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 Climate 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 Representa-
tatives 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 7 to 29 of this 2019 Act;

“(b) Examine and prioritize expenditures and investments of state proceeds from auctions conducted under section 22 of this 2019 Act; and

“(c) Make recommendations related to the expenditures and investments of state proceeds from auctions conducted under section 22 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:

“(a) The biennial expenditure reports and audit report required by sections 43 and 44 of this 2019 Act;

“(b) The biennial climate action investment plan required by section
46 of this 2019 Act; and
“(c) The recommendations of the Environmental Justice Task Force required by section 49 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 7 to 29 and 43 to 47 of this 2019 Act and ORS 468A.280 and other statutes, rules or policies that commit functions to the office.
“(3) The office may advise, consult and cooperate with other agencies of the state, political subdivisions, other states or the federal government, 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 consultants, purchase materials and supplies and enter into contracts necessary to carry out the purposes set forth in sections 7 to 29 and 43 to 47 of this 2019 Act and ORS 468A.280 and other statutes, rules or policies that commit functions to the office.

“SECTION 5. Director. (1) The Carbon Policy Office is under the supervision and control of a director, who is responsible for the performance 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 committed to the office under sections 7 to 29 and 43 to 47 of this 2019 Act and ORS 468A.280 and other statutes, rules or policies that commit functions to the 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 organize and reorganize the administrative structure of the office as the director considers appropriate to properly conduct the work of the office.

“(6) The director may divide the functions of the office into administrative divisions. Subject to the approval of the Governor, the director 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 individual appointed under this subsection must be well qualified by technical training and experience in the functions to be performed by the individual.

“(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.

“OREGON CLIMATE ACTION PROGRAM

“(Statement of Purpose)

“(SECTION 6. (1) The Legislative Assembly finds and declares that
the purposes of sections 6 to 49 of this 2019 Act are:

“(a) To achieve a reduction in total levels of regulated emissions under sections 7 to 29 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 the adaptation and resilience of natural and working lands, fish and wildlife resources, communities, the economy and this state’s infrastructure in the face of climate change and ocean acidification; and

“(d) To provide assistance to households, businesses and workers impacted by climate change or climate change policies that allow for the State of Oregon to achieve the greenhouse gas reduction goals set forth in ORS 468A.205.

“(2) Sections 6 to 49 of this 2019 Act and the rules adopted pursuant to sections 6 to 49 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 7. Definitions. As used in sections 7 to 29 of this 2019 Act:

“(1) ‘Aggregation’ means an approach for qualifying and quantifying offset projects, for the purposes of reducing costs and increasing the development of offset projects, that allows for the grouping to-
gether of two or more geographically separate activities undertaken
by one or more parties that result in reductions or removals of
greenhouse gases in a similar manner.

“(2) ‘Air contamination source’ means an air contamination source
as that term is defined in ORS 468A.005 for which a permit is issued
by the Department of Environmental Quality pursuant to ORS 468.065,
468A.040 or 468A.155.

“(3) ‘Allowance’ means a tradable authorization to emit one metric
ton of carbon dioxide equivalent.

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

“(5) ‘Anthropogenic greenhouse gas emissions’ means greenhouse
gas emissions that are not biogenic greenhouse gas emissions.

“(6) ‘Best available technology’ means the technology that will most
efficiently reduce the greenhouse gas emissions associated with the
manufacture of a good, without changing the characteristics of the
good being manufactured, that is technically feasible, commercially
available, economically viable and compliant with all applicable laws.

“(7) ‘Biogenic greenhouse gas emissions’ means greenhouse gas
emissions generated from the combustion of biomass-derived fuels.

“(8) ‘Biomass-derived fuels’ includes:

“(a) Nonfossilized and biodegradable organic material originating
from plants, animals or microorganisms;

“(b) Products, by-products, residues or waste from agriculture,
forestry or related industries; and

“(c) The nonfossilized and biodegradable organic fractions of in-
dustrial and municipal wastes, including gases and liquids recovered
from the decomposition of nonfossilized and biodegradable organic
material originating from plants, animals or microorganisms.
“(9)(a) ‘Business unit’ means a business operation that is located at a facility permitted as a single air contamination source under ORS 468.065, 468A.040 or 468A.155, but that is distinguishable from one or more other business operations located at the facility by:

“(A) The short title and six-digit code in the North American Industry Classification System applicable to the business operation;

“(B) Accounting practices for the business operation that maintain the finances for the business operation as distinct from the finances of other business operations located at the facility; and

“(C) The capability of the business operation to operate separately and independently of other business operations at the facility if not colocated with the other business operations.

“(b) ‘Business unit’ does not mean a cogeneration facility.

“(10) ‘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.

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

“(12) ‘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.

“(13) ‘Consumer-owned utility’ has the meaning given that term in ORS 757.270.

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

“(15) ‘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.
“(16) ‘EITE entity’ means a covered entity or an opt-in entity that is engaged in the manufacture of goods through one or more emissions-intensive, trade-exposed processes, as further designated by the office pursuant to section 14 of this 2019 Act.
“(17) ‘Electric company’ has the meaning given that term in ORS 757.600.
“(18) ‘Electricity service supplier’ has the meaning given that term in ORS 757.600.
“(19) ‘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.
“(20) ‘Eligible Indian tribe’ means each of the Burns Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs, the Coquille Indian Tribe, the Cow Creek Band of
Umpqua Tribe of Indians and the Klamath Tribes.

“(21) ‘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 com-
pliance instruments.

“(22) ‘Greenhouse gas’ includes, but is not limited to, carbon
dioxide, methane, nitrous oxide, hydrofluorocarbons,
perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.

“(23) ‘Impacted community’ means a community most at risk of
being disproportionately impacted by climate change as designated by
the office under section 21 of this 2019 Act.

“(24) ‘Indian trust lands’ means lands within the State of Oregon
held in trust by the United States for the benefit of an Indian tribe
of individual Indians.

“(25) ‘Multistate jurisdictional electric company’ means an electric
company that serves electricity customers in both Oregon and one or
more other states.

“(26) ‘Natural and working lands’ means lands and waters:
“(a) Actively used by an agricultural owner or operator for an ag-
icultural operation that includes, but need not be limited to, active
engagement in farming or ranching;
“(b) Producing forest products;
“(c) Consisting of forests, woodlands, grasslands, sagebrush steppes,
deserts, freshwater and riparian systems, wetlands, coastal and
estuarine areas, the submerged and submersible lands within Oregon’s
territorial sea, watersheds, wildlands or wildlife habitats;
“(d) Used for recreational purposes such as parks, urban and com-
community forests, trails, greenbelts and other similar open space land;
or
“(e) That are Indian trust lands.

“(27) ‘Natural gas supplier’ means any entity that is not a natural gas utility and:

“(a) That procures natural gas for end use in this state; or

“(b) That owns natural gas as it is imported into this state for end use in this state.

“(28) ‘Natural gas utility’ means a natural gas utility regulated by the Public Utility Commission under ORS chapter 757.

“(29) ‘Offset credit’ means a tradable credit generated by an offset project that represents a greenhouse gas emissions reduction or removal of one metric ton of carbon dioxide equivalent.

“(30) ‘Offset project’ means a project that reduces or removes greenhouse gas emissions that are not regulated emissions.

“(31) ‘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.

“(32) ‘Oregon Climate Action Program’ means the program adopted by rule by the Director of the Carbon Policy Office under section 8 (1) of this 2019 Act and in accordance with the provisions of sections 7 to 29 of this 2019 Act.

“(33) ‘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.

“(34) ‘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.

“(35) ‘Regulated emissions’ means the verified anthropogenic 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 anthropogenic greenhouse gas emissions regulated under sections 7 to 29 of this 2019 Act.

“(36) ‘Surrender’ means to transfer a compliance instrument to the office:

“(a) To fulfill a compliance obligation or an adjusted compliance obligation; or

“(b) On a voluntary basis.

“SECTION 8. 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 7 to 29 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 budgets for 2021 to 2050; and

“(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 a forecast of regulated emissions for 2021, informed by the three-year average of the total, expressed in metric tons of carbon dioxide equivalent, of anthropogenic greenhouse gas emissions attributable to all persons that the office designates to be covered entities under the program. In calculating baseline emissions, the office shall use 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 shall 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 9 of this 2019 Act, the office shall designate persons as covered entities as follows:

“(a) Except as provided in paragraphs (b) and (c) of this subsection, the office shall designate a person in control of an air contamination source as a covered entity if the annual regulated emissions attributable to the air contamination source meet or exceed 25,000 metric tons of carbon dioxide equivalent.

“(b) For the purpose of regulating anthropogenic greenhouse gas emissions attributable to the generation of electricity in this state, the office shall designate a person in control of an air contamination source as a covered entity if the industry description and code under the North American Industry Classification System that is listed in the permit for the air contamination source is fossil fuel electric power generation, regardless of whether the annual regulated emissions attributable to the air contamination source meet or exceed 25,000 metric tons of carbon dioxide equivalent.

“(c) If an air contamination source is a facility composed of two or
more business units colocated with a cogeneration facility that generates energy utilized by the air contamination source, the office shall designate the person in control of the air contamination source as a covered entity for each individual business unit with annual regulated emissions attributable to the business unit that meet or exceed 25,000 metric tons of carbon dioxide equivalent. A person designated as a covered entity under this paragraph shall be a covered entity only for addressing the annual regulated emissions attributable to the business units for which the person is designated as a covered entity. For the purposes of determining emissions attributable to an individual business unit under this paragraph, the office shall attribute to the business unit the emissions from the cogeneration facility colocated with the business unit that are proportionate to the annual energy usage of the business unit.

“(d) The office shall designate an electric system manager as a covered 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 accounting for transmission and distribution line losses.

“(e) The office shall designate a natural gas supplier 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 supplier for use in this state by persons that are not designated as covered entities under paragraph (a), (b) or (c) of this subsection.

“(f) The office shall designate a natural gas utility as a covered entity 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 contamination sources under paragraph (a), (b) or (c) of this subsection or natural gas suppliers under paragraph (e) of this subsection.

“(g) The office shall designate as covered entities persons not described in paragraphs (e) and (f) 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 attributable 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) Rules allowing for the trading of compliance instruments;
“(b) Rules allowing registered entities to bank and carry forward allowances;
“(c) Rules prohibiting the borrowing of allowances from future compliance periods;
“(d) Rules allowing opt-in entities and general market participants to participate in the Oregon Climate Action Program; and
“(e) Compliance periods, standards for calculating compliance obligations and procedures for covered entities and opt-in entities to fulfill 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, regardless of the disposition of the
renewable energy certificate associated with the electricity, shall be
considered to have the emissions attributes of the underlying
renewable energy resource.

“(5) In addition to any penalty provided by law, rules adopted by the
director:

“(a) Shall require a covered entity or opt-in entity that fails to
timely surrender to the office a sufficient quantity of compliance in-
struments to fulfill a compliance obligation to surrender to the office
a number of compliance instruments that is in addition to the entity’s
compliance obligation; and

“(b) May establish a process for placing restrictions on the holding
account of a registered entity determined to have engaged in a vio-
lation described in section 29 of this 2019 Act.

“(6)(a) All covered entities, opt-in entities and general market par-
ticipants 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 par-
ticipate in auctions administered pursuant to section 22 of this 2019
Act.

SECTION 9. Exemptions and exclusions. (1) The Carbon Policy
Office shall exempt from regulation as a covered entity under sections
7 to 29 of this 2019 Act:

“(a) A land disposal site as that term is defined in ORS 459.005.

“(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 7 to 29 of this 2019 Act:

“(a) Greenhouse gas emissions attributable to an air contamination
source described in section 8 (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.

“(b) 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.

“(c) 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.

“(d) The emissions attributable to a person that is exempt from designation as a covered entity under this section.

“(3) For purposes of section 8 (2)(g) 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.

“SECTION 10. Allocation of allowances, generally. (1) The Carbon Policy Office shall allocate the allowances available in each annual allowance budget as follows:
“(a) The office shall allocate a percentage of the allowances for direct distribution into an allowance price containment reserve.

“(b) The office may allocate a percentage of the allowances for direct distribution into a voluntary renewable electricity generation reserve. The Director of the Carbon Policy Office shall adopt rules for the distribution of allowances from the voluntary renewable electricity generation reserve for voluntary renewable electricity generated by generating facilities that begin operations on or after January 1, 2021.

“(c) The office shall allocate a number of the allowances for direct distribution at no cost to covered entities that are electric companies subject to rules adopted under section 11 of this 2019 Act.

“(d) The office shall allocate a number of the allowances for direct distribution at no cost to covered entities that are electric system managers other than electric companies pursuant to section 12 of this 2019 Act.

“(e) The office shall allocate a percentage of the allowances for direct distribution into an electricity price containment reserve. Allowances may be directly distributed at no cost 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.

“(f) The office shall allocate a number of the allowances for direct distribution at no cost to covered entities that are natural gas utilities subject to rules adopted under section 13 of this 2019 Act.
“(g) In order to mitigate leakage and pursuant to sections 14 and 16 of this 2019 Act, the office shall allocate a number of the allowances for direct distribution at no cost to covered entities and opt-in entities that are EITE entities.

“(h) The office shall allocate a percentage of the allowances for direct distribution into an emissions-intensive, trade-exposed process reserve account. Allowances in the emissions-intensive, trade-exposed process reserve account may be distributed only to EITE entities pursuant to rules adopted by the director under section 16 (6) of this 2019 Act.

“(i) The office may allocate a number of the allowances for direct distribution into any other reserves that the office establishes by rule and as the office determines is necessary.

“(j) The office shall allocate the allowances that are otherwise unallocated pursuant to paragraphs (a) to (i) of this subsection for distribution into an auction holding account for auction pursuant to section 22 of this 2019 Act.

“(2)(a) The office shall distribute the allowances available within each annual allowance budget pursuant to the allocations made under subsection (1) of this section.

“(b) If allowances distributed to the auction holding account pursuant to subsection (1)(j) of this section remain unsold after two or more consecutive auctions held pursuant to section 22 of this 2019 Act, the office may redistribute the unsold allowances to the allowance price containment reserve described in section (1)(a) of this section.

“SECTION 11. Direct distribution of allowances for electric companies. The Director of the Carbon Policy Office shall, in consultation with the Public Utility Commission, adopt rules for allocating allowances for direct distribution at no cost to covered entities that are electric companies. Direct distributions under this section must be for
the exclusive benefit of ratepayers. Rules adopted under this section must allow for an electric company to use allowances directly distributed under this section to fulfill compliance obligations associated with electricity used to serve the load of the electric company's retail electricity consumers, as that term is defined in ORS 757.600, in Oregon, subject to the oversight of the commission. The rules must include provisions necessary to implement direct distributions of allowances to electric companies as follows:

"(1)(a) For the purpose of aligning the effects of sections 7 to 29 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:

"(A) The annual direct distributions to an electric company during 2021 and for each calendar year until and including 2029 must be in a number of allowances such that the electric company receives a total direct distribution of allowances over that time period equal to 100 percent of the electric company's forecast regulated emissions for 2021 and for each calendar year until and including 2029 associated with the electricity used to serve the load of the electric company's retail electricity consumers in Oregon; and

"(B) The direct distribution of allowances to an electric company during 2030 must represent an amount equal to 100 percent of the electric company's forecast regulated emissions associated with the electricity used to serve the load of the electric company's retail electricity customers in Oregon for the calendar year 2030.

"(b) For purposes of this subsection, forecast regulated emissions for an electric company must be based on, or contained in:

"(A) The most recent integrated resource plan filed by the electric company and acknowledged by order by the commission;

"(B) Any updates to the integrated resource plan filed by the elec-
electric company with the commission as of January 1, 2021; or

“(C) In the case of a multistate jurisdictional electric company, other information developed consistent with a methodology approved by the commission.

“(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 company in 2030 by a constant amount proportionate to the decline in the amount of allowances available in annual allowance budgets pursuant to section 8 (1)(b) of this 2019 Act.

SECTION 12. Direct distribution of allowances for certain electric system managers. (1) The Carbon Policy Office shall allocate allowances 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 verified anthropogenic greenhouse gas emissions that are:

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

“(B) Not excluded from regulated emissions under section 9 (2)(c) 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 system manager for emissions described in paragraph (a) of this subsection shall decline annually by a constant amount proportionate to the decline in the amount of allowances available in annual allowance budgets pursuant to section 8 (1)(b) of this 2019 Act.
“(2) Proceeds from the sale by a consumer-owned utility of allowances 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 6 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 13. Direct distribution of allowances for natural gas utilities. (1) The Director of the Carbon Policy Office shall, in consultation with the Public Utility Commission, 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 commission, the quantity of allowances to allocate directly to a natural gas utility over the course of the compliance period.

“(2) Rules adopted under this section must allow for natural gas utilities to, subject to the oversight of the commission, use allowances directly distributed under this section to minimize the impacts of sections 7 to 29 of this 2019 Act on low-income residential customers
through actions that may include, but need not be limited to, fulfilling compliance obligations associated with serving the load of the natural gas utility’s retail customers in Oregon.

“SECTION 14. Designation of covered entities and opt-in entities engaged in emissions-intensive, trade-exposed processes as EITE entities. (1) The Carbon Policy Office shall designate a covered entity or opt-in entity as an EITE entity, if the covered entity or opt-in entity is a person in control of an air contamination source and is engaged, as of the operative date of this section, in the manufacture of goods through one or more of the following emissions-intensive, trade-exposed processes, as identified by industry group and code in the North American Industry Classification System:

“(a) Sawmills and Wood Preservation, code 3211.
“(b) Veneer, Plywood, and Engineered Wood Product Manufacturing, code 3212.
“(c) Cement and Concrete Product Manufacturing, code 3273.
“(d) Fruit and Vegetable Preserving and Specialty Food Manufacturing, code 3114.
“(e) Iron and Steel Mills and Ferroalloy Manufacturing, code 3311.
“(f) Basic Chemical Manufacturing, code 3251.
“(g) Plastics Product Manufacturing, code 3261.
“(h) Other Nonmetallic Mineral Product Manufacturing, code 3279.
“(i) Glass and Glass Product Manufacturing, code 3272.
“(j) Lime and Gypsum Product Manufacturing, code 3274.
“(L) Semiconductor and Other Electronic Component Manufacturing, code 3344.
“(m) Foundries, code 3315.
“(2)(a) The Director of the Carbon Policy Office shall adopt by rule a process for designating as an EITE entity a covered entity or opt-in
entity that:

“(A) Begins manufacturing a good or goods in this state after the operative date of this section through an emissions-intensive, trade-exposed process listed in subsection (1) of this section; or

“(B) Manufactures a good or goods through a process not listed in subsection (1) of this section that the director, by rule, identifies as an emissions-intensive, trade-exposed process.

“(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 assist the director in carrying out the process required by this subsection.

“(c) Rules adopted under this subsection may allow for the office to assign a good manufactured by a covered entity or opt-in entity designated as an EITE entity pursuant to this subsection a temporary benchmark, consistent with the processes for calculating benchmarks under section 16 of this 2019 Act, and to adjust the temporary benchmark after the close of the first compliance period for which the EITE entity must fulfill a compliance obligation.

“(3) 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 be designated as an EITE entity and may not receive allowances at no cost under section 16 of this 2019 Act.

“SECTION 15. Leakage risk study. (1) No later than September 15, 2021, the Carbon Policy Office shall complete a study on the leakage risk of air contamination sources in this state that report annual verified anthropogenic greenhouse gas emissions under ORS 468A.280 of between 10,000 and 25,000 metric tons of carbon dioxide equivalent.

“(2) The purpose of the study shall be to evaluate the emissions intensiveness and trade exposure of the air contamination sources described in subsection (1) of this section and to aid the office in im-
plementing the process for designation of EITE entities adopted by rule under section 14 (2) of this 2019 Act.

“(3) The office shall provide a report on the study to the Joint Committee on Climate Action in the manner provided in ORS 192.245.

“SECTION 16. Direct distribution of allowances for EITE entities.

(1) The annual allocation of allowances for direct distribution at no cost to an EITE entity shall be a number of allowances equal to the sum total of the annual good-specific emissions calculations for the goods manufactured by the EITE entity, multiplied by 95 percent.

“(2) The annual good-specific emissions calculation for a good manufactured by an EITE entity shall be the product of:

“(a) The applicable benchmark for the good pursuant to subsection (3) or (4) of this section; and

“(b) The EITE 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.

“(3) For the calendar years beginning in 2021 and for each following year until and including 2023, the Carbon Policy Office shall calculate and apply a facility benchmark for each good manufactured in this state by each EITE entity by:

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

“(b) Dividing the number calculated under paragraph (a) of this subsection by the three-year average of the total annual output of the good in this state by the EITE entity, using output data from the three
most recent years prior to 2021.

“(4)(a) Beginning in 2024 and for each following year until and in-
cluding 2050, the office shall apply a best available technology
benchmark for each good manufactured in this state by each EITE
entity. The office shall first adopt best available technology
benchmarks for goods manufactured in this state by EITE entities no
later than January 1, 2024, and shall update the best available tech-
nology benchmarks once every six years. Each best available technol-
ogy benchmark must represent the anthropogenic greenhouse gas
emissions that would be attributable to manufacture of the good in
this state by the EITE entity if the EITE entity were to use the best
available technology as of the date that the benchmark was last up-
dated.

“(b) In adopting the best available technology benchmark for a good
manufactured by an EITE entity, the office may review and consider
emissions intensity audit reports specific to the EITE entity and that
are produced by qualified, independent third-party organizations.

“(c) An EITE entity may submit to the office, for consideration in
adopting best available technology benchmarks, an emissions intensity
audit report produced by a qualified, independent third-party organ-
ization. The audit report must:

“A) Include an analysis of the current technologies, equipment and
processes used to manufacture each good at the EITE entity’s facility
and the resulting emissions intensity per unit of output for each good
manufactured by the EITE entity.

“B) Include an analysis of the best available technology to produce
the goods manufactured by the EITE entity and the resulting emis-
sions intensity per unit of output for each good if best available tech-
nology were used at the EITE entity’s facility. The analysis required
by this subparagraph must take into consideration, to the greatest
extent practical:

“(i) The fuels, processes, equipment and technology used by facilities in this state or in other jurisdictions to produce goods of comparable type, use or quality; and

“(ii) Any barriers that would prevent adoption of the best available technology by the EITE entity’s facility.

“(C) Based on the analyses required under subparagraphs (A) and (B) of this paragraph, provide an estimate of the emissions intensity per unit of output to produce the same goods at the same facility if the facility used the best available technology.

“(5) In order to implement subsections (3) and (4) of this section, the Director of the Carbon Policy Office shall adopt by rule:

“(a) A means for attributing an EITE entity’s anthropogenic greenhouse gas emissions to the manufacture of individual goods; and

“(b) Requirements for EITE entities to provide any pertinent records necessary for the office to verify the output data used to calculate benchmarks pursuant to this section.

“(6) The director shall adopt by rule a process for EITE entities to apply to the office for an adjustment to the allocation of allowances for direct distribution at no cost that the EITE entity may receive. The office may grant an adjustment only for a significant unanticipated change in the greenhouse gas emissions attributable to the manufacture of an individual good or goods in this state by the EITE entity, based on a finding by the office that the adjustment is necessary to accommodate changes to the manufacturing process that have a material impact on greenhouse gas emissions. Rules adopted under this subsection may provide for the director to contract with an external third-party expert to assist the office in making individual determinations on applications for adjustments.

“SECTION 17. Benchmark report. No later than September 15, 2030,
the Carbon Policy 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 section 16 of this 2019 Act. The report may include recommendations for legislation. The report shall assess:

“(1) The emissions intensity and trade exposure of covered entities and opt-in entities that have been designated as EITE entities pursuant to section 14 of this 2019 Act;

“(2) The emissions reduction opportunities available to the covered entities and opt-in entities described in subsection (1) of this section;

and

“(3) Whether the conclusions of the assessments required under subsections (1) and (2) of this section warrant an adjustment to the methods of calculating benchmarks developed pursuant to section 16 of this 2019 Act.

“SECTION 18. Offsets generally; rules. (1) Offset projects:

“(a) Must be located in the United States or approved by a jurisdiction with which the State of Oregon has entered into a linkage agreement pursuant to section 25 of this 2019 Act;

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

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

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

“(B) Are in addition to anthropogenic greenhouse gas emissions reductions or removals otherwise required by law or legally enforceable mandate and that exceed any other anthropogenic greenhouse gas emissions reductions or removals that would otherwise occur in a conservative business-as-usual scenario.

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

“(b) The Director of the Carbon Policy Office may by rule adopt additional restrictions on the number of offset credits that may be surrendered by a covered entity that is an air contamination source and 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 and the air contamination source substantially contributes to or causes the 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 468.065 or ORS chapter 468A and issued by the Department of Environmental Quality or a regional air quality control authority formed under ORS 468A.105.

“(3) The director shall adopt rules governing offset projects and the generation and use of offset credits. The rules shall:

“(a) Provide for the development of offset protocols in a manner that enables the state to pursue linkage agreements with other jurisdictions pursuant to section 25 of this 2019 Act;

“(b) Take into consideration standards, rules or protocols for:

“(A) Offset projects and the generation and use of offset credits, as established by other states, provinces and countries with programs comparable to the Oregon Climate Action Program; and

“(B) Voluntary offset projects and the generation and use of offset credits, as established by organizations that operate offset credit registries;
“(c) Allow for the broadest possible participation by landowners in developing and operating offset projects across the broadest possible variety of types and sizes of lands;

“(d) Encourage opportunities for the development of offset projects in this state, including offset projects that provide direct environmental benefits in this state;

“(e) Prioritize offset projects that benefit impacted communities, members of eligible Indian tribes and natural and working lands; and

“(f) Address qualifications for persons and agencies that provide third-party verification and registration of offset projects and offset credits.

“(4) The office shall adopt by rule a process to investigate and invalidate issued offset credits as necessary to uphold the environmental integrity of the Oregon Climate Action Program. Reasons for invalidating issued offset credits may include, but are not limited to:

“(a) A misstatement, of more than five percent, of the amount of greenhouse gas emissions reductions or removals attributable to an offset project for which offset credits were issued;

“(b) An environmental, health or safety violation by an offset project for which offset credits were issued; or

“(c) A determination that offset credits are duplicative of other offset credits issued for the same greenhouse gas emissions reductions or removals through another offset credit issuing body and that the invalidation is necessary to remedy the duplication.

“(5) The Carbon Police Office shall withhold a percentage of the offset credits issued for each offset project and deposit the withheld offset credits in an offset integrity account established by rule. Offset credits deposited in the offset integrity account may be used to replace offset credits that are invalidated pursuant to rules adopted under subsection (4) of this section.
"SECTION 19. Offset protocols. (1) Offset protocols, and any greenhouse gas emission inventory and monitoring requirements related to the offset protocols, developed pursuant to rules adopted under section 18 of this 2019 Act:

(a) Must be straightforward and effective to implement and administer, for both offset project operators and persons purchasing offset credits;

(b) Must provide for flexibility for landowners in the development of offset projects; and

(c) May make use of aggregation or other mechanisms to increase development of offset projects by landowners across the broadest possible variety of types and sizes of lands.

(2)(a) The Carbon Policy Office shall collaborate and consult with the State Forestry Department in the development and monitoring of offset protocols related to forestry. Offset protocols related to forestry that are developed pursuant to this subsection:

(A) Must prioritize reforestation, avoided forest conversion and improved forest management;

(B) Must be consistent with the Oregon Forest Practices Act and have the ability to be administered consistently with the applicable state and local land use laws of Oregon; and

(C) May include offset protocols for low carbon-impact building materials and urban forestry.

(b) The office and the department shall jointly convene a technical advisory committee to advise the office and the department in the development and monitoring of offset protocols related to forestry.

(3) The office shall collaborate and consult with all relevant state agencies, including but not limited to the State Department of Agriculture and the Oregon Watershed Enhancement Board, in the development and monitoring of offset protocols related to agriculture and
conservation on natural and working lands. In developing offset protocols pursuant to this subsection, the office shall:

“(a) Consider developing offset protocols for:

“(A) Manure management that reduces methane emissions from agricultural operations;

“(B) Avoided grassland conversion; and

“(C) Other categories of offset projects that would otherwise result in the reduction of greenhouse gas emissions related to agricultural operations; and

“(b) Ensure that the offset protocols have the ability to be administered consistently with the applicable state and local land use laws of Oregon.

“(4) In developing any offset protocol related to a matter not addressed by subsections (2) and (3) of this section, the Director of the Carbon Policy Office shall appoint a technical advisory committee composed of persons with expertise relevant to the development of the offset protocol.

“(5) The office shall regularly review and update offset protocols developed pursuant to rules adopted under section 18 of this 2019 Act. The reviews and updates of offset protocols shall include any updates, as necessary, to the methods or technologies used for measuring and monitoring the greenhouse gas emissions reductions or removals attributable to the offset projects addressed by the offset protocols.

“(6) Offset protocols shall be developed and updated by the office pursuant to the rulemaking provisions of ORS chapter 183.

“SECTION 20. Offsets; consultation. (1) In adopting and updating rules and developing and updating offset protocols pursuant to sections 18 and 19 of this 2019 Act, the Director of the Carbon Policy Office:

“(a) Shall consult with and consider the recommendations of:
“(A) The State Department of Agriculture, the State Forestry Department, the Environmental Justice Task Force, the Oregon Watershed Enhancement Board and other relevant state agencies; and

“(B) Persons and agencies that provide third-party verification and registration of offset projects and offset credits; and

“(b) May contract with one or more persons or agencies that provide third-party verification and registration of offset projects and offset credits to assist in the development of offset protocols.

“(2) The director shall appoint a compliance offsets program advisory committee to advise the Carbon Policy Office in developing and updating rules and offset protocols pursuant to sections 18 and 19 of this 2019 Act. The compliance offsets program advisory committee shall provide guidance to the office in designing the rules and offset protocols to promote offset projects that provide direct environmental benefits in this state and to prioritize offset projects that benefit impacted communities, members of eligible Indian tribes and natural and working lands. The director shall appoint at least one member to the advisory committee from each of the following groups:

“(a) Scientists;
“(b) Public health experts;
“(c) Carbon market experts;
“(d) Representatives of eligible 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.

(1) The Director of the Carbon Policy Office, by rule and in consultation 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. The Carbon Policy Office shall designate impacted communities based on a methodology that takes into consideration geographic, 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) Rural communities.

“(b) Areas with above-average concentrations of low-income households, historically disadvantaged households, high unemployment, high linguistic isolation, low levels of homeownership, high rent burden, sensitive populations or residents with low levels of educational attainment.

“(c) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure 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 at least once every five years.

“SECTION 22. Auctions. (1) Except as provided in subsection (8) 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 ceiling price for 2021 and a schedule for the hard ceiling price 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 ceiling price.

“(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 ceiling price 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 25 of this 2019 Act with other jurisdictions.

“(7) The proceeds of an auction shall be transferred to the State Treasurer to be deposited in the Auction Proceeds Distribution Fund.
established under section 23 of this 2019 Act.

“(8) Sales 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 from the reserve sale must be made available again at future reserve sales. General market participants may not purchase allowances at reserve sales.

“(9)(a) If the hard ceiling price for an auction is reached, the office shall offer for sale, at the hard ceiling price, allowances from any reserve described in section 10 of this 2019 Act or established by rule pursuant to section 10 of this 2019 Act, as necessary to meet demand from covered entities and opt-in entities. If the supplies of all allowances from all reserves are exhausted and additional sales of allowances are necessary for one or more covered entities or opt-in entities to fulfill a compliance obligation, the office may sell allowances in addition to the allowances available in the annual allowance budget at the hard ceiling price.

“(b) The proceeds from any sales of allowances pursuant to this subsection shall be transferred to the State Treasurer to be deposited in the Oregon Climate Action Program Operating Fund established under section 27 of this 2019 Act and may be used only pursuant to section 27 of this 2019 Act.

“(10) The proceeds of an auction shall be transferred to the State Treasurer to be deposited in the Auction Proceeds Distribution Fund established under section 23 of this 2019 Act.

“(11) The office may adopt rules necessary to administer auctions.


“(2) The Auction Proceeds Distribution Fund shall consist of mon-
eys transferred to the fund under section 22 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 31 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 in the following manner:

“(A) Two percent to the Oregon Climate Action Program Operating
Fund established under section 27 of this 2019 Act; and

“(B) The remainder to the Climate Investments Fund established
under section 35 of this 2019 Act.

Carbon Policy Office shall annually 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 8 of this 2019 Act. A 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 25. Linkage with market-based compliance mechanisms in other jurisdictions. (1) In adopting and implementing rules under sections 7 to 29 of this 2019 Act, the Director of the Carbon Policy Office shall:

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

“(b) Provide for implementation of the Oregon Climate Action Program in a manner that:

“(A) Avoids double counting of greenhouse gas 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 7 to 29 of this 2019 Act and rules adopted under sections 7 to 29 of this 2019 Act with the market-based compliance mechanism of any other jurisdiction unless the director 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 emission reductions that are equivalent to or stricter than those required by sections 7 to 29 of this 2019 Act;

“(b) Under the proposed linkage agreement, the State of Oregon is able to enforce sections 7 to 29 of this 2019 Act against any person subject to regulation under sections 7 to 29 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 jurisdiction of program requirements that are equivalent to or stricter than those required by sections 7 to 29 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 administrative or technical services to support the implementation of sections 7 to 29 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 Governor, in making the findings, shall consider the advice of the Attorney General. Findings issued pursuant to subsection (2) of this section are not subject to judicial review.

“SECTION 26. Oregon Climate Action Program advisory committee. The Governor shall appoint a nine-member Oregon Climate Action Program advisory committee to advise the Director of the Carbon Policy Office in adopting rules under sections 7 to 29 of this 2019 Act. The advisory committee shall consist of persons impacted by or otherwise interested in the Oregon Climate Action Program.
“SECTION 27. Operating fund. (1) The Oregon Climate Action Program 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 7 to 29 and 43 to 47 of this 2019 Act and ORS 468A.280.

“(2) The Oregon Climate Action Program Operating Fund shall consist of:

“(a) Moneys deposited in the fund pursuant to sections 22, 23 and 29 of this 2019 Act;

“(b) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly; and

“(c) Other moneys deposited in the fund from any source.

“(3) Civil penalties deposited in the fund under section 29 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 7 to 29 of this 2019 Act or rules adopted under sections 7 to 29 of this 2019 Act; or

“(b) Providing technical assistance to covered entities and opt-in entities.

“(4) The proceeds from sales of allowances at the hard ceiling price pursuant to section 22 (9) of this 2019 Act shall be deposited in a separate subaccount created in the fund and must be used by the office only for the purchase and retirement of offset credits.

“SECTION 28. Public records law; application. (1) The Legislative Assembly finds and declares that it is the policy of this state that the market-based compliance mechanism of the Oregon Climate Action
Program operate free of abuse and disruptive activity. It is therefore
the intent of the Legislative Assembly that the provisions of this sec-
tion and sections 8 (3), 22, 24 and 25 of this 2019 Act be implemented
in a manner necessary to prevent fraud, abuse or market manipulation
to the greatest extent possible while upholding the public interest in
transparency in public process and government through making cer-
tain market activity information available in aggregated form.

“(2) The following information obtained by the State of Oregon
pursuant to sections 7 to 29 of this 2019 Act, or rules adopted pursuant
to sections 7 to 29 of this 2019 Act, shall be treated as confidential
business information, is exempt from disclosure under the public re-
cords law, ORS 192.311 to 192.478, and may not be disclosed to any
person or entity except as provided in subsection (3) or (4) of this
section:

“(a) Individually identifiable information related to a registered
entity’s application to participate and participation in auctions held
under section 22 of this 2019 Act, including but not limited to bid ac-
tivity and auction results for the registered entity.

“(b) Other individually identifiable information not described in
paragraph (a) of this subsection related to the holding, transfer or
surrender of compliance instruments by registered entities.

“(c) Any individually identifiable information on the manufacturing
output of goods, other than emissions data submitted under ORS
468A.280, obtained by the Carbon Policy Office as necessary to admin-
ister and implement sections 14, 15, 16 and 17 of this 2019 Act.

“(3) Information described in subsection (2) of this section may be
used and disclosed in aggregated form.

“(4) This section does not prohibit the disclosure of information
between the Carbon Policy Office and other agencies of the executive
department, as defined in ORS 174.112, jurisdictions with which the
State of Oregon has entered into a linkage agreement under section 25 of this 2019 Act or persons engaged by the State of Oregon to provide administrative or technical services to support implementation of sections 7 to 29 of this 2019 Act if the disclosure is necessary for purposes of the administration and implementation of sections 7 to 29 of this 2019 Act.

“(5) Any person to whom information described in subsection (2) of this section is disclosed under subsection (4) of this section shall treat the information as confidential business information, exempt from disclosure under the public records law, ORS 192.311 to 192.478. Redisclosure of individually identifiable information outside the Carbon Policy Office remains subject to the provisions of this section.

“SECTION 29. Civil penalties. (1) As used in this section:

“(a) ‘Intentionally’ means conduct by a person with a conscious objective to cause the result of the conduct.

“(b) ‘Recklessly’ means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

“(2) In addition to any other liability or penalty provided by law, the Director of the Carbon Policy Office may impose a civil penalty on a person for any of the following:

“(a) A violation of a provision of sections 7 to 29 of this 2019 Act or rules adopted under sections 7 to 29 of this 2019 Act.

“(b) A violation of ORS 468A.280 or rules adopted under ORS 468A.280.

“(c) Submitting any record, information or report required by sections 7 to 29 of this 2019 Act or ORS 468A.280 or rules adopted under
sections 7 to 29 of this 2019 Act or ORS 468A.280 that falsifies or conceals a material fact or makes any false or fraudulent representation.

“(3) Each day of violation under subsection (2) of this section constitutes a separate offense.

“(4)(a) The director shall adopt by rule a schedule of civil penalties that may be imposed for violations described in subsection (2) of this section. Except as provided in paragraph (b) of this subsection, a civil penalty may not exceed $10,000 per day. The civil penalty for a violation described in subsection (2) of this section may include an amount equal to an estimate of the economic benefit received as a result of the violation.

“(b) The civil penalty for a violation described in subsection (2) of this section arising from an intentional, reckless or negligent act may not exceed $25,000 per day.

“(5) In imposing a civil penalty pursuant to this section, the director shall consider the following factors:

“(a) The past history of the person incurring the civil penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

“(b) Any actions taken by the person to mitigate the violation.

“(c) Any prior act that resulted in a violation described in subsection (2) of this section.

“(d) The economic and financial conditions of the person incurring the civil penalty.

“(e) The gravity and magnitude of the violation.

“(f) Whether the violation was repeated or continuous.

“(g) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

“(h) The person’s cooperativeness and efforts to correct the violation.
“(i) Whether the person incurring the civil penalty gained an economic benefit as a result of the violation.

“(6) Civil penalties under this section must be imposed in the manner provided by ORS 183.745. All civil penalties recovered under this section shall be paid into the State Treasury and credited to the Oregon Climate Action Program Operating Fund established under section 27 of this 2019 Act and may be used only pursuant to section 27 (3) of this 2019 Act.

“INVESTMENT OF STATE PROCEEDS FROM OREGON CLIMATE ACTION PROGRAM AUCTIONS

“(Transportation Decarbonization Investments Account)

“SECTION 30. Definitions. As used in sections 30 to 34 of this 2019 Act:

“(1) ‘Eligible Indian tribe’ has the meaning given that term in section 7 of this 2019 Act.

“(2) ‘Impacted community’ has the meaning given that term in section 7 of this 2019 Act.

“(3) ‘Metropolitan planning organization’ has the meaning given that term in ORS 197.629.

“SECTION 31. Transportation Decarbonization Investments Account. (1) The Transportation Decarbonization Investments Account is established as a separate account within the State Highway Fund. Interest earned by the Transportation Decarbonization Investments Account shall be credited to the account.

“(2) Moneys in the Transportation Decarbonization Investments Account are continuously appropriated to the Department of Transportation for the purposes described in subsections (4) and (5) of this section and sections 32 and 33 of this 2019 Act.
“(3) The Transportation Decarbonization Investments Account consists of moneys deposited in the account under section 23 of this 2019 Act.

“(4) Of the moneys deposited in the Transportation Decarbonization Investments Account each biennium:

“(a) 50 percent may be expended by the Department of Transportation for transportation projects selected by the Oregon Transportation Commission pursuant to section 33 of this 2019 Act; and

“(b) 50 percent may be used to provide grants for transportation projects pursuant to sections 32 and 33 of this 2019 Act and to provide technical assistance to applicants for and recipients of the grants.

“(5) The amount of moneys used to provide technical assistance under subsection (4)(b) of this section may not exceed one percent of the amount of moneys deposited in the account each biennium.

“SECTION 32. Grant program. (1) The Department of Transportation may provide, pursuant to section 33 of this 2019 Act and from moneys in the Transportation Decarbonization Investments Account established under section 31 of this 2019 Act, grants for transportation projects to cities, counties and metropolitan planning organizations.

“(2)(a) The department shall adopt rules specifying the competitive process by which a city, county or metropolitan planning organization may apply for a grant under this section and prescribing the terms and conditions of grants, including but not necessarily limited to a requirement that the city, county or metropolitan planning organization receiving the grant provide a percentage of the moneys required for the transportation project.

“(b) In adopting rules under this section, the department shall be advised by the Oregon Climate Action Program advisory committee appointed under section 26 of this 2019 Act.

“SECTION 33. Selection of transportation projects. (1) The Oregon
Transportation Commission shall select the transportation projects to be funded with moneys in the Transportation Decarbonization Investments Account established under section 31 of this 2019 Act.

“(2) A transportation project may not be funded with moneys in the Transportation Decarbonization Investments Account unless the commission determines that the transportation project furthers the purposes set forth in section 6 of this 2019 Act and that the project may constitutionally be funded by revenues described in Article IX, section 3a, of the Oregon Constitution.

“(3) Prior to selecting transportation projects, the commission shall seek input from the applicable area commission on transportation.

“(4) In selecting transportation projects, the commission shall consider whether a proposed transportation project:

“(a) Will further the objectives of the statewide transportation strategy on greenhouse gas emissions adopted by the commission pursuant to ORS 184.617;

“(b) Will further the objectives of the biennial climate action investment plan adopted by the Carbon Policy Office under section 46 of this 2019 Act; and

“(c) Is consistent with or complements investments that may be funded by moneys in the Climate Investments Fund established under section 35 of this 2019 Act.

“(5) In selecting transportation projects, the commission shall give priority to projects that:

“(a) Benefit impacted communities.

“(b) Complement efforts to achieve and maintain local air quality.

“(c) Provide opportunities for eligible Indian tribes, members of impacted communities or businesses owned by women or members of minority groups to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.
“(d) Promote low carbon economic development opportunities and
the creation of jobs that sustain living wages.

“(e) Will facilitate:
“(A) 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; or
“(B) The planning, development or implementation of land use and
transportation scenarios by local governments and metropolitan plan-
ing organizations in accordance with the guidelines established by
the Department of Transportation and the Department of Land Con-
servation and Development under ORS 184.893.

“(f) Will, to the greatest extent practicable, serve to conserve, re-
store, preserve and enhance adjacent natural resources through the
use of roadside vegetation in a manner designed to:
“(A) Minimize soil erosion;
“(B) Improve or maintain slope stability;
“(C) Reduce storm water runoff volume and velocity;
“(D) Promote water conservation and plant survivability; and
“(E) Otherwise best address the full range of impacts associated
with the use of the roadside vegetation.

“(6) In selecting transportation projects, the commission shall
strive to provide for a balanced distribution over time of moneys in
the Transportation Decarbonization Investments Account:
“(a) Among all geographic areas of this state; and
“(b) To the extent practicable, in a manner that provides equal
funding support between transportation projects that result in
greenhouse gas emissions reductions and transportation projects that
support climate change adaptation.

“(7) If a transportation project is eligible only in part to be funded
in part by moneys in the Transportation Decarbonization Investments Account, the transportation project may also be eligible to receive funding through the allocation of moneys in the Climate Investments Fund for those portions of the transportation project that may not be constitutionally funded by revenues described in Article IX, section 3a, of the Oregon Constitution.

“(8) Transportation projects selected by the commission under this section are subject to the provisions of section 38 of this 2019 Act.

“SECTION 34. Procurement preferences. (1) As used in this section:

“(a) ‘Building materials’ means asphalt, cement, concrete or any other aggregate product, aluminum, steel, iron, coatings for steel and iron, glass, manufactured wood products and copper.

“(b) ‘Contracting agency’ has the meaning given that term in ORS 279A.010.

“(c) ‘Nursery stock’ has the meaning given that term in ORS 571.005.

“(d) ‘Oregon Climate Action Program’ has the meaning given that term in section 7 of this 2019 Act.

“(e) ‘Subject to a carbon pricing program’ means a building materials manufacturer whose emissions from the manufacture of goods:

“(A) Are subject to a tax or governmental regulatory program that has the effect of placing a price on greenhouse gas emissions and that is at least as stringent as the Oregon Climate Action Program, as determined by the Carbon Policy Office by rule; or

“(B) Are directly regulated by the jurisdiction where the manufacturing facility is located for the greenhouse gas emissions attributable to the manufacturing of goods at the facility operated by the manufacturer.

“(2) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best
proposer or provider of a quotation, and except as prohibited by federal
law, a contracting agency, when using funds from the Transportation
Decarbonization Investments Account, shall give a preference of not
more than 10 percent to:

“(a) Building materials procured from manufacturers subject to a
carbon pricing program; and

“(b) Nursery stock that is grown, propagated and sold entirely
within this state.

“(3) If the contracting agency finds in a written determination that
the building material is not available in the quantity, quality, type or
timeframe required for the procurement, or if the cost of the building
material is more than 10 percent more than the building material costs
from manufacturers not subject to a carbon pricing program, the
contracting agency may decline to give the building material prefer-
ence.

“(4) If the contracting agency finds in a written determination that
the nursery stock is not available in the quantity, quality, type or
timeframe required for the procurement, or if the cost of the nursery
stock is more than 10 percent more than the cost of nursery stock that
is not grown, propagated and sold entirely within this state, the con-
tracting agency may decline to give the nursery stock preference.

“(5) This section does not apply to emergency work, minor alter-
ations, ordinary repairs or maintenance work for public improvements
or to other construction contracts described in ORS 279C.320 (1).

“(Climate Investments Fund)

“SECTION 35. Climate Investments Fund. (1) The Climate Invest-
ments 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 23 of this 2019 Act. Interest earned by the fund shall be credited to the fund.

“(2) Moneys in the fund may be used only for projects, programs and activities that further the purposes set forth in section 6 of this 2019 Act.

“(3) The Legislative Assembly shall allocate the moneys deposited in the fund as informed by the biennial climate action investment plan adopted by the Climate Policy Office under section 46 of this 2019 Act.

“(4) Of the moneys deposited in the fund each biennium:

“(a) 10 percent shall be allocated for investments and expenditures that benefit eligible Indian tribes, as defined in section 7 of this 2019 Act;

“(b) 40 percent shall be allocated for investments and expenditures that benefit impacted communities, as defined in section 7 of this 2019 Act;

“(c) No more than one percent shall be allocated to provide technical assistance to eligible Indian tribes and impacted communities that are applicants for or recipients of moneys allocated from the fund; and

“(d) $10 million shall be allocated for deposit in the Just Transition Fund established in section 40 of this 2019 Act to be used for the purposes described in section 40 (4) of this 2019 Act.

“SECTION 36. Repeal of certain funding percentage requirements.
The amendments to section 35 of this 2019 Act by section 37 of this 2019 Act become operative July 1, 2027.

“SECTION 37. Section 35 of this 2019 Act is amended to read:

“Sec. 35. (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 23 of this 2019 Act. Interest earned by the fund shall be credited to the fund.
“(2) Moneys in the fund may be used only for projects, programs and activities that further the purposes set forth in section 6 of this 2019 Act.

“(3) The Legislative Assembly shall allocate the moneys deposited in the fund as informed by the biennial climate action investment plan adopted by the Climate Policy Office under section 46 of this 2019 Act.

“(4) Of the moneys deposited in the fund each biennium:[,]

“[(a)] 10 percent shall be allocated for investments and expenditures that benefit eligible Indian tribes, as defined in section 7 of this 2019 Act[;]

“[(b) 40 percent shall be allocated for investments and expenditures that benefit impacted communities, as defined in section 7 of this 2019 Act;]

“[(c) No more than one percent shall be allocated to provide technical assistance to eligible Indian tribes and impacted communities that are applicants for or recipients of moneys allocated from the fund; and]

“[(d) $10 million shall be allocated for deposit in the Just Transition Fund established in section 40 of this 2019 Act to be used for the purposes described in section 40 (4) of this 2019 Act.]

“SECTION 38. Procurement preferences. (1) As used in this section:

“(a) ‘Building materials’ means asphalt, cement, concrete or any other aggregate product, aluminum, steel, iron, coatings for steel and iron, glass, manufactured wood products and copper.

“(b) ‘Contracting agency’ has the meaning given that term in ORS 279A.010.

“(c) ‘Oregon Climate Action Program’ has the meaning given that term in section 7 of this 2019 Act.

“(d) ‘Subject to a carbon pricing program’ means building materials manufactured by a manufacturing facility that:

“(A) Is subject to a tax or governmental regulatory program that has the effect of placing a price on greenhouse gas emissions and that is at least as stringent as the Oregon Climate Action Program, as determined by the Carbon Policy Office by rule; or
“(B) Is directly regulated by the jurisdiction where the manufac-
turing facility is located for the greenhouse gas emissions attributable
to the manufacturing of goods at the facility operated by the man-
ufacturer.

“(2) Notwithstanding provisions of law requiring a contracting
agency to award a contract to the lowest responsible bidder or best
proposer or provider of a quotation, and except as prohibited by federal
law, a contracting agency, when using funds from the Climate In-
vestments Fund, shall give a preference of not more than 10 percent
to building materials procured from manufacturers subject to a carbon
pricing program.

“(3) If the contracting agency finds in a written determination that
the building material is not available in the quantity, quality, type or
timeframe required for the procurement, or if the building material
cost is more than 10 percent more than the building material costs
from producers not subject to a carbon pricing program, the con-
tracting agency may decline to give the building material preference.

“(Labor and Contracting Provisions)

“SECTION 39. Construction projects funded by certain auction
proceeds; requirements. (1) If a construction project receives more
than $50,000 in funding from moneys in the Climate Investments Fund
established under section 35 of this 2019 Act or the Transportation
Decarbonization Investments Account established under section 31 of
this 2019 Act, the primary contractor participating in the construction
project:

“(a) Shall pay the prevailing rate of wage for an hour’s work in the
same trade or occupation in the locality where the labor is performed;

“(b) Shall offer health care and retirement benefits to the employ-
ees performing the labor on the construction project;

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

“(d) 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;

“(e) 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

“(f) 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 construction projects that receive more than $50,000 in funding from moneys in 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 construction projects that receive more than $200,000 in funding from moneys in the Climate Investments Fund or the Transportation Decarbonization Investments Account.
For all other construction projects funded as described in paragraph (a) of this subsection, the model rules shall:

“(A) Establish measurable, enforceable goals for the training and hiring of persons who are members of impacted communities, as defined in section 7 of this 2019 Act, and for contracting with businesses that are owned or operated by members of impacted communities; and

“(B) Establish wage, benefit and labor relations standards consistent with the provisions of this section.

“(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 con-
struction projects that receive more than $50,000 in funding from
moneys in the Climate Investments Fund or the Transportation
Decarbonization Investments Account may not adopt the administer-
ing agency’s own rules for labor and workforce procedures related to
administering funds allocated from the Climate Investments Fund or
the Transportation Decarbonization Investments Account.

“(Just Transition)

“SECTION 40. (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 Edu-
cation Coordinating Commission to be used for the purposes described
in this section.

“(2) The fund shall consist of moneys deposited in the fund from
any source.

“(3)(a) The fund shall include a reserve account, which shall consist
of moneys allocated or appropriated to the fund by the Legislative
Assembly for deposit in the reserve account.

“(b) 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.

“(4) Moneys not deposited in the reserve account shall be used to carry out the provisions of section 41 of this 2019 Act.

“SECTION 41. (1)(a) The Higher Education Coordinating Commission, in consultation with the Employment Department and other interested state agencies, shall establish:

“(A) A Just Transition Program for the purpose of distributing moneys in the Just Transition Fund; and

“(B) A Just Transition Plan for the implementation and administration of the Just Transition Program.

“(b) Each even-numbered year, the commission shall deliver a report, in the manner provided in ORS 192.245, to the Governor and the Joint Committee on Climate Action that includes:

“(A) Information on implementation of the Just Transition Program;

“(B) Recommendations regarding the level of funding necessary to carry out activities pursuant to the Just Transition Plan; and

“(C) Recommendations regarding the level of funding necessary to maintain the reserve account of the Just Transition Fund established under section 40 of this 2019 Act and recommendations for how moneys in the reserve account may be best used, including recommendations regarding use of the moneys for the replacement of wages or benefits for workers dislocated or adversely affected by climate change or climate change policies.

“(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; or
“(c) Consistent with the purposes set forth in section 6 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 complementary to other local, state and federal programs, policies and incentives 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 administration 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 reevaluation 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 commission may order the recipient to refund all moneys distributed from the fund. Moneys refunded pursuant to this subsection shall be credited to the fund.

“(Common School Fund)
“SECTION 42. Moneys deposited in the Common School Fund under section 23 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 6 of this 2019 Act.

“(Distribution of Auction Proceeds; Expenditure Reporting)

“SECTION 43. 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:

“(a) The investments from the Climate Investments Fund;

“(b) Whether the investments met the requirements for allocations under section 35 of this 2019 Act; and

“(c) The effectiveness of those investments in carrying out the purposes set forth in section 6 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 Gov-
ernor and the Joint Committee on Climate Action describing:

“(a) The transportation projects funded by moneys from the Transportation Decarbonization Investments Account;
“(b) How the transportation projects met the requirements of section 33 of this 2019 Act; and
“(c) The results of the transportation projects in furthering the purposes set forth in section 6 of this 2019 Act.

“SECTION 44. 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 transportation projects funded by moneys from the Transportation Decarbonization Investments Account.
“(2) The office and the department 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 43 of this 2019 Act, to the Governor and to the Joint Committee on Climate Action.

“(Biennial Climate Action Investments Plan)

“SECTION 45. Definitions. As used in section 46 and 47 of this 2019 Act:
“(1) ‘Best available technology’ has the meaning given that term in section 7 of this 2019 Act.
“(2) ‘Eligible Indian tribe’ has the meaning given that term in section 7 of this 2019 Act.
“(3) ‘Impacted community’ has the meaning given that term in section 7 of this 2019 Act.
“SECTION 46. Biennial climate action investment plan. (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 climate action investment plan shall identify the short-term and long-term objectives of the state for making expenditures and investments of state proceeds from auctions conducted under section 22 of this 2019 Act, in furtherance of the purposes set forth in section 6 of this 2019 Act and consistent with the requirements of the Oregon Constitution.

“(2) The biennial climate action investment plan must be based on consideration of the best scientific and economic information available at the time of the preparation of the plan and must include:

“(a) A plan, developed in consultation with the Department of Transportation, for investments and expenditures of moneys in the Transportation Decarbonization Investments Account pursuant to sections 30 to 34 of this 2019 Act;

“(b) A proposal for investments and expenditures of moneys deposited in the Climate Investments Fund and a description of how the proposal:

“(A) Furthers the purposes set forth in section 6 of this 2019 Act and is consistent with the requirements of the Oregon Constitution;

“(B) Meets the requirements under section 35 of this 2019 Act for allocations of moneys deposited in the Climate Investments Fund; and

“(C) Carries out the priorities for expenditures of moneys in the Climate Investments Fund set forth in section 47 of this 2019 Act; and

“(c) A description of how the plan and proposal required by paragraphs (a) and (b) of this subsection will result in a balanced and complementary package of investments and expenditures that represent the best opportunities available to the state during the next
biennial budget period to carry out the purposes set forth in section 6 of this 2019 Act.

“(3) In preparing the biennial climate action investment 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 eligible 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 advise the office in carrying out the requirements of this section. The members of the committee must reflect the geographic, socioeconomic, racial and cultural diversity of the State of Oregon.

“SECTION 47. Priorities for investment of moneys from Climate Investment Fund. (1) In proposing investments and expenditures of moneys in the Climate Investments Fund for inclusion in the biennial climate action investment plan pursuant to section 46 (2)(b) of this 2019 Act, the Carbon Policy Office shall give first priority to considering whether an investment or expenditure will:

“(a) Further the state’s objectives in meeting the requirements under section 35 of this 2019 Act for allocations of moneys deposited in the Climate Investments Fund;

“(b) Benefit impacted communities;

“(c) Complement efforts to achieve and maintain local air quality;

“(d) Provide opportunities for eligible 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...
businesses owned by women or members of minority groups, nonprofit organizations and other community institutions that serve or represent impacted communities or low-income households;

“(e) Promote low carbon economic development opportunities and the creation of jobs that sustain living wages; or

“(f) Aid households, businesses and workers in the transition to the State of Oregon achieving the greenhouse gas emissions reduction goals set forth in ORS 468A.205.

“(2) The office shall aim to develop the proposal required by section 46 (2)(b) of this 2019 Act in a manner that, in total, would result in:

“(a) An amount of moneys that is approximately equal to the amount of moneys deposited in the Climate Investments Fund as proceeds received through the purchase at auction of allowances by natural gas utilities, to be invested in energy efficiency improvements benefitting the retail customers in Oregon of natural gas utilities;

“(b) An amount of moneys that is approximately equal to half of the amount of moneys deposited in the Climate Investments Fund as proceeds received through the purchase at auction of allowances by EITE entities to be used to assist the EITE entities in using best available technology; and

“(c) An amount of moneys that is approximately equal to the amount of moneys deposited in the Climate Investments Fund as proceeds received through the purchase of allowances related to greenhouse gas emissions attributable to the direct combustion of municipal solid waste to generate renewable energy to be used for programs for reducing plastics-related greenhouse gas emissions.

“(3) In addition to and not exclusive of the considerations required by subsections (1) and (2) of this section, in proposing expenditures and investments of moneys in the Climate Investments Fund, the office shall prioritize funding to:
“(a) Reduce greenhouse gas emissions or promote adaptation or resiliency through energy efficiency and energy conservation in buildings, low-income weatherization and activities to address energy burden in this state.

“(b) 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.

“(c) 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.

“(d) 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.

“(e) 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 forest products manufacturing that serve to reduce greenhouse gas emissions or promote carbon sequestration, wildfire prevention, 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.

“(f) Facilitate the development in Oregon of clean energy infrastructure or technologies, low carbon infrastructure or technologies,
gies, carbon capture and storage or carbon-free infrastructure and technologies.

“(g) Assist air contamination sources for which a permit is issued pursuant to ORS 468.065, 468A.040 or 468A.155 in reducing greenhouse gas emissions.

“(h) Assist Oregon small and medium businesses in reducing greenhouse gas emissions through the adoption of more emissions-efficient equipment and processes, including but not limited to retrofits, weatherization or equipment upgrades or replacements.

“(i) Strengthen the resilience of fish, wildlife and ecosystems in the face of climate change through investments that include but are 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.

“(j) Protect sources of domestic drinking water.

“(k) Promote research by nonprofit organizations or public universities listed in ORS 352.002 into methods for reducing greenhouse gas emissions, sequestering carbon on natural and working lands or adapting to climate change, including but not limited to research investigating feedstocks to reduce emissions from dairy cows and cattle, research investigating crops and agricultural practices that reduce greenhouse gas emissions or promote resilience to climate change, and research to promote resilience to ocean acidification.

“SECTION 48. Use of biennial climate investments plan in budget process. In preparing the Governor's budget as required under ORS 291.202, the Governor shall consider the recommendations contained in the biennial climate action investment plan prepared by the Carbon Policy Office under section 46 of this 2019 Act.

“SECTION 49. 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 46 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 50. Sections 51 to 53 of this 2019 Act are added to and made a part of ORS chapter 757.

“SECTION 51. (1) As used in this section:

“(a) ‘Allowance’ has the meaning given that term in section 7 of this 2019 Act.

“(b) ‘Electric company’ has the meaning given that term in ORS 757.600.

“(c) ‘Retail electricity consumer’ has the meaning given that term in ORS 757.600.

“(2) If, rather than surrendering the allowances to fulfill its compliance obligation, an electric company sells allowances that were directly distributed at no cost to the electric company under sections 10 and 11 of this 2019 Act, the Public Utility Commission shall require the proceeds received by the electric company through the sale:

“(a) To be spent by the electric company for the exclusive benefit of the electric company’s retail electricity consumers; and

“(b) To be used only for activities that serve to reduce greenhouse gas emissions or provide assistance to the electric company’s retail electricity consumers, consistent with the purposes of sections 6 to 49 of this 2019 Act, as set forth in section 6 of this 2019 Act.
“(3) Subject to subsection (2) of this section, an electric company shall prioritize the use of proceeds received by the electric company from the sale of allowances that were directly distributed at no cost to the electric company for:

“(a) Providing weatherization, energy efficiency improvements, bill assistance or rate assistance to the electric company’s low-income residential customers;

“(b) Accelerated transportation electrification;

“(c) Investments and activities that serve to reduce greenhouse gas emissions through actions such as energy efficiency improvements, voltage optimization, portfolio optimization and renewable energy procurement; and

“(d) Facilitating integration and utilization of variable energy resources through investments in programs and technologies such as demand response, smart grid communication and control systems, grid connected end-uses and energy storage.

“(4)(a) The 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.

“(b) Rules adopted under this subsection shall include a requirement for electric companies to regularly report to the commission on how the electric company has used allowances that were directly distributed at no cost to the electric company, including a description of how any proceeds received by the electric company from the sale of the allowances were used.

“(5) No later than September 15 of each even-numbered year, the commission shall, in the manner provided by ORS 192.245, provide a report to the Joint Committee on Climate Action and to the Carbon Policy Office on how electric companies have made use of allowances that were directly distributed at no cost to the electric company, in-
including a description of how any proceeds received by the electric company from the sale of the allowances were used.

“SECTION 52. The Public Utility Commission shall establish a process to ensure prudent, appropriate and contemporaneous cost recovery for public utilities subject to compliance with the Oregon Climate Action Program established under sections 7 to 29 of this 2019 Act.

“SECTION 53. 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.

“SECTION 54. Section 12, chapter 751, Oregon Laws 2009, is amended to read:

“Sec. 12. Section 9 [of this 2009 Act], chapter 751, Oregon Laws 2009, is repealed on [January 2, 2020] the effective date of this 2019 Act.

“BIENNIAL STATEWIDE ENERGY BURDEN REPORT

“SECTION 55. (1) 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 regarding the availability and collection of data necessary
to develop the report.

“(2) The purposes of the biennial statewide energy burden report are to:

“(a) Establish a baseline for assessing the energy burden experienced by the residents of this state on a statewide level, by county and by utility service territory, and for assessing the differences in regional or demographic data that may impact the energy burden experienced;

“(b) Develop and maintain an inventory of all programs in Oregon that contribute to reducing energy burden that are funded through state, federal or utility programs and include in the inventory a description of the annual funding necessary for each program and the sources for funding received;

“(c) Explore new statewide mechanisms for reducing energy burden, with an emphasis on addressing the specific needs of renters, mobile home and manufactured dwelling park residents and residents of multifamily housing;

“(d) Develop and provide recommendations for restructuring programs or for creating new programs to enhance efforts for addressing energy burden in this state; and

“(e) Develop and provide recommendations for improving the delivery of services for reducing energy burden by improving data gathering and knowledge sharing between state agencies, utilities, community action agencies and other organizations that implement energy assistance programs.

“(3) The Housing and Community Services Department, in consultation with the State Department of Energy, shall convene an Energy Burden and Poverty Working Group to provide guidance and assistance to the departments in developing the biennial statewide energy burden report. The working group shall include representatives of
low-income and environmental justice communities, consumer-owned utilities, investor-owned utilities, at least one community action agency and organizations that implement energy assistance on a statewide level. The Department of Housing and Community Services shall provide staff support to the working group. The working group shall meet regularly, as is necessary for the working group to review the statewide progress in addressing energy burden since issuance of the previous biennial statewide energy burden report and to assist in developing the upcoming biennial statewide energy burden report.

“GREENHOUSE GAS EMISSIONS REGISTRATION AND REPORTING

“(Transfer of Duties Related to Greenhouse Gas Reporting Program)

“SECTION 56. 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 57. 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 56 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 56 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 56 of this 2019 Act, without reduction of com-
ensation but subject to change or termination of employment or
compensation as provided by law.

“(3) The Governor shall resolve any dispute between the Depart-
ment 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 58. 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, contin-
uously appropriated, appropriated or otherwise made available for the
purpose of administering and enforcing the duties, functions and
powers transferred by section 56 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 56
of this 2019 Act.

“(2) The expenditure classifications, if any, established by Acts au-
thorizing or limiting expenditures by the Department of Environ-
mental Quality remain applicable to expenditures by the Carbon Policy
Office under this section.

“SECTION 59. Action, proceeding, prosecution. The transfer of du-
ties, functions and powers to the Carbon Policy Office by section 56
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 60. Liability, duty, obligation. (1) Nothing in sections 56 to 62 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 56 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 Commission 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 56 of this 2019 Act accruing under or with respect to the duties, functions and powers transferred by section 56 of this 2019 Act are transferred to the Carbon Policy Office. For the purpose of succession to these rights and obligations, the Carbon Policy Office is a continuation of the Environmental Quality Commission or the Department of Environmental Quality, as appropriate, and not a new authority.

SECTION 61. Rules. (1) Notwithstanding the transfer of duties, functions and powers by section 56 of this 2019 Act, the rules of the Environmental Quality Commission with respect to such duties, functions or powers that are in effect on the operative date of section 56 of this 2019 Act continue in effect until superseded or repealed by rules of the Carbon Policy Office. References in the rules of the Environmental 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 Commission to the Department of Environmental Quality Commission 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 Legisla-
tive Assembly or in any rule, document, record or proceeding author-
ized by the Legislative Assembly, in the context of the duties, 
functions and powers transferred by section 56 of this 2019 Act, refer-
ence is made to the Environmental Quality Commission, with relation 
to the duties, functions or powers transferred by section 56 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 Legisla-
tive Assembly or in any rule, document, record or proceeding author-
ized by the Legislative Assembly, in the context of the duties, 
functions and powers transferred by section 56 of this 2019 Act, refer-
ence is made to the Department of Environmental Quality, or an of-
ficer of employee of the Department of Environmental Quality, whose 
duties, functions or powers are transferred by section 56 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 62. 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 63. 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 7 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.

“(2) 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;

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

“(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 distribution 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 [commission] director.

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

“(9) The office may adjust by rule the registration and reporting requirements under subsection (2) of this section if necessary to accommodate participation in an energy imbalance market by persons who import, sell, allocate or distribute electricity, or as necessary to otherwise address developments in electricity markets.

“(10) The office may require a person for which registration and reporting 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.

“(11) 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 7 to 29 of this 2019
“(12)(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 section.

“(b) The director shall limit the fees established under this subsection to the anticipated cost of developing, implementing and analyzing data collected under greenhouse gas emissions registration and reporting programs.

“(13) Emissions data submitted to the office under this section is public information and may not be designated as confidential for purposes of disclosure under the public records law, ORS 192.311 to 192.478.

“ENERGY FACILITY CARBON DIOXIDE EMISSIONS STANDARDS

“(Repeal of Carbon Dioxide Emissions Standards)

“SECTION 64. 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 applicable 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 resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions 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 con-
sideration 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 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 offsets. 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 selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring 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 paragraphs (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 implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity 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 paragraph 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 information requested and, based on such information, shall make any recommendations 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) 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) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.  
“SECTION 65. 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 re-
sources 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).]

“(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 sub-
sections (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 67. 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 and 469.503 by sections 64 and 65 of this 2019 Act and the provisions of section 66 of this 2019 Act.

“SECTION 68. (1) As used in this section and section 69 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 64 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 64 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 re-
quests about the qualified organization’s performance. The council
shall evaluate the information requested and, based on the informa-
tion, shall make any recommendations to the Legislative Assembly
that the council deems appropriate.

“SECTION 69. Section 68 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 quali-
fied 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 70. ORS 469.409 is repealed.

“(Conforming Amendments)

“SECTION 71. 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 cer-
tificate 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 certificate has already been issued, filed in accordance with the procedures established 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 constructed 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 capacity 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 consisting 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 appointed 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 engage in the business of generating, supplying, transmitting or distributing electric energy.
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 Department 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 current 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 under 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 September 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 secondary 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 extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, 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 material, 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 materials sufficient to form a critical mass. ‘Nuclear installation’ does not include 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 associated transmission lines.

“(21) (23) ‘Person’ means an individual, partnership, joint venture, pri-
vate or public corporation, association, firm, public service company, polit-

cal subdivision, municipal corporation, government agency, people’s utility
district, or any other entity, public or private, however organized.

“(22) ‘Project order’ means the order, including any amendments,
issued by the State Department of Energy under ORS 469.330.

“(23)(a) ‘Radioactive waste’ means all material which is dis-
carded, 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 radioac-
tive 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

“(24) ‘Related or supporting facilities’ means any structure, pro-
posed by the applicant, to be constructed or substantially modified in con-
nection 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.

“(25) ‘Site’ means any proposed location of an energy facility and
related or supporting facilities.

“(26) ‘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.

“[(27)] (29) ‘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’ in-
cludes 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 72. ORS 469.310 is amended to read:

"469.310. In the interests of the public health and the welfare of the peo-
ple 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 73. 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) 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 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. Following 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 74.** 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 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 compliance with land use standards, the department shall not review such a proposed pipeline for compliance with land use requirements. Notwithstanding 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 procedural rules for the department review. The department shall issue an order approving or rejecting the proposed pipeline. Judicial review of a department order under this section shall be as provided in ORS 469.403.

“SECTION 75. 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 ex-
emption, 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 proceeding.

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

“SECTION 76. 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 described 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 impracticable; 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 consequences 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 applicable 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 related 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 recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making 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 programs 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.

“(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 77.** 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 resolution.

**REPEAL OF FORESTRY CARBON OFFSET PROVISIONS**

**SECTION 78.** ORS 526.780, 526.783, 526.786 and 526.789 are repealed.

**SECTION 79.** ORS 526.005 is amended to read:

“526.005. As used in this chapter, unless the context otherwise requires:

“(1) ‘Biomass’ means any organic matter, including woody biomass, agricultural crops, wood wastes and residues, plants, aquatic plants, grasses,
residues, fibers, animal wastes, municipal wastes and other waste materials.

“(2) ‘Board’ means the State Board of Forestry.

“(3) ‘Certified Burn Manager’ means an individual, other than the forester, who is currently certified under a program established pursuant to ORS 526.360 (3).

“(4) ‘Department’ means the State Forestry Department.

“(5) ‘Forester’ means the State Forester or the authorized representative of the forester.

“(6)(a) ‘Forestland’ means any woodland, brushland, timberland, grazing land or clearing that, during any time of the year, contains enough forest growth, slashing or vegetation to constitute, in the judgment of the forester, a fire hazard, regardless of how the land is zoned or taxed.

“(b) As used in this subsection, ‘clearing’ means any grassland, improved area, lake, meadow, mechanically or manually cleared area, road, rocky area, stream or other similar opening that is surrounded by or contiguous to land described in paragraph (a) of this subsection and that has been included in areas classified as forestland under ORS 526.305 to 526.370.

“(7) ‘Forestry carbon offset’ means a transferable unit based on a measured amount of carbon storage expressed as a carbon dioxide emission equivalent, or other equivalent standard, and accruing on forestland as live or dead matter in trees, shrubs, forest litter and soil.

“(8) (7) ‘Nonindustrial private forest landowner’ means any forest landowner who does not own a forest products manufacturing facility that employs more than six people.

“(9) (8) ‘Nonindustrial private forestland’ means any forestland owned by a nonindustrial private forest landowner.

“(10)(a) (9)(a) ‘Woody biomass’ means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban interface environment that is the by-product of forest management, ecosystem restoration or
hazardous fuel reduction treatment.

“(b) ‘Woody biomass’ does not mean:

“(A) Wood pieces that have been treated with creosote, pentachlorophenol, copper chrome arsenic or other chemical preservatives;

“(B) Wood that must be retained under state or federal regulations;

“(C) Wood required for large woody debris recruitment; or

“(D) Municipal solid waste.

SECTION 80. ORS 526.725 is amended to read:

“526.725. (1) The State Board of Forestry or the State Forester may enter into agreements with private, governmental or other organizations and may accept contributions, gifts or grants from any source to carry out the duties, functions and powers of the Forest Resource Trust. All moneys received by the board or the State Forester pursuant to this section shall be deposited in the Forest Resource Trust Fund.

“(2) The board may acquire, on behalf of the Forest Resource Trust, through exchange, lease or purchase, land only to the extent necessary to carry out the duties, functions and powers of the trust.

“(3) Agreements with private, governmental or other organizations under subsection (1) of this section may specify the terms under which funds are invested and benefits accrue to the contributing party to the extent the agreement is consistent with the provisions of ORS 526.695 to 526.775.

“(4) The State Forester may, on behalf of the Forest Resource Trust, market, register, transfer or sell forestry carbon offsets attributable to the lands enrolled in the stand establishment program under ORS 526.705. Prices for the transfer or sale of forestry carbon offsets may be negotiated but must be at or greater than fair market value.

“[(5)] (4) Nothing in ORS 526.695 to 526.775 is intended to create an enforceable trust on any agency or officer of the State of Oregon.

SECTION 81. ORS 530.050 is amended to read:

“530.050. Under the authority and direction of the State Board of Forestry
except as otherwise provided for the sale of forest products, the State
Forester shall manage the lands acquired pursuant to ORS 530.010 to 530.040
so as to secure the greatest permanent value of those lands to the state, and
to that end may:

“(1) Protect the lands from fire, disease and insect pests, cooperate with
the counties and with persons owning lands within the state in the pro-
tection of the lands and enter into all agreements necessary or convenient
for the protection of the lands.

“(2) Sell forest products from the lands, and execute mining leases and
contracts as provided for in ORS 273.551.

“(3) Enter into and administer contracts for the sale of timber from lands
owned or managed by the State Board of Forestry and the State Forestry
Department.

“(4) Enter into and administer contracts for activities necessary or con-
venient for the sale of timber under subsection (3) of this section, either
separately from or in conjunction with contracts for the sale of timber, in-
cluding but not limited to activities such as timber harvesting and sorting,
transporting, gravel pit development or operation, and road construction,
maintenance or improvement.

“(5) Permit the use of the lands for other purposes, including but not
limited to forage and browse for domestic livestock, fish and wildlife envi-
ronment, landscape effect, protection against floods and erosion, recreation,
and protection of water supplies when, in the opinion of the board, the use
is not detrimental to the best interest of the state.

“(6) Grant easements, permits and licenses over, through and across the
lands. The State Forester may require and collect reasonable fees or charges
relating to the location and establishment of easements, permits and licenses
granted by the state over the lands. The fees and charges collected shall be
used exclusively for the expenses of locating and establishing the easements,
permits and licenses under this subsection and shall be placed in the State
Forestry Department Account.

“(7) Require and collect fees or charges for the use of state forest roads. The fees or charges collected shall be used exclusively for purposes of maintenance and improvements of the roads and shall be placed in the State Forestry Department Account.

“(8) Reforest the lands and cooperate with the counties, and with persons owning timberlands within the state, in the reforestation, and make all agreements necessary or convenient for the reforestation.

“(9) Require such undertakings as in the opinion of the board are necessary or convenient to secure performance of any contract entered into under the terms of this section or ORS 273.551.

“(10) Sell rock, sand, gravel, pumice and other such materials from the lands. The sale may be negotiated without bidding, provided the appraised value of the materials does not exceed $2,500.

“(11) Enter into agreements, each for not more than 10 years duration, for the production of minor forest products.

“[(12) Establish a forestry carbon offset program to market, register, transfer or sell forestry carbon offsets. In establishing the program, the forester may:]

“[(a) Execute any contracts or agreements necessary to create opportunities for the creation of forestry carbon offsets; and]

“[(b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of forestry carbon offsets.]

“[(13)] (12) Do all things and make all rules, not inconsistent with law, necessary or convenient for the management, protection, utilization and conservation of the lands.

“SECTION 82. ORS 530.500 is amended to read:

“530.500. In order to accomplish the purposes of ORS 530.490, the State Forester may:

“(1) Protect the lands from fire, disease and insect pests, cooperate with
the counties and with persons owning lands within the state in the pro-
tection of the lands and enter into all agreements necessary or convenient
for the protection of the lands.

“(2) Enter into and administer contracts for the sale of timber from lands
owned or managed by the State Board of Forestry and the State Forestry
Department.

“(3) Enter into and administer contracts for activities necessary or con-
venient for the sale of timber under subsection (2) of this section, either
separately from or in conjunction with contracts for the sale of timber, in-
cluding but not limited to activities such as timber harvesting and sorting,
transporting, gravel pit development or operation, and road construction,
maintenance or improvement.

“(4) Permit the use of the lands for other purposes, including but not
limited to fish and wildlife environment, landscape effect, protection against
flood and erosion, recreation and production and protection of water supplies
when the use is not detrimental to the purpose for which the lands are ded-
icated.

“(5) Contract with other governmental bodies for the protection of water
supplies to facilitate the multiple use of publicly owned water supplies for
recreational purposes as well as a source of water for domestic and indus-
trial use.

“(6) Grant permits and licenses on, over and across the lands.

“(7) Reforest the lands and cooperate with persons owning timberlands
within the state in the reforestation, and make all agreements necessary or
convenient for the reforestation.

“[8] Establish a forestry carbon offset program to market, register, transfer
or sell forestry carbon offsets. In establishing the program, the forester may:

“[(a) Execute any contracts or agreements necessary to create opportunities
for the creation of forestry carbon offsets; and]

“[(b) Negotiate prices that are at, or greater than, fair market value for the
transfer or sale of forestry carbon offsets.]

“[(9)] (8) Do all things and make all rules and regulations, not inconsist-
ent with law, necessary or convenient for the management, protection, utili-
ization and conservation of the lands.

“[(10)] (9) Require such undertakings as in the opinion of the State
Forester are necessary or convenient to secure performance of any agreement
authorized in ORS 530.450 to 530.520.

“REGULATION OF LANDFILL METHANE EMISSIONS

“SECTION 83. Section 84 of this 2019 Act is added to and made a
part of ORS chapter 468A.

“SECTION 84. (1) As used in this section:

“(a) ‘Anthropogenic greenhouse gas emissions’ has the meaning
given that term in section 7 of this 2019 Act.

“(b) ‘Carbon dioxide equivalent’ has the meaning given that term
in section 7 of this 2019 Act.

“(c) ‘Hazardous waste’ has the meaning given that term in ORS
466.005.

“(d) ‘Land disposal site’ has the meaning given that term in ORS
459.005.

“(e) ‘Landfill’ has the meaning given that term in ORS 459.005.

“(f) ‘Solid waste’ has the meaning given that term in ORS 459.005.

“(2) It is the intent of the Legislative Assembly that the standards
and requirements adopted by rule under this section be at least as
stringent as the most stringent standards and requirements for re-
ducing methane gas emissions from landfills implemented among the
states having a boundary with Oregon.

“(3) The Environmental Quality Commission shall adopt by rule
standards and requirements for reducing methane gas emissions from

HB 2020-31  3/25/19
Proposed Amendments to HB 2020 Page 121
landfills. Before adopting standards and requirements under this sec-
tion, the commission shall consider the standards and requirements
of the State of California for reducing methane gas emissions from
landfills.

“(4) The following landfills are exempt from standards and require-
ments adopted by rule under this section:

“(a) Landfills that emit less than 25,000 metric tons of carbon
dioxide equivalent in anthropogenic greenhouse gas emissions annu-
ally, as reported under ORS 468A.280.

“(b) Landfills that only receive hazardous waste.

“(c) Landfills that only receive waste from building demolition or
construction.

“(d) Land disposal sites that are closed and no longer receiving solid
waste, are maintained in compliance with ORS 459.268 and have less
than 450,000 metric tons of waste-in-place.

“(5) Rules adopted under this section shall include but need not be
limited to:

“(a) Reporting requirements related to waste-in-place, calculated
landfill gas heat input capacity, and landfill surface emissions moni-
toring.

“(b) Methane gas collection and control system requirements for
landfills with reported calculated landfill gas heat input capacity ex-
ceeding 3.0 million British thermal units per hour recovered.

“(c) Standards and requirements for methane limits, monitoring
and corrective actions.

“(d) Alternative compliance measures and methods that may be
applied for certain landfills on a case-by-case basis.

“(e) Standards and requirements for records retention, landfill clo-
sure notification, methane gas collection and control device removal
or modification and annual operating reports.
“SECTION 85. The Environmental Quality Commission shall adopt rules under section 84 of this 2019 Act in time for the rules to become operative no later than July 1, 2021.

“EXPEDITED JUDICIAL REVIEW TO SUPREME COURT;
EXPIRATION

“SECTION 86. (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 22 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)(a) Any person interested in or affected or aggrieved by section 22 of this 2019 Act may petition for judicial review under this section. A petition for review must be filed within 60 days after the effective date of this 2019 Act.

“(b) The petition must state facts showing how the petitioner is interested, affected or aggrieved and the grounds upon which the petition is based.

“(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.
“(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 87. (1) Original jurisdiction to determine whether auctions conducted under section 22 of this 2019 Act impose a tax that is subject to the provisions of Article IX, section 3a, of the Oregon Constitution, is conferred on the Supreme Court.

“(2)(a) Any person interested in or affected or aggrieved by section 22 of this 2019 Act may petition for judicial review under this section. A petition for review must be filed within 60 days after the effective date of this 2019 Act.

“(b) The petition must state facts showing how the petitioner is interested, affected or aggrieved and the grounds upon which the petition is based.

“(3) 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.

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

“(5) 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 88. 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 7 to 29 of this 2019 Act and for the implementation of sections 6, 43 to 47 and 56 to 62 of this 2019 Act and the amendments to ORS 468A.280 by section 63 of this 2019 Act.

“SECTION 89. 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 90. (1) Sections 4 to 14, 16, 18 to 53, 55 to 62 and 66 to 69 of this 2019 Act, the amendments to statutes and session law by sections 54, 63 to 65, 71 to 77 and 79 to 82 of this 2019 Act and the repeal of statutes by sections 70 and 78 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 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 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 14, 16, 18 to 53, 55 to 62 and 66 to 69 of this 2019 Act, the amendments to statutes and session law by sections 54, 63 to 65, 71 to 77 and 79 to 82 of this 2019 Act and the repeal of statutes by sections 70 and 78 of this 2019 Act.

"REPORTS AND REVIEWS"

"SECTION 91. 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 7 to 29 of this 2019 Act to the Joint Committee on Climate Action.

"SECTION 92. 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 sections 18 to 20 of this 2019 Act and rules adopted under section 18 of this 2019 Act. The report may include recommendations for legislation. The review and report must:

"(1) Assess the implementation of laws and policies for offset projects and the use of offset credits by covered entities;

"(2) Include a review of:

"(a) Offset project development costs and the time it takes for state agencies to review offset projects;

"(b) To date, the offset projects developed and the offset credits generated and issued under rules adopted and offset protocols developed pursuant to sections 18 to 20 of this 2019 Act;

"(c) To date, the offset credits that have been invalidated pursuant to section 18 (4) of this 2019 Act;
“(d) Offset credit prices and offset credit market conditions; and
“(e) Advancements in the methods or technologies used for measuring and monitoring the greenhouse gas emissions reductions or removals attributable to offset projects;
“(3) Identify barriers to the adoption of offset protocols; and
“(4) Make determinations and recommendations regarding whether changes to laws and policies are necessary or advisable to address any negative impacts related to offset projects or offset credits or to best align the laws or policies for offset projects and the use of offset credits by covered entities with the purposes set forth in section 6 of this 2019 Act.

“SECTION 93. (1) No later than January 1, 2025, 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 from regulated emissions, as provided for in section 9 (2)(b) of this 2019 Act, of the greenhouse gas emissions from aviation fuel and fuel used in watercraft and railroad locomotives. The purpose of the report shall be to provide recommendations, which may include recommendations for legislation, on the anticipated effect of amending section 9 of this 2019 Act and any other statutes as necessary such that, beginning in the first compliance period that begins after January 1, 2027, the greenhouse gas emissions from the combustion of fuel described in section 9 (2)(b) of this 2019 Act would be included in regulated emissions.
“(2) In carrying out the provisions of this section, the office shall research and provide recommendations on:
“(a) Whether the aviation, marine and railroad industries in Oregon are reducing greenhouse gas emissions consistent with the best available technologies and energy alternatives;
“(b) Whether other jurisdictions that have adopted carbon pricing
mechanisms require aviation fuels, marine fuels or railroad fuels to comply with those carbon pricing mechanisms; 

“(c) The costs and economic impacts of eliminating the exclusion provided under section 9 (2)(b) of this 2019 Act, analyzed separately for each industry that would be impacted by the elimination of the exclusion; and 

“(d) The environmental impacts of eliminating the exclusion provided under section 9 (2)(b) of this 2019 Act, analyzed separately for each industry that would be impacted by the elimination of the exclusion.

“SECTION 94. (1) The Department of Transportation, in consultation with the Department of Revenue and any other relevant state agencies, shall study the creation of the following refunds or credits of moneys deposited in the Transportation Decarbonization Investments Account established under section 31 of this 2019 Act, to be administered by the Department of Transportation, to offset estimated increases in motor vehicle fuel costs in Oregon attributable to the regulation of motor vehicle fuel producers and importers as covered entities under sections 7 to 29 of this 2019 Act:

“(a) A refund or credit available in an amount up to 100 percent of the estimated increase in the cost, to Oregon households of one or more individuals whose combined incomes are at or below 100 percent of the area median income, of motor vehicle fuel used to propel motor vehicles on the highways of this state. 

“(b) Refunds or credits available to offset the estimated increase in motor vehicle fuel used to propel motor vehicles that are not operated on the highways of this state and that are motor vehicles used in the agricultural and natural resource sectors.

“(2) In conducting the study required by this section, the departments shall assume that:
“(a) The refunds or credits shall be of or against moneys:
“(A) Received by the state through the auction of allowances under section 22 of this 2019 Act and deposited in the Transportation Decarbonization Investments Account established under section 31 of this 2019 Act; and
“(B) That are revenues described in Article IX, section 3a (1), of the Oregon Constitution; and
“(b) That the amount available for the issuance of refunds or credits described in subsection (1)(a) of this section shall not exceed $100 million per year.
“(3) On or before September 15, 2019, and in the manner provided by ORS 192.245, the Department of Transportation shall provide a report on the study, which may include recommendations for legislation, to the Joint Committee on Climate Action and the Joint Committee on Transportation.

“CAPTIONS

“SECTION 95. 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 96. 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.”.