

# D R A F T

## SUMMARY

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

Modifies statewide greenhouse gas emissions reduction goals.

Establishes Joint Committee on Climate Action.

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

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

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

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

Provides that provisions related to Carbon Policy Office, Oregon Climate Action Program, investment of certain moneys, Public Utility Commission, transfer of duties, and repeal of Energy Facility Siting Council carbon dioxide emissions standards become operative January 1, 2021.

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

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1

2 Relating to greenhouse gas emissions; creating new provisions; amending

1 ORS 468A.205, 468A.280, 469.300, 469.310, 469.373, 469.405, 469.407, 469.501,  
2 469.503, 469.504, 469.505 and 526.786; repealing ORS 469.409; and declaring  
3 an emergency.

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

5  
6 **STATEWIDE GREENHOUSE GAS EMISSIONS REDUCTION GOALS**

7  
8 **SECTION 1.** ORS 468A.205 is amended to read:

9 468A.205. (1) The Legislative Assembly declares that it is the [*policy*] **goal**  
10 of this state to **achieve a reduction in greenhouse gas emissions levels**  
11 **in Oregon:** [*reduce greenhouse gas emissions in Oregon pursuant to the fol-*  
12 *lowing greenhouse gas emissions reduction goals:*]

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

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

17 [(c) *By 2050, achieve greenhouse gas levels that are at least 75 percent below*  
18 *1990 levels.*]

19 **(a) To at least 45 percent below 1990 emissions levels by 2035; and**

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

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

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

28  
29 **JOINT COMMITTEE ON CLIMATE ACTION**

30  
31 **SECTION 2.** (1) **There is established the Joint Committee on Cli-**

1 **mate Action.**

2 **(2) The joint committee consists of members of the Senate ap-**  
3 **pointed by the President of the Senate and members of the House of**  
4 **Representatives appointed by the Speaker of the House of Represen-**  
5 **tatives.**

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

10 **(4) The joint committee has a continuing existence and may meet,**  
11 **act and conduct its business during sessions of the Legislative As-**  
12 **sembly or any recess thereof and in the interim between sessions.**

13 **(5) The term of a member shall expire upon the date of the con-**  
14 **vening of the odd-numbered year regular session of the Legislative**  
15 **Assembly next following the commencement of the member's term.**

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

18 **(b) When a vacancy occurs in the membership of the joint com-**  
19 **mittee in the interim between odd-numbered year regular sessions,**  
20 **until the vacancy is filled:**

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

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

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

31 **(b) Notwithstanding paragraph (a) of this subsection, when engaged**

1 in out-of-state travel, members shall be entitled to receive their actual  
2 and necessary expenses in lieu of the amount authorized by this sub-  
3 section. Payment shall be made from funds appropriated to the Legis-  
4 lative Assembly.

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

10 (9) Action by the joint committee requires the affirmative vote of  
11 a majority of joint committee members from the House of Represen-  
12 tatives and a majority of joint committee members from the Senate.

13 (10) The joint committee may adopt rules necessary for the opera-  
14 tion of the joint committee.

15 (11) The Legislative Policy and Research Director may employ per-  
16 sons necessary for the performance of the functions of the joint com-  
17 mittee. The director shall fix the duties and amounts of compensation  
18 of the employees. The joint committee shall use the services of con-  
19 tinuing legislative staff, without employing additional persons, to the  
20 greatest extent practicable.

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

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

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

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

1 and

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

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

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

12 (b) The biennial climate action investment plan required by section  
13 40 of this 2019 Act; and

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

16

17 **CARBON POLICY OFFICE ESTABLISHED**

18

19 **SECTION 4. Carbon Policy Office.** (1) The Carbon Policy Office is  
20 established within the Oregon Department of Administrative Services.

21 (2) The office shall:

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

26 (b) Carry out the duties, functions and powers committed to the  
27 office under sections 8 to 26 and 38 to 40 of this 2019 Act and ORS  
28 468A.280 and other statutes, rules or policies that commit functions to  
29 the Carbon Policy Office.

30 (3) The office may advise, consult and cooperate with other agencies  
31 of the state, political subdivisions, other states or the federal govern-

1 ment, with respect to any proceedings and all matters pertaining to  
2 the reduction of greenhouse gas emissions levels in Oregon.

3 (4) The office may employ personnel, including specialists and con-  
4 sultants, purchase materials and supplies and enter into contracts  
5 necessary to carry out the purposes set forth in sections 8 to 26 and  
6 38 to 40 of this 2019 Act and ORS 468A.280.

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

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

14 (3) The director may adopt rules in accordance with ORS chapter  
15 183 to exercise and carry out the duties, functions and powers com-  
16 mitted to the Carbon Policy Office under sections 8 to 26 and 38 to 40  
17 of this 2019 Act and ORS 468A.280 and other statutes, rules or policies  
18 that commit functions to the Carbon Policy Office.

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

21 (5) Subject to the approval of the Governor, the director may or-  
22 ganize and reorganize the administrative structure of the office as the  
23 director considers appropriate to properly conduct the work of the of-  
24 fice.

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

1 **vidual.**

2 **(7) Subject to any applicable provisions of ORS chapter 240, the di-**  
3 **rector shall appoint all subordinate officers and employees of the of-**  
4 **vice, prescribe their duties and fix their compensation.**

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

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

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

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

14 **(3) All civil penalties recovered under this section must be paid into**  
15 **the State Treasury and credited to the Oregon Climate Action Pro-**  
16 **gram Operating Fund and may be used only pursuant to section 26 (3)**  
17 **of this 2019 Act.**

18

19 **OREGON CLIMATE ACTION PROGRAM**

20 **(Statement of Purpose)**

21

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

24 **(a) To achieve a reduction in total levels of regulated emissions**  
25 **under sections 8 to 26 of this 2019 Act to at least 45 percent below 1990**  
26 **emissions levels by 2035 and to achieve a reduction in total regulated**  
27 **emissions levels to at least 80 percent below 1990 emissions levels by**  
28 **2050;**

29 **(b) To promote greenhouse gas emissions sequestration and miti-**  
30 **gation;**

31 **(c) To promote adaptation and resilience by natural and working**

1 **lands, fish and wildlife resources, communities and the economy in the**  
2 **face of climate change and ocean acidification; and**

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

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

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

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

13  
14 **(Greenhouse Gas Cap and Market-Based Compliance Mechanism)**

15  
16 **SECTION 8. Definitions. As used in sections 8 to 26 of this 2019 Act:**

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

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

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

26 **(4) “Carbon dioxide equivalent” means the amount of carbon dioxide**  
27 **by weight that would produce the same global warming impact as a**  
28 **given weight of another greenhouse gas, based on considerations in-**  
29 **cluding but not limited to the best available science, including infor-**  
30 **mation from the Intergovernmental Panel on Climate Change.**

31 **(5) “Compliance instrument” means one allowance or one offset**



1 **credit that may be used to fulfill a compliance obligation.**

2 **(6) “Compliance obligation” means the quantity of regulated emis-**  
3 **sions for which a covered entity must submit compliance instruments**  
4 **to the Carbon Policy Office during a compliance period.**

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

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

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

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

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

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

17 **(10) “Electric company” has the meaning given that term in ORS**  
18 **757.600.**

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

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

27 **(a) Electric companies.**

28 **(b) Electricity service suppliers.**

29 **(c) Consumer-owned utilities.**

30 **(d) The Bonneville Power Administration.**

31 **(e) Electric generation and transmission cooperatives.**

1 (13) **“General market participant” means a person that:**

2 (a) **Is a registered entity;**

3 (b) **Is not a covered entity or an opt-in entity; and**

4 (c) **Intends to purchase, hold, sell or voluntarily surrender compli-**  
5 **ance instruments.**

6 (14) **“Greenhouse gas” includes, but is not limited to, carbon**  
7 **dioxide, methane, nitrous oxide, hydrofluorocarbons,**  
8 **perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.**

9 (15) **“Impacted community” means a community most at risk of**  
10 **being disproportionately impacted by climate change as designated by**  
11 **the office under section 20 of this 2019 Act.**

12 (16) **“Indian trust lands” means lands within the State of Oregon**  
13 **held in trust by the United States for the benefit of an Indian tribe**  
14 **of individual Indians.**

15 (17) **“Natural and working lands” means:**

16 (a) **Land that is actively used by an agricultural owner or operator**  
17 **for an agricultural operation that includes, but need not be limited to,**  
18 **active engagement in farming or ranching;**

19 (b) **Land producing forest products;**

20 (c) **Lands consisting of forests, grasslands, deserts, freshwater and**  
21 **riparian systems, wetlands, coastal and estuarine areas, watersheds,**  
22 **wildlands or wildlife habitat;**

23 (d) **Lands used for recreational purposes such as parks, urban and**  
24 **community forests, trails, greenbelts and other similar open space**  
25 **land; or**

26 (e) **Indian trust lands.**

27 (18) **“Natural gas utility” means a natural gas utility regulated by**  
28 **the Public Utility Commission under ORS chapter 757.**

29 (19) **“Offset credit” means a tradable credit generated through an**  
30 **offset project that represents a greenhouse gas emissions reduction**  
31 **or removal of one metric ton of carbon dioxide equivalent.**

1 (20) “Offset project” means a project that reduces or removes  
2 greenhouse gas emissions that are not regulated emissions.

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

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

10 (23) “Person” includes individuals, corporations, associations, firms,  
11 partnerships, joint stock companies, public and municipal corpo-  
12 rations, political subdivisions, the state and any agencies thereof and  
13 the federal government and any agencies thereof.

14 (24) “Registered entity” means a covered entity, opt-in entity or  
15 general market participant that has successfully registered to partic-  
16 ipate in the Oregon Climate Action Program.

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

21 (26) “Surrender” means to transfer a compliance instrument to the  
22 office:

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

25 (b) On a voluntary basis.

26 SECTION 9. Adoption of program; general provisions. (1)(a) The  
27 Director of the Carbon Policy Office shall adopt an Oregon Climate  
28 Action Program by rule in accordance with the provisions of sections  
29 8 to 26 of this 2019 Act. The program shall:

30 (A) Place a cap on the total anthropogenic greenhouse gas emis-  
31 sions that are regulated emissions through setting annual allowance

1 budgets for 2021 to 2050; and

2 (B) Provide a market-based mechanism for covered entities to  
3 demonstrate compliance with the program.

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

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

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

17 (c) The office shall calculate baseline emissions to be equal to the  
18 three-year average of the total, expressed in tons of carbon dioxide  
19 equivalent, anthropogenic greenhouse gas emissions attributable to all  
20 persons that the office designates to be covered entities under the  
21 program, using greenhouse gas emissions information from the three  
22 most recent years prior to 2021 for which greenhouse gas emissions  
23 information is available and verified by the office. The office may ex-  
24 clude from the calculation of baseline emissions those greenhouse gas  
25 emissions during the three most recent years prior to 2021 that would  
26 not have been regulated emissions if the Oregon Climate Action Pro-  
27 gram had been in effect during the time that the greenhouse gas  
28 emissions occurred.

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

31 (a) Except as provided in paragraph (b) of this subsection, the office

1 shall designate a person in control of one or more air contamination  
2 sources for which a permit is issued pursuant to ORS 468.065, 468A.040  
3 or 468A.155 as a covered entity if the annual regulated emissions at-  
4 tributable to the air contamination sources meet or exceed 25,000  
5 metric tons of carbon dioxide equivalent.

6 (b) For the purpose of regulating anthropogenic emissions of  
7 greenhouse gasses attributable to the generation of electricity in this  
8 state, the office shall designate a person in control of one or more air  
9 contamination sources for which a permit is issued pursuant to ORS  
10 468.065, 468A.040 or 468A.155 as a covered entity if the industry de-  
11 scription and code under the North American Industry Classification  
12 System that is listed in the permit for the air contamination sources  
13 is fossil fuel electric power generation, regardless of whether the an-  
14 nual regulated emissions attributable to the air contamination sources  
15 meet or exceed 25,000 metric tons of carbon dioxide equivalent.

16 (c) The office shall designate an electric system manager as a cov-  
17 ered entity for the purpose of addressing annual regulated emissions  
18 from outside this state that are attributable to the generation of  
19 electricity that the electric system manager schedules for delivery and  
20 consumption in this state, including wholesale market purchases for  
21 which the energy source for the electricity is not known, and ac-  
22 counting for transmission and distribution line losses.

23 (d) The office shall designate a natural gas marketer as a covered  
24 entity for the purpose of addressing annual regulated emissions that  
25 are attributable to the combustion of natural gas that is sold by the  
26 natural gas marketer for use in this state by persons that are not  
27 designated as covered entities under paragraph (a) or (b) of this sub-  
28 section.

29 (e) The office shall designate a natural gas utility as a covered en-  
30 tity for the purpose of addressing annual regulated emissions that are  
31 attributable to the combustion of natural gas that the natural gas

1 utility imports, sells or distributes for use in this state and that are  
2 not emissions accounted for through the regulation of air contam-  
3 ination sources under paragraph (a) or (b) of this subsection or natural  
4 gas marketers under paragraph (d) of this subsection.

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

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

13 (a) Criteria for the allocation of allowances pursuant to sections 14  
14 to 18 of this 2019 Act;

15 (b) Standards, pursuant to section 19 of this 2019 Act, for offset  
16 projects and for covered entities and opt-in entities to use offset  
17 credits;

18 (c) Rules for the administration of auctions of allowances pursuant  
19 to section 21 of this 2019 Act;

20 (d) Rules allowing for the trading of compliance instruments;

21 (e) Rules allowing registered entities to bank and carry forward al-  
22 lowances;

23 (f) Rules prohibiting the borrowing of allowances from future an-  
24 nual allowance budgets;

25 (g) Rules allowing opt-in entities and general market participants  
26 to participate in the market-based compliance mechanism; and

27 (h) Compliance periods, standards for calculating compliance obli-  
28 gations and procedures for covered entities to demonstrate compliance  
29 with their compliance obligations.

30 (4)(a) The office shall require a covered entity or opt-in entity to  
31 surrender to the office a quantity of compliance instruments equal to

1 the covered entity's or opt-in entity's compliance obligation no later  
2 than the surrender date specified by the director by rule or order.

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

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

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

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

23 **SECTION 10. Exemptions and exclusions.** (1) The Carbon Policy  
24 Office shall exempt from regulation as a covered entity under sections  
25 8 to 26 of this 2019 Act:

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

29 (b) A cogeneration facility, as defined in ORS 758.505, that is owned  
30 or operated by a public university listed in ORS 352.002 or by the  
31 Oregon Health and Science University established under ORS 353.020.

1       **(2) The office shall exclude from regulated emissions under sections**  
2 **8 to 26 of this 2019 Act:**

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

6       **(b) Greenhouse gas emissions from the direct combustion of mu-**  
7 **nicipal solid waste to generate renewable energy including but not**  
8 **limited to electricity, transportation fuels or heat.**

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

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

14       **(B) For which the capital and fuel costs associated with the gener-**  
15 **ation are included in the rates of a multistate jurisdictional electric**  
16 **company that are charged to the electricity customers in a state other**  
17 **than Oregon.**

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

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

28       **(3) For purposes of section 9 (2)(f) of this 2019 Act, the office may**  
29 **exempt from designation as a covered entity any person that imports**  
30 **in a calendar year less than a de minimis amount of gasoline and**  
31 **diesel fuel, in total, as determined by the office by rule. Gasoline and**



1 diesel fuel imported by persons that are related or share common  
2 ownership or control shall be aggregated in determining whether a  
3 person may be exempted under this subsection. The emissions attrib-  
4 utable to a person that is exempt from designation as a covered entity  
5 under this section shall be excluded from regulated emissions under  
6 sections 8 to 26 of this 2019 Act.

7 **SECTION 11. Temporary exclusion for certain emissions.** (1) Annual  
8 verified greenhouse gas emissions reported or assigned under ORS  
9 468A.280 that are emissions of hydrofluorocarbons, perfluorocarbons,  
10 sulfur hexafluoride, nitrogen trifluoride or other fluorinated  
11 greenhouse gases generated during semiconductor and related device  
12 manufacturing are excluded from regulated emissions.

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

19 (b) Nothing in this section may be interpreted to prevent a covered  
20 entity engaged in processes identified by industry description and code  
21 in the North American Industry Classification System as Semicon-  
22 ductor and Related Device Manufacturing, code 334413, from receiving  
23 allowances by direct distribution at no cost pursuant to sections 14 and  
24 18 of this 2019 Act for the manufacture of goods through emissions-  
25 intensive, trade-exposed processes.

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

28 **SECTION 13. Report on temporary exclusion.** No later than Sep-  
29 tember 15, 2024, the Carbon Policy Office shall conduct research and  
30 submit a report, in the manner provided by ORS 192.245, to the Joint  
31 Committee on Climate Action regarding the exclusion provided in

1 section 11 of this 2019 Act. The purpose of the report is to provide  
2 recommendations, which may include recommendations for legis-  
3 lation, on the anticipated effects of the January 2, 2026, repeal of sec-  
4 tion 11 of this 2019 Act and on whether to modify the January 2, 2026,  
5 repeal date provided in section 12 of this 2019 Act. In carrying out the  
6 provisions of this section, the office shall research and report on:

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

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

16 (3) The trade exposure of semiconductor manufacturers worldwide;

17 (4) The cost and economic impacts of repealing the exclusion pro-  
18 vided under section 11 of this 2019 Act; and

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

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

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

31 (3) The office shall allocate allowances for direct distribution at no

1 cost to covered entities that are electric companies subject to rules  
2 adopted under section 15 of this 2019 Act.

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

6 (5) The office shall allocate a percentage of allowances from each  
7 annual allowance budget to be distributed directly into an electricity  
8 price containment reserve. Allowances may be distributed from the  
9 electricity price containment reserve only when the distribution is  
10 necessary to protect electricity ratepayers from cost increases associ-  
11 ated with unexpected increases in regulated emissions attributable to  
12 an electric system manager that are outside of the control of the  
13 electric system manager, including but not limited to unexpected in-  
14 creases in regulated emissions due to hydroelectric power generation  
15 variability. The director shall adopt by rule a process for electric sys-  
16 tem managers to apply for direct distribution at no cost of allowances  
17 from the electricity price containment reserve.

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

21 (7) In order to mitigate leakage and pursuant to section 18 of this  
22 2019 Act, the office shall allocate allowances for direct distribution at  
23 no cost to covered entities and opt-in entities that are engaged in  
24 emissions-intensive, trade-exposed processes.

25 (8) The office shall allocate a percentage of allowances from each  
26 annual allowance budget to be distributed directly into an emissions-  
27 intensive, trade-exposed process reserve account. Allowances in the  
28 emissions-intensive, trade-exposed process reserve account may be  
29 distributed only to covered entities and opt-in entities described in,  
30 and pursuant to rules adopted by the director under, section 18 (6) and  
31 (7) of this 2019 Act.

1 (9) After making all allocations provided for in subsections (1) to  
2 (8) of this section, the office shall:

3 (a) Allocate all remaining allowances in the annual allowance  
4 budget to be distributed to an auction holding account for auction  
5 pursuant to section 21 of this 2019 Act; and

6 (b) Distribute the annual allowance budget pursuant to the allo-  
7 cations made under this section.

8 **SECTION 15. Direct distribution of allowances for electric compa-**  
9 **nies.** The Director of the Carbon Policy Office shall adopt rules for  
10 allocating allowances for direct distribution at no cost to covered en-  
11 tities that are electric companies. Rules adopted under this section  
12 must allow for an electric company to use allowances directly distrib-  
13 uted under this section to meet compliance obligations associated with  
14 generation of electricity to serve the load of the electric company's  
15 retail electricity consumers in Oregon, subject to the approval of the  
16 Public Utility Commission. The rules must include provisions neces-  
17 sary to implement direct distributions of allowances to electric com-  
18 panies as follows:

19 (1) For the purpose of aligning the effects of sections 8 to 26 of this  
20 2019 Act with the trajectory of emissions reductions by electric com-  
21 panies resulting from the requirements of ORS 469A.005 to 469A.210  
22 and 757.518, the direct distribution to an electric company during cal-  
23 endar year 2021 and for each calendar year until and including 2030  
24 must represent an amount equal to 100 percent of the electric  
25 company's forecast emissions associated with the generation of elec-  
26 tricity to serve the load of the electric company's retail electricity  
27 consumers in Oregon for the calendar year for which the allowances  
28 are directly distributed. For purposes of this subsection, forecast  
29 emissions must be based on information contained in the most recent  
30 integrated resource plan filed by the electric company and acknowl-  
31 edged by order by the Public Utility Commission or in any updates to

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

3 (2) Beginning in 2031 and for each following year until and including  
4 2050, the direct distribution to an electric company under this section  
5 must decline from the amount of allowances allocated to the electric  
6 company in 2030 by a constant amount proportionate to the decline in  
7 the amount of allowances available in annual allowance budgets pur-  
8 suant to section 9 (1)(b) of this 2019 Act.

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

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

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

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

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

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

1 by the governing body of the consumer-owned utility.

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

10 SECTION 17. Direct distribution of allowances for natural gas util-  
11 ities. (1) The Director of the Carbon Policy Office shall adopt rules for  
12 allocating allowances for direct distribution at no cost to covered en-  
13 tities that are natural gas utilities. Rules adopted under this section  
14 must allow for a natural gas utility to be directly distributed allow-  
15 ances at no cost in an amount equal to the covered emissions attrib-  
16 utable to the provision of natural gas service to the natural gas  
17 utility's low-income residential customers. By January 1 of the first  
18 year of each compliance period, the Carbon Policy Office shall deter-  
19 mine, after consultation with the Public Utility Commission, the  
20 quantity of allowances to allocate directly to a natural utility over the  
21 course of the compliance period.

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

29 SECTION 18. Direct distribution of allowances for covered entities  
30 and opt-in entities engaged in emissions-intensive, trade-exposed pro-  
31 cesses. (1) The Carbon Policy Office shall allocate allowances for direct

1 **distribution at no cost to a covered entity or an opt-in entity, if the**  
2 **covered entity or opt-in entity is a person in control of one or more**  
3 **air contamination sources designated as a covered entity under section**  
4 **9 of this 2019 Act and engaged in the manufacture of goods through**  
5 **one or more of the following emissions-intensive, trade-exposed pro-**  
6 **cesses, as identified by industry description and code in the North**  
7 **American Industry Classification System:**

8 **(a) Cement Manufacturing, code 327310.**

9 **(b) Other Crushed and Broken Stone Mining and Quarrying, code**  
10 **212319.**

11 **(c) Frozen Fruit, Juice and Vegetable Manufacturing, code 311411.**

12 **(d) Frozen Specialty Food Manufacturing, code 311412.**

13 **(e) Dried and Dehydrated Food Manufacturing, code 311423.**

14 **(f) Iron and Steel Mills and Ferroalloy Manufacturing, code 331110.**

15 **(g) Other Basic Inorganic Chemical Manufacturing, code 325180.**

16 **(h) All Other Plastics Product Manufacturing, code 326199.**

17 **(i) Mineral Wool Manufacturing, code 327993.**

18 **(j) Polystyrene Foam Product Manufacturing, code 326140.**

19 **(k) Glass Container Manufacturing, code 327213.**

20 **(L) Ethyl Alcohol Manufacturing, code 325193.**

21 **(m) Reconstituted Wood Product Manufacturing, code 321219.**

22 **(n) Gypsum Product Manufacturing, code 327420.**

23 **(o) Pulp Mills, code 322110.**

24 **(p) Paper (Except Newsprint) Mills, code 322121.**

25 **(q) Paperboard Mills, code 322130.**

26 **(r) Semiconductor and Related Device Manufacturing, code 334413.**

27 **(2) A covered entity or opt-in entity that is a fossil fuel distribution**  
28 **and storage facility or infrastructure, or an electric generating unit,**  
29 **may not receive allowances at no cost under this section and section**  
30 **14 of this 2019 Act.**

31 **(3) The annual allocation of allowances for direct distribution at**

1 no cost to a covered entity or opt-in entity described in subsection (1)  
2 of this section shall be a number of allowances equal to the sum total  
3 of the annual good-specific emissions calculations for the goods man-  
4 ufactured by the covered entity or opt-in entity, multiplied by:

5 (a) During calendar year 2021, 100 percent; and

6 (b) Beginning in 2022 and for each following year until and including  
7 2050, a percentage that is adjusted annually, as set forth in a schedule  
8 adopted by the Director of the Carbon Policy Office by rule. The  
9 schedule required by this subsection shall result in the amount of an-  
10 nual allowance allocations that a covered entity or opt-in entity may  
11 receive under this section and section 14 of this 2019 Act in each year  
12 declining annually by a constant amount proportionate to the decline  
13 in the amount of allowances available in annual allowance budgets  
14 pursuant to section 9 (1)(b) of this 2019 Act.

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

17 (a) The benchmark for the good, as calculated pursuant to sub-  
18 section (5) of this section; and

19 (b) The covered entity's or opt-in entity's output of the good during  
20 the calendar year prior to the calendar year in which the annual al-  
21 location of allowances will be directly distributed.

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

30 (A) A means for attributing a covered entity's or opt-in entity's  
31 greenhouse gas emissions to the manufacture of individual goods; and



1       **(B) Requirements for covered entities and opt-in entities to provide**  
2 **any pertinent records necessary for the office to verify the output data**  
3 **used to calculate benchmarks pursuant to this paragraph.**

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

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

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

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

26       **(A) Calculating the three-year average of the total, expressed in**  
27 **tons of carbon dioxide equivalent, of greenhouse gas emissions attrib-**  
28 **utable to manufacture of the good in this state each year by the cov-**  
29 **ered entity or opt-in entity, using greenhouse gas emissions**  
30 **information from the three most recent years prior to 2021 for which**  
31 **verified greenhouse gas emissions information is available and verified**

1 by the office; and

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

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

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

16 (B) Significant changes to a covered entity's or opt-in entity's ex-  
17 ternal competitive environment that result in a significant increase in  
18 leakage risk.

19 (b) Rules adopted under this subsection:

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

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

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

31 (A) Temporarily continuing to apply in the calculation conducted

1 for the covered entity or opt-in entity under subsection (3) of this  
2 section, for a period of years to be determined by the office, the  
3 scheduled percentage under subsection (3)(b) of this section that was  
4 applicable during the year prior to the year in which the covered entity  
5 or opt-in entity applied for the adjustment, such that the annual al-  
6 lowance allocation received by the covered entity or opt-in entity does  
7 not decline during the adjustment period; or

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

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

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

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

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

27 (c) Rules adopted under this subsection:

28 (A) May allow for the office to assign a good manufactured by a  
29 covered entity or opt-in entity described in this subsection a tempo-  
30 rary benchmark and to adjust the temporary benchmark after the  
31 close of the first compliance period for which the covered entity or

1 **opt-in entity must meet a compliance obligation;**

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

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

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

15 **(a) The emissions intensity and trade exposure of the industries**  
16 **listed in subsection (1) of this section and any other industries allo-**  
17 **cated allowances for direct distribution at no cost under subsection (7)**  
18 **of this section;**

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

21 **(c) Whether the conclusions of the assessments required under**  
22 **paragraphs (a) and (b) of this subsection warrant an adjustment to the**  
23 **benchmarks developed pursuant to subsections (5) and (7) of this sec-**  
24 **tion, and thus an adjustment to the allocation of allowances calculated**  
25 **using the benchmarks.**

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

27 **(a) Must be located in the United States or in a jurisdiction with**  
28 **which the State of Oregon has entered into a linkage agreement pur-**  
29 **suant to section 24 of this 2019 Act;**

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

31 **(c) Must result in greenhouse gas emissions reductions or removals**

1 **that:**

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

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

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

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

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

23 (B) The air contamination source is in violation of the terms or  
24 conditions of any permit required or authorized under ORS chapter  
25 468A and issued by the Department of Environmental Quality or a re-  
26 gional air quality control authority formed under ORS 468A.105.

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

29 (a) Take into consideration standards, rules or protocols for offset  
30 projects and offset credits established by other states, provinces and  
31 countries with programs comparable to the Oregon Climate Action

1 **Program;**

2 **(b) Encourage opportunities for the development of offset projects**  
3 **in this state by adopting offset protocols that may include, but need**  
4 **not be limited to:**

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

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

10 **(c) Consult with and consider the recommendations of the State**  
11 **Department of Agriculture, the State Board of Forestry, the Environ-**  
12 **mental Justice Task Force, the Oregon Watershed Enhancement**  
13 **Board and other relevant state agencies;**

14 **(d) Adopt by rule a process for the Carbon Policy Office to investi-**  
15 **gate and invalidate issued offset credits as necessary to uphold the**  
16 **environmental integrity of the Oregon Climate Action Program; and**

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

23 **(4) The director shall appoint a compliance offsets protocol advisory**  
24 **committee to aid and advise the office in adopting and updating rules**  
25 **governing offset projects and covered entities' use of offset credits.**  
26 **The advisory committee shall provide guidance to the office in devel-**  
27 **oping and updating offset protocols for the purposes of increasing off-**  
28 **set projects with direct environmental benefits in this state while**  
29 **prioritizing offset projects that benefit impacted communities, Indian**  
30 **tribes and natural and working lands. The director shall appoint at**  
31 **least one member to the advisory committee from each of the follow-**

1 **ing groups:**

- 2 (a) **Scientists;**
- 3 (b) **Public health experts;**
- 4 (c) **Carbon market experts;**
- 5 (d) **Representatives of Indian tribes;**
- 6 (e) **Environmental justice advocates;**
- 7 (f) **Labor and workforce representatives;**
- 8 (g) **Forestry experts;**
- 9 (h) **Agriculture experts;**
- 10 (i) **Environmental advocates;**
- 11 (j) **Conservation advocates; and**
- 12 (k) **Dairy experts.**

13 **SECTION 20. Methodology for designating impacted communities.**

14 (1) **The Director of the Carbon Policy Office, by rule and in consulta-**  
15 **tion with the Portland State University Population Research Center,**  
16 **the Oregon Health Authority and other relevant state agencies and**  
17 **local agencies and officials, shall designate impacted communities by**  
18 **census tract. The Carbon Policy Office shall designate impacted com-**  
19 **munities based on a methodology that takes into consideration ge-**  
20 **ographic, socioeconomic, historic disadvantage, public health and**  
21 **environmental hazard criteria. The office may designate as impacted**  
22 **communities areas that include, but are not limited to:**

23 (a) **Areas with above average concentrations of low-income house-**  
24 **holds, historically disadvantaged households, high unemployment,**  
25 **high linguistic isolation, low levels of homeownership, high rent bur-**  
26 **den, sensitive populations or residents with low levels of educational**  
27 **attainment.**

28 (b) **Areas disproportionately affected by environmental pollution**  
29 **and other hazards that can lead to negative public health effects, ex-**  
30 **posure or environmental degradation.**

31 (2) **The methodology required by this section must give greater**

1 **weight to those criteria that the office determines are the most accu-**  
2 **rate predictors of vulnerability to the impacts of climate change and**  
3 **ocean acidification.**

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

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

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

10 **(3) The office may engage:**

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

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

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

17 **(5) The office shall:**

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

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

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

28 **(d) Take actions to minimize the potential for market manipulation**  
29 **and to guard against bidder collusion, including but not limited to**  
30 **specifying as holding limits the maximum number of allowances that**  
31 **may be held for use or trade by a registered entity at any time.**



1 (6) In setting the auction floor price, allowance price containment  
2 reserve floor price and hard price ceiling and adopting rules as re-  
3 quired by subsection (5) of this section, the office shall consider:

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

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

8 (7) Reserve auctions of allowances from the allowance price con-  
9 tainment reserve shall be conducted separately from the auction of  
10 other allowances for the purpose of addressing high costs of compli-  
11 ance instruments. Allowances unsold at a reserve auction must be  
12 made available again at future reserve auctions. General market par-  
13 ticipants may not participate in reserve auctions.

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

17 SECTION 22. Auction Proceeds Distribution Fund. (1) The Auction  
18 Proceeds Distribution Fund is established in the State Treasury, sep-  
19 arate and distinct from the General Fund.

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

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

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

30 (b) All moneys that constitute revenues described in Article VIII,  
31 section 2 (1)(g), of the Oregon Constitution, must be transferred to the

1 **Common School Fund; and**

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

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

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

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

20 **(3) The regulated emissions reductions achieved during the compli-**  
21 **ance period and progress made toward achieving a reduction in total**  
22 **regulated emissions levels to at least 45 percent below 1990 levels by**  
23 **2035 and a reduction in total regulated emissions levels to at least 80**  
24 **percent below 1990 emissions levels by 2050; and**

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

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

31 **(a) Consider market-based compliance mechanisms designed to re-**

1 **duce greenhouse gas emissions in other jurisdictions; and**

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

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

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

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

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

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

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

28 **(d) The proposed linkage agreement and any related engagement**  
29 **by the State of Oregon of an independent organization to provide ad-**  
30 **ministrative or technical services to support the implementation of**  
31 **sections 8 to 26 of this 2019 Act will not impose any significant liability**

1 on the state or any state agency for any failure associated with the  
2 linkage.

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

10 SECTION 25. Rulemaking advisory committee. The Governor shall  
11 appoint a nine-member advisory committee to advise the Director of  
12 the Carbon Policy Office in adopting rules under sections 8 to 26 of this  
13 2019 Act. The advisory committee shall consist of persons impacted by  
14 or otherwise interested in the Oregon Climate Action Program.

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

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

25 (a) Moneys appropriated or otherwise transferred to the fund by the  
26 Legislative Assembly; and

27 (b) Other moneys deposited in the fund from any source.

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

31 (a) Administering the enforcement of sections 8 to 26 of this 2019

1 Act or rules adopted under sections 8 to 26 of this 2019 Act; or

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

4  
5 INVESTMENT OF STATE PROCEEDS FROM OREGON  
6 CLIMATE ACTION PROGRAM AUCTIONS  
7 (General Provisions)  
8

9 SECTION 27. Definitions. As used in sections 27 to 41 of this 2019  
10 Act:

11 (1) “Impacted community” has the meaning given that term in  
12 section 8 of this 2019 Act.

13 (2) “Metropolitan planning organization” has the meaning given  
14 that term in ORS 197.629.

15 (3) “Natural and working lands” has the meaning given that term  
16 in section 8 of this 2019 Act.

17 (4) “Regional transportation plan” has the meaning given that term  
18 in ORS 184.899.

19 SECTION 28. Severability. If an allocation of moneys for a partic-  
20 ular purpose by the Legislative Assembly under sections 27 to 41 of this  
21 2019 Act is determined by a court to be inconsistent with law, the al-  
22 location is hereby declared independent and severable and the inva-  
23 lidity, if any, of any part or feature of the allocation shall not affect  
24 or render the remainder of the allocations by the Legislative Assembly  
25 under sections 27 to 41 of this 2019 Act invalid or inoperative.

26  
27 (Climate Investments Fund;  
28 Transportation Decarbonization Investments Account)  
29

30 SECTION 29. Moneys deposited in Climate Investments Fund and  
31 Transportation Decarbonization Investments Account; general direc-

1 **tives.** (1) Moneys deposited in the Climate Investments Fund and  
2 moneys deposited in the Transportation Decarbonization Investments  
3 Account shall be allocated in a manner consistent with:

4 (a) The purposes set forth in section 7 of this 2019 Act; and

5 (b) The requirements of the Oregon Constitution.

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

10 (a) Prioritize projects that benefit impacted communities.

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

12 (c) Provide opportunities for Indian tribes, members of impacted  
13 communities and businesses owned by women or members of minority  
14 groups to participate in and benefit from statewide efforts to reduce  
15 greenhouse gas emissions, including technical assistance for minority  
16 or women owned businesses, nonprofit organizations and other com-  
17 munity institutions that serve or represent most impacted communi-  
18 ties or low income households.

19 (d) Make use of domestically produced products.

20 (e) Promote low carbon economic development opportunities and  
21 the creation of jobs that sustain living wages.

22 (f) Provide assistance to help households, businesses and workers  
23 transition to an economic system that allows for the State of Oregon  
24 to achieve the greenhouse gas emissions reduction goals set forth in  
25 ORS 468A.205.

26 **SECTION 30. Climate Investments Fund.** (1) The Climate Invest-  
27 ments Fund is established in the State Treasury, separate and distinct  
28 from the General Fund. The Climate Investments Fund shall consist  
29 of moneys deposited in the fund under section 22 of this 2019 Act. In-  
30 terest earned by the fund shall be credited to the fund.

31 (2) Moneys in the Climate Investments Fund may be used only for

1 projects, programs and activities that further the purposes set forth  
2 in section 7 of this 2019 Act.

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

6 (a) Ten percent shall be allocated for projects, programs or activ-  
7 ities that benefit Indian tribes;

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

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

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

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

20 (2) Funding to reduce greenhouse gas emissions through electrical  
21 grid decarbonization efforts, including but not limited to investments  
22 in energy generation from renewable resources, distributed energy re-  
23 sources, transmission and storage projects for renewable energy, de-  
24 mand response, community solar projects and other community-scale  
25 renewable energy projects.

26 (3) Funding to reduce greenhouse gas emissions associated with  
27 transportation, including but not limited to investments in transpor-  
28 tation electrification, transit, fuel and energy efficiency in vessels  
29 powered by marine engines and roadside landscape management ef-  
30 forts that promote carbon sequestration.

31 (4) Funding to support planning or implementation of planning by

1 local governments and metropolitan planning organizations for re-  
2 ducing greenhouse gas emissions or promoting carbon sequestration,  
3 adaptation or resilience.

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

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

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

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

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

29 **SECTION 32. Transportation Decarbonization Investments Account.**

30 (1) The Transportation Decarbonization Investments Account is es-  
31 tablished as a separate account within the State Highway Fund. In-



1 **terest earned by the Transportation Decarbonization Investments**  
2 **Account shall be credited to the account. Moneys in the account must**  
3 **be distributed by the Department of Transportation as provided in this**  
4 **section.**

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

7 **(3) Moneys deposited in the account may be used only:**

8 **(a) As authorized by Article IX, section 3a, of the Oregon Consti-**  
9 **tution; and**

10 **(b) For activities that further the purposes set forth in section 7**  
11 **of this 2019 Act.**

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

14 **SECTION 33. Uses of Transportation Decarbonization Investments**  
15 **Account. (1) In allocating moneys from the Transportation**  
16 **Decarbonization Investments Account, the Legislative Assembly shall,**  
17 **to the extent feasible and consistent with law, seek to invest in:**

18 **(a) Programs, projects or activities by state agencies, local govern-**  
19 **ments or metropolitan planning organizations that are consistent**  
20 **with, or that complement, investments described in section 31 of this**  
21 **2019 Act;**

22 **(b) The implementation of land use and transportation scenarios**  
23 **required to be adopted by metropolitan service districts under section**  
24 **37, chapter 865, Oregon Laws 2009, and that have been approved by the**  
25 **Land Conservation and Development Commission; and**

26 **(c) The planning, development and implementation of land use and**  
27 **transportation scenarios by local governments and metropolitan plan-**  
28 **ning organizations in accordance with the guidelines established by**  
29 **the Department of Transportation and the Department of Land Con-**  
30 **servation and Development under ORS 184.893.**

31 **(2) Improvements funded by moneys deposited in the Transporta-**

1 tion Decarbonization Investments Account shall, to the greatest ex-  
2 tent practicable, serve to conserve, restore, preserve and enhance  
3 natural resources adjacent to the improvements through the procure-  
4 ment and installation of Oregon and native nursery stock. The re-  
5 quirements of this subsection shall be implemented in a manner  
6 designed to minimize soil erosion, reduce storm water runoff volume  
7 and velocity, and to promote water conservation and natural  
8 ecosystem resiliency in the face of climate change.

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

16 **SECTION 34. Construction projects funded by certain auction pro-**  
17 **ceeds; requirements.** (1) If a construction project is funded in whole  
18 or in part by moneys allocated by the Legislative Assembly from the  
19 Climate Investments Fund or the Transportation Decarbonization In-  
20 vestments Account, the primary contractor participating in the con-  
21 struction project:

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

24 (b) May not be a contractor listed by the Commissioner of the Bu-  
25 reau of Labor and Industries under ORS 279C.860 as ineligible to re-  
26 ceive a contract or subcontract for public works;

27 (c) Must demonstrate a history of compliance with the rules and  
28 other requirements of the Construction Contractors Board and of the  
29 Workers' Compensation Division, the Building Codes Division and the  
30 Occupational Safety and Health Division of the Department of Con-  
31 sumer and Business Services; and

1 (d) Must demonstrate a history of compliance with federal and state  
2 wage and hour laws.

3 (2) A farm labor contractor, as defined in ORS 658.405, may not re-  
4 ceive moneys allocated by the Legislative Assembly from the Climate  
5 Investments Fund or the Transportation Decarbonization Investments  
6 Account unless the farm labor contractor is in compliance with all li-  
7 censing and any other requirements or regulations imposed upon farm  
8 labor contractors pursuant to ORS 658.405 to 658.503.

9 (3)(a) The Oregon Department of Administrative Services shall  
10 adopt model rules that specify labor, workforce and contracting pro-  
11 cedures for all state agencies to use in administering funds for projects  
12 that are funded in whole or in part by moneys allocated by the Legis-  
13 lative Assembly from the Climate Investments Fund or the Transpor-  
14 tation Decarbonization Investments Account. The department shall  
15 adopt the rules in accordance with ORS chapter 183.

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

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

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

31 (B) The requirement in subparagraph (A) of this paragraph shall

1 **not apply if the administering agency finds that:**

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

3 **(ii) Steel, iron, coatings for steel and iron and manufactured pro-**  
4 **ducts required for the project are not produced in the United States**  
5 **in sufficient and reasonably available quantities and with satisfactory**  
6 **quality; or**

7 **(iii) The requirement set forth in subparagraph (A) of this para-**  
8 **graph will increase the costs of the project, exclusive of labor costs**  
9 **involved in final assembly for manufactured products, by 25 percent**  
10 **or more.**

11 **(C) Notwithstanding a finding by the administering agency under**  
12 **paragraph (d)(B) of this subsection, a contractor shall spend at least**  
13 **75 percent of the total amount the contractor spends in connection**  
14 **with the construction project on steel, iron, coatings for steel and iron**  
15 **and manufactured products that become part of a permanent structure**  
16 **to purchase steel, iron, coatings for steel and iron and manufactured**  
17 **products that are produced in the United States.**

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

21 **(4) A state agency charged with administering funds for con-**  
22 **struction projects that are funded in whole or in part by moneys de-**  
23 **posited in the Climate Investments Fund or the Transportation**  
24 **Decarbonization Investments Account may not adopt the administer-**  
25 **ing agency's own rules for labor, workforce and contracting proce-**  
26 **dures related to administering funds allocated from the Climate**  
27 **Investments Fund or the Transportation Decarbonization Investments**  
28 **Account.**

29

30

**(Just Transition)**

31

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

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

9       (3)(a) Of the moneys deposited in the fund each biennium, the  
10 commission shall set aside 50 percent of the funds in a reserve ac-  
11 count.

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

15       (A) An amount that, in the commission's determination, is ade-  
16 quate for the purposes specified in paragraph (c) of this subsection;  
17 or

18       (B) \$\_\_\_\_\_.

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

23       **SECTION 36.** (1) The Higher Education Coordinating Commission,  
24 in consultation with the Employment Department and other interested  
25 state agencies, shall establish a Just Transition Program for the pur-  
26 pose of distributing moneys deposited in the Just Transition Fund.

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

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

31       (b) Provide financial support for workers dislocated or adversely

1 affected by climate change or climate change policies;

2 (c) Provide mental health services for workers dislocated or ad-  
3 versely affected by climate change or climate change policies; or

4 (d) Consistent with the purposes set forth in section 7 of this 2019  
5 Act, provide other related workforce support to communities in this  
6 state that are adversely affected by climate change or climate change  
7 policies.

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

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

18 (5) A grant program adopted under this section may:

19 (a) Encourage, but not require, a grant applicant to provide  
20 matching funds for completion of the project, program or activity for  
21 which a grant is awarded; and

22 (b) Allow a grant applicant to appeal to the commission for reeval-  
23 uation of any determination of grant funding.

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

31

(Common School Fund)

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

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

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

**(Distribution of Auction Proceeds; Reporting; Recommendations)**

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

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

1 and the results of those investments in carrying out the purposes set  
2 forth in section 7 of this 2019 Act.

3 **SECTION 39. Biennial expenditure audit.** (1) The Carbon Policy Of-  
4 fice and the Department of Transportation jointly shall select an in-  
5 dependent third-party organization to prepare a biennial audit of:

6 (a) All programs, projects or activities funded by moneys from the  
7 Climate Investments Fund; and

8 (b) All programs, projects or activities funded by moneys from the  
9 Transportation Decarbonization Investments Account.

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

15 **SECTION 40. Biennial climate action investment plan; preparation.**

16 (1) No later than June 1 of each even-numbered year and in the man-  
17 ner provided in ORS 192.245, the Carbon Policy Office shall deliver a  
18 biennial climate action investment plan to the Environmental Justice  
19 Task Force, the Governor and the Joint Committee on Climate Action.  
20 The purpose of the plan is to present recommendations, including  
21 recommendations for legislation, on the best opportunities available  
22 to the state during the next biennial budget period to make expendi-  
23 tures and investments of state proceeds from auctions conducted un-  
24 der section 21 of this 2019 Act that:

25 (a) Are consistent with the requirements of the Oregon Constitu-  
26 tion;

27 (b) Carry out the purposes set forth in section 7 of this 2019 Act;  
28 and

29 (c) Are consistent with the provisions of sections 29, 30, 31, 32 and  
30 33 of this 2019 Act.

31 (2) The recommendations contained in the plan required by this



1 section must be based on consideration of the best scientific and eco-  
2 nomic information available at the time of the preparation of the plan.

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

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

7 (b) Representatives of Indian tribes; and

8 (c) The citizens' advisory committee required by subsection (4) of  
9 this section.

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

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

23  
24 **PROVISIONS RELATED TO THE PUBLIC UTILITY COMMISSION**

25  
26 SECTION 42. Sections 43 and 44 of this 2019 Act are added to and  
27 made a part of ORS chapter 757.

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

29 (a) "Electric company" has the meaning given that term in ORS  
30 757.600.

31 (b) "Natural gas utility" means a natural gas utility regulated by

1 **the Public Utility Commission under this chapter.**

2 **(2) The Public Utility Commission shall require proceeds received**  
3 **by an electric company or natural gas utility from the sale of allow-**  
4 **ances directly distributed at no cost under sections 14, 15 and 17 of this**  
5 **2019 Act:**

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

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

13 **(3) Subject to subsection (2) of this section, an electric company or**  
14 **natural gas utility shall prioritize the use of auction proceeds for en-**  
15 **ergy assistance programs, including:**

16 **(a) Rate design based solutions;**

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

19 **(c) Participation by low-income residential customers in conserva-**  
20 **tion programs that further reduce the out-of-pocket costs for energy**  
21 **efficiency measures.**

22 **(4) The Public Utility Commission shall, pursuant to ORS 756.040**  
23 **and after consultation with the Housing and Community Services De-**  
24 **partment, adopt rules for the implementation and enforcement of this**  
25 **section.**

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

1 **low-income assistance.**

2

3 **BIENNIAL STATEWIDE ENERGY BURDEN REPORT**

4

5 **SECTION 45. No later than November 1 of every even-numbered**  
6 **year, the Housing and Community Services Department and the State**  
7 **Department of Energy shall jointly transmit to the Governor and the**  
8 **Legislative Assembly a biennial statewide energy burden report. The**  
9 **Housing and Community Services Department and the State Depart-**  
10 **ment of Energy shall jointly adopt rules for gathering data necessary**  
11 **to prepare the report. In adopting rules under this section, the Hous-**  
12 **ing and Community Services Department and the State Department**  
13 **of Energy shall consult with consumer-owned utilities as defined in**  
14 **ORS 757.600.**

15

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

18

19 **SECTION 46. Transfer. The duties, functions and powers of the**  
20 **Environmental Quality Commission and the Department of Environ-**  
21 **mental Quality relating to ORS 468A.280 and rules adopted pursuant**  
22 **to ORS 468A.280 are imposed upon, transferred to and vested in the**  
23 **Carbon Policy Office.**

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

26 **(a) Deliver to the Carbon Policy Office all records and property**  
27 **within the jurisdiction of the director that relate to the duties, func-**  
28 **tions and powers transferred by section 46 of this 2019 Act; and**

29 **(b) Transfer to the Carbon Policy Office those employees engaged**  
30 **primarily in the exercise of the duties, functions and powers trans-**  
31 **ferred by section 46 of this 2019 Act.**

1       **(2) The Director of the Carbon Policy Office shall take possession**  
2 **of the records and property, and shall take charge of the employees**  
3 **and employ them in the exercise of the duties, functions and powers**  
4 **transferred by section 46 of this 2019 Act, without reduction of com-**  
5 **ensation but subject to change or termination of employment or**  
6 **compensation as provided by law.**

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

11       **SECTION 48. Unexpended revenues. (1) The unexpended balances**  
12 **of amounts authorized to be expended by the Environmental Quality**  
13 **Commission or the Department of Environmental Quality for the**  
14 **biennium beginning July 1, 2019, from revenues dedicated, contin-**  
15 **uously appropriated, appropriated or otherwise made available for the**  
16 **purpose of administering and enforcing the duties, functions and**  
17 **powers transferred by section 46 of this 2019 Act are transferred to and**  
18 **are available for expenditure by the Carbon Policy Office for the**  
19 **biennium beginning July 1, 2019, for the purpose of administering and**  
20 **enforcing the duties, functions and powers transferred by section 46**  
21 **of this 2019 Act.**

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

26       **SECTION 49. Action, proceeding, prosecution. The transfer of du-**  
27 **ties, functions and powers to the Carbon Policy Office by section 46**  
28 **of this 2019 Act does not affect any action, proceeding or prosecution**  
29 **involving or with respect to the duties, functions and powers begun**  
30 **before and pending at the time of the transfer, except that the Carbon**  
31 **Policy Office is substituted for the Environmental Quality Commission**

1 or the Department of Environmental Quality, as appropriate, in the  
2 action, proceeding or prosecution.

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

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

19 **SECTION 51. Rules.** (1) Notwithstanding the transfer of duties,  
20 functions and powers by section 46 of this 2019 Act, the rules of the  
21 Environmental Quality Commission with respect to such duties, func-  
22 tions or powers that are in effect on the operative date of section 46  
23 of this 2019 Act continue in effect until superseded or repealed by rules  
24 of the Carbon Policy Office. References in the rules of the Environ-  
25 mental Quality Commission to the Environmental Quality Commission  
26 are considered to be references to the Director of the Carbon Policy  
27 Office. References in the rules of the Environmental Quality Com-  
28 mission to the Department of Environmental Quality or an officer or  
29 employee of the Department of Environmental Quality are considered  
30 to be references to the Carbon Policy Office or an officer or employee  
31 of the Carbon Policy Office.



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

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

6 **(b) “Greenhouse gas” has the meaning given that term in section**  
7 **8 of this 2019 Act.**

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

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

13 *[(a)]* **(b) [Any] A person who imports, sells, allocates or distributes elec-**  
14 **tricity for use in this state** *[electricity, the generation of which emits*  
15 *greenhouse gases].*

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

18 **(3) A person required to register and report under subsection (2) of**  
19 **this section shall register with the Carbon Policy Office and make re-**  
20 **ports containing information that the director by rule may require**  
21 **that is relevant to determining and verifying greenhouse gas emis-**  
22 **sions. The director may by rule require the person to provide an audit**  
23 **by an independent and disinterested party to verify that the**  
24 **greenhouse gas emissions information reported by the person is true**  
25 **and accurate.**

26 *[(2)]* **(4) Rules adopted by the [commission] director under this section for**  
27 **electricity that is imported, sold, allocated or distributed for use in this state**  
28 **may require reporting of information necessary to determine greenhouse gas**  
29 **emissions from generating facilities used to produce the electricity and re-**  
30 **lated electricity transmission line losses.**

31 *[(3)(a)]* **(5)(a) The [commission] director shall allow consumer-owned**

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

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

10 (A) The number of megawatt-hours of electricity purchased by the utility  
11 from the Bonneville Power Administration, segregated by the types of con-  
12 tracts entered into by the utility with the Bonneville Power Administration;  
13 and

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

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

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

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

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

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

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

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

30 [(D)] (E) An estimate of the amount of greenhouse gas emissions[, using  
31 *default greenhouse gas emissions factors established by the commission by*



1 *rule,*] attributable to:

2 (i) Electricity purchases made by a particular seller to the electric com-  
3 pany;

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

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

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

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

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

15 [(5)] (7) Rules adopted by the [commission] **director** under this section for  
16 [fossil] fuel that is imported, sold or distributed for use in this state may  
17 require reporting of the type and quantity of the fuel and any additional  
18 information necessary to determine the [carbon content] **greenhouse gas**  
19 **emissions associated with the use or combustion** of the fuel. [For the  
20 purpose of determining greenhouse gas emissions related to liquefied petroleum  
21 gas, the commission shall allow reporting using publications or submission of  
22 data by the American Petroleum Institute but may require reporting of such  
23 other information necessary to achieve the purposes of the rules adopted by the  
24 commission under this section.]

25 [(6)] (8) To an extent that is consistent with the purposes of the rules  
26 adopted by the [commission] **director** under this section, the [commission]  
27 **director** shall minimize the burden of the reporting required under this  
28 section by:

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

31 (b) Allowing electronic reporting;

1 (c) Allowing use of good engineering practice calculations in reports, or  
2 of emission factors published by the United States Environmental Protection  
3 Agency;

4 (d) Establishing thresholds for the amount of specific greenhouse gases  
5 that may be emitted or generated without reporting;

6 (e) Requiring reporting by the fewest number of persons in a fuel dis-  
7 tribution system that will allow the [commission] **director** to acquire the  
8 information needed by the [commission] **director**; or

9 (f) Other appropriate means and procedures determined by the [commis-  
10 sion] **director**.

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

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

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

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

28 **(b) The director shall limit the fees established under this sub-**  
29 **section to the anticipated cost of developing, implementing and ana-**  
30 **lyzing data collected under greenhouse gas emissions registration and**  
31 **reporting programs.**

1 **ENERGY FACILITY CARBON DIOXIDE EMISSIONS STANDARDS**  
2 **(Repeal of Carbon Dioxide Emissions Standards)**

3  
4 **SECTION 54.** ORS 469.503 is amended to read:

5 469.503. In order to issue a site certificate, the Energy Facility Siting  
6 Council shall determine that the preponderance of the evidence on the record  
7 supports the following conclusions:

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

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

20 *[(a) The net carbon dioxide emissions rate of the proposed base load gas*  
21 *plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt*  
22 *hour of net electric power output, with carbon dioxide emissions and net elec-*  
23 *tric power output measured on a new and clean basis. Notwithstanding the*  
24 *foregoing, the council may by rule modify the carbon dioxide emissions stand-*  
25 *ard for base load gas plants if the council finds that the most efficient stand-*  
26 *alone combined cycle, combustion turbine, natural gas-fired energy facility that*  
27 *is commercially demonstrated and operating in the United States has a net*  
28 *heat rate of less than 7,200 Btu per kilowatt hour higher heating value ad-*  
29 *justed to ISO conditions. In modifying the carbon dioxide emission standard,*  
30 *the council shall determine the rate of carbon dioxide emissions per kilowatt*  
31 *hour of net electric output of such energy facility, adjusted to ISO conditions,*

1 *and reset the carbon dioxide emissions standard at 17 percent below this*  
2 *rate.]*

3 *[(b) The council shall adopt carbon dioxide emissions standards for other*  
4 *types of fossil-fueled power plants. Such carbon dioxide emissions standards*  
5 *shall be promulgated by rule. In adopting or amending such carbon dioxide*  
6 *emissions standards, the council shall consider and balance at least the fol-*  
7 *lowing principles, the findings on which shall be contained in the rulemaking*  
8 *record:]*

9 *[(A) Promote facility fuel efficiency;]*

10 *[(B) Promote efficiency in the resource mix;]*

11 *[(C) Reduce net carbon dioxide emissions;]*

12 *[(D) Promote cogeneration that reduces net carbon dioxide emissions;]*

13 *[(E) Promote innovative technologies and creative approaches to mitigating,*  
14 *reducing or avoiding carbon dioxide emissions;]*

15 *[(F) Minimize transaction costs;]*

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

19 *[(H) Allow either the applicant or third parties to implement offsets;]*

20 *[(I) Be attainable and economically achievable for various types of power*  
21 *plants;]*

22 *[(J) Promote public participation in the selection and review of offsets;]*

23 *[(K) Promote prompt implementation of offset projects;]*

24 *[(L) Provide for monitoring and evaluation of the performance of offsets;*  
25 *and]*

26 *[(M) Promote reliability of the regional electric system.]*

27 *[(c) The council shall determine whether the applicable carbon dioxide*  
28 *emissions standard is met by first determining the gross carbon dioxide emis-*  
29 *sions that are reasonably likely to result from the operation of the proposed*  
30 *energy facility. Such determination shall be based on the proposed design of*  
31 *the energy facility. The council shall adopt site certificate conditions to ensure*

1 *that the predicted carbon dioxide emissions are not exceeded on a new and*  
2 *clean basis. For any remaining emissions reduction necessary to meet the ap-*  
3 *plicable standard, the applicant may elect to use any of subparagraphs (A) to*  
4 *(D) of this paragraph, or any combination thereof. The council shall determine*  
5 *the amount of carbon dioxide or other greenhouse gas emissions reduction that*  
6 *is reasonably likely to result from the applicant's offsets and whether the re-*  
7 *sulting net carbon dioxide emissions meet the applicable carbon dioxide emis-*  
8 *sions standard. For purposes of determining the net carbon dioxide emissions,*  
9 *the council shall by rule establish the global warming potential of each*  
10 *greenhouse gas based on a generally accepted scientific method, and convert*  
11 *any greenhouse gas emissions to a carbon dioxide equivalent. Unless otherwise*  
12 *provided by the council by rule, the global warming potential of methane is*  
13 *23 times that of carbon dioxide, and the global warming potential of nitrous*  
14 *oxide is 296 times that of carbon dioxide. If the council or a court on judicial*  
15 *review concludes that the applicant has not demonstrated compliance with the*  
16 *applicable carbon dioxide emissions standard under subparagraphs (A), (B)*  
17 *or (D) of this paragraph, or any combination thereof, and the applicant has*  
18 *agreed to meet the requirements of subparagraph (C) of this paragraph for any*  
19 *deficiency, the council or a court shall find compliance based on such agree-*  
20 *ment.]*

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

26 *[(B) The applicant or a third party will implement particular offsets, in*  
27 *which case the council may adopt site certificate conditions ensuring that the*  
28 *proposed offsets are implemented but shall not require that predicted levels of*  
29 *avoidance, displacement or sequestration of greenhouse gas emissions be*  
30 *achieved. The council shall determine the quantity of greenhouse gas emissions*  
31 *reduction that is reasonably likely to result from each of the proposed offsets*

1 *based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In*  
2 *making this determination, the council shall not allow credit for offsets that*  
3 *have already been allocated or awarded credit for greenhouse gas emissions*  
4 *reduction in another regulatory setting. In addition, the fact that an applicant*  
5 *or other parties involved with an offset may derive benefits from the offset*  
6 *other than the reduction of greenhouse gas emissions is not, by itself, a basis*  
7 *for withholding credit for an offset.]*

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

10 *[(ii) The ability of the council to determine the actual quantity of*  
11 *greenhouse gas emissions reduction resulting from the offset, taking into con-*  
12 *sideration any proposed measurement, monitoring and evaluation of mitigation*  
13 *measure performance; and]*

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

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

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

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

4 *[(d) If the applicant elects to meet the applicable carbon dioxide emissions*  
5 *standard in whole or in part under paragraph (c)(C) of this subsection, the*  
6 *applicant shall identify the qualified organization. The applicant may identify*  
7 *an organization that has applied for, but has not received, an exemption from*  
8 *federal income taxation, but the council may not find that the organization is*  
9 *a qualified organization unless the organization is exempt from federal taxa-*  
10 *tion under section 501(c)(3) of the Internal Revenue Code as amended and in*  
11 *effect on December 31, 1996. The site certificate holder shall provide a bond*  
12 *or comparable security in a form reasonably acceptable to the council to ensure*  
13 *the payment of the offset funds and the amount required under subparagraph*  
14 *(A)(ii) of this paragraph. Such security shall be provided by the date specified*  
15 *in the site certificate, which shall be no later than the commencement of con-*  
16 *struction of the facility. The site certificate shall require that the offset funds*  
17 *be disbursed as specified in subparagraph (A) of this paragraph, unless the*  
18 *council finds that no qualified organization exists, in which case the site cer-*  
19 *tificate shall require that the offset funds be disbursed as specified in sub-*  
20 *paragraph (B) of this paragraph.]*

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

24 *[(i) When the site certificate holder receives written notice from the quali-*  
25 *fied organization certifying that the qualified organization is contractually*  
26 *obligated to pay any funds to implement offsets using the offset funds, the site*  
27 *certificate holder shall make the requested amount available to the qualified*  
28 *organization unless the total of the amount requested and any amounts previ-*  
29 *ously requested exceeds the offset funds, in which case only the remaining*  
30 *amount of the offset funds shall be made available. The qualified organization*  
31 *shall use at least 80 percent of the offset funds for contracts to implement off-*

1 sets. The qualified organization shall assess offsets for their potential to  
2 qualify in, generate credits in or reduce obligations in other regulatory set-  
3 tings. The qualified organization may use up to 20 percent of the offset funds  
4 for monitoring, evaluation, administration and enforcement of contracts to im-  
5 plement offsets.]

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

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

22 [(B) If the council finds there is no qualified organization, the site certif-  
23 icate holder shall select one or more offsets to be implemented pursuant to  
24 criteria established by the council. The site certificate holder shall give written  
25 notice of its selections to the council and to any person requesting notice. On  
26 petition by the State Department of Energy, or by any person adversely affected  
27 or aggrieved by the site certificate holder's selection of offsets, or on the  
28 council's own motion, the council may review such selection. The petition must  
29 be received by the council within 30 days of the date the notice of selection is  
30 placed in the United States mail, with first-class postage prepaid. The council  
31 shall approve the site certificate holder's selection unless it finds that the se-



1 *lection is not consistent with criteria established by the council. The site cer-*  
2 *tificate holder shall contract to implement the selected offsets within 18 months*  
3 *after commencing construction of the facility unless good cause is shown re-*  
4 *quiring additional time. The contracts shall obligate the expenditure of at least*  
5 *85 percent of the offset funds for the implementation of offsets. No more than*  
6 *15 percent of the offset funds may be spent on monitoring, evaluation and*  
7 *enforcement of the contract to implement the selected offsets. The council's*  
8 *criteria for selection of offsets shall be based on the criteria set forth in para-*  
9 *graphs (b)(C) and (c)(B) of this subsection and may also consider the costs of*  
10 *particular types of offsets in relation to the expected benefits of such offsets.*  
11 *The council's criteria shall not require the site certificate holder to select*  
12 *particular offsets, and shall allow the site certificate holder a reasonable range*  
13 *of choices in selecting offsets. In addition, notwithstanding any other provision*  
14 *of this section, the site certificate holder's financial liability for implementa-*  
15 *tion, monitoring, evaluation and enforcement of offsets pursuant to this sub-*  
16 *section shall be limited to the amount of any offset funds not already*  
17 *contractually obligated. Nonperformance, negligence or misconduct by the en-*  
18 *tity or entities implementing, monitoring or evaluating the selected offset shall*  
19 *not be a basis for revocation of the site certificate or any other enforcement*  
20 *action by the council with respect to the site certificate holder.]*

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

27 *[(e) As used in this subsection:]*

28 *[(A) "Adjusted to ISO conditions" means carbon dioxide emissions and net*  
29 *electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per*  
30 *square inch atmospheric pressure and 60 percent humidity.]*

31 *[(B) "Base load gas plant" means a generating facility that is fueled by*

1 *natural gas, except for periods during which an alternative fuel may be used*  
2 *and when such alternative fuel use shall not exceed 10 percent of expected fuel*  
3 *use in Btu, higher heating value, on an average annual basis, and where the*  
4 *applicant requests and the council adopts no condition in the site certificate*  
5 *for the generating facility that would limit hours of operation other than re-*  
6 *strictions on the use of alternative fuel. The council shall assume a 100 per-*  
7 *cent capacity factor for such plants and a 30-year life for the plants for*  
8 *purposes of determining gross carbon dioxide emissions.]*

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

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

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

16 [(F) “Global warming potential” means the determination of the atmo-  
17 spheric warming resulting from the release of a unit mass of a particular  
18 greenhouse gas in relation to the warming resulting from the release of the  
19 equivalent mass of carbon dioxide.]

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

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

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

28 [(J) “New and clean basis” means the average carbon dioxide emissions rate  
29 per hour and net electric power output of the energy facility, without degra-  
30 dation, as determined by a 100-hour test at full power completed during the  
31 first 12 months of commercial operation of the energy facility, with the results

1 *adjusted for the average annual site condition for temperature, barometric*  
2 *pressure and relative humidity and use of alternative fuels, and using a rate*  
3 *of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate*  
4 *of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel*  
5 *use is proposed by the applicant. The council may by rule adjust the rate of*  
6 *pounds of carbon dioxide per million Btu for natural gas or distillate fuel.*  
7 *The council may by rule set carbon dioxide emissions rates for other fuels.]*

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

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

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

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

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

19 [(ii) Either is incorporated in the State of Oregon or is a foreign corpo-  
20 ration authorized to do business in the State of Oregon;]

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

31 [(iv) Has made available on an annual basis, beginning after the first year

1 *of operation, a signed opinion of an independent certified public accountant*  
2 *stating that the qualified organization's use of funds pursuant to this statute*  
3 *conforms with generally accepted accounting procedures except that the quali-*  
4 *fied organization shall have one year to conform with generally accepted ac-*  
5 *counting principles in the event of a nonconforming audit;]*

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

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

11 [(3)] (2) Except as provided in ORS 469.504 for land use compliance and  
12 except for those statutes and rules for which the decision on compliance has  
13 been delegated by the federal government to a state agency other than the  
14 council, the facility complies with all other Oregon statutes and adminis-  
15 trative rules identified in the project order, as amended, as applicable to the  
16 issuance of a site certificate for the proposed facility. If compliance with  
17 applicable Oregon statutes and administrative rules, other than those in-  
18 volving federally delegated programs, would result in conflicting conditions  
19 in the site certificate, the council may resolve the conflict consistent with  
20 the public interest. A resolution may not result in the waiver of any appli-  
21 cable state statute.

22 [(4)] (3) The facility complies with the statewide planning goals adopted  
23 by the Land Conservation and Development Commission.

24 **SECTION 55.** ORS 469.501 is amended to read:

25 469.501. (1) The Energy Facility Siting Council shall adopt standards for  
26 the siting, construction, operation and retirement of facilities. The standards  
27 may address but need not be limited to the following subjects:

28 (a) The organizational, managerial and technical expertise of the appli-  
29 cant to construct and operate the proposed facility.

30 (b) Seismic hazards.

31 (c) Areas designated for protection by the state or federal government,

1 including but not limited to monuments, wilderness areas, wildlife refuges,  
2 scenic waterways and similar areas.

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

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

6 (f) Impacts of the facility on historic, cultural or archaeological resources  
7 listed on, or determined by the State Historic Preservation Officer to be el-  
8 igible for listing on, the National Register of Historic Places or the Oregon  
9 State Register of Historic Properties.

10 (g) Protection of public health and safety, including necessary safety de-  
11 vices and procedures.

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

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

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

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

20 (L) The need for proposed nongenerating facilities [*as defined in ORS*  
21 *469.503*], consistent with the state energy policy set forth in ORS 469.010 and  
22 469.310. The council may consider least-cost plans when adopting a need  
23 standard or in determining whether an applicable need standard has been  
24 met. The council shall not adopt a standard requiring a showing of need or  
25 cost-effectiveness for generating facilities [*as defined in ORS 469.503*].

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

28 (n) Soil protection.

29 [*o*] *For energy facilities that emit carbon dioxide, the impacts of those*  
30 *emissions on climate change. For fossil-fueled power plants, as defined in ORS*  
31 *469.503, the council shall apply a standard as provided for by ORS 469.503*

1 (2).]

2 (2) The council may adopt exemptions from any need standard adopted  
3 under subsection (1)(L) of this section if the exemption is consistent with the  
4 state's energy policy set forth in ORS 469.010 and 469.310.

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

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

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

19

20

**(Transitional Provisions)**

21

22 **SECTION 56. (1) Notwithstanding ORS 469.401 (2), any conditions in**  
23 **a site certificate or amended site certificate issued before January 1,**  
24 **2021, that are conditions related to any carbon dioxide emissions**  
25 **standard applicable pursuant to ORS 469.501 (o) (2017 Edition) or 469.503**  
26 **(2017 Edition) or to rules adopted by the Energy Facility Siting Council**  
27 **pursuant to ORS 469.501 (o) (2017 Edition) or 469.503 (2017 Edition) cease**  
28 **to be enforceable on January 1, 2021.**

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

1 on January 1, 2021.

2 (3) Any site certificate amendment approved by the council on or  
3 after January 1, 2021, shall remove from the site certificate being  
4 amended all conditions and provisions rendered unenforceable by sub-  
5 sections (1) and (2) of this section. Notwithstanding ORS 469.405 or any  
6 council rule, the contested case hearing on a site certificate amend-  
7 ment subject to this subsection may not include hearing on amend-  
8 ments necessary to comply with this subsection. The provisions of the  
9 council's order relevant to compliance with this subsection is not  
10 subject to judicial review.

11 SECTION 57. The Energy Facility Siting Council shall, no later than  
12 January 1, 2022, complete rulemaking to amend or repeal any rules  
13 adopted by the council relating to the application of a carbon dioxide  
14 emissions standard to generating facilities or nongenerating facilities  
15 as necessary to bring the rules of the council into compliance with the  
16 amendments to ORS 469.501 (o) and 469.503 by sections 54 and 55 of this  
17 2019 Act and the provisions of section 56 of this 2019 Act.

18 SECTION 58. (1) As used in this section and section 59 of this 2019  
19 Act, "qualified organization" has the meaning given that term in ORS  
20 469.503 (2)(e)(N) (2017 Edition).

21 (2) On or after the operative date of this section and the amend-  
22 ments to ORS 469.503 by section 54 of this 2019 Act and in accordance  
23 with the provisions of ORS 469.503 (2)(d) (2017 Edition), a qualified or-  
24 ganization that, before the operative date of this section and the  
25 amendments to ORS 469.503 by section 54 of this 2019 Act, received  
26 payment of offset funds pursuant to ORS 469.503 (2)(c)(C) (2017 Edi-  
27 tion):

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

31 (b) May use up to 20 percent of the offset funds for monitoring,

1 **evaluating, administering and enforcing contracts to implement off-**  
2 **sets; and**

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

12 **SECTION 59. Section 58 of this 2019 Act is repealed on the date that**  
13 **the Legislative Counsel receives written notice from the Energy Fa-**  
14 **cility Siting Council that the council has confirmed that all qualified**  
15 **organizations that received payment of offset funds pursuant to ORS**  
16 **469.503 (2)(c)(C) (2017 Edition) have ceased to be involved in the in-**  
17 **vestment of the offset funds.**

18

19

**(Repeal)**

20

21 **SECTION 60. ORS 469.409 is repealed.**

22

23

**(Conforming Amendments)**

24

25 **SECTION 61. ORS 469.300 is amended to read:**

26 **469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and**  
27 **469.992, unless the context requires otherwise:**

28 **(1) “Applicant” means any person who makes application for a site cer-**  
29 **tificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619,**  
30 **469.930 and 469.992.**

31 **(2) “Application” means a request for approval of a particular site or sites**



1 for the construction and operation of an energy facility or the construction  
2 and operation of an additional energy facility upon a site for which a cer-  
3 tificate has already been issued, filed in accordance with the procedures es-  
4 tablished pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and  
5 469.992.

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

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

13 (a) For wind facilities, 3.00;

14 (b) For geothermal energy facilities, 1.11; or

15 (c) For all other energy facilities, 1.00.

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

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

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

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

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

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

1 electric energy.

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

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

5 (i) Thermal power;

6 (ii) Combustion turbine power plant; or

7 (iii) Solar thermal power plant.

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

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

12 (i) Lines proposed for construction entirely within 500 feet of an existing  
13 corridor occupied by high voltage transmission lines with a capacity of  
14 230,000 volts or more; and

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

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

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

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

24 (iii) 320 acres located on any other land.

25 (E) A pipeline that is:

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

30 (ii) At least 16 inches in diameter, and five or more miles in length, used  
31 for the transportation of natural or synthetic gas, but excluding:

1 (I) A pipeline proposed for construction of which less than five miles of  
2 the pipeline is more than 50 feet from a public road, as defined in ORS  
3 368.001; or

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

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

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

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

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

23 (I) A surface facility related to an underground gas storage reservoir that,  
24 at design injection or withdrawal rates, will receive or deliver more than 50  
25 million cubic feet of natural or synthetic gas per day, or require more than  
26 4,000 horsepower of natural gas compression to operate, but excluding:

27 (i) The underground storage reservoir;

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

30 (iii) An underground gas storage reservoir into which gas is injected  
31 solely for testing or reservoir maintenance purposes or to facilitate the sec-

1 onduary recovery of oil or other hydrocarbons.

2 (J) An electric power generating plant with an average electric generat-  
3 ing capacity of 35 megawatts or more if the power is produced from  
4 geothermal or wind energy at a single energy facility or within a single en-  
5 ergy generation area.

6 (b) "Energy facility" does not include a hydroelectric facility or an energy  
7 facility under paragraph (a)(A)(iii) or (D) of this subsection that is estab-  
8 lished on the site of a decommissioned United States Air Force facility that  
9 has adequate transmission capacity to serve the energy facility.

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

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

29 (14) "Facility" means an energy facility together with any related or  
30 supporting facilities.

31 (15) "Generating facility" means those energy facilities that are

1 **defined in subsection (11)(a)(A), (B) and (D) of this section.**

2 [(15)] (16) “Geothermal reservoir” means an aquifer or aquifers containing  
3 a common geothermal fluid.

4 [(16)] (17) “Local government” means a city or county.

5 [(17)] (18) “Nominal electric generating capacity” means the maximum net  
6 electric power output of an energy facility based on the average temperature,  
7 barometric pressure and relative humidity at the site during the times of the  
8 year when the facility is intended to operate.

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

11 [(18)] (20) “Nuclear incident” means any occurrence, including an ex-  
12 traordinary nuclear occurrence, that results in bodily injury, sickness, dis-  
13 ease, death, loss of or damage to property or loss of use of property due to  
14 the radioactive, toxic, explosive or other hazardous properties of source ma-  
15 terial, special nuclear material or by-product material as those terms are  
16 defined in ORS 453.605.

17 [(19)] (21) “Nuclear installation” means any power reactor, nuclear fuel  
18 fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for  
19 radioactive waste, and any facility handling that quantity of fissionable ma-  
20 terials sufficient to form a critical mass. “Nuclear installation” does not in-  
21 clude any such facilities that are part of a thermal power plant.

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

26 [(21)] (23) “Person” means an individual, partnership, joint venture, pri-  
27 vate or public corporation, association, firm, public service company, poli-  
28 tical subdivision, municipal corporation, government agency, people’s utility  
29 district, or any other entity, public or private, however organized.

30 [(22)] (24) “Project order” means the order, including any amendments,  
31 issued by the State Department of Energy under ORS 469.330.

1 [(23)(a)] **(25)(a)** “Radioactive waste” means all material which is dis-  
2 carded, unwanted or has no present lawful economic use, and contains mined  
3 or refined naturally occurring isotopes, accelerator produced isotopes and  
4 by-product material, source material or special nuclear material as those  
5 terms are defined in ORS 453.605. The term does not include those radioac-  
6 tive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted  
7 by the council on December 12, 1978, and revised periodically for the purpose  
8 of adding additional isotopes which are not referred to in OAR 345-50 as  
9 presenting no significant danger to the public health and safety.

10 (b) Notwithstanding paragraph (a) of this subsection, “radioactive  
11 waste” does not include uranium mine overburden or uranium mill tailings,  
12 mill wastes or mill by-product materials as those terms are defined in Title  
13 42, United States Code, section 2014, on June 25, 1979.

14 [(24)] **(26)** “Related or supporting facilities” means any structure, pro-  
15 posed by the applicant, to be constructed or substantially modified in con-  
16 nection with the construction of an energy facility, including associated  
17 transmission lines, reservoirs, storage facilities, intake structures, road and  
18 rail access, pipelines, barge basins, office or public buildings, and commercial  
19 and industrial structures. “Related or supporting facilities” does not include  
20 geothermal or underground gas storage reservoirs, production, injection or  
21 monitoring wells or wellhead equipment or pumps.

22 [(25)] **(27)** “Site” means any proposed location of an energy facility and  
23 related or supporting facilities.

24 [(26)] **(28)** “Site certificate” means the binding agreement between the  
25 State of Oregon and the applicant, authorizing the applicant to construct and  
26 operate a facility on an approved site, incorporating all conditions imposed  
27 by the council on the applicant.

28 [(27)] **(29)** “Thermal power plant” means an electrical facility using any  
29 source of thermal energy with a nominal electric generating capacity of 25  
30 megawatts or more, for generation and distribution of electricity, and asso-  
31 ciated transmission lines, including but not limited to a nuclear-fueled,

1 geothermal-fueled or fossil-fueled power plant, but not including a portable  
2 power plant the principal use of which is to supply power in emergencies.  
3 “Thermal power plant” includes a nuclear-fueled thermal power plant that  
4 has ceased to operate.

5 [(28)] (30) “Transportation” means the transport within the borders of the  
6 State of Oregon of radioactive material destined for or derived from any lo-  
7 cation.

8 [(29)] (31) “Underground gas storage reservoir” means any subsurface  
9 sand, strata, formation, aquifer, cavern or void, whether natural or arti-  
10 ficially created, suitable for the injection, storage and withdrawal of natural  
11 gas or other gaseous substances. “Underground gas storage reservoir” in-  
12 cludes a pool as defined in ORS 520.005.

13 [(30)] (32) “Utility” includes:

14 (a) A person, a regulated electrical company, a people’s utility district, a  
15 joint operating agency, an electric cooperative, municipality or any combi-  
16 nation thereof, engaged in or authorized to engage in the business of gener-  
17 ating, transmitting or distributing electric energy;

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

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

22 [(31)] (33) “Waste disposal facility” means a geographical site in or upon  
23 which radioactive waste is held or placed but does not include a site at  
24 which radioactive waste used or generated pursuant to a license granted  
25 under ORS 453.635 is stored temporarily, a site of a thermal power plant used  
26 for the temporary storage of radioactive waste from that plant for which a  
27 site certificate has been issued pursuant to this chapter or a site used for  
28 temporary storage of radioactive waste from a reactor operated by a college,  
29 university or graduate center for research purposes and not connected to the  
30 Northwest Power Grid. As used in this subsection, “temporary storage” in-  
31 cludes storage of radioactive waste on the site of a nuclear-fueled thermal

1 power plant for which a site certificate has been issued until a permanent  
2 storage site is available by the federal government.

3 **SECTION 62.** ORS 469.310 is amended to read:

4 469.310. In the interests of the public health and the welfare of the people  
5 of this state, it is the declared public policy of this state that the siting,  
6 construction and operation of energy facilities shall be accomplished in a  
7 manner consistent with protection of the public health and safety and in  
8 compliance with the energy policy and air, water, solid waste, land use and  
9 other environmental protection policies of this state. It is, therefore, the  
10 purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to  
11 exercise the jurisdiction of the State of Oregon to the maximum extent per-  
12 mitted by the United States Constitution and to establish in cooperation  
13 with the federal government a comprehensive system for the siting, moni-  
14 toring and regulating of the location, construction and operation of all en-  
15 ergy facilities in this state. It is furthermore the policy of this state,  
16 notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS  
17 469.020, that the need for new generating facilities[, *as defined in ORS*  
18 *469.503,*] is sufficiently addressed by reliance on competition in the market  
19 rather than by consideration of cost-effectiveness and shall not be a matter  
20 requiring determination by the Energy Facility Siting Council in the siting  
21 of a generating facility[, *as defined in ORS 469.503*].

22 **SECTION 63.** ORS 469.373 is amended to read:

23 469.373. (1) Notwithstanding the expedited review process established  
24 pursuant to ORS 469.370, an applicant may apply under the provisions of this  
25 section for expedited review of an application for a site certificate for an  
26 energy facility if the energy facility:

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

30 (b) Is a permitted or conditional use allowed under an applicable local  
31 acknowledged comprehensive plan, land use regulation or federal land use



1 plan, and is located:

2 (A) At or adjacent to an existing energy facility; or

3 (B)(i) At, adjacent to or in close proximity to an existing industrial use;  
4 and

5 (ii) In an area currently zoned or designated for industrial use;

6 (c)(A) Requires no more than three miles of associated transmission lines  
7 or three miles of new natural gas pipelines outside of existing rights of way  
8 for transmission lines or natural gas pipelines; or

9 (B) Imposes, in the determination of the Energy Facility Siting Council,  
10 no significant impact in the locating of associated transmission lines or new  
11 natural gas pipelines outside of existing rights of way;

12 (d) Requires no new water right or water right transfer; **and**

13 *[(e) Provides funds to a qualified organization in an amount determined*  
14 *by the council to be sufficient to produce any required reduction in emissions*  
15 *as specified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503*  
16 *for the total carbon dioxide emissions produced by the energy facility for the*  
17 *life of the energy facility; and]*

18 *[(f)(A)]* **(e)(A)** Discharges process wastewater to a wastewater treatment  
19 facility that has an existing National Pollutant Discharge Elimination Sys-  
20 tem permit, can obtain an industrial pretreatment permit, if needed, within  
21 the expedited review process time frame and has written confirmation from  
22 the wastewater facility permit holder that the additional wastewater load  
23 will be accommodated by the facility without resulting in a significant  
24 thermal increase in the facility effluent or without requiring any changes to  
25 the wastewater facility National Pollutant Discharge Elimination System  
26 permit;

27 (B) Plans to discharge process wastewater to a wastewater treatment fa-  
28 cility owned by a municipal corporation that will accommodate the  
29 wastewater from the energy facility and supplies evidence from the municipal  
30 corporation that:

31 (i) The municipal corporation has included, or intends to include, the

1 process wastewater load from the energy facility in an application for a  
2 National Pollutant Discharge Elimination System permit; and

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

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

10 (i) A new National Pollutant Discharge Elimination System permit, ex-  
11 cept for a storm water general permit for construction activities; or

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

15 (2) An applicant seeking expedited review under this section shall submit  
16 documentation to the State Department of Energy, prior to the submission  
17 of an application for a site certificate, that demonstrates that the energy  
18 facility meets the qualifications set forth in subsection (1) of this section.  
19 The department shall determine, within 14 days of receipt of the documen-  
20 tation, on a preliminary, nonbinding basis, whether the energy facility qual-  
21 ifies for expedited review.

22 (3) If the department determines that the energy facility preliminarily  
23 qualifies for expedited review, the applicant may submit an application for  
24 expedited review. Within 30 days after the date that the application for ex-  
25 pedited review is submitted, the department shall determine whether the ap-  
26 plication is complete. If the department determines that the application is  
27 complete, the application shall be deemed filed on the date that the depart-  
28 ment sends the applicant notice of its determination. If the department de-  
29 termines that the application is not complete, the department shall notify the  
30 applicant of the deficiencies in the application and shall deem the applica-  
31 tion filed on the date that the department determines that the application

1 is complete. The department or the council may request additional infor-  
2 mation from the applicant at any time.

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

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

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

28 (5) Within 90 days after the date that the application was filed, the de-  
29 partment shall issue a draft proposed order setting forth:

30 (a) A description of the proposed energy facility;

31 (b) A list of the permits, licenses and certificates that are addressed in

1 the application and that are required for the construction or operation of the  
2 proposed energy facility;

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

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

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

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

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

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

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

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

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

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

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

1 and

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

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

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

25 (a) Grant the application;

26 (b) Grant the application with conditions;

27 (c) Deny the application; or

28 (d) Return the application to the site certification process required by  
29 ORS 469.320.

30 (10) If the application is granted, the council shall issue a site certificate  
31 pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this

1 section, the council may impose conditions based on standards adopted under  
2 ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based  
3 on those standards.

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

6 **SECTION 64.** ORS 469.405 is amended to read:

7 469.405. (1) A site certificate may be amended with the approval of the  
8 Energy Facility Siting Council. The council may establish by rule the type  
9 of amendment that must be considered in a contested case proceeding. Judi-  
10 cial review of an amendment to a site certificate shall be as provided in ORS  
11 469.403.

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

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

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

11 **SECTION 65.** ORS 469.407 is amended to read:

12 469.407. (1) A recipient may by amendment of its application for a site  
13 certificate or by amendment of its site certificate increase the capacity of the  
14 facility if the Energy Facility Siting Council finds that:

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

17 (b) The enlarged facility does not exceed 500 megawatts and meets the  
18 applicable carbon dioxide standard provided for in ORS 469.503 (2) (2017  
19 **Edition**) for any increase in capacity beyond the capacity of the  
20 500-megawatt exemption; and

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

22 (2) A recipient is deemed to meet any applicable need standard and carbon  
23 dioxide emissions standard for the nominal generating capacity of the  
24 500-megawatt exemption provided that the recipient satisfies the conditions  
25 of the 500-megawatt exemption, unless the council modifies the conditions.

26 (3) As used in this section:

27 (a) "Recipient" means any base load gas plant, as defined in ORS 469.503  
28 (2017 **Edition**), determined by the council to have the lowest net monetized  
29 air emissions among the applicants participating in a contested case pro-  
30 ceeding.

31 (b) "500-megawatt exemption" means the council order in which a recipi-

1 ent was determined to have the lowest net monetized air emissions.

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

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

5 (a) The facility has received local land use approval under the acknowl-  
6 edged comprehensive plan and land use regulations of the affected local  
7 government; or

8 (b) The Energy Facility Siting Council determines that:

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

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

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

27 (2) The council may find goal compliance for a facility that does not  
28 otherwise comply with one or more statewide planning goals by taking an  
29 exception to the applicable goal. Notwithstanding the requirements of ORS  
30 197.732, the statewide planning goal pertaining to the exception process or  
31 any rules of the Land Conservation and Development Commission pertaining



1 to an exception process goal, the council may take an exception to a goal if  
2 the council finds:

3 (a) The land subject to the exception is physically developed to the extent  
4 that the land is no longer available for uses allowed by the applicable goal;

5 (b) The land subject to the exception is irrevocably committed as de-  
6 scribed by the rules of the Land Conservation and Development Commission  
7 to uses not allowed by the applicable goal because existing adjacent uses and  
8 other relevant factors make uses allowed by the applicable goal impractica-  
9 ble; or

10 (c) The following standards are met:

11 (A) Reasons justify why the state policy embodied in the applicable goal  
12 should not apply;

13 (B) The significant environmental, economic, social and energy conse-  
14 quences anticipated as a result of the proposed facility have been identified  
15 and adverse impacts will be mitigated in accordance with rules of the council  
16 applicable to the siting of the proposed facility; and

17 (C) The proposed facility is compatible with other adjacent uses or will  
18 be made compatible through measures designed to reduce adverse impacts.

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

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

28 (5) Upon request by the State Department of Energy, the special advisory  
29 group established under ORS 469.480 shall recommend to the council, within  
30 the time stated in the request, the applicable substantive criteria under  
31 subsection (1)(b)(A) of this section. If the special advisory group does not

1 recommend applicable substantive criteria within the time established in the  
2 department's request, the council may either determine and apply the appli-  
3 cable substantive criteria under subsection (1)(b) of this section or determine  
4 compliance with the statewide planning goals under subsection (1)(b)(B) or  
5 (C) of this section. If the special advisory group recommends applicable  
6 substantive criteria for an energy facility described in ORS 469.300 or a re-  
7 lated or supporting facility that does not pass through more than one local  
8 government jurisdiction or more than three zones in any one jurisdiction, the  
9 council shall apply the criteria recommended by the special advisory group.  
10 If the special advisory group recommends applicable substantive criteria for  
11 an energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or  
12 supporting facility that passes through more than one jurisdiction or more  
13 than three zones in any one jurisdiction, the council shall review the re-  
14 commended criteria and determine whether to evaluate the proposed facility  
15 against the applicable substantive criteria recommended by the special advi-  
16 sory group, against the statewide planning goals or against a combination  
17 of the applicable substantive criteria and statewide planning goals. In mak-  
18 ing its determination, the council shall consult with the special advisory  
19 group and shall consider:

20 (a) The number of jurisdictions and zones in question;

21 (b) The degree to which the applicable substantive criteria reflect local  
22 government consideration of energy facilities in the planning process; and

23 (c) The level of consistency of the applicable substantive criteria from the  
24 various zones and jurisdictions.

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

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

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

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

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

16 469.505. (1) In making a determination regarding compliance with stat-  
17 utes, rules and ordinances administered by another agency or compliance  
18 with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where  
19 another agency has special expertise, consultation with the other agency  
20 shall occur during the notice of intent and site certificate application pro-  
21 cess. Any permit application for which the permitting decision has been de-  
22 legated by the federal government to a state agency other than the Energy  
23 Facility Siting Council shall be reviewed, whenever feasible, simultaneously  
24 with the council's review of the site certificate application. Any hearings  
25 required on such permit applications shall be consolidated, whenever feasi-  
26 ble, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.

27 (2) Before resolving any conflicting conditions in site certificates or  
28 amended site certificates under ORS 469.503 [(3)] (2) and 469.504, the council  
29 shall notify and consult with the agencies and local governments responsible  
30 for administering the statutes, administrative rules or substantive local cri-  
31 teria that result in the conflicting conditions regarding potential conflict

1 resolution.

2 **SECTION 68.** ORS 526.786 is amended to read:

3 526.786. (1) The State Board of Forestry may develop administrative rules  
4 that define principles and standards relating to the creation, measurement,  
5 accounting, marketing, verifying, registering, transferring and selling of  
6 forestry carbon offsets from nonfederal forestlands.

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

11 (a) Have the effect of increasing carbon storage on forestlands as meas-  
12 ured by a forestry carbon offset accounting system;

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

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

17 (3) Rules adopted by the board under this section shall establish princi-  
18 ples to ensure that the forestry carbon offset accounting system shall:

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

21 (b) Account for the duration and permanence of the carbon dioxide stor-  
22 age or emission reductions;

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

27 (d) Account for other relevant and measurable greenhouse gas conse-  
28 quences, specifically credits and debits expressed as a carbon dioxide emis-  
29 sions equivalent, when establishing baselines or otherwise as appropriate;

30 (e) Account for the specific forest management practices used on-site and  
31 include provisions for monitoring carbon dioxide emission debits and credits

1 for carbon storage or sequestration, from the implementation of specific  
2 practices;

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

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

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

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

11 (4) Rules adopted by the board under this section may address qualifica-  
12 tions for persons and agencies that provide third-party verification and reg-  
13 istration of forestry carbon offsets.

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

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

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

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

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

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

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

29 (g) At least one representative from [*a qualified organization, as defined*  
30 *in ORS 469.503*] **a nonprofit organization that sells voluntary and com-**  
31 **pliance offsets from greenhouse gas reduction projects; and**

1 (h) At least one representative from the State Forestry Department who  
2 shall serve as the secretary to the advisory committee.

3  
4 **EXPEDITED JUDICIAL REVIEW TO SUPREME COURT;**  
5 **EXPIRATION**

6  
7 **SECTION 69.** (1) It is the intent of the Legislative Assembly that  
8 the provisions of this 2019 Act relating to the receipt of moneys by the  
9 state through the sale of allowances by auction under section 21 of this  
10 2019 Act do not render this 2019 Act a bill for raising revenue subject  
11 to the provisions of Article IV, sections 18 and 25 (2), of the Oregon  
12 Constitution.

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

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

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

22 (b) The petition must include the following:

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

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

26 (4) The petitioner shall serve a copy of the petition by registered  
27 or certified mail upon the Oregon Department of Administrative Ser-  
28 vices, the Oregon Director of the Carbon Policy Office, the Attorney  
29 General and the Governor.

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

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

4 **SECTION 70.** (1) It is the intent of the Legislative Assembly that  
5 certain revenue from the auctions conducted under section 21 of this  
6 2019 Act is subject to the provisions of Article IX, section 3a, of the  
7 Oregon Constitution.

8 (2) Original jurisdiction is conferred on the Supreme Court to de-  
9 termine whether auctions conducted under section 21 of this 2019 Act  
10 impose:

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

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

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

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

22 (b) The petition must include the following:

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

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

26 (4) The petitioner shall serve a copy of the petition by registered  
27 or certified mail upon the Oregon Department of Administrative Ser-  
28 vices, the Director of the Carbon Policy Office, the Attorney General  
29 and the Governor.

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

1 (6) In the event that the Supreme Court determines that there are  
2 factual issues in the petition, the Supreme Court may appoint a special  
3 master to hear evidence and to prepare recommended findings of fact.  
4

5 **APPROPRIATIONS**  
6

7 **SECTION 71.** In addition to and not in lieu of any other appropri-  
8 ation, there is appropriated to the Oregon Department of Administra-  
9 tive Services, for the biennium beginning July 1, 2019, out of the  
10 General Fund, the amount of \$\_\_\_\_\_ for use by the Carbon Policy  
11 Office in the development and implementation of the Oregon Climate  
12 Action Program pursuant to sections 8 to 26 of this 2019 Act and for  
13 the implementation of sections 7, 38 to 40 and 46 to 52 of this 2019 Act  
14 and the amendments to ORS 468A.280 by section 53 of this 2019 Act.

15 **SECTION 72.** In addition to and not in lieu of any other appropri-  
16 ation, there is appropriated to the Environmental Justice Task Force,  
17 for the biennium beginning July 1, 2019, out of the General Fund, the  
18 amount of \$\_\_\_\_\_, which may be expended for compensation and  
19 expenses incurred by members of the task force who are not members  
20 of the Legislative Assembly in the manner and amounts provided for  
21 in ORS 292.495, and for provision by the Governor of clerical and ad-  
22 ministrative staff support to the task force.  
23

24 **OPERATIVE DATE**  
25

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

30 (2) The Director of the Carbon Policy Office, the Carbon Policy Of-  
31 fice, the Public Utility Commission, the Housing and Community Ser-



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

## 16 17 REPORTS AND REVIEWS

18  
19 **SECTION 74.** On or before September 15, 2020, the Oregon Depart-  
 20 ment of Administrative Services shall report on the actions being  
 21 taken to prepare for implementation of sections 8 to 26 of this 2019  
 22 Act to the Joint Committee on Climate Action.

23 **SECTION 75.** On or before September 15, 2031, the Carbon Policy  
 24 Office shall conduct a review and provide a report to the Joint Com-  
 25 mittee on Climate Action in the manner provided by ORS 192.245 on  
 26 the implementation of section 19 of this 2019 Act and rules adopted  
 27 under section 19 of this 2019 Act. The report may include recommen-  
 28 dations for legislation. The review and report must:

29 (1) Assess the implementation of laws, policies and protocols for  
 30 offset projects and the use of offset credits by covered entities; and

31 (2) Make determinations and recommendations regarding whether

1 **changes to laws, policies or protocols are necessary or advisable to**  
2 **address any negative impacts or to best align the laws, policies or**  
3 **protocols with the purposes set forth in section 7 of this 2019 Act.**

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### **CAPTIONS**

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

11

12

### **EMERGENCY CLAUSE**

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

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