

House Bill 3545

Sponsored by Representatives BRUUN, CANNON; Representatives DINGFELDER, MACPHERSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes annual statewide limits for emissions of carbon dioxide by electricity providers. Assigns percentage of annual statewide emissions limit to each electricity provider. Provides that electricity provider may meet requirements of Act with emission allowance certificates, greenhouse gas credits, unbundled renewable energy certificates and alternative compliance payments.

Exempts certain electricity providers from limits.

Establishes process for annual issuance of emission allowance certificates. Provides that specified percentages of certificates may be set aside for load changes, sold at auction and directly distributed to electricity providers after payment of administrative fee.

Allows use of greenhouse gas credits approved by State Department of Energy to meet electricity provider's emissions limit. Establishes criteria for approval of greenhouse gas credits.

Directs State Department of Energy to establish system of renewable energy certificates that can be used by electricity provider to comply with provider's emissions limit. Provides that only unbundled renewable energy certificates may be used to comply with limit.

Provides that electricity provider must make alternative compliance payments if provider is unable to comply with provider's emissions limit.

A BILL FOR AN ACT

1
2 Related to reduction of greenhouse gases.

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

DEFINITIONS

SECTION 1. Definitions. As used in sections 1 to 21 of this 2007 Act:

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8 (1) "Capped provider" means an electricity provider that is subject to section 2 of this
9 2007 Act.

10 (2) "Carbon dioxide emissions" means emissions of carbon dioxide that result from the
11 combustion of fossil fuels. "Carbon dioxide emissions" does not include emissions of carbon
12 dioxide that result from the combustion of nonfossil, biogenic fuels.

13 (3) "Consumer-owned utility" has the meaning given that term in ORS 757.600.

14 (4) "Electric company" has the meaning given that term in ORS 757.600.

15 (5) "Electricity provider" means:

16 (a) An electric company, an electricity service supplier or a consumer-owned utility that
17 sells electricity to retail electricity consumers in this state; or

18 (b) A self-generator that is located in this state.

19 (6) "Electricity service supplier" has the meaning given that term in ORS 757.600.

20 (7) "Greenhouse gas" means any gas that contributes to global warming, including but
21 not limited to:

22 (a) Carbon dioxide;

23 (b) Methane;

24 (c) Nitrous oxide;

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (d) Perfluorocarbons;

2 (e) Sulfur hexafluoride; and

3 (f) Hydrofluorocarbons.

4 (8) "Load" means the number of megawatt-hours of electricity generated to serve the
5 customers of an electricity provider or for a self-generator's own use, including electricity
6 losses from transmission and distribution equipment.

7 (9) "Nominal electric generating capacity" has the meaning given that term in ORS
8 469.300.

9 (10) "Self-generator" means an electricity user that generates a portion or all of the us-
10 er's own electricity for use at a site in this state.

11 (11) "Site" has the meaning given that term in ORS 757.600.

12 (12) "Statewide emissions limit" means the allowable limit on carbon dioxide emissions
13 for a calendar year, as established under section 3 of this 2007 Act.

14 (13) "Unbundled renewable energy certificate" means a renewable energy certificate for
15 electricity that is acquired by an electricity provider by trade, purchase or other transfer
16 without acquiring the electricity for which the certificate was issued.

17
18 **MANDATORY COMPLIANCE WITH**
19 **CARBON DIOXIDE EMISSIONS LIMIT**
20

21 **SECTION 2. Required compliance with capped provider's emissions limit.** Except as pro-
22 vided in sections 1 to 21 of this 2007 Act, for each compliance period established under sec-
23 tion 18 of this 2007 Act, an electricity provider must establish that the provider has complied
24 with the provider's carbon dioxide emissions limit, or has otherwise met the requirements
25 of sections 1 to 21 of this 2007 Act, for each calendar year of the period by providing to the
26 State Department of Energy any combination of the following:

27 (1) Emission allowance certificates issued under section 7 of this 2007 Act;

28 (2) Greenhouse gas credits issued under section 14 of this 2007 Act;

29 (3) Unbundled renewable energy certificates approved under section 16 of this 2007 Act;
30 **and**

31 (4) Alternative compliance payments under section 19 of this 2007 Act.

32
33 **EMISSIONS LIMITS**
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35 **SECTION 3. Statewide emissions limits.** (1) On or before December 31, 2008, the State
36 Department of Energy shall calculate the average annual carbon dioxide emissions, in metric
37 tons of carbon dioxide, for calendar years 2002 through 2006 by each electricity provider that
38 is a capped provider on January 1, 2008. The department shall use the methodology provided
39 in section 17 of this 2007 Act to calculate a three-year average for the five-year period de-
40 scribed, disregarding data for the calendar year in which the provider's annual emissions
41 were the highest and the calendar year in which the provider's annual emissions were the
42 lowest. The sum of the average annual carbon dioxide emissions of all capped providers cal-
43 culated under this subsection, expressed in metric tons of carbon dioxide, is the statewide
44 emissions baseline amount.

45 (2) The statewide emissions limit for calendar years 2009, 2010 and 2011 is equal to the

1 statewide emissions baseline amount determined under subsection (1) of this section.

2 (3) The department shall determine the total of statewide carbon dioxide emissions by
3 all electricity providers in calendar year 1990. The statewide emissions limit in calendar year
4 2020 is equal to 90 percent of the total of statewide carbon dioxide emissions in calendar year
5 1990. The department shall establish statewide emissions limits for calendar years 2012
6 through 2019 that decline linearly from the statewide emissions limit for calendar year 2011
7 established under subsection (2) of this section to the statewide emissions limit for calendar
8 year 2020 established under this subsection.

9 (4) The statewide emissions limit in calendar year 2050 is equal to 25 percent of the total
10 of statewide carbon dioxide emissions in calendar year 1990 as determined under subsection
11 (3) of this section. The department shall establish statewide emissions limits for calendar
12 years 2021 through 2049 that decline linearly from the statewide emissions limit for calendar
13 year 2020 established under subsection (3) of this section to the statewide emissions limit for
14 calendar year 2050 established under this subsection.

15 (5)(a) Upon completion of a normal compliance period established under section 18 (1) or
16 (3) of this 2007 Act, the department shall determine whether capped providers made alter-
17 native compliance payments for the compliance period under section 19 of this 2007 Act for
18 an amount of carbon dioxide that, in the aggregate, exceeds 10 percent of the sum of:

19 (A) The amount of carbon dioxide allowed for the compliance period under the statewide
20 emissions limits established for the calendar years of the period; and

21 (B) The amount of carbon dioxide represented by banked emission allowance certificates
22 held by capped providers at the beginning of the compliance period.

23 (b) If the department determines that capped providers made alternative compliance
24 payments in excess of the amount specified in paragraph (a) of this subsection, the statewide
25 emissions limit for the first year of the normal compliance period following the compliance
26 period for which the determination was made shall be the same as the limit for the last year
27 of the compliance period for which the determination was made. The statewide emissions
28 limits for subsequent years shall be as provided in subsection (3) or (4) of this section.

29 SECTION 3a. Baseline date for electricity providers. All electricity providers shall submit
30 a report to the State Department of Energy on or before July 1, 2008, that contains infor-
31 mation on the provider's carbon dioxide emissions in calendar years 2002, 2003, 2004, 2005 and
32 2006 and any other information required by the department.

33 SECTION 4. Capped provider's emissions limits. (1) The State Department of Energy shall
34 assign to each capped provider a percentage of the statewide emissions baseline amount
35 calculated under section 3 (1) of this 2007 Act so that the entire baseline amount is assigned.
36 Except as provided in this section, a capped provider's emissions limit for a calendar year is
37 equal to the percentage assigned to the provider under this subsection multiplied by the
38 statewide emissions limit for the calendar year.

39 (2) If a consumer-owned utility or self-generator that was exempt under section 5 of this
40 2007 Act subsequently ceases to be qualified for the exemption, the department shall assign
41 to the utility or self-generator a portion of the statewide emissions limit beginning in the
42 calendar year following the year in which the utility or self-generator ceases to qualify for
43 the exemption. The department shall reduce the emissions limits of all other capped provid-
44 ers proportionately.

45 (3) In addition to adjustments required by subsection (2) of this section, the department

1 shall adjust the emissions limits of all other capped providers if:

2 (a) A new electricity provider commences to make sales of electricity after January 1,
3 2008;

4 (b) A self-generator or an electricity service supplier that is a capped provider increases
5 or decreases its load after January 1, 2008, in a manner that increases or decreases the load
6 of another capped provider; or

7 (c) An electric company or consumer-owned utility that is a capped provider acquires
8 territory previously served by another electric company or consumer-owned utility.

9 (4) The department by rule may adjust the emissions limits of capped providers based on
10 any of the following:

11 (a) Sales of electricity generating facilities by the provider;

12 (b) Contracts for purchases of electricity by the provider; or

13 (c) Changes in the sources of electricity used by the provider, if those changes result in
14 a reduction in the provider's annual carbon dioxide emissions and the department determines
15 that those changes do not reduce total annual carbon dioxide emissions by all capped pro-
16 viders.

17
18 **EXEMPT ELECTRICITY PROVIDERS**

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20 **SECTION 5. Exemption for certain consumer-owned utilities and self-generators.** (1)
21 Section 2 of this 2007 Act does not apply to:

22 (a) A consumer-owned utility with annual carbon dioxide emissions of less than 15,000
23 metric tons of carbon dioxide;

24 (b) A self-generator that has a nominal electric generating capacity of less than five
25 megawatts and combined annual carbon dioxide emissions of less than 15,000 metric tons of
26 carbon dioxide at all sites; or

27 (c) A self-generator that provides only emergency backup power generation and has a
28 combined nominal electric generating capacity of less than 25 megawatts if:

29 (A) No individual electricity generating facility having a nominal electric generating ca-
30 pacity of one megawatt or more exceeded 500 hours of operation in any calendar year after
31 2001; and

32 (B) The combined carbon dioxide emissions of all electricity generating facilities operated
33 by the self-generator do not exceed 15,000 metric tons of carbon dioxide in any calendar year
34 after 2001.

35 (2) For the purpose of maintaining an exemption under this section, a consumer-owned
36 utility or self-generator may purchase and use emission allowance certificates, greenhouse
37 gas credits and unbundled renewable energy certificates for application against annual car-
38 bon dioxide emissions by the utility or self-generator that exceed 15,000 metric tons of carbon
39 dioxide in a calendar year.

40 **SECTION 6. Reports by exempt electricity providers.** (1) A consumer-owned utility that
41 is exempt under section 5 (1) of this 2007 Act, or a self-generator that is exempt under sec-
42 tion 5 (1)(b) of this 2007 Act and that has a nominal electric generating capacity of more than
43 one megawatt, shall make an annual report to the State Department of Energy that provides
44 information on:

45 (a) The utility's or self-generator's carbon dioxide emissions during the previous calendar

1 year;

2 (b) Emission allowance certificates, greenhouse gas credits and unbundled renewable en-
 3 ergy certificates used by the utility or self-generator to maintain the exemption provided by
 4 section 5 of this 2007 Act; and

5 (c) Any other information required by the department.

6 (2) The reporting requirements of this section do not apply to:

7 (a) A self-generator that is exempt under section 5 (1)(b) of this 2007 Act and that has a
 8 nominal electric generating capacity of one megawatt or less; and

9 (b) A self-generator that is exempt under section 5 (1)(c) of this 2007 Act.

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 11 **EMISSION ALLOWANCE CERTIFICATES**

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 13 **SECTION 7. Emission allowance certificates.** (1) For each calendar year, the State De-
 14 partment of Energy shall issue emission allowance certificates the total value of which
 15 equals the allowed carbon dioxide emissions for that calendar year under the statewide
 16 emissions limit. Each certificate permits the holder to emit one metric ton of carbon dioxide.
 17 The department shall identify each certificate with an identification number and the year of
 18 issuance.

19 (2) The department shall distribute emission allowance certificates for a calendar year
 20 as follows:

21 (a) For set-asides under section 8 of this 2007 Act;

22 (b) By auction under section 9 of this 2007 Act; and

23 (c) By direct distribution under section 10 of this 2007 Act.

24 (3) The department shall collect a uniform administrative fee for each emission allowance
 25 certificate that is directly distributed to a capped provider under section 10 of this 2007 Act
 26 or set aside and distributed to a capped provider under section 8 of this 2007 Act. The fee
 27 shall be in an amount sufficient to pay all costs incurred by the department in administering
 28 sections 1 to 21 of this 2007 Act, excluding the cost of administering greenhouse gas credits
 29 under section 14 of this 2007 Act.

30 **SECTION 8. Set-asides of emission allowance certificates.** (1) For each calendar year, the
 31 State Department of Energy may set aside up to three percent of the total number of emis-
 32 sion allowance certificates that are issued under section 7 of this 2007 Act. Certificates that
 33 are set aside may be distributed during the calendar year to:

34 (a) Electricity providers that come into existence during the calendar year; and

35 (b) Capped providers that have a significant increase in load as described in subsection
 36 (2) of this section during the calendar year.

37 (2) The department may distribute emission allowance certificates to a capped provider
 38 under subsection (1)(b) of this section if the department determines that the provider has a
 39 significant increase in load because:

40 (a) The capped provider acquires a new customer that uses a significant amount of
 41 electricity at a single site during the customer's first year of operation; or

42 (b) An existing customer of the capped provider has a significant increase in electricity
 43 use in a single year at a single site.

44 (3) The department by rule shall determine the size of the increase in load that will
 45 qualify a capped provider to receive emission allowance certificates under subsection (1)(b)

1 of this section. The department may set different size thresholds based on the relative size
 2 of capped providers' loads for the calendar year.

3 (4) Any emission allowance certificates set aside under this section but not distributed
 4 at the end of the calendar year shall be allocated to capped providers in proportion to each
 5 provider's emissions limit for that calendar year as determined under section 4 of this 2007
 6 Act.

7 **SECTION 9. Auction of emission allowance certificates.** (1) After setting aside a portion
 8 of the total number of emission allowance certificates under section 8 of this 2007 Act, the
 9 State Department of Energy shall offer for sale at auction at least five percent of the cer-
 10 tificates remaining for the calendar year. The department by rule may increase the per-
 11 centage of emission allowance certificates sold at auction each year, but no more than 10
 12 percent of the certificates for a calendar year may be sold at auction.

13 (2) The department shall conduct two auctions each year under this section. Only capped
 14 providers and joint operating agencies, as defined in ORS 262.005, may bid at an auction.
 15 Electricity providers other than electric companies shall have a right of first refusal for a
 16 percentage, determined by the department by rule, of the emission allowance certificates
 17 available at the auction. The department shall cancel any emission allowance certificates
 18 offered and not sold at an auction.

19 (3) The department may direct that up to 25 percent of the revenues from auctions con-
 20 ducted under this section be used for programs that reduce carbon dioxide emissions in this
 21 state, including:

22 (a) Energy efficiency projects;

23 (b) Projects for the construction of electricity generating facilities using renewable en-
 24 ergy sources;

25 (c) Improvements to the efficiency of electricity generating facilities that use fossil fuels;
 26 and

27 (d) Energy research and demonstration projects designed to test:

28 (A) New renewable energy sources or devices; or

29 (B) Processes to improve the efficiency of electricity generating facilities.

30 (4) Except as provided in subsection (5) of this section, the department shall distribute
 31 any auction revenues not used under subsection (3) of this section to capped providers in
 32 proportion to each provider's emission limit for the calendar year as determined under sec-
 33 tion 4 of this 2007 Act. Revenues distributed to capped providers under this subsection may
 34 be used only for the purposes specified in subsection (3) of this section. Expenditures by
 35 electric companies under subsection (3) of this section are subject to approval by the Public
 36 Utility Commission.

37 (5) The department by rule may provide that all or part of the auction revenues that
 38 otherwise would be distributed to self-generators and electricity service suppliers under
 39 subsection (4) of this section be distributed to other capped providers or used for purposes
 40 other than those specified in subsection (3) of this section.

41 **SECTION 10. Direct distribution of emission allowance certificates.** Each calendar year,
 42 the emission allowance certificates that are not set aside under section 8 of this 2007 Act
 43 or sold at auction or otherwise disposed of under section 9 of this 2007 Act shall be allocated
 44 by the State Department of Energy to capped providers in proportion to each provider's
 45 emissions limit for the calendar year as determined under section 4 of this 2007 Act. The

1 department shall distribute certificates to capped providers upon payment of the adminis-
 2 trative fee established under section 7 (3) of this 2007 Act. The department shall cancel any
 3 certificate allocated to a capped provider if the capped provider declines to accept the cer-
 4 tificate.

5 **SECTION 11. Banking, sale and use of emission allowance certificates.** (1) Emission al-
 6 lowance certificates that are not used by a capped provider to comply with the provider’s
 7 carbon dioxide emissions limits for the calendar years of a compliance period may be banked
 8 and carried forward indefinitely for the purpose of complying with the provider’s emissions
 9 limits in the calendar years of a subsequent compliance period. If a capped provider has
 10 banked emission allowance certificates, the provider must use the banked certificates
 11 before using other certificates, and must use the oldest banked certificates first.

12 (2) A capped provider may sell emission allowance certificates to its customers, to other
 13 capped providers or, if authorized by rules of the State Department of Energy under section
 14 12 (2) of this 2007 Act, to out-of-state entities. If a capped provider sells emission allowance
 15 certificates to one of its customers, the customer may sell the certificates only to another
 16 capped provider.

17 (3) A capped provider may not sell emission allowance certificates during an extended
 18 compliance period granted to the provider under section 18 (3) of this 2007 Act.

19 (4) An emission allowance certificate that is sold by a capped provider may not be used
 20 by the provider to comply with the provider’s emissions limit.

21 **SECTION 12. Emission allowance certificates that may be used to comply with emissions**
 22 **limit.** (1) Except as provided in subsection (2) of this section, a capped provider may use only
 23 emission allowance certificates issued by the State Department of Energy under section 7
 24 of this 2007 Act to comply with the provider’s carbon dioxide emissions limit.

25 (2) The department by rule may authorize the use of carbon dioxide emission allowances
 26 issued by other states for the purpose of complying with a carbon dioxide emissions limit
 27 under sections 1 to 21 of this 2007 Act if the department determines that the other state’s
 28 system for imposing carbon dioxide emissions limits is consistent with and comparable to the
 29 system established under sections 1 to 21 of this 2007 Act.

30 **SECTION 13. Reports by capped providers.** (1) Every capped provider shall report annu-
 31 ally to the State Department of Energy. The report must indicate the number of banked
 32 emission allowance certificates held by the provider and must specify the date of issuance
 33 of the certificates. At least once each year, the department shall publish the information
 34 provided by each capped provider under this subsection and the provider’s annual carbon
 35 dioxide emissions as determined by the department under section 17 of this 2007 Act. The
 36 department also may publish the information provided by exempt electricity providers under
 37 section 6 of this 2007 Act.

38 (2) At least once every three years, each capped provider shall provide to the department
 39 a forecast of the provider’s anticipated carbon dioxide emissions for the subsequent 10-year
 40 period. The forecast shall include a description of the manner in which the capped provider
 41 intends to comply with the provider’s emissions limits, including information on the provid-
 42 er’s use of emission allowance certificates, greenhouse gas credits, unbundled renewable en-
 43 ergy certificates and alternative compliance payments.

1 **SECTION 14. Greenhouse gas credits.** (1) Subject to the limits imposed by section 15 of
 2 this 2007 Act, a capped provider may use greenhouse gas credits that have been approved by
 3 the State Department of Energy for the purpose of complying with the provider’s carbon
 4 dioxide emissions limit. Greenhouse gas credits shall be approved for demonstrated re-
 5 ductions in greenhouse gases. For each greenhouse gas credit approved, the department
 6 shall assign a value, in metric tons of carbon dioxide, that is determined by the department
 7 to be equivalent to the amount of greenhouse gases not emitted in the compliance period for
 8 which credit is sought.

9 (2) The department may approve a greenhouse gas credit only if the department finds:

10 (a) The claimed reduction in greenhouse gas emissions is real, quantifiable, verified,
 11 sustainable and enforceable; and

12 (b) The claimed reduction in greenhouse gas emissions is unlikely to have occurred if the
 13 identified measures had not been implemented.

14 (3) A greenhouse gas credit may not be approved for:

15 (a) Reductions in annual carbon dioxide emissions resulting from the generation of elec-
 16 tricity; or

17 (b) Reductions in greenhouse gas emissions that are required by reason of limitations
 18 imposed by this state or any other government.

19 (4) A greenhouse gas credit may be approved only for measures taken before or during
 20 the compliance period for which the provider seeks to claim the credit. A greenhouse gas
 21 credit may not be approved for any period of time before the effective date of this 2007 Act.

22 (5) The department shall define by rule the measures that qualify for greenhouse gas
 23 credits under subsection (2) of this section and shall establish procedures to quantify and
 24 verify greenhouse gas credits.

25 (6) The department shall establish and collect an administrative fee for the use of
 26 greenhouse gas credits under this section. A fee schedule shall be established sufficient to
 27 pay all costs incurred by the department in administering this section.

28 **SECTION 15. Limits on use of greenhouse gas credits.** (1) Except as provided in sub-
 29 sections (2) and (3) of this section:

30 (a) For all compliance periods that include a calendar year before 2021, a capped provider
 31 may use greenhouse gas credits only to the extent that the metric tons of carbon dioxide
 32 assigned to the credits does not exceed two percent of the combined amount of carbon
 33 dioxide allowed under the provider’s emissions limits for the calendar years of the compli-
 34 ance period; and

35 (b) For all compliance periods subsequent to the compliance period subject to paragraph
 36 (a) of this subsection, a capped provider may use greenhouse gas credits only to the extent
 37 that the metric tons of carbon dioxide assigned to the credits does not exceed one percent
 38 of the combined amount of carbon dioxide allowed under the provider’s emissions limits for
 39 the calendar years of the compliance period.

40 (2) A consumer-owned utility subject to section 2 of this 2007 Act may use greenhouse
 41 gas credits to the extent that the metric tons of carbon dioxide assigned to the credits is
 42 equal to or less than the amount of carbon dioxide emissions that are attributable to elec-
 43 tricity acquired by the utility from the Bonneville Power Administration for retail sales
 44 during the compliance period.

45 (3) A self-generator subject to section 2 of this 2007 Act may use any amount of

1 greenhouse gas credits to comply with the emissions limits applicable to the self-generator
 2 for the compliance period.

3
 4 **RENEWABLE ENERGY CERTIFICATES**

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 6 **SECTION 16. Renewable energy certificates.** (1) The State Department of Energy shall
 7 establish a system of renewable energy certificates that can be used by a capped provider to
 8 establish compliance with the provider’s carbon dioxide emissions limit. The department shall
 9 consult with the Public Utility Commission before establishing a system of renewable energy
 10 certificates under this section. The department may allow use of renewable energy certif-
 11 icates that are issued, monitored, accounted for or transferred by or through a regional
 12 system or trading program, including but not limited to the Western Renewable Energy
 13 Generation Information System. The system of renewable energy certificates established by
 14 the department under this section shall allow issuance, transfer and use of certificates in
 15 electronic form.

16 (2) Except as provided in this section, a capped provider may apply unbundled renewable
 17 energy certificates against the load of the provider to comply with the provider’s carbon
 18 dioxide emissions limit. The department shall assign to each unbundled renewable energy
 19 certificate a value, in metric tons of carbon dioxide, that is determined by the department
 20 to be equivalent to the reduction in carbon dioxide emissions attributable to the renewable
 21 energy source used to generate the electricity for which the certificate was issued. The de-
 22 partment may require that unbundled renewable energy certificates be applied first against
 23 that portion of a capped provider’s load for which the source of electricity cannot be deter-
 24 mined.

25 (3) Except as provided in subsection (4) of this section, for any compliance period, a
 26 capped provider may use unbundled renewable energy certificates only to the extent that the
 27 reduction in carbon dioxide emissions represented by those certificates does not exceed one
 28 percent of the amount of carbon dioxide allowed under the provider’s emissions limits for the
 29 calendar years of the compliance period.

30 (4) For any compliance period, a consumer-owned utility subject to section 2 of this 2007
 31 Act may apply any number of unbundled renewable energy certificates against that portion
 32 of the utility’s load:

- 33 (a) For which the source of electricity cannot be determined; or
- 34 (b) That is attributable to electricity acquired by the utility from the Bonneville Power
 35 Administration for retail sales during the compliance period.

36
 37 **COMPLIANCE**

38
 39 **SECTION 17. Determination of actual emissions.** (1) For calendar year 2009 and subse-
 40 quent calendar years, the State Department of Energy shall calculate the amount of annual
 41 carbon dioxide emissions of each capped provider in metric tons of carbon dioxide. The de-
 42 partment shall first determine the capped provider’s load for the calendar year. The depart-
 43 ment shall then calculate the carbon dioxide emissions per megawatt-hour based on the mix
 44 of energy sources used by the capped provider. The total annual carbon dioxide emissions
 45 of the capped provider is equal to the load of the provider multiplied by the carbon dioxide

1 emissions per megawatt-hour.

2 (2) The department by rule shall establish a methodology for determining a carbon
3 dioxide emissions rate or rates for that portion of a capped provider's load for which the
4 source of electricity cannot be determined.

5 (3) The department shall calculate carbon dioxide emissions for generation of electricity
6 using fossil fuels based on the fossil carbon content of the fuels. The department shall cal-
7 culate carbon dioxide emissions from waste fuels based on the carbon content of the waste
8 materials. To the extent practicable, the department shall calculate carbon dioxide emissions
9 of a capped provider by identifying and evaluating the specific generating facilities supplying
10 electricity to the provider.

11 (4) As part of the annual report submitted under section 13 of this 2007 Act, a capped
12 provider shall submit all information required by the department relating to the mix of en-
13 ergy sources used by the provider and the specific generating facilities supplying electricity
14 to the provider.

15 **SECTION 18. Compliance period.** (1) The normal compliance period for capped providers
16 is three calendar years. The first compliance period commences with calendar year 2009.

17 (2) A capped provider may petition the State Department of Energy to approve an ex-
18 tended compliance period for the provider. The department may approve an extended com-
19 pliance period only if the cumulative reduction in carbon dioxide emissions during the
20 extended period is greater than would have resulted had the normal compliance period not
21 been extended. The department may not approve an extended compliance period that is
22 longer than six calendar years.

23 (3) The normal compliance period for all capped providers, and any extended compliance
24 period approved under subsection (2) of this section, shall be extended by the department by
25 one year for each year of exceptionally low hydroelectric generation, as defined by depart-
26 ment rule.

27 **SECTION 19. Alternative compliance payments.** (1) If, in any compliance period, a capped
28 provider fails to provide the State Department of Energy with emission allowance certif-
29 icates, greenhouse gas credits and unbundled renewable energy certificates sufficient to
30 comply with the provider's carbon dioxide emissions limit for the calendar years of the
31 compliance period, the provider must make alternative compliance payments under this
32 section.

33 (2) Alternative compliance payments shall be made at the rate of \$40 per metric ton of
34 carbon dioxide. The department shall adjust the rate of alternative compliance payments
35 every year based on changes in the U.S. City Average Consumer Price Index for All Urban
36 Consumers (All Items) as published by the Bureau of Labor Statistics of the United States
37 Department of Labor or its successor.

38 (3) Moneys paid by a capped provider under this section shall be deposited in an escrow
39 account established by the provider.

40 (4) If an electric company makes alternative compliance payments, the company may
41 submit a plan to the Public Utility Commission before the end of the compliance period next
42 following the period for which alternative compliance payments are made that identifies
43 measures for reducing the company's carbon dioxide emissions and that shows that the
44 company has committed to expending funds to implement that plan. If the commission ap-
45 proves the plan, the commission shall release to the company all or part of the funds in the

1 company's escrow account pursuant to the terms of the plan. The commission may approve
 2 a plan under this subsection only if funds from the escrow account will be expended for the
 3 purposes specified in section 9 (3) of this 2007 Act.

4 (5) If a capped provider other than an electric company makes alternative compliance
 5 payments, the provider may submit a plan to the State Department of Energy before the end
 6 of the compliance period next following the period for which alternative compliance payments
 7 are made that identifies measures for reducing the provider's carbon dioxide emissions and
 8 that shows that the provider has committed to expending funds to implement that plan. If
 9 the department approves the plan, the department shall release to the capped provider all
 10 or part of the funds in the provider's escrow account pursuant to the terms of the plan. The
 11 department may approve a plan under this subsection only if funds from the escrow account
 12 will be expended for the purposes specified in section 9 (3) of this 2007 Act.

13 (6) If plan submitted by a capped provider is not approved under subsection (4) or (5) of
 14 this section, funds that remain in the provider's escrow account at the end of a compliance
 15 period shall be distributed by the provider to a third party provider. The commission shall
 16 designate the third party provider for funds held in escrow accounts under subsection (4) of
 17 this section. The department shall designate the third party provider for funds held in escrow
 18 accounts under subsection (5) of this section. The funds may be used only for the purpose
 19 of implementing reductions in carbon dioxide emissions by capped providers. To the extent
 20 practicable, the funds shall be used to implement reductions in carbon dioxide emissions by
 21 the capped provider that made the alternative compliance payments.

22
 23 MISCELLANEOUS PROVISIONS
 24

25 SECTION 20. Rates of electric companies. In establishing rates for electric companies,
 26 the Public Utility Commission shall take into consideration the requirements imposed on
 27 electric companies by sections 1 to 21 of this 2007 Act.

28 SECTION 21. Report by State Department of Energy. Not less than one year after the
 29 end of each normal compliance period, the State Department of Energy shall conduct a public
 30 review of the impacts of sections 1 to 21 of this 2007 Act on annual statewide carbon dioxide
 31 emissions. Based on the review, the department shall prepare a report to the Governor and
 32 the Legislative Assembly. The report to the Legislative Assembly shall be made in the man-
 33 ner prescribed in ORS 192.245.

34 SECTION 22. Rulemaking. The State Department of Energy and the Public Utility Com-
 35 mission shall adopt all rules necessary for the performance of the duties of the department
 36 and of the commission under the provisions of sections 1 to 21 of this 2007 Act.

37 SECTION 23. Captions. The unit and section captions used in this 2007 Act are provided
 38 only for the convenience of the reader and do not become part of the statutory law of this
 39 state or express any legislative intent in the enactment of this 2007 Act.