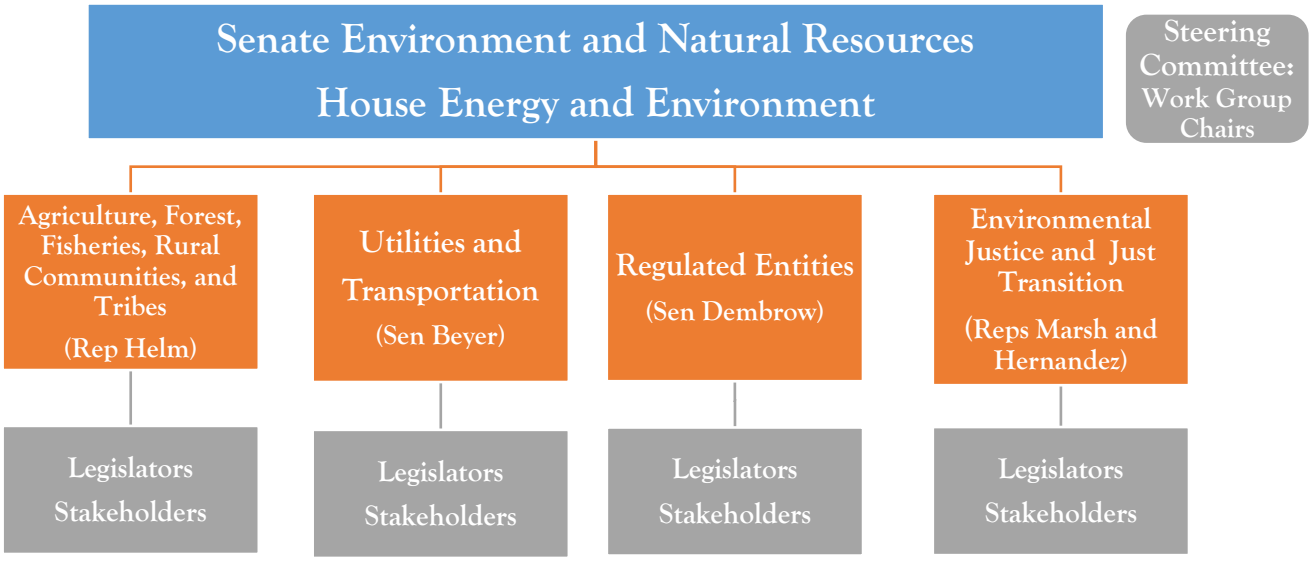
Structure and Dates for Work Groups

CLEAN ENERGY JOBS WORK GROUPS



WORK GROUP MEETING SCHEDULE:

All meetings will be held in Hearing Room 50, State Capitol. To view a livestream of a work group meeting, follow this link https://www.oregonlegislature.gov/citizen_engagement/Pages/Legislative-Video.aspx to the Legislative Audio and Video webpage and scroll down to "Live and Upcoming Meetings" to find the correct work group (all Clean Energy Jobs Work Groups begin with the letters "CEJW"). A call-in number is also available: 1-877-848-7030, meeting # 7714152.

Agriculture, Forest, Fisheries, Rural Communities, and Tribes
September 21, 2017: 10 AM – 11:45 AM
October 16, 2017: 10 AM – noon
November 2, 2017: 1 PM – 3 PM

Utilities and Transportation
September 21, 2017: 3 PM – 4:45 PM
October 17, 2017: 10 AM – noon
~~November 1, 2017: 10 AM – noon~~ **Please note new date and time**: November 7, 10 AM - noon

Regulated Entities
September 21, 2017: 1 PM – 2:45 PM
October 17, 2017: 1 PM – 3 PM
November 2, 2017: 10 AM – noon

Environmental Justice and Just Transition
September 21, 2017: 8 AM – 9:45 AM
October 16, 2017: 1 PM – 3 PM
November 1, 2017: 1 PM – 3 PM

November Legislative Days: A joint meeting of the Senate Environment and Natural Resources Committee and the House Energy and Environment Committee to hear reports back from work groups and hold policy discussions necessary to request bill draft for 2018 session.

Guiding Principles for Work Groups

Clean Energy Jobs Work Group

Guiding Principles

1. The purpose of the Clean Energy Job Work Group process is to make improvements to Senate Bill 1070 (2017) in order to submit a drafting request to Legislative Counsel by November 18, 2017.
2. All work group meetings are open to everyone, though legislative quorum limitations may limit the number of legislators participating in a work group.
3. The goal of the work groups is not consensus on every issue, but we will work for broad agreement where possible. The bill draft proposal will be informed by the participation of all stakeholders.
4. Work group members may designate a substitute to represent their position if they are not available to attend a meeting.
5. The purpose of the work group is to build from the cap-and-invest program framework in Senate Bill 1070 (2017), not to debate climate change or other approaches such as a carbon tax.
6. A public comment opportunity will be part of each work group meeting and the public may also submit written comments.
7. Work group recommendations and outcomes will be reported to a joint meeting of SENR and HEE during November legislative days.
8. Work group meeting agendas and materials will be available on the legislature's website (https://www.oregonlegislature.gov/helm/Pages/clean-energy.aspx). Requests to post materials to this site should be submitted to Beth Reiley (beth.reiley@oregonlegislature.gov) or Beth Patrino (beth.patrino@oregonlegislature.gov).

Charge/Policy Questions for Work Groups

Clean Energy Jobs Work Groups
Charge and Policy Questions

1. Agriculture, Forests, Fisheries, Rural Communities, and Tribes Work Group

Charge: Discuss the opportunities for agriculture, forestry, and fishery sectors under a cap-and-invest program and what would be important to understand for the offsets conversation.

Policy Questions to Answer:

1. How would a cap-and-invest program affect these industries, communities, and tribes? What interests or concerns are important to consider from each perspective?
2. How can an Oregon offsets program be designed to provide the most benefit to Oregon's rural economies, communities, and tribes?
3. What are the concerns related to development of, and use of, offsets, and how can a program be designed to address some of these concerns? What can we learn from existing offset programs?
4. What opportunities exist in Oregon for agriculture, forestry, and fishery sectors, and who would benefit? How will revenues be invested in rural communities? What are some examples?
5. How can a cap-and-invest program help advance Oregon's efforts to mitigate and adapt to the effects of climate change?

2. Utilities and Transportation Work Group

Charge: Discuss compliance with cap-and-invest, flexibility, and cost containment with regard to utilities and transportation.

Utilities -- Policy Questions to Answer:

1. How would compliance with cap-and-invest and other existing policies interact for different power suppliers?
2. How can a cap-and-invest program be designed to be as complementary as possible to existing policies in the electricity sector?
3. What are potential interests and concerns related to allocation for utilities, especially the consignment methodology and process?
4. What policies are needed to ensure cost containment, flexibility, and stable energy prices?

Transportation -- Policy Questions to Answer:

1. How would cap-and-invest and other existing policies interact for different fuel suppliers and different fuel users?
2. What mechanisms would or could be in place to ensure cost containment and flexibility?

3. How should we structure advisory committees and relevant funds created by the cap-and-invest legislation, and what investment opportunities exist for proceeds in the Highway Trust Fund? What investment opportunities might specifically mitigate higher fuel prices for certain fuel user groups (e.g. freight)?
4. How, if at all, will a cap-and-invest program affect the 2017 transportation package?

3. Regulated Entities Work Group

Charge: Discuss compliance with cap-and-invest, flexibility, and cost containment with regard to regulated entities.

Policy Questions to Answer:

1. How would a cap-and-invest program interact with regulated industries?
2. How would energy-intensive and trade-exposed (EITE) entities likely be determined, and how would EITE determinations likely play out for key Oregon industries?
3. How could cost containment mechanisms be designed fairly? For example, if we decide to offer free allowances to some industries in order to control leakage, what are the implications for auction revenue generation and for reducing emissions? Should free allowances be time-limited? How will we be assured that EITEs will in fact produce fewer emissions over time?

4. Environmental Justice and Just Transition Work Group

Charge: Discuss the impacts and potential opportunities for impacted communities and how to ensure a just transition under a cap-and-invest model.

Policy Questions to Answer:

1. How do we identify/define impacted individuals and communities?
2. Are there specific investment opportunities that will benefit those impacted?
3. Are there specific investment opportunities to benefit a just transition for workers?
4. How should decision making be structured to ensure access and transparency?

Senate Bill 1070

Senate Bill 1070

Sponsored by Senators DEMBROW, BEYER, Representative HELM, Senators PROZANSKI, TAYLOR, Representatives HOLVEY, LININGER, LIVELY, MARSH, POWER; Senators FREDERICK, GELSER, MANNING JR, RILEY, ROBLAN, STEINER HAYWARD, Representatives BARNHART, DOHERTY, FAHEY, GORSEK, GREENLICK, HERNANDEZ, KENY-GUYER, MALSTROM, MCLAIN, NATHANSON, NOSSE, PILUSO, RAYFIELD, REARDON, SANCHEZ, SMITH WARNER, SOLLMAN

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.**

Requires Environmental Quality Commission to adopt carbon pollution market by rule. Requires commission to consult with certain interested persons and be advised by advisory committee in adopting rules. Establishes Greenhouse Gas Cap and Investment Program Oversight Committee. Provides for minimum requirements of carbon pollution market. Declares legislative purposes of carbon pollution market.

Establishes Climate Investments Account within State Highway Fund. Requires that certain auction proceeds be deposited in account for purpose of funding programs consistent with legislative purposes of carbon pollution market.

Establishes Oregon Climate Investments Fund. Requires that certain auction proceeds be deposited in fund, to be distributed through Climate Investments Grant Program adopted by Environmental Quality Commission by rule.

Creates Climate Investments in Impacted Communities Advisory Committee. Requires committee to advise on distributions of certain auction proceeds.

Establishes Just Transition Fund. Requires that certain auction proceeds be deposited in fund, to be distributed through Just Transition Grant Program adopted by Oregon Business Development Department by rule.

Makes all provisions related to carbon pollution market and distribution of auction proceeds operative January 1, 2021. Authorizes Environmental Quality Commission, Public Utility Commission, Department of Transportation and Oregon Business Development Department to adopt rules prior to operative date.

Repeals greenhouse gas emissions goals and requires Environmental Quality Commission to adopt by rule statewide greenhouse gas emissions goal for 2025, and limits for years 2035 and 2050.

Defines "greenhouse gas" for purposes of air pollution laws.

Requires registration and reporting by certain sources of greenhouse gas emissions. Requires certain sources to pay annual fee to Department of Environmental Quality to pay costs of department and Environmental Quality Commission in developing and preparing for implementation of carbon pollution market required by Act.

Make provisions related to greenhouse gas definition, emissions limits and registration and reporting operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to greenhouse gas emissions; creating new provisions; amending ORS 184.889, 468A.005, 468A.050, 468A.210, 468A.235, 468A.240, 468A.250, 468A.260, 468A.270, 468A.275, 468A.280 and 757.528 and section 9, chapter 751, Oregon Laws 2009, and section 20, chapter 28, Oregon Laws 2016; repealing ORS 468A.205; and declaring an emergency.

Whereas climate change and ocean acidification caused by greenhouse gas emissions threaten to have significant detrimental effects on public health and the economic vitality, natural resources and environment of this state; and

Whereas the diverse impacts of climate change and ocean acidification include the exacerbation of air quality problems, a reduction in the quantity and quality of water available to this state from mountain snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and food sources, the degradation of the na-

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.

tural environment from increased severity of forest fires and pest infestations of stressed land-based ecosystems, extreme weather events and an increase in the incidences of infectious diseases, asthma and other human health-related problems; and

Whereas climate change and ocean acidification will have detrimental effects on some of this state's most important industries, including agriculture, forestry, commercial fishing, recreation and tourism; and

Whereas climate change will strain the electricity and domestic water supplies that are necessary for economic stability and the most basic levels of human well-being and survival in this state; and

Whereas national and international actions are necessary to fully address climate change and ocean acidification; and

Whereas national actions in the United States are emerging too slowly to address the scope, magnitude and urgency of climate change and ocean acidification; and

Whereas many greenhouse gases persist in the atmosphere for millennia, meaning that the costs of early policy inaction will be severe; and

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

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

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

Whereas global climate change has a disproportionate effect on impacted communities, which typically have fewer resources to adapt to climate change and are therefore the most vulnerable to displacement, adverse health effects, job loss, property damage and other effects of climate change; and

Whereas climate change policies can be designed to protect impacted communities, rural communities and workers from economic costs and can provide co-benefits to and within these communities that include, but are not limited to, opportunities for job creation and training, investments in infrastructure, affordable housing investment, economic development, air quality improvements, energy savings and conservation and increased utilization of clean energy technologies; and

Whereas any climate policy should address leakage to ensure a level playing field between in-state and out-of-state companies to prevent jobs from leaving this state; and

Whereas the climate crisis is pressing; and

Whereas it is the intent of the Legislative Assembly to obtain reductions in greenhouse gas emissions through legally binding market-based mechanisms; now, therefore,

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

GREENHOUSE GAS DEFINITION

SECTION 1. ORS 468A.005 is amended to read:

468A.005. As used in ORS chapters 468, 468A and 468B, unless the context requires otherwise:

(1) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

(2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

(3) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

(6) "Area of the state" means any city or county or portion thereof or other geographical area of the state as may be designated by the Environmental Quality Commission.

(7) "Greenhouse gas" includes, but is not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexaflouride and nitrogen trifluoride.

STATEWIDE GREENHOUSE GAS EMISSIONS LIMITS

SECTION 2. ORS 468A.205 is repealed.

SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS chapter 468A.

SECTION 4. (1) As used in this section, "statewide greenhouse gas emissions" means:

(a) The total annual emissions of greenhouse gases in this state; and

(b) All emissions of greenhouse gases from outside this state that are attributable to the generation of electricity that is delivered to and consumed in this state, accounting for transmission and distribution line losses.

(2) The Environmental Quality Commission shall adopt by rule:

(a) A statewide greenhouse gas emissions goal for the year 2025 to limit greenhouse gas emissions to levels that are at least 20 percent below 1990 levels;

(b) A statewide greenhouse gas emissions limit for the year 2035 that limits greenhouse gas emissions to levels that are at least 45 percent below 1990 levels; and

(c) A statewide greenhouse gas emissions limit for the year 2050 that limits greenhouse gas emissions to levels that are at least 80 percent below 1990 levels.

GREENHOUSE GAS CAP AND INVESTMENT PROGRAM

(Statement of Purposes)

SECTION 5. Sections 6 to 12, 15 and 16 of this 2017 Act and ORS 468A.200 to 468A.260 are added to and made a part of ORS chapter 468A.

SECTION 6. (1) The Legislative Assembly finds and declares that the purposes of sections 6 to 20 of this 2017 Act are to reduce greenhouse gas emissions consistent with the statewide

greenhouse gas emissions levels established under section 4 of this 2017 Act and to promote adaptation and resilience by this state's communities and economy in the face of climate change.

(2) Sections 6 to 20 of this 2017 Act and the rules adopted pursuant to sections 6 to 20 of this 2017 Act:

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

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

(Rules Adoption and Implementation Oversight Advisory Committees)

SECTION 7. (1) In adopting rules as required by sections 10, 11, 12 and 16 of this 2017 Act, the Environmental Quality Commission shall consult with the Environmental Justice Task Force, Indian tribes, the Public Utility Commission, the State Department of Energy, the Department of Transportation and other interested state and federal agencies, and shall be advised by an advisory committee appointed by the Governor.

(2) The advisory committee required by subsection (1) of this section shall be composed of:

(a) One member appointed by the Commission on Asian and Pacific Islander Affairs;

(b) One member appointed by the Commission on Black Affairs;

(c) One member appointed by the Commission on Hispanic Affairs;

(d) One member appointed by the Commission on Indian Services; and

(e) Five members appointed by the Governor who reflect the geographic and demographic diversity of this state, and who have the qualifications deemed necessary by the Governor to advise the Environmental Quality Commission on the diversity of interests relating to efforts by the state to limit greenhouse gas emissions consistent with section 4 of this 2017 Act, with a preference in making appointments given to individuals who can represent the interests of multiple constituencies.

SECTION 8. (1) The Greenhouse Gas Cap and Investment Program Oversight Committee is created. The committee consists of nine members as follows:

(a) The President of the Senate shall appoint one member from among the members of the Senate.

(b) The Speaker of the House of Representatives shall appoint one member from among the members of the House of Representatives.

(c) The Governor shall appoint:

(A) One member who represents the office of the Governor;

(B) One member who represents impacted communities;

(C) One member who represents the interests of labor organizations;

(D) One member who represents environmental organizations;

(E) One member who represents covered entities;

(F) One member with expertise in climate science; and

(G) One member who represents the interests of business sectors impacted by climate change.

(2) The term of a legislative member of the committee shall be two years. If a person

appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Notwithstanding ORS 171.072, members of the committee who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the committee. Other members of the committee are not entitled to compensation or reimbursement for expenses and serve as volunteers on the committee.

(5) The committee shall:

(a) Study the implementation of sections 6 to 20 of this 2017 Act, with particular focus on:

(A) How moneys received by the state as auction proceeds pursuant to section 11 of this 2017 Act are spent;

(B) The greenhouse gas reductions that have resulted from the state's expenditure of auction proceeds;

(C) The geographic distribution of activities that have benefited from the expenditure of auction proceeds; and

(D) How impacted communities and economically distressed areas have benefited from the expenditure of auction proceeds;

(b) Make any recommendations to the Environmental Quality Commission, the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness of the implementation of sections 6 to 20 of this 2017 Act;

(c) Make any recommendations for additional legislation governing the adoption and implementation of the carbon pollution market; and

(d) Conduct such other studies as necessary to provide oversight to the implementation of sections 6 to 20 of this 2017 Act.

(6) The Department of Environmental Quality shall provide the committee with staff, subject to availability of funding for that purpose.

(Definitions)

SECTION 9. As used in ORS 468A.200 to 468A.260 and sections 6 to 20 of this 2017 Act:

(1) "Allowance" means a tradable authorization to emit up to:

(a) One metric ton of carbon dioxide; or

(b) One unit of carbon dioxide equivalent.

(2) "Annual allowance budget" means the total number of allowances allocated by the Environmental Quality Commission for auction or distribution in one calendar year.

(3) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including form the Intergovernmental Panel on Climate Change.

(4) "Carbon pollution market" means the system for regulating greenhouse gas emissions established by the Environmental Quality Commission by rule under section 10 of this 2017 Act.

(5) "Compliance instrument" means an allowance or an offset credit that may be used to fulfill a compliance obligation, such that one compliance instrument is equal to one metric ton of carbon dioxide or carbon dioxide equivalent.

(6) "Compliance obligation" means the quantity of verified reported emissions or assigned emissions for which a covered entity must submit compliance instruments to the Department of Environmental Quality during a compliance period under the carbon pollution market.

(7) "Covered entity" means a source that is required by the Environmental Quality Commission to participate in the carbon pollution market.

(8) "Economically distressed area" means an area designated as distressed by the Oregon Business Development Department under ORS 285A.020 and 285A.075.

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

(10) "General market participant" means a person that:

(a) Is a registered entity;

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

(c) Intends to purchase, hold, sell or voluntarily retire compliance instruments in the carbon pollution market.

(11) "High road agreement" means an agreement among multiple stakeholders that specifies goals for a project or program that are related to the quality and accessibility of economic opportunities provided by that project or program, and that includes:

(a) Strategies for advancing the specified goals based on metrics that may include but are not limited to:

(A) Requirements for wages and benefits;

(B) Workforce and business diversity;

(C) Training and career development; and

(D) Environmental benefits;

(b) A mechanism for implementing the agreement; and

(c) A process for evaluating the progress of a project or program toward achieving the goals specified in the agreement.

(12) "Impacted communities" includes, but is not limited to, the following communities most at risk of being disproportionately impacted by climate change:

(a) Communities with a high percentage of people of color, low-income households, immigrants or refugees relative to other communities;

(b) Linguistically isolated communities;

(c) Communities with high exposures to pollution or toxics relative to other communities; and

(d) Rural communities with unemployment rates that are above this state's mean statewide unemployment rate.

(13) "Leakage" means a reduction in greenhouse gas emissions within this state that is offset by an increase in greenhouse gas emissions outside this state.

(14) "Natural gas utility" means a natural gas utility regulated by the Public Utility Commission under ORS chapter 757.

(15) "Offset credit" means a tradable compliance instrument that is generated by an offset project, such that one offset credit is equal to an authorization to emit one metric ton of carbon dioxide or carbon dioxide equivalent.

(16) "Offset project" means a project, implemented by a person that is not a covered entity, that reduces or removes greenhouse gas emissions that are attributable to persons that are not covered entities.

(17) "Opt-in entity" means a source that is not required to participate in the carbon pollution market and that voluntarily chooses to participate in the carbon pollution market as if it were a covered entity.

(18) "Project labor agreement" means a collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and that, at a minimum:

(a) Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) Allows all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are parties to any other collective bargaining agreement;

(c) Contains guarantees against strikes, lockouts and similar job disruptions; and

(d) Sets forth effective, prompt and mutually binding procedures for resolving labor disputes that arise during the term of the project labor agreement.

(19) "Registered entity" means a covered entity, opt-in entity, or general market participant that has successfully registered to participate in the carbon pollution market.

(20) "Retire" means to permanently remove a compliance instrument from the carbon pollution market such that the compliance instrument may not be sold, traded or otherwise used again.

(21) "Source" means:

(a) An air contamination source as defined in ORS 468A.005;

(b) Any person that imports, sells, allocates or distributes for use in this state electricity, the generation of which emits greenhouse gases; or

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

(22) "Surrender" means to transfer a compliance instrument to the Department of Environmental Quality:

(a) To meet a compliance obligation;

(b) To satisfy a penalty imposed; or

(c) On a voluntary basis.

(Carbon Pollution Market)

SECTION 10. (1) The Environmental Quality Commission shall adopt a carbon pollution market by rule. Rules adopted under this subsection must, at a minimum:

(a) Identify sources subject to the carbon pollution market. In adopting rules under this subsection, the commission may not require a source to be subject to the carbon pollution market unless or until the annual verified greenhouse gas emissions reported under ORS 468A.050 or 468A.280 attributable to that source meet or exceed 25,000 metric tons of carbon dioxide or carbon dioxide equivalent.

(b) Set a cap on the total combined greenhouse gas emissions allowed from covered entities during the calendar year 2021, and a schedule for the cap to decrease by a predetermined amount each calendar year until 2050. The cap and schedule shall reflect the total greenhouse gas emissions from covered entities, as a proportionate share of statewide greenhouse gas emissions as defined in section 4 of this 2017 Act, that must be reduced in order to prevent exceedance of the statewide greenhouse gas emissions levels established by section 4 of this 2017 Act.

(c) Establish an annual allowance budget for the calendar year 2021, and a schedule for the annual allowance budget to decrease by a predetermined amount each calendar year until 2050, consistent with the cap set under paragraph (b) of this subsection and taking into account the effect of offset projects.

(d) Establish a market for allowances and criteria for the distribution of allowances either directly at no cost or through an auction administered by the Department of Environmental Quality pursuant to section 11 of this 2017 Act. In distributing allowances, the department:

(A) Shall place a certain percentage of allowances, as determined necessary by the commission by rule, directly in an allowance price containment reserve designed to assist in containing compliance costs for covered entities in the event of unanticipated high costs for compliance instruments;

(B) Shall distribute to electric companies and natural gas utilities, directly and free of charge, allowances to be consigned to the state for auction under section 11 of this 2017 Act;

(C) May distribute to consumer-owned utilities, directly and free of charge, allowances to be consigned to the state for auction under section 11 of this 2017 Act;

(D) Shall, in order to address leakage and as determined necessary by the commission pursuant to subsection (2) of this section, distribute allowances directly and free of charge to covered entities that include, but are not limited to, covered entities that are part of an emissions-intensive, trade-exposed industry; and

(E) Shall allocate all remaining allowances to an auction holding account to be auctioned pursuant to section 11 of this 2017 Act and associated rules.

(e) Allow for the trading of compliance instruments.

(f) Establish three-year compliance periods, standards for calculating covered entities' compliance obligations relative to the annual allowance budgets applicable during each compliance period and, subject to section 12 of this 2017 Act, procedures by which covered entities shall meet their compliance obligations.

(g) Allow opt-in entities and general market participants to participate in the carbon pollution market.

(2) The commission shall hire or contract with a third party organization to provide data and analysis identifying leakage risk from specific covered entities including, but not limited to, covered entities that are part of an emissions-intensive, trade-exposed industry. The commission shall use the data and analysis provided by a third party organization under this

section to determine the number of allowances to be distributed directly and free of charge under subsection (1)(d) of this section. No less than once every five years, the commission shall:

(a) Require that any data and analysis provided under this subsection be updated by the third party organization.

(b) Adjust the number of allowances distributed directly and free of charge under subsection (1)(d) of this section as necessary to reflect the updated data and analysis.

(3)(a) The commission shall adopt by rule standards for offset projects that may generate offset credits and standards for covered entities to use offset credits in meeting their compliance obligations under the carbon pollution market.

(b) Offset projects:

(A) Must be located in the United States or a country with which the commission has entered into a linkage agreement for administration of the carbon pollution market;

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

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

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

(ii) Are in addition to greenhouse gas emissions reductions or removals otherwise required by law; and

(iii) Would not otherwise have occurred if the emissions reduction or removal activity had not been implemented as part of the offset project.

(c) Standards adopted under this subsection must require that offset credits constitute a quantity that may be no more than eight percent of the total quantity of compliance instruments submitted by a covered entity to meet the entity's compliance obligation for a compliance period. Standards adopted under this subsection may place additional restrictions on the number of offset credits that may be used by a covered entity that is an air contamination source as defined in ORS 468A.005 if the building, premises or other property in, at or on which the air contamination source is located, or the facility, equipment or other property by which greenhouse gas emissions are caused or from which the greenhouse gas emissions come, is geographically located in an impacted community.

(d) In adopting standards under this subsection, the commission shall:

(A) Take into consideration any standards for offset projects and offset credits established by other states and countries with comparable carbon pollution markets; and

(B) Develop the standards in a manner that allows for the department to explore and encourage opportunities for the development of offset projects in this state that may generate offset credits for use by covered entities in meeting their compliance obligations under the carbon pollution market.

(4) All covered entities, opt-in entities and general market participants must register as registered entities to participate in the carbon pollution market. The commission shall adopt by rule registration requirements and any additional requirements necessary for registered entities to participate in auctions administered by the department under section 11 of this 2017 Act. The commission may adopt a schedule of fees for registration under this subsection. Fees shall be reasonably calculated not to exceed the costs to the department in administering the carbon pollution market.

(5) The commission and the department shall develop and administer the carbon pollution market under this section in a manner necessary to enable this state to pursue linkage

agreements with market-based programs in other states or countries.

SECTION 11. (1) Except as provided in subsection (2) of this section, auctions of allowances under the carbon pollution market shall be open to registered entities. The Environmental Quality Commission shall adopt rules necessary for the Department of Environmental Quality to administer the auctions. Rules adopted under this subsection must, at a minimum:

(a) Require the department to hold a maximum of four auctions annually. An auction may include allowances from the annual allowance budget of the current year and allowances from the annual allowance budgets from prior years that remained unsold at previous auctions. The department may auction allowances from future annual allowance budgets separately from allowances from current and previous annual allowance budgets.

(b) Require the department to engage:

(A) A qualified, independent contractor to run the auctions; and

(B) A qualified financial services administrator to hold bid guarantees, evaluate bid guarantees and inform the department of the value of bid guarantees once the bids are accepted.

(c) Require the department to issue notice for an upcoming auction at least 90 days prior to the auction. The auction must consist of a single round of sealed bids submitted during a three-hour open window and must be conducted through a secure online system.

(d) Set an auction floor price and a schedule for the floor price to increase by a predetermined amount each calendar year as necessary for proper functioning of the carbon pollution market. The department may not sell allowances at bids lower than the auction floor price.

(e) Specify, as holding limits, the maximum number of allowances that may be held for use or trade by a registered entity at any one time.

(f) Require that allowances distributed free of charge to an electric company, natural gas utility or consumer-owned utility must be consigned to the state for auction and may not be surrendered under section 12 of this 2017 Act to meet the utility's or company's compliance obligation. Proceeds from the sale of allowances consigned to the state for auction under this paragraph may be used by an electric company or natural gas utility only as provided in section 13 of this 2017 Act. The department shall adopt rules governing the use of proceeds from the sale of allowances consigned to the state for auction under this paragraph by consumer-owned utilities.

(g) Require a registered entity intending to participate in an auction to submit an application to participate at least 30 days prior to the auction.

(h) Include provisions to guard against bidder collusion and minimize the potential for market manipulation.

(2)(a) The department shall conduct reserve auctions of allowances from the allowance price containment reserve once each calendar quarter, separate from the auction of other allowances. Allowances unsold at a reserve auction must be made available again at future reserve auctions.

(b) Only covered entities may participate in reserve auctions.

(c) The department shall follow the procedures for auctions adopted by rule under subsection (1) of this section for reserve auctions, except that the department may choose to establish multiple price tiers for the allowances from the allowance price containment reserve.

(3) Upon completion and verification of the results of an auction conducted under this section, the financial services administrator shall notify winning bidders and transfer the proceeds of the auction as follows:

(a) For auction proceeds from allowances consigned to the state for auction under subsection (1)(f) of this section, to the electric companies, natural gas utilities and consumer-owned companies that consigned the allowances, to be used:

(A) By electric companies and natural gas utilities only as specified in section 13 of this 2017 Act; and

(B) By consumer-owned utilities as prescribed by the department by rule;

(b) For auction proceeds that constitute revenues described in Article IX, section 3a, of the Oregon Constitution, to the State Treasurer to be deposited in the Climate Investments Account in the State Highway Fund; and

(c) For auction proceeds remaining after completion of the transfers under paragraphs (a) and (b) of this subsection, to the State Treasurer to be deposited as follows:

(A) Eighty-five percent in the Oregon Climate Investments Fund; and

(B) Fifteen percent in the Just Transition Fund.

SECTION 12. (1) A covered entity subject to the carbon pollution market developed under section 10 of this 2017 Act must surrender to the Department of Environmental Quality the quantity of compliance instruments equal to the entity's compliance obligation no later than the surrender date for a compliance period specified by the Environmental Quality Commission by rule or order.

(2) In addition to any other penalty provided by law, a covered entity that fails to timely surrender to the department a sufficient quantity of allowances to meet the entity's compliance obligation must, no later than six months after the specified surrender date for the compliance period, surrender to the department a penalty of four allowances for every one allowance that the entity failed to timely surrender.

(3) If a covered entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify the Department of Environmental Quality. Upon receiving notification, the department shall issue an order requiring the entity to surrender penalty allowances as provided for under subsection (2) of this section.

(4) Three out of every four penalty allowances surrendered by a covered entity to the department pursuant to this section must be offered by the department for purchase in future auctions conducted under section 11 of this 2017 Act. The remaining penalty allowances surrendered must be retired by the department and counted toward fulfilling the compliance obligation of the covered entity in the compliance period for which the penalty allowances were surrendered.

(Climate Investments)

SECTION 13. (1) An electric company or natural gas utility that receives the proceeds from the sale of allowances consigned to the state for auction under section 11 of this 2017 Act may use the auction proceeds only for activities, consistent with the purposes of sections 6 to 20 of this 2017 Act as stated in section 6 of this 2017 Act, that serve to stabilize and reduce energy bills while also lowering greenhouse gas emissions, including but not limited to:

(a) Bill assistance for low-income residential customers;

(b) Bill assistance for energy intensive industrial customers that, at the time the bill assistance is received, are not covered entities receiving allowances distributed directly and free of charge to address leakage as allowed under section 10 of this 2017 Act;

(c) Nonvolumetric, on-bill climate credits applied annually or semiannually to residential customers or small business customers with 50 employees or less; or

(d) Other weatherization and energy efficiency programs.

(2) The Public Utility Commission shall adopt rules necessary to implement this section. In adopting rules under this section, the commission shall:

(a) Consult with the advisory committee established under section 7 of this 2017 Act; and

(b) Develop rules that prioritize uses of the proceeds that benefit low-income residential customers.

SECTION 14. (1) The Climate Investments Account is established within the State Highway Fund. Interest earned by the Climate Investments Account shall be credited to the account. Moneys in the account are continuously appropriated to the Department of Transportation to be used only for activities that further the purposes of sections 6 to 20 of this 2017 Act as stated in section 6 of this 2017 Act.

(2) The Climate Investments Account shall consist of moneys deposited in the account under section 11 (3)(b) of this 2017 Act.

(3)(a) Of the moneys deposited in the account each biennium:

(A) At least 20 percent must be used to support projects that are geographically located in impacted communities; and

(B) At least 20 percent must be used to support projects that otherwise benefit impacted communities.

(b) For purposes of this section, the Department of Transportation shall designate impacted communities using the methodology adopted by the Environmental Quality Commission by rule under section 16 of this 2017 Act.

(4) In distributing moneys in the account, the Department of Transportation shall:

(a) Consult with the Climate Investments in Impacted Communities Advisory Committee created under section 17 of this 2017 Act;

(b) Follow a methodology, as developed by the Department of Transportation, for ensuring that a meaningful share of the moneys distributed under this section is used to fund projects that involve the participation of businesses owned by women and members of minority groups; and

(c) To the maximum extent feasible and practicable, give funding preference to projects that will result in the greatest greenhouse gas emissions reductions.

(5) If a construction project is funded in whole or in part by moneys from the account, the primary contractor participating in the construction project:

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

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

(c) Must demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the

Occupational Safety and Health Division of the Department of Consumer and Business Services; and

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

(6) If a construction project is funded in whole or in part by moneys from the account, the Department of Transportation may, on a project-by-project basis, require the use of a high road agreement or a project labor agreement if the use of either type of agreement would advance the public interest and be consistent with law.

SECTION 15. (1) The Oregon Climate Investments Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Climate Investments Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Environmental Quality to be distributed pursuant to the Climate Investments Grant Program adopted under section 16 of this 2017 Act.

(2) The Oregon Climate Investments Fund shall consist of moneys deposited in the fund under section 11 (3)(c)(A) of this 2017 Act.

(3) Moneys in the fund may be used only for activities that further the purposes of sections 6 to 20 of this 2017 Act as stated in section 6 of this 2017 Act.

(4) The department may perform activities as necessary to ensure that recipients of grants from the Oregon Climate Investments Fund comply with applicable requirements. If the department determines that a recipient has not complied with applicable requirements, it may order the recipient to refund all grant moneys and may impose penalties pursuant to ORS 468.140.

SECTION 16. (1) The Environmental Quality Commission shall adopt by rule a Climate Investments Grant Program for distributing moneys in the Oregon Climate Investments Fund. The grant program must carry out the purposes of sections 6 to 20 of this 2017 Act as stated in section 6 of this 2017 Act.

(2)(a) Moneys must be distributed through the grant program developed under this section such that, of the moneys deposited in or credited to the Oregon Climate Investments Fund each biennium:

(A) At least 50 percent of the moneys are distributed to projects or programs that are geographically located in impacted communities; and

(B) At least 40 percent of the moneys are distributed to projects or programs that are geographically located in economically distressed areas, with an emphasis placed on projects or programs that support job creation and job education and training opportunities.

(b) Impacted communities and economically distressed areas may be, but need not be, considered mutually exclusive for purposes of this subsection.

(c) The commission shall consult with the Environmental Justice Task Force, the Oregon Health Authority, other state agencies, local agencies and local officials in adopting by rule a methodology for designating impacted communities for purposes of this subsection.

(3) The grant program shall include the appointment of a grant committee. Members of the grant committee shall be appointed by the Governor. The appointment of members of the grant committee is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565. The grant committee may be composed of any number of individuals that the Governor determines necessary. However, in making appointments to the grant committee under this section, the Governor shall:

(a) Appoint only members who are residents of this state and ensure that at least one

member is appointed from each congressional district in this state;

(b) Appoint members with experience in administering state grant programs;

(c) Appoint members who reflect the racial, ethnic and economic diversity of experience and background necessary to support successful implementation of the grant program and who have a demonstrated interest in reducing greenhouse gas emissions and taking other actions to promote adaptation and resilience by this state's communities and economy in the face of climate change; and

(d) Ensure that members of the grant committee have expertise in the following fields:

(A) Residential or commercial renewable energy;

(B) Promotion of civil rights or racial equality;

(C) Weatherization, energy efficiency and climate resilience for low-income residents;

(D) Water conservation;

(E) Financing tools for making renewable energy, energy efficiency and climate resilience strategies available to a broad spectrum of the public;

(F) Job training and contracting with businesses owned by women and members of minority groups;

(G) Climate justice or environmental justice; and

(H) Climate science, with particular expertise in quantifying greenhouse gas emissions reductions.

(4) The commission shall determine the form and method of applying for grants from the grant program, the eligibility requirements for grant applicants and general terms and conditions of the grants.

(5) The rules adopted by the commission under this section shall provide that the grant committee consult with the Climate Investments in Impacted Communities Advisory Committee created under section 17 of this 2017 Act in reviewing grant applications and making determinations of funding based on a scoring system developed by the commission. The scoring system shall give funding preference to projects and programs that:

(a) Maximize multiple benefits in this state, including but not limited to environmental, social and economic benefits;

(b) Result in greenhouse gas emissions reductions that are cost effective or that are the product of business and research development interests in this state;

(c) Constitute investments in, and facilitate the development of, clean energy infrastructure and technologies in this state;

(d) Complement efforts to achieve and maintain federal and state air quality standards;

(e) Protect impacted communities and economically distressed areas from economic uncertainties associated with climate change or climate change policies;

(f) Make use of domestically produced products to the maximum extent feasible; or

(g) Promote job creation.

(6) The grant program adopted under this section may:

(a) To the extent feasible, require that a grant applicant provide matching funds for completion of the project or program for which a grant is awarded.

(b) Allow an applicant to appeal to the commission for reevaluation of any determination of grant funding.

(c) Allow for the provision of technical assistance during the grant application process to applicants that are businesses owned by women or members of minority groups.

(7) If a construction project is funded in whole or in part by a grant awarded under the grant program, the grant agreement shall require that the primary contractor participating in the construction project:

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

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

(c) Must demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services; and

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

(8) If a construction project is funded in whole or in part by a grant awarded under the grant program, the Department of Environmental Quality may, on a project-by-project basis, require the use of a high road agreement or a project labor agreement if the use of either type of agreement would advance the public interest and be consistent with law.

(9) Subject to the rules adopted by the commission, and subject to reevaluation by the commission on appeal, the grant committee has the responsibility to review grant applications and make funding determinations under the grant program adopted pursuant to this section.

SECTION 17. (1) There is created a Climate Investments in Impacted Communities Advisory Committee consisting of 17 members appointed by the Governor, with at least one member from each congressional district in this state. The Governor shall appoint members to the advisory committee as follows:

(a) Eight members must be recommended by the Environmental Justice Task Force and have experience in working to support environmental justice in impacted communities;

(b) Three members must represent labor interests;

(c) Three members must have experience in sustainable development;

(d) One member must represent the interests of cities;

(e) One member must represent the interests of counties; and

(f) One member must represent the interests of business.

(2) The advisory committee shall consult with and make recommendations to the following public bodies regarding the investment of funds in projects and programs that are geographically located in impacted communities or that otherwise directly benefit households located in impacted communities:

(a) The Department of Transportation with relation to the use of moneys in the Climate Investments Account; and

(b) The grant committee appointed by the Governor under section 16 of this 2017 Act with relation to the award of grants under the Climate Investments Grant Program.

(3) A majority of the members of the advisory committee constitutes a quorum for the transaction of business.

(4) The advisory committee shall elect one of its members to serve as chairperson.

(5) The term of a member of the advisory committee shall be four years. Members of the advisory committee may be reappointed. If there is a vacancy for any cause, the Governor

shall make an appointment to become immediately effective.

(6) The advisory committee shall meet at times and places specified by the call of the chairperson or of a majority of the members of the advisory committee.

SECTION 18. Notwithstanding the term of office specified by section 17 of this 2017 Act, of the members first appointed to the Climate Investments in Impacted Communities Advisory Committee:

(1) Four shall serve for a term ending January 1, 2022.

(2) Four shall serve for a term ending January 1, 2023.

(3) Four shall serve for a term ending January 1, 2024.

(4) Five shall serve for a term ending January 1, 2025.

SECTION 19. (1) The Just Transition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Just Transition Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Business Development Department to be distributed pursuant to the Just Transition Grant Program developed under section 20 of this 2017 Act.

(2) The Just Transition Fund shall consist of moneys deposited in the fund under section 11 (3)(c)(B) of this 2017 Act.

(3) Moneys in the fund may be used only for activities that further the purposes of sections 6 to 20 of this 2017 Act as stated in section 6 of this 2017 Act.

SECTION 20. (1) The Oregon Business Development Department shall adopt by rule a Just Transition Grant Program for the disbursement of moneys in the Just Transition Fund. In developing the grant program, the department shall consult with the advisory committee created under section 7 of this 2017 Act. The purpose of the grant program shall be to support economic diversification, job creation, job training and other employment and mental health services for workers and communities in this state that are adversely affected by climate change or climate change policies.

(2) The grant program shall include the appointment of a grant committee. Members of the grant committee shall be appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The grant committee may be composed of any number of individuals with qualifications that the Governor determines necessary and that represent the demographic and geographic diversity in this state. However, the Governor shall include on the grant committee:

(a) Individuals who have experience in administering state grant programs;

(b) Individuals recommended by the Environmental Justice Task Force who have experience in working to support environmental justice in impacted communities;

(c) Representatives of labor organizations;

(d) Individuals with energy and climate policy expertise;

(e) At least one individual from each congressional district in this state; and

(f) Representatives of industries impacted by climate change.

(3) Subject to the rules adopted by the department, and subject to reevaluation by the department on appeal, the grant committee has the responsibility to review grant applications and make funding determinations under the grant program adopted pursuant to this section.

(4) The department shall determine the form and method of applying for grants from the grant program, the eligibility requirements for grant applicants and general terms and con-

ditions of the grants.

(5) The grant program adopted under this section may:

(a) Require that a grant applicant provide matching funds for completion of the project or program for which a grant is awarded; and

(b) Allow an applicant to appeal to the department for reevaluation of any determination of grant funding.

GREENHOUSE GAS EMISSIONS REGISTRATION AND REPORTING

SECTION 21. ORS 468A.050 is amended to read:

468A.050. (1) By rule the Environmental Quality Commission may classify air contamination sources according to levels and types of emissions and other characteristics [*which*] **that** cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the Department of Environmental Quality and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution.

(3)(a) In addition to any other registration or reporting required under subsection (1) of this section, the commission shall by rule require registration and reporting of greenhouse gas emissions by air contamination sources classified pursuant to subsection (1) of this section. Rules adopted under this subsection must support implementation of the carbon pollution market developed under section 10 of this 2017 Act.

(b) If an air contamination source that has a compliance obligation under the carbon pollution market developed under section 10 of this 2017 Act fails to submit a report under this section, the department shall develop an assigned emissions level for that air contamination source for purposes of participation in the carbon pollution market.

[*(3)*] **(4)** By rule the commission may establish a schedule of fees for the registration of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain a permit under ORS 468A.040 or 468A.155 but chooses instead to register if allowed by the commission by rule. The commission shall base the fees on the anticipated cost of developing and implementing programs related to the different classes, including but not limited to the cost of processing registrations, compliance inspections and enforcement. A registration must be accompanied by any fee specified by the commission by rule, and a subsequent annual registration fee is payable as prescribed by rule of the commission.

[*(4)(a)*] **(5)(a)** By rule the commission may establish a schedule of fees for reporting of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain permits under ORS 468A.040 or 468A.155 or is subject to the federal operating permit program pursuant to ORS 468A.310.

(b) Before establishing fees pursuant to this subsection, the commission shall consider the total fees for each class of sources subject to reporting under this subsection and for which permits are required under ORS 468A.040 or 468A.155 or the federal operating permit program under ORS 468A.315.

(c) The commission shall limit the fees established under this subsection to the anticipated cost of developing and implementing reporting programs. Any fees collected under this subsection for any air contamination source issued a permit under ORS 468A.040 or 468A.155 or sources subject to the federal operating permit program under ORS 468A.310 must be collected as part of the fee for that specific permit.

SECTION 22. ORS 468A.280 is amended to read:

468A.280. (1) In addition to any registration and reporting that may be required under ORS 468A.050, the Environmental Quality Commission by rule may require registration and reporting by:

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

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

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

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

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

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

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

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

(A) Greenhouse gas emissions emitted from generating facilities owned or operated by the electric company;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Allowing electronic reporting;

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

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

(e) Requiring reporting by the fewest number of persons in a fuel distribution system that will allow the commission to acquire the information needed by the commission; or

(f) Other appropriate means and procedures determined by the commission.

(7)(a) Rules adopted under this section must support implementation of the carbon pollution market developed under section 10 of this 2017 Act.

(b) If a person that has a compliance obligation under the carbon pollution market developed under section 10 of this 2017 Act fails to submit a report under this section, the department shall develop an assigned greenhouse gas emissions level for that person for purposes of participation in the carbon pollution market.

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

SECTION 23. (1) The Department of Environmental Quality shall study the feasibility of requiring greenhouse gas emissions reported under ORS 468A.050 and 468A.280 to be quantified and reported in a manner that meets:

(a) The standards established by the International Organization for Standardization under ISO 14064; or

(b) Other standards that meet criteria identified by the department for calculating emissions on a complete life cycle basis, including the emissions attributable to the extraction, production, storage, transportation, delivery and final use combustion of a greenhouse gas and fugitive losses, expressed in carbon dioxide equivalents.

(2) If the department determines that it is feasible, pursuant to the study required by

subsection (1) of this section, the Environmental Quality Commission may require greenhouse gas emissions to be quantified and reported under ORS 468A.050 and 468A.280 in a manner that meets the standards specified in subsection (1)(a) or (b) of this section.

GREENHOUSE GAS CAP AND INVESTMENT PROGRAM DEVELOPMENT FEE

SECTION 24. Section 25 of this 2017 Act is added to and made a part of ORS chapter 468A.

SECTION 25. (1) As used in this section, "source" means:

(a) An air contamination source as defined in ORS 468A.005;

(b) Any person that imports, sells, allocates or distributes for use in this state electricity, the generation of which emits greenhouse gases; or

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

(2) In addition to and not in lieu of any other fee required by law, and subject to subsection (3) of this section, a source shall pay to the Department of Environmental Quality an annual supplemental fee of $_____.

(3) This section applies any source required to register and report greenhouse gas emissions to the department under ORS 468A.050 or 468A.280 that, for the year prior to the year in which the fee is assessed, reported annual greenhouse gas emissions attributable to that source that equal or exceed 25,000 metric tons of carbon dioxide or carbon dioxide equivalent.

(4) Fees collected under this section shall be deposited into the State Treasury to the credit of an account of the Department of Environmental Quality. Moneys deposited under this subsection are continuously appropriated to the department for the payment of expenses of the department and the Environmental Quality Commission in developing and preparing for implementation the carbon pollution market required by sections 6 to 20 of this 2017 Act.

(3) A source shall pay to the department the fee required under this section no later than 30 days after the date of the invoice issued by the department for the fee.

(4) The department may adopt rules necessary to implement the provisions of this section, including but not limited to rules requiring an additional fee for failure to pay, substantial underpayment of or late payment of the fee required by this section.

SECTION 26. Section 25 of this 2017 Act is repealed on January 2, 2021.

CONFORMING AMENDMENTS, OPERATIVE JANUARY 1, 2018

SECTION 27. ORS 184.889 is amended to read:

184.889. (1) The Oregon Transportation Commission, after consultation with and in cooperation with metropolitan planning organizations, other state agencies, local governments and stakeholders, as a part of the state transportation policy developed and maintained under ORS 184.618, shall adopt a statewide transportation strategy on greenhouse gas emissions to aid in achieving the greenhouse gas emissions reduction goals set forth in ORS 468A.205 **(2017)**. The commission shall focus on reducing greenhouse gas emissions resulting from transportation. In developing the strategy, the commission shall take into account state and federal programs, policies and incentives related to reducing greenhouse gas emissions.

(2) The commission shall actively solicit public review and comment in the development of the strategy.

(3) The commission shall periodically assess, update and modify the strategy as necessary to prevent exceedance of the greenhouse gas emissions levels established by section 4 of this 2017 Act.

SECTION 28. ORS 468A.210 is amended to read:

468A.210. As used in ORS 352.823 and 468A.200 to 468A.260[*:*]**,**

[*(1)*] "global warming" means an increase in the average temperature of the earth's atmosphere that is associated with the release of greenhouse gases.

[*(2) "Greenhouse gas" means any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.*]

[*(3) "Greenhouse gas cap-and-trade system" means a system that:*]

[*(a) Establishes a total cap on greenhouse gas emissions from an identified group of emitters;*]

[*(b) Establishes a market for allowances that represent emissions; and*]

[*(c) Allows trading of allowances among greenhouse gas emitters.*]

SECTION 29. ORS 468A.235 is amended to read:

468A.235. The Oregon Global Warming Commission shall recommend ways to coordinate state and local efforts to reduce greenhouse gas emissions in Oregon consistent with the **levels of** greenhouse gas emissions [*reduction goals*] established by [*ORS 468A.205*] **section 4 of this 2017 Act** and shall recommend efforts to help Oregon prepare for the effects of global warming. The Office of the Governor and state agencies working on multistate and regional efforts to reduce greenhouse gas emissions shall inform the commission about these efforts and shall consider input from the commission for such efforts.

SECTION 30. ORS 468A.240 is amended to read:

468A.240. (1) In furtherance of **preventing exceedance of** the **levels of** greenhouse gas emissions [*reduction goals*] established by [*ORS 468A.205*] **section 4 of this 2017 Act**, the Oregon Global Warming Commission may recommend statutory and administrative changes, policy measures and other recommendations to be carried out by state and local governments, businesses, nonprofit organizations or residents. In developing its recommendations, the commission shall consider economic, environmental, health and social costs, and the risks and benefits of alternative strategies, including least-cost options. The commission shall solicit and consider public comment relating to statutory, administrative or policy recommendations.

[*(2) The commission shall examine greenhouse gas cap-and-trade systems, including a statewide and multistate carbon cap-and-trade system and market-based mechanisms, as a means of achieving the greenhouse gas emissions reduction goals established by ORS 468A.205.*]

[*(3)*] **(2)** The commission shall examine possible funding mechanisms to obtain low-cost greenhouse gas emissions reductions and energy efficiency enhancements, including but not limited to those in the natural gas industry.

SECTION 31. ORS 468A.250 is amended to read:

468A.250. (1) The Oregon Global Warming Commission shall track and evaluate:

(a) Economic, environmental, health and social assessments of global warming impacts on Oregon and the Pacific Northwest;

(b) Existing greenhouse gas emissions reduction policies and measures;

(c) Economic, environmental, health and social costs, and the risks and benefits of alternative

strategies, including least-cost options;

(d) The physical science of global warming;

(e) Progress toward **preventing exceedance of** the greenhouse gas emissions [*reduction goals*] **levels** established by [*ORS 468A.205*] **section 4 of this 2017 Act**;

(f) Greenhouse gases emitted by various sectors of the state economy, including but not limited to industrial, transportation and utility sectors;

(g) Technological progress on sources of energy the use of which generates no or low greenhouse gas emissions and methods for carbon sequestration;

(h) Efforts to identify the greenhouse gas emissions attributable to the residential and commercial building sectors;

(i) The carbon sequestration potential of Oregon's forests, alternative methods of forest management that can increase carbon sequestration and reduce the loss of carbon sequestration to wildfire, changes in the mortality and distribution of tree and other plant species and the extent to which carbon is stored in tree-based building materials;

(j) The advancement of regional, national and international policies to reduce greenhouse gas emissions;

(k) Local and regional efforts to prepare for the effects of global warming; and

(L) Any other information, policies or analyses that the commission determines will aid in [*the achievement of the greenhouse gas emissions reduction goals established by ORS 468A.205*] **preventing exceedance of the greenhouse gas emissions levels established by section 4 of this 2017 Act**.

(2) The commission shall:

(a) Work with the State Department of Energy and the Department of Environmental Quality to evaluate all gases with the potential to be greenhouse gases and to determine a carbon dioxide equivalency for those gases; and

(b) Use regional and national baseline studies of building performance to identify incremental targets for the reduction of greenhouse gas emissions attributable to residential and commercial building construction and operations.

SECTION 32. ORS 468A.260 is amended to read:

468A.260. The Oregon Global Warming Commission shall submit a report to the Legislative Assembly, in the manner provided by ORS 192.245, by [*March 31 of each odd-numbered year*] **September 15 of each even-numbered year** that describes Oregon's progress toward [*achievement of the greenhouse gas emissions reduction goals established by ORS 468A.205*] **preventing exceedance of the greenhouse gas emissions levels established by section 4 of this 2017 Act**. The report may include relevant issues and trends of significance, including trends of greenhouse gas emissions, emerging public policy and technological advances. The report also may discuss measures the state may adopt to mitigate the impacts of global warming on the environment, the economy and the residents of Oregon and to prepare for those impacts.

SECTION 33. ORS 468A.270 is amended to read:

468A.270. (1) As used in this section[*:*]

[*(a) "Greenhouse gas" has the meaning given that term in ORS 468A.210.*]

[*(b)*]**,** "motor vehicle" has the meaning given that term in ORS 801.360.

(2) The Environmental Quality Commission may adopt by rule standards and requirements described in this section to reduce greenhouse gas emissions.

(3)(a) The commission may adopt requirements to prevent the tampering, alteration and modification of the original design or performance of motor vehicle pollution control systems.

(b) Before adopting requirements under this section, the commission shall consider the anti-tampering requirements and exemptions of the State of California.

(4) The commission may adopt requirements for motor vehicle service providers to check and inflate tire pressure according to the tire manufacturer's or motor vehicle manufacturer's recommended specifications, provided that the requirements:

(a) Do not apply when the primary purpose of the motor vehicle service is fueling vehicles; and

(b) Do not require motor vehicle service providers to purchase equipment to check and inflate tire pressure.

(5) The commission may adopt restrictions on engine use by commercial ships while at port, and requirements that ports provide alternatives to engine use such as electric power, provided that:

(a) Engine use shall be allowed when necessary to power mechanical or electrical operations if alternatives are not reasonably available;

(b) Engine use shall be allowed when necessary for reasonable periods due to emergencies and other considerations as determined by the commission; and

(c) The requirements must be developed in consultation with representatives of Oregon ports and take into account operational considerations, operational agreements, international protocols and limitations, the ability to fund the purchase and use of electric power equipment and the potential effect of the requirements on competition with other ports.

(6) In adopting rules under this section, the commission shall evaluate:

(a) Safety, feasibility, net reduction of greenhouse gas emissions and cost-effectiveness;

(b) Potential adverse impacts to public health and the environment, including but not limited to air quality, water quality and the generation and disposal of waste in this state;

(c) Flexible implementation approaches to minimize compliance costs; and

(d) Technical and economic studies of comparable greenhouse gas emissions reduction measures implemented in other states and any other studies as determined by the commission.

(7) The provisions of this section do not apply to:

(a) Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.

(b) Farm tractors, as defined in ORS 801.265.

(c) Implements of husbandry, as defined in ORS 801.310.

(d) Motor trucks, as defined in ORS 801.355, used primarily to transport logs.

SECTION 34. ORS 468A.275 is amended to read:

468A.275. (1) As used in this section:

[*(a) "Greenhouse gas" has the meaning given that term in ORS 468A.210.*]

[*(b)*] **(a)** "Low carbon fuel standards" means standards for the reduction of greenhouse gas emissions, on average, per unit of fuel energy.

[*(c)*] **(b)** "Motor vehicle" has the meaning given that term in ORS 801.360.

(2)(a) The Environmental Quality Commission shall adopt by rule low carbon fuel standards for gasoline, diesel and fuels used as substitutes for gasoline or diesel.

(b) The commission may adopt the following related to the standards, including but not limited to:

(A) A schedule to phase in implementation of the standards in a manner that reduces the average amount of greenhouse gas emissions per unit of fuel energy of the fuels by 10 percent below 2010 levels by the year 2025 or by a later date if the commission determines that an extension is appropriate to implement the standards;

(B) Standards for greenhouse gas emissions attributable to the fuels throughout their lifecycles,

including but not limited to emissions from the production, storage, transportation and combustion of the fuels and from changes in land use associated with the fuels;

(C) Provisions allowing the use of all types of low carbon fuels to meet the low carbon fuel standards, including but not limited to biofuels, biogas, natural gas, liquefied petroleum gas, gasoline, diesel, hydrogen and electricity;

(D) Standards for the issuance of deferrals, established with adequate lead time, as necessary to ensure adequate fuel supplies;

(E) Exemptions for fuels that are used in volumes below thresholds established by the commission;

(F) Standards, specifications, testing requirements and other measures as needed to ensure the quality of fuels produced in accordance with the low carbon fuel standards, including but not limited to the requirements of ORS 646.910 to 646.923 and administrative rules adopted by the State Department of Agriculture for motor fuel quality; and

(G) Adjustments to the amounts of greenhouse gas emissions per unit of fuel energy assigned to fuels for combustion and drive train efficiency.

(c) Before adopting standards under this section, the commission shall consider the low carbon fuel standards of other states, including but not limited to Washington, for the purpose of determining schedules and goals for the reduction of the average amount of greenhouse gas emissions per unit of fuel energy and the default values for these reductions for applicable fuels.

(d) The commission shall adopt by rule provisions for managing and containing the costs of compliance with the standards, including but not limited to provisions to facilitate compliance with the standards by ensuring that persons may obtain credits for fuels used as substitutes for gasoline or diesel and by creating opportunities for persons to trade credits.

(e) The commission shall exempt from the standards any person who imports in a calendar year less than 500,000 gallons of gasoline and diesel fuel, in total. Any fuel imported by persons that are related or share common ownership or control shall be aggregated together to determine whether a person is exempt under this paragraph.

(f)(A) The commission by rule shall prohibit fuels that contain biodiesel from being considered an alternative fuel under these standards unless the fuel meets the following standards:

(i) Fuel that consists entirely of biodiesel, designated as B100, shall comply with ASTM D 6751 and shall have an oxidation stability induction period of not less than eight hours as determined by the test method described in European standard EN 15751; and

(ii) Fuel that consists of a blend of diesel fuel and between 6 and 20 volume percent biodiesel, and designated as biodiesel blends B6 to B20, shall comply with ASTM D 7467 and shall have an oxidation stability induction period of not less than 20 hours as determined by the test method described in European standard EN 15751.

(B) The commission may adopt rules different from those required under subparagraph (A) of this paragraph if an ASTM or EN standard applicable to biodiesel is approved or amended after March 12, 2015, or if the commission finds that different rules are necessary due to changes in technology or fuel testing or production methods.

(C) As used in this subsection, "biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm oil.

(3) In adopting rules under this section, the Environmental Quality Commission shall evaluate:

(a) Safety, feasibility, net reduction of greenhouse gas emissions and cost-effectiveness;

(b) Potential adverse impacts to public health and the environment, including but not limited to air quality, water quality and the generation and disposal of waste in this state;

(c) Flexible implementation approaches to minimize compliance costs; and

(d) Technical and economic studies of comparable greenhouse gas emissions reduction measures implemented in other states and any other studies as determined by the commission.

(4)(a) The provisions of this section do not apply to fuel that is demonstrated to have been used in any of the following:

(A) Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.

(B) Farm tractors, as defined in ORS 801.265.

(C) Implements of husbandry, as defined in ORS 801.310.

(D) Motor trucks, as defined in ORS 801.355, used primarily to transport logs.

(E) Motor vehicles that are not designed primarily to transport persons or property, that are operated on highways only incidentally, and that are used primarily for construction work.

(F) Watercraft.

(G) Railroad locomotives.

(b) The Environmental Quality Commission shall by rule adopt standards for persons to qualify for the exemptions provided in this subsection.

SECTION 35. Section 9, chapter 751, Oregon Laws 2009, is amended to read:

Sec. 9. (1) The Public Utility Commission shall develop estimates of the rate impacts for electric companies and natural gas companies to meet the following alternative greenhouse gas emission reduction goals for 2020:

(a) Ten percent below 1990 levels[*, as specified in ORS 468A.205*]; and

(b) Fifteen percent below 2005 levels.

(2) The commission shall submit a report presenting the estimates and explaining the analysis used to develop the estimates to the appropriate interim committee of the Legislative Assembly prior to November 1 of each even-numbered year.

SECTION 36. Section 20, chapter 28, Oregon Laws 2016, is amended to read:

Sec. 20. (1) As used in this section:

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

(b) "Transportation electrification" means:

(A) The use of electricity from external sources to provide power to all or part of a vehicle;

(B) Programs related to developing the use of electricity for the purpose described in subparagraph (A) of this paragraph; and

(C) Infrastructure investments related to developing the use of electricity for the purpose described in subparagraph (A) of this paragraph.

(c) "Vehicle" means a vehicle, vessel, train, boat or any other equipment that is mobile.

(2) The Legislative Assembly finds and declares that:

(a) Transportation electrification is necessary to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, [*meet this state's greenhouse gas emissions reduction goals described in ORS 468A.205*] **prevent exceedance of the greenhouse gas emissions levels established by section 4 of this 2017 Act** and improve the public health and safety;

(b) Widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel;

(c) Widespread transportation electrification requires that electric companies increase access to

the use of electricity as a transportation fuel in low and moderate income communities;

(d) Widespread transportation electrification should stimulate innovation and competition, provide consumers with increased options in the use of charging equipment and in procuring services from suppliers of electricity, attract private capital investments and create high quality jobs in this state;

(e) Transportation electrification and the purchase and use of electric vehicles should assist in managing the electrical grid, integrating generation from renewable energy resources and improving electric system efficiency and operational flexibility, including the ability of an electric company to integrate variable generating resources;

(f) Deploying transportation electrification and electric vehicles creates the opportunity for an electric company to propose, to the Public Utility Commission, that a net benefit for the customers of the electric company is attainable; and

(g) Charging electric vehicles in a manner that provides benefits to electrical grid management affords fuel cost savings for vehicle drivers.

(3) The Public Utility Commission shall direct each electric company to file applications, in a form and manner prescribed by the commission, for programs to accelerate transportation electrification. A program proposed by an electric company may include prudent investments in or customer rebates for electric vehicle charging and related infrastructure.

(4) When considering a transportation electrification program and determining cost recovery for investments and other expenditures related to a program proposed by an electric company under subsection (3) of this section, the commission shall consider whether the investments and other expenditures:

(a) Are within the service territory of the electric company;

(b) Are prudent as determined by the commission;

(c) Are reasonably expected to be used and useful as determined by the commission;

(d) Are reasonably expected to enable the electric company to support the electric company's electrical system;

(e) Are reasonably expected to improve the electric company's electrical system efficiency and operational flexibility, including the ability of the electric company to integrate variable generating resources; and

(f) Are reasonably expected to stimulate innovation, competition and customer choice in electric vehicle charging and related infrastructure and services.

(5)(a) Tariff schedules and rates allowed pursuant to subsection (3) of this section:

(A) May allow a return of and a return on an investment made by an electric company under subsection (3) of this section; and

(B) Shall be recovered from all customers of an electric company in a manner that is similar to the recovery of distribution system investments.

(b) A return on investment allowed under this subsection may be earned for a period of time that does not exceed the depreciation schedule of the investment approved by the commission. When an electric company's investment is fully depreciated, the commission may authorize the electric company to donate the electric vehicle charging infrastructure to the owner of the property on which the infrastructure is located.

(6) For purposes of ORS 757.355, electric vehicle charging infrastructure provides utility service to the customers of an electric company.

(7) In authorizing programs described in subsection (3) of this section, the commission shall re-

view data concerning current and future adoption of electric vehicles and utilization of electric vehicle charging infrastructure. If market barriers unrelated to the investment made by an electric company prevent electric vehicles from adequately utilizing available electric vehicle charging infrastructure, the commission may not permit additional investments in transportation electrification without a reasonable showing that the investments would not result in long-term stranded costs recoverable from the customers of electric companies.

SECTION 37. ORS 757.528 is amended to read:

757.528. (1) Unless modified by rule by the State Department of Energy as provided in this section, the greenhouse gas emissions standard that applies to consumer-owned utilities is 1,100 pounds of greenhouse gases per megawatt-hour for a generating facility.

(2) Unless modified pursuant to subsection (4) of this section, the greenhouse gas emissions standard includes only carbon dioxide emissions.

(3) For purposes of applying the emissions standard to cogeneration facilities, the department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for cogeneration facilities recognizes the total usable energy output of the process and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy.

(4) The department shall review the greenhouse gas emissions standard established under this section no more than once every three years. After public notice and hearing, and consultation with the Public Utility Commission, the department may:

(a) Modify the emissions standard to include other greenhouse gases as defined in [*ORS 468A.210*] **ORS 468A.005**, with the other greenhouse gases expressed as their carbon dioxide equivalent; and

(b) Modify the emissions standard based upon current information on the rate of greenhouse gas emissions from a commercially available combined-cycle natural gas generating facility that:

(A) Employs a combination of one or more gas turbines and one or more steam turbines and produces electricity in the steam turbines from waste heat produced by the gas turbines;

(B) Has a heat rate at high elevation within the boundaries of the Western Electricity Coordinating Council; and

(C) Has a heat rate at ambient temperatures when operating during the hottest day of the year.

(5) In modifying the greenhouse gas emissions standard, the department shall:

(a) Use an output-based methodology to ensure that the calculation of greenhouse gas emissions through cogeneration recognizes the total usable energy output of the process and includes all greenhouse gases emitted by the generating facility in the production of both electrical and thermal energy; and

(b) Consider the effects of the emissions standard on system reliability and overall costs to electricity consumers.

(6) If upon a review conducted pursuant to subsection (4) of this section, the department determines that a mandatory greenhouse gas emissions limit has been established pursuant to state or federal law, the department shall issue a report to the appropriate legislative committees of the Legislative Assembly stating which portions, if any, of the greenhouse gas emissions standard are no longer necessary as a matter of state law.

OPERATIVE DATES

SECTION 38. **(1)(a) Sections 3, 4 and 24 to 26 of this 2017 Act, the amendments to statutes and session law by sections 1, 21, 22 and 27 to 37 of this 2017 Act and the repeal of ORS 468A.205 by section 2 of this 2017 Act become operative on January 1, 2018.**

(b) The Environmental Quality Commission may adopt rules or take any actions before the operative date specified in paragraph (a) of this subsection that are necessary to enable the commission, on and after the operative date specified in paragraph (a) of this subsection, to carry out the provisions of sections 3, 4 and 24 to 26 of this 2017 Act, the amendments to statutes and session law by sections 1, 21, 22 and 27 to 37 of this 2017 Act and the repeal of ORS 468A.205 by section 2 of this 2017 Act. Any rules adopted under this paragraph may not become operative until January 1, 2018.

(2)(a) Sections 5 to 20 of this 2017 Act become operative on January 1, 2021.

(b) The Environmental Quality Commission, the Public Utility Commission, the Department of Transportation and the Oregon Business Development Department may adopt rules or take any actions before the operative date specified in paragraph (a) of this subsection that are necessary to enable the commissions and departments, on and after the operative date specified in paragraph (a) of this subsection, to carry out the provisions of sections 5 to 20 of this 2017 Act. Any rules adopted under this paragraph may not become operative until January 1, 2021.

REPORT

SECTION 39. **On or before September 15, 2019, the Department of Environmental Quality shall report on the actions being taken by the Environmental Quality Commission and the department to prepare for implementation of sections 6 to 20 and 23 of this 2017 Act and the amendments to ORS 468A.050 and 468A.280 by sections 21 and 22 of this 2017 Act to the interim legislative committees on the environment and natural resources.**

CAPTIONS

SECTION 40. **The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.**

EMERGENCY CLAUSE

SECTION 41. **This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.**

Legislative Counsel Memorandum regarding Application of Bill for Raising Revenue Jurisprudence and Article IX, Section 3a, to SB 1070

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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

October 10, 2017

Senator Michael Dembrow
900 Court Street NE S407
Salem OR 97301

Re: Application of bill for raising revenue jurisprudence and Article IX, section 3a, to SB 1070

Dear Senator Dembrow:

Senate Bill 1070 (2017) requires the Environmental Quality Commission (EQC) to adopt and administer a greenhouse gas (GHG) cap-and-investment program.[1] You asked whether SB 1070 is a bill for raising revenue for purposes of Article IV, sections 18 and 25 (2), of the Oregon Constitution, and whether Article IX, section 3a, of the Oregon Constitution would apply to certain proceeds received by the state pursuant to SB 1070.

We begin with a general explanation of cap-and-trade programs, of which cap-and-investment programs are a variant. We then describe the provisions of SB 1070 that require establishment of a cap-and-investment program and analyze whether those provisions make the bill a bill for raising revenue. We conclude that SB 1070 is not a bill for raising revenue. Finally, we conclude that under Article IX, section 3a, Oregon Constitution, certain state proceeds from the sale at auction of allowances within a SB 1070 cap-and-investment program would very likely be required to be used exclusively for certain highway purposes.

Design and function of cap-and-trade programs generally

Cap-and-trade is one type of market-based approach to reducing greenhouse gas emissions.[2] Under traditional command-and-control regulations for reducing emissions, governments generally require businesses to install certain types of emissions reduction technologies or to meet certain minimum emissions standards.[3] By contrast, market-based programs such as cap-and-trade add a financial cost to producing GHGs, thus providing an economic incentive for private businesses and consumers to reduce emissions. Market-based

[1] Senate Bill 1070 also repeals ORS 468A.205, which establishes certain GHG emission reduction goals for the state, and instead requires the EQC to adopt by rule statewide GHG emission goals for 2025 and limits for years 2035 and 2050. The bill also includes other provisions necessary for developing and administering a cap-and-investment program, such as establishing registration and reporting requirements for entities subject to the program, authorizing the commission to adopt a schedule of registration fees and establishing a temporary program development fee to fund EQC's development by rule of a cap-and-investment program. We do not discuss the registration and program development fees, the inclusion of which does not make a bill a bill for raising revenue under Article IV, sections 18 and 25 (2). *See Northern Counties Trust v. Sears*, 30 Or. 388 (1895).

[2] Another commonly discussed market-based approach is a carbon tax, which we do not discuss in this opinion. For a general description of how a cap-and-trade program differs from a carbon tax, *see* Oregon Department of Environmental Quality, *Considerations for Designing a Cap-and-Trade Program in Oregon*, at 2 (Feb. 14, 2017) http://www.oregon.gov/deq/FilterDocs/ghgmarketstudy.pdf (visited Sept. 27, 2017).

[3] Mac Taylor, Legislative Analyst's Office, *The 2017-18 Budget: Cap-and-Trade*, at 6-7 (Feb. 2017), available at http://www.lao.ca.gov/reports/2017/3553/cap-and-trade-021317.pdf (last visited Sept. 27, 2017).

programs, in theory, provide flexibility for the private sector to determine what emission reduction activities are the least costly for them and whether the costs of the activities are less than the financial cost of continuing to emit GHGs.[4]

In a cap-and-trade program, a government establishes an overall limit (a "cap") on the aggregate GHG emissions from a group of covered entities, expressed in tons of carbon dioxide equivalent. The cap generally covers a broad spectrum of entities that emit more than an annual threshold amount of GHGs, including electricity generators and importers, industrial facilities and certain upstream entities within the transportation fuel industry. The cap declines over time, ultimately arriving at a target emissions level by a target year.

To implement a cap-and-trade program, the government annually issues carbon allowances in an amount equal to the applicable annual cap, each allowance being essentially a permit to emit one ton of carbon dioxide equivalent.[5] The government can distribute allowances by allocating them for free to covered entities, which it typically chooses to do in order to protect businesses exposed to trade pressure from competitors outside the government's jurisdiction,[6] or by selling them at auction, with the proceeds going to the government. Auctioning allowances is considered to be a transparent process for distributing allowances, extricates the government from determining who should receive allowances and how many and establishes a market price for GHG emissions.[7] In practice, jurisdictions with cap-and-trade programs usually distribute allowances through a combination of free allocations and auctions.[8] Once distributed, allowances can be traded by covered entities on a secondary market—that secondary market activity is the "trade" component of a cap-and-trade program.

Covered entities can also purchase "offsets." Offsets are GHG emission reduction projects undertaken by entities that are not subject to the state's cap-and-trade program. Governments usually limit how many offsets an entity can use to demonstrate compliance. [9]

To meet their compliance obligations within a cap-and-trade program, covered entities must surrender to the government compliance instruments (allowances plus offsets) equal to the covered entity's total emissions for a compliance period. A covered entity, for example, may be allocated some free allowances but will need to make up a shortfall in its compliance obligation by reducing emissions, purchasing allowances at auction, purchasing allowances on the secondary market or purchasing offsets, singly or in any combination.

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[4] *Id.*

[5] For example, if the cap for a given year is 50 million tons of carbon dioxide equivalent across all covered entities, the state will issue 50 million allowances for that year.

[6] In California, for example, a certain percentage of emission allowances are allocated for free to covered entities that are considered most likely to leave the state because of the cap-and-trade program, e.g., manufacturers. That likelihood is generally referred to as a covered entity's "leakage" risk. The allocations are intended to reduce leakage risk by helping to avoid sudden, steep cost increases for those entities. The number of freely allocated allowances that such an entity receives is generally based on the entity's production activity and efficiency compared to a sector-specific benchmark. *See* Alex Hoover, *Understanding California's Cap-and-Trade Regulations* (July 27, 2011) http://www.acc.com/legalresources/quickcounsel/UCCTR.cfm (visited Oct. 1, 2017); California Air Resources Board (CARB), *Allowance Allocation for Industrial Assistance* (visited Oct. 1, 2017) https://www.arb.ca.gov/cc/capandtrade/allowanceallocation/allowanceallocation.htm#industry.

[7] *Considerations for Designing a Cap-and-Trade Program in Oregon*, at 2 (visited Oct. 2, 2017); Taylor at 7.

[8] *See, e.g.*, CARB, *Allowance Allocation* (visited Sept. 27, 2017) (describing the four primary methods that CARB uses for allocating allowances for leakage prevention and transition assistance in the California cap-and-trade program and illustrating that CARB also sells allowances through quarterly auctions and sets aside a small amount of allowances in an allowance price containment reserve).

[9] Taylor at 7.

It is important to remember that under a cap-and-trade program the government does not receive proceeds from entities buying and selling allowances on the secondary market or from the generation and sale of offsets. Rather, the government receives proceeds only by selling allowances at state-run auctions.

The term "cap-and-investment" describes one way that a cap-and-trade program can be designed to direct a government's use of allowance auction proceeds. In a cap-and-investment program, the government sells some allowances at auction and invests the proceeds in activities that further expand the environmental benefits of the program.[10]

Relevant provisions of SB 1070

Senate Bill 1070, in relevant part, requires establishment of a cap-and-investment program in Oregon and directs the EQC to further develop the program by rule.[11] The purposes of the cap-and-investment program, as described in section 6 of the bill, "are to reduce greenhouse gas emissions consistent with the statewide greenhouse gas emissions levels established under section 4 of this 2017 Act and to promote adaptation and resilience by this state's communities and economy in the face of climate change."

Senate Bill 1070 directs the Department of Environmental Quality (DEQ) to distribute its annual budget of allowances through a combination of free allocation and auction.[12] The bill leaves it to the EQC and DEQ to decide what percentage of allowances will be freely allocated and auctioned. With reference to the auction process, the bill requires the EQC to establish by rule "an auction floor price and a schedule for the floor price to increase by a predetermined amount each calendar year as necessary for proper functioning" of the program.[13] No more than four auctions may be held per year.[14] Auctions are predicted to bring in as much as $690 million in proceeds in the first year of the cap-and-investment program.[15]

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[10] Union of Concerned Scientists, *Cap and Invest: How a Cap-and-Trade Program Can Reduce Energy Costs, Create Jobs, and Improve Energy Security* (visited Sept. 27, 2017) http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/Cap-and-Invest-hi-res.pdf.

[11] *See* SB 1070, section 10 (requiring EQC to adopt a carbon pollution market by rule); section 11 (setting forth minimum requirements for auctions of allowances and directing distribution of proceeds from auctions); section 12 (setting forth minimum requirements for covered entities to demonstrate compliance with the program and penalties).

[12] Specifically, section 10 (1)(d) of SB 1070 requires that some allowances must be set aside annually in an allowance price containment reserve, some must be freely allocated to certain covered entities for leakage prevention, some must be distributed to electric companies and natural gas utilities for consignment to auction, some *may* be distributed to consumer-owned utilities for consignment and, finally, some must be directly sold by the state at auction. Consignment is further addressed in sections 11 (1)(f) and 13 of the bill. Under the consignment provisions, electric companies, natural gas utilities and consumer-owned utilities are allocated free allowances, not to be used to demonstrate compliance but to be consigned back to the state for auction. Consigning entities receive the proceeds from the sale of consigned allowances and are required to use the proceeds for certain activities that serve to stabilize and reduce energy bills while also lowering greenhouse gas emissions. Thus, although the state administers the auctioning of consigned allowances, the state does not receive proceeds from selling them.

[13] SB 1070, section 11 (1)(d). An "auction floor price" means the lowest price that the state will accept for a single allowance at auction.

[14] SB 1070, section 11 (1)(a).

[15] According to a preliminary estimate by DEQ for 2021, the first year that the cap-and-investment program under SB 1070 would be operative. *See* Colin McConnaha, *Greenhouse Gas Cap & Trade Program* (visited Sept. 29, 2017) https://www.oregonlegislature.gov/helm/workgroup_materials/EJJT%20-%20cap%20and%20trade%20EJ%20and%20rural_ag_forest%20workgroups%20(McConnaha,%20DEQ).pdf. Please note, however, that it is inherently difficult to predict the many market factors that contribute to the success of allowance auctions, such as the effectiveness of complementary regulations in reducing emissions, fluctuations in economic growth, market uncertainty due to legal or political challenges, etc. The history of the revenue forecasts for California's cap-and-trade program bear this out. *See* Taylor at 10, 16.

Sections 11 (3) and 13 to 20 of the bill contain detailed provisions for the investment of auction proceeds. It is an overarching requirement of SB 1070 that all state auction proceeds must be used for actions that further the purposes of the cap-and-investment program, as stated in section 6 of the bill.[16] Proceeds that constitute revenues described in Article IX, section 3a, of the Oregon Constitution, are to be deposited in a new Climate Investments Account in the State Highway Fund.[17] Uses of moneys in the Climate Investments Account are restricted both by Article IX, section 3a, and section 6 of the bill, and the bill specifies a minimum percentage that must be used to benefit disadvantaged communities.[18] Of the remaining proceeds, 85 percent must be deposited in a new Oregon Climate Investments Fund and appropriated to DEQ for distribution through a Climate Investments Grant Program, and 15 percent must be deposited in a new Just Transition Fund and distributed through a Just Transition Grant Program administered by the Oregon Business Development Department.[19] The provisions for both the Climate Investments Grant Program and the Just Transition Grant Program place restrictions on how the proceeds dedicated to those programs can be used that are in addition to the requirements that all proceeds be used in a manner that carries out the purposes of the cap-and-investment program.[20]

Application of bill for raising revenue jurisprudence to SB 1070

Article IV, section 18, of the Oregon Constitution, requires bills for raising revenue to originate in the House of Representatives, and Article IV, section 25 (2), of the Oregon Constitution, requires bills for raising revenue to receive at least a three-fifths majority vote in favor of passage in each chamber. The phrase "bill for raising revenue" has the same meaning for both constitutional requirements.[21]

In *Bobo v. Kulongoski*, the Oregon Supreme Court adopted a two-pronged test for determining whether a bill is a bill for raising revenue:

> The first is whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry. If a bill does bring money into the treasury, the remaining question is whether the bill possesses the essential features of a bill levying a tax.[22]

We first consider whether SB 1070 brings money into the treasury. Again, the *Bobo* court looked to the term "raise" as used in Article I, section 18, of the Oregon Constitution, to draw the conclusion that a bill will raise revenue only if it collects or brings money into the treasury.[23] A bill that transfers moneys that the state has already collected from one program to another does not raise revenue within the meaning of Article IV, section 18, for example, because it "does not collect or bring any money into the treasury; it does not impose a new tax, increase an existing one, or even impose a fee for a service."[24] In *City of Seattle v. Department of Revenue*, however, the Supreme Court determined, without discussion, that a bill repealing a property tax exemption "[w]ithout question" brought money into the treasury.[25] Bills that repeal property tax exemptions modify the base on which a local government may impose property

[16] SB 1070, sections 13 (1), 14 (1), 15 (3), 16 (1), 19 (3).
[17] SB 1070, sections 11 (3), 14.
[18] *Id*.
[19] SB 1070, sections 11 (3), 15-20.
[20] SB 1070, sections 16, 20.
[21] *Bobo v. Kulongoski*, 338 Or. 111, 123 (2005).
[22] *Id*. at 122.
[23] *Id.* at 120.
[24] *Id.* at 122.
[25] *City of Seattle v. Department of Revenue*, 357 Or. 718, 732 (2015).

taxes but do not, in and of themselves, provide for the collection or bringing of money into the treasury. That is because the final decision on the amount of property taxes to be raised lies with local governments, which annually certify property tax rates applicable for the property tax year.[26] The court's determination in *City of Seattle* potentially broadens the set of factual situations in which a bill may "bring[] money into the treasury" for purposes of the first prong of the *Bobo* analysis.

Here, the provisions of SB 1070 do not, in and of themselves, provide for the collection or bringing of money into the treasury. The provisions do not impose an exaction in any set amount on a covered entity, or even delegate to an agency the authority to set a specific fee by rule. Instead, the bill provides for a market-based regulatory program in which DEQ is required to distribute some portion of allowances by sale at auction. DEQ will decide how many allowances to sell, and while the EQC by rule will set the floor price for the auctions, the actual auction price will be determined by the market through the public bidding process. The prices at auction will also change over time, based to some extent on market forces outside the state's control. It is also conceivable, at least in the early years of the program, that individual allowance auctions will generate little, if any, participation.[27] In other words, the amount of money to be collected or brought in by the auctions relies on multiple actions and decisions that will occur subsequent to the passage of the bill. One could argue, based on these considerations, that SB 1070 does not bring money into the treasury.

That said, the auction provisions must be read in the context of the greater cap-and-investment program structure. Senate Bill 1070 requires covered entities to obtain allowances to demonstrate compliance with a statewide GHG emissions cap and requires DEQ to distribute at least some of those allowances by auction. With a properly set declining cap, demand for allowances throughout the life of the program should be high enough that at least some covered entities will be required to purchase allowances from the state, even if the state initially chooses to distribute most allowances for free. Thus, the statutory scheme all but guarantees that allowance auction proceeds will be collected or brought into the treasury, even if the bill itself does not provide for the collection of moneys at a set amount. Given the Supreme Court's conclusion in *City of Seattle* that a bill that modified a tax base but didn't impose a tax rate brought money into the treasury, we believe it is prudent to assume that a court will hold that SB 1070 "collects or brings money into the treasury."

Assuming that SB 1070 passes the first prong of the *Bobo* test, we turn to the second prong which asks "whether the bill possesses the essential features of a bill levying a tax." [28] Oregon courts have adopted the narrow federal standard under which application of the origination clause "has been confined to bills to levy taxes *in the strict sense of the words*, and has not been understood to extend to bills for other purposes, *which may incidentally create*

[26] For this reason, this office has traditionally determined that bills repealing property tax exemptions are not bills for raising revenue. While Ballot Measure 50 (1997) (codified at Article XI, section 11, of the Oregon Constitution) established permanent property tax rate limits for all taxing districts, local governments are free to certify tax rates below their respective limits. Because the amount of revenue raised following passage of a bill repealing a property tax exemption depends on subsequent decisions by independently elected local governing bodies, this office has always concluded that that type of bill fails the first prong of the *Bobo* test and therefore is not a bill for raising revenue.

[27] In the February 2017 quarterly auction under California's cap-and-trade program, for example, only 16.5 percent of the offered allowances were sold at the floor price of $13.57 per ton. Dan Walters, "California's cap and trade auction another washout," *Sacramento Bee*, Mar. 1, 2017, http://www.sacbee.com/news/politics-government/capitol-alert/article135781558.html (visited Oct. 2, 2017). How much auctions in an Oregon cap-and-investment program earn will depend in large part on market conditions but also on administrative choices made by the state, such as the number of allowances allocated for free early in the program and how high the initial cap is.

[28] *Bobo*, 338 Or. at 122.

revenue."[29] Moreover, in *Northern Counties Trust*, the Oregon Supreme Court held that the "controlling feature" of bills for raising revenue is that they "impose taxes upon the people, either directly or indirectly, or lay duties, imposts, or excises, for the use of the government, and give to the persons from whom the money is exacted no equivalent in return, unless in the enjoyment, in common with the rest of the citizens, of the benefit of good government."[30] In addition, a law establishing a fee "which the party may pay and obtain the benefits under the law, or let it alone, as he chooses" was outside the category of bills for raising revenue.[31]

In a recent decision by the California Court of Appeals regarding that state's cap-and-trade program, a determination that allowances are valuable commodities was central to the court's conclusion that California's cap-and-trade auctions do not amount to a tax subject to Article XIIIA, section 3(a), of the California Constitution (2006 Edition), which required that "any changes in State taxes enacted for the purpose of increasing rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature."[32] An allowance, the court reasoned,

> conveys a valuable asset—the privilege to pollute the air. This is unlike any tax we know. As EDF contends, "unlike taxes, which offer no discrete benefits to the payers, the auction and reserve provide participants valuable, tradable emission allowances as consideration for the purchase price. They may be used for current compliance, banked for future compliance, or sold, each of which returns value to the holder. Because participants' bids presumably reflect the value they ascribe to the allowances, the revenue generated by the auction and reserve will not exceed the aggregate value to purchasers of the allowances sold.[33]

Oregon's cap-and-investment program set forth in SB 1070 will be similar to California's program. Although California appellate court case law has no precedential value in Oregon, we believe that an Oregon court would likely find the reasoning in *California Chamber of Commerce* persuasive for purposes of the analysis under *Northern Counties Trust*.

Thus, under SB 1070, just as under the California program, an allowance will convey a valuable asset—an authorization to emit one ton of carbon dioxide equivalent.[34] And, as in the California program, a participant's bid for an allowance at auction under the Oregon program will reflect the value the auction participant places on the allowance. Under *Northern Counties Trust*, then, winning bidders at allowance auctions will receive an equivalent in return, other than the enjoyment, in common with the rest of the citizens, of the benefit of good government.

Furthermore, a covered entity may pay for an allowance at auction and obtain the benefits under the cap-and-investment law, or let it alone, as the entity chooses. The cap-and-investment program set forth in SB 1070 will offer each covered entity a variety of compliance options. The covered entity may reduce its emissions, receive free allocations, purchase allowances from the state at auction, purchase allowances on the secondary market or purchase offsets. Thus, a covered entity may forgo the benefit conferred by the auction scheme

[29] *City of Seattle*, 357 Or. at 732-733 (emphasis in original) (*quoting Northern Counties Trust*, 30 Or. at 402).
[30] *Northern Counties Trust*, 30 Or. at 401-402.
[31] *Id.* at 403.
[32] *California Chamber of Commerce v. State Air Resources Board*, 10 Cal. App. 5th 604, 635 (2017).
[33] *Id*. at 646.
[34] SB 1070, section 9 (1) (defining "allowance").

under SB 1070, if, for instance, the covered entity determines that other compliance options will cost less.

In reaching our conclusions, we acknowledge that the revenue impact of SB 1070 could be high. However, under Oregon case law, "the revenue effect of a bill, in and of itself, does not determine if the bill is a 'bill for raising revenue.'"[35] We also recognize that jurisprudence interpreting Article IV, sections 18 and 25 (2), of the Oregon Constitution, is very limited, and that a bill establishing a cap-and-investment program is unlike the factual situations that gave rise to the jurisprudence. We therefore recognize that our conclusions are not free from doubt, and that SB 1070 may not be insulated from challenge under Article IV, sections 18 and 25 (2). In particular, a challenger may argue that the bill should be characterized as a tax because the primary legislative purpose for requiring DEQ to auction allowances is to exact revenues from auction participants for the use of government—i.e., for activities to reduce GHG emissions and promoting adaptation and resilience to climate change—and that the benefits for which the revenues are to be used will be enjoyed in common by all citizens, rather than as an equivalent in return for the bidder's payment.

However, under *Bobo* and *City of Seattle*, the "task is not to determine the primary legislative purpose" for enacting a bill. Rather, where a bill generates revenue for the state, the "task is to determine 'whether the bill possesses the essential features of a bill levying a tax.'"[36] Because we determine that winning bidders at allowance auctions will receive an equivalent in return for their payment in the form of tradeable allowances, and because a covered entity may forgo the benefit conferred by the auction scheme under the bill, we conclude that SB 1070 does not possess the essential features of a bill levying a tax under the Oregon Supreme Court's decisions in *Northern Counties Trust* and *City of Seattle*. Therefore, we conclude that SB 1070 is not a bill for raising revenue for purposes of Article IV, sections 18 and 25 (2), of the Oregon Constitution.

Application of Article IX, section 3a, to SB 1070

You also asked whether certain cap-and-investment auction proceeds would be revenues described in Article IX, section 3a, Oregon Constitution. We conclude that Article IX, section 3a, would very likely apply to certain auction proceeds received from covered entities in the motor vehicle fuel sector.

Article IX, section 3a, provides, in relevant part,

> **Sec. 3a.** (1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state:
>
> (a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and
>
> (b) Any tax or excise levied on the ownership, operation or use of motor vehicles.

[35] *City of Seattle*, 357 Or. at 736.
[36] *Id.* at 735.

The meaning of the term "tax" varies among provisions of the Oregon Constitution; for purposes of Article IX, section 3a, the Oregon Supreme Court has interpreted the term very broadly.[37] In *Automobile Club of Oregon v. State of Oregon*, the Oregon Supreme Court considered, in relevant part, whether the expenditures of a state underground storage tank assessment violated Article IX, section 3a. The assessment was collected from any person taking delivery into an underground storage tank of gasoline intended for resale.[38] In considering whether revenues from the assessment were subject to Article IX, section 3a (1)(a), the court first considered whether, despite its name, the "assessment" was really a "tax" within the meaning of Article IX, section 3a (1)(a). Because the court found that Article IX, section 3a, was adopted by the people for the "clear and unambiguous" purpose of ensuring that moneys derived from taxes and fees on motor vehicles and motor vehicle fuel not be diverted to nonhighway purposes,[39] the court held that the underground storage tank assessment was a tax under Article IX, section 3a(1)(a):

> The underground storage tank assessment is measured by the receipt of motor vehicle fuel into storage tanks. The limitations of Article IX, section 3a(1)(a), apply to "*[a]ny tax* levied on, with respect to, or *measured by* the storage, withdrawal, use, sale, distribution, importation or *receipt of motor vehicle fuel*." . . . We conclude that, despite the "assessment" label attached to the levy, the underground storage tank assessment is a tax on motor vehicle fuel (a "gasoline tax") under Article IX, section 3a(1)(a).[40]

SB 1070 directs the EQC and DEQ to design a cap-and-investment program that will likely cover emissions from the transportation sector by placing the point of regulation on entities that are as far upstream in the motor vehicle fuel supply chain as possible.[41] Each such covered entity will be required to obtain compliance instruments equal to the GHG emissions resulting from the burning of the motor vehicle fuel in Oregon that the covered entity is responsible for. Like any other regulated party, such covered entities will be able to obtain compliance instruments by being allocated allowances for free from the state (if the state determines it is necessary to prevent leakage), purchasing allowances at auction, purchasing allowances on the secondary market or purchasing offsets.

Again, an allowance is essentially a permit to emit one ton of carbon dioxide equivalent. The auction price paid for an allowance by a covered entity from the motor vehicle fuel sector reflects the auction price that the market is willing to bear for obtaining a permit to emit one ton of carbon dioxide equivalent through the burning, or use, of motor vehicle fuel. Therefore, we believe a court would likely hold that such auction proceeds are "revenue from . . . [a] tax . . . measured by the . . . use . . . of motor vehicle fuel." The use limitations of Article IX, section 3a, would therefore apply to the proceeds.[42]

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[37] *Automobile Club of Oregon v. State of Oregon*, 314 Or. 479, 485-486, 488-489 (1992); *Scappoose Sand & Gravel, Inc. v. Columbia County*, 161 Or. App. 325, 336 (1999) (citing *Automobile Club* for the proposition that the meaning of the term "tax" varies from one context to another and is ascertainable largely by reference to the purposes of the provisions in which the term is used or to which it is applied).

[38] *Automobile Club of Oregon*, 314 Or. at 484-485.

[39] *Id.* at 486-487. S*ee also Rogers v. Lane County*, 307 Or. 534, 541 (1989).

[40] *Automobile Club of Oregon*, 314 Or. at 488-489 (emphasis in original).

[41] *See* SB 1070, section 9 (21), (defining a "source" for purposes of the cap-and-investment program, in part, as "any person that imports, sells or distributes for use in this state fossil fuel that generates greenhouse gases when combusted"); section 9 (7) (defining a "covered entity" for purposes of the cap-and-investment program as "a source that is required by the Environmental Quality Commission to participate in the carbon pollution market").

[42] We note that even if a court were to reach the opposite conclusion, that result would not require modification of, or render unconstitutional, the language of SB 1070. SB 1070, section 11 (3)(b) provides that "auction proceeds that

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Very truly yours,

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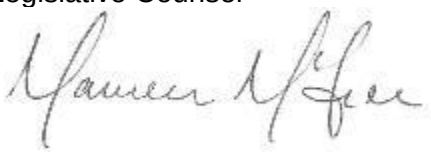
Legislative Counsel



By
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constitute revenues described in Article IX, section 3a, of the Oregon Constitution" must be transferred to the State Treasurer to be deposited in the Climate Investments Account in the State Highway Fund. If a court were to determine that auction proceeds within the cap-and-investment program do not constitute such revenues, no remedy would be required. No auction proceeds would have to be deposited in the Climate Investments Account, though the Legislative Assembly could choose to deposit them in the account.

Overview of Senate Bill 1070 (2017) and Diagram of Auction Revenues

Overview of Senate Bill 1070 (2017)

Senate Bill 1070 (2017) establishes a **Greenhouse Gas Cap-and-Investment Program** to:

- **Reduce greenhouse gas (GHG) emissions**:
  - By 2025 to levels that are at least 20 percent below 1990 levels;
  - By 2035 to levels that are at least 45 percent lower than 1990 levels; and
  - By 2050 to levels that are at least 80 percent lower than 1990 levels.
- Promote **adaptation and resilience** by Oregon's communities and economy in the face of climate change.

Carbon Pollution Market

The measure directs the Environmental Quality Commission (EQC) to create a **carbon pollution market** to regulate GHG emissions beginning in 2021. The EQC may require participation in this market by any emissions source that meets or exceeds a reported annual verified GHG emission level of 25,000 metric tons of carbon dioxide (CO_2) or CO_2 equivalent[1]. In 2021, EQC will set a **cap** on total emissions statewide – not individual caps for each source of emissions – and publish a schedule for the cap to decrease by a predetermined amount each year until 2050.

An "**allowance**" authorizes the emission of up to one metric ton of carbon dioxide (CO_2) or CO_2 equivalent. Allowances can be bought and sold. The EQC will set an annual allowance budget for 2021 and decrease the budget on a schedule each year until 2050. DEQ will distribute allowances to emissions sources subject to the cap as follows:

- A percentage of allowances, as specified by EQC rule, will be placed in a price containment reserve to moderate price if there are unanticipated high costs for compliance instruments[2];
- Allowances will be distributed directly and free-of-charge to electric companies (not including consumer-owned utilities) and natural gas utilities;
- Allowances may also be distributed directly and free-of-charge to consumer-owned utilities;
- Allowances will be distributed directly and free-of-charge to some sources, including emissions-intensive, trade-exposed industries to address leakage[3] and as determined necessary by EQC; and
- All remaining allowances will be auctioned.

A maximum of four **auctions** will be held annually. Carbon market participants must **register** with EQC to participate in auctions. The EQC will set an auction floor price to increase by a predetermined amount each year and set a maximum number of allowances that may be held at any one time for use or trade by a registered entity.

Sources subject to the cap must submit compliance instruments[2] to DEQ every three years equal to their **compliance obligation**. A penalty for noncompliance is assessed at the rate of four allowances for every one allowance that a source fails to submit.

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[1] A CO_2 equivalent is the amount of CO_2 by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science.

[2] A compliance instrument is an allowance or an offset credit. Each instrument is equal to one metric ton of CO_2 or CO_2 equivalent.

[3] Leakage means a reduction in GHG emissions in Oregon that is offset by an increase in GHG emissions outside of Oregon.

An **offset project** is a project that is not subject to the cap that reduces or eliminates GHG emissions. These projects may generate offset credits that can be bought and sold for use by sources subject to the cap, to meet their compliance obligations. Offset projects must:

- Be located in the United States or a country with which EQC has entered an agreement for administering a carbon pollution market;
- Not otherwise be required by law;
- Result in GHG emissions reductions or eliminations that:
  - Are real, permanent, quantifiable, verifiable and enforceable;
  - Are in addition to GHG emission reductions or eliminations otherwise required by law; and
  - Would not have otherwise occurred if not for the offset project.

Offsets may make up no more than 8 percent of a covered source's compliance obligation in each compliance period. The EQC may place additional restrictions on the number of offset credits that may be used if a source is geographically located in an impacted community[4].

Climate Investments

(See accompanying "Governance of Auction Revenues" diagram)

Auction revenue proceeds are distributed as follows:

- Proceeds from the auction of allowances distributed directly and free-of-charge to utilities may only be used by an electric company or natural gas utility to stabilize or reduce consumers' energy bills while also lowering GHG emissions. The use of these proceeds by consumer-owned utilities will be governed by DEQ rules.
- Proceeds that constitute revenue described in Article IX, section 3a of the Oregon Constitution will be deposited into the **Climate Investments Account** in the State Highway Fund. This account is continuously appropriated to the Department of Transportation (ODOT) to further the purposes of the GHG Cap-and-Investment Program. Specified percentages of the fund are directed to support projects geographically located in or benefitting impacted communities.
- Of the remaining proceeds: 85 percent will be deposited in the **Oregon Climate Investments Fund** and 15 percent will be deposited in the **Just Transition Fund**. Agencies receiving appropriations from either fund are directed to consult with advisory committees.
  - DEQ will distribute funds from the Oregon Climate Investments Fund through a Climate Investments Grant Program to further the purposes of the GHG Cap-and-Investment Program. At least 50 percent of moneys will be distributed to projects or programs that are geographically located in impacted communities and at least 40 percent of moneys will be distributed to projects that are geographically located in economically distressed areas.
  - The Oregon Business Development Department will distribute funds from the Just Transition Fund through a Just Transition Grant Program in support of economic diversification, job creation, job training and other employment and mental health services for Oregon workers adversely affected by climate change or climate change policies.

[4] An impacted community includes those communities most at risk of being disproportionately impacted by climate change. See complete definition on page 6, lines 37 – 45 of SB 1070.

Senate Bill 1070 (2017)

Governance of Auction Revenues

STATE TREASURY

All SB 1070 funds must be used to reduce greenhouse gas emissions and to promote climate change adaptation and resilience by Oregon's communities and economy.

State Highway Fund *§14,§11*
Climate Investments Account

Oregon Climate Investments Fund *§15,§11*
(85% of general auction proceeds)

Just Transition Fund *§19,§11*
(15% of general auction proceeds)

Consignment Proceeds *§11,§13*
Allowances distributed free-of-charge must be consigned to the state for auction

ODOT

Distribution Requirements

- At least 20% to projects geographically located in impacted communities
- At least 20% to projects that otherwise benefit impacted communities
- Meaningful share to projects that involve businesses owned by women and minorities
- Funding preference to projects that result in greatest GHG reductions

Rulemaking: ODOT *(§38)*

DEQ

CLIMATE INVESTMENTS GRANT PROGRAM *§16*

Distribution Requirements

- At least 50% to projects geographically located in impacted communities
- At least 40% to projects geographically located in economically distressed areas; emphasis placed on job creation, job education, and training opportunities
- Funding preferences specified *(§16(5)(a-g))*

Rulemaking: EQC in consultation with EJ Task Force, Indian tribes, PUC, ODOE, ODOT, OHA, other interested agencies, and Advisory Committee

Climate Investments Grant Committee

Reviews grant applications and makes funding determinations; governor-appointed, subject to senate confirmation

Business Oregon

JUST TRANSITION GRANT PROGRAM *§20*

Distribution Requirements

- Support economic diversification, job creation, job training, and other employment and mental health services for Oregon workers and communities that are adversely affected by climate change or climate change policies

Rulemaking: Business Oregon in consultation with Advisory Committee

Just Transition Grant Committee

Reviews grant applications and makes funding determinations; governor-appointed, subject to senate confirmation

Electric Companies & Natural Gas Utilities

Distribution Requirements

- Must serve to stabilize and reduce energy bills
- Prioritize low-income residential customers

Rulemaking: PUC in consultation with Advisory Committee

Consumer-Owned Utilities

Distribution Requirements

- None specified

Rulemaking: DEQ

Climate Investments in Impacted Communities Advisory Committee

Consult and make recommendations on investments that benefit impacted communities *§17*

Advisory Committee *§7*

Provide advice from diversity of interests

Types of Auction Revenues

- State Highway Fund Revenue *(Or. Const. Article IX, § 3a)*
- Other Funds Revenue
- Consignment Revenue

Legislative Policy and Research Office, September 2017

What Is a Cap-and-Invest Program? (Excerpt from DEQ Report)

Background Material – Clean Energy Jobs Work Groups
What is a Cap-and-Invest Program?

Source: "Considerations for Designing a Cap-and-Trade Program in Oregon," Oregon Department of Environmental Quality, February 14, 2017, pages 1 – 4

How does a cap-and-trade program work?
A cap-and-trade program establishes an overall limit (the *cap*) on GHG emissions from certain sources of pollution, such as electricity providers, industrial facilities, and fossil fuel suppliers. Permits or "allowances" are issued by the state to regulated entities. Each allowance permits a business to emit or supply fuel that emits one ton of emissions. For example, if a program has a cap of 50 million tons of pollution in a given year, the state would issue 50 million allowances in that year. These allowances can be bought and sold on the market (the *trade*). Companies covered by the program must acquire allowances to match their emissions. As the cap declines over time, the entities covered by the program must make collective cuts in emissions. However, because of the formation of a marketplace for allowances, emission reductions won't be uniform across the covered entities but instead will occur where reductions are cheapest. Entities that can most cheaply reduce their emissions will do so, while others will pay to acquire sufficient allowances. This should reduce emissions where it is cheapest to do so, while spurring innovation to develop new methods for greater reductions. As described below, there are different methods for the state to issue allowances.

How does this differ from "cap-and-dividend" or "cap-and-invest"?
It doesn't. These terms describe distinct ways a cap-and-trade program can be designed to use revenue generated by the state's sale of allowances. *Cap-and-dividend* uses program revenue to provide rebates to households or businesses to offset the higher energy costs created by the program. *Cap-and-invest* directs program revenue to fund specific programs; usually those that further reduce GHG emissions to expand the environmental benefit of the program or to lower costs to regulated entities. It's important to note that these different uses of revenue could be combined. For example, some revenue could be provided to natural gas and electric utilities to reimburse their customers for higher energy costs, while other revenue could be invested in programs that reduce GHG emissions or directly benefit households in disadvantaged communities.

How does cap-and-trade differ from a carbon tax?
Both cap-and-trade and a carbon tax establish a price on GHG emissions. Cap-and-trade specifies a certain amount of emissions reduction and allows the price to pollute to adjust based on market demand, while a carbon tax does not prescribe an amount of emissions to be reduced but specifies a price to emit GHGs. Cap-and-trade sets a firm limit on emissions, providing certainty that pollution will be reduced to the level of the cap. This program does not establish a specific price on GHG pollution, letting the marketplace determine this based on the supply of allowances and the demand from regulated entities to pollute. In contrast, a carbon tax does not require specific emission reductions, but does set the price to emit GHGs. The flexibility offered by cap-and-trade provides some benefits compared to a carbon tax. In addition to providing certainty on emission reductions, cap-and-trade offers the state tools to better directly mitigate impacts to specific businesses and should produce emission reductions at a lower overall cost.

Who would be regulated by an Oregon cap-and-trade program?
This would vary depending on the design of the cap-and-trade program. Based on existing conditions, DEQ estimates approximately 100 facilities and businesses would be regulated if the program covered fossil fuel and natural gas suppliers, electricity providers, and industrial emitters responsible for at least 25,000 tons of GHGs per year, which is the emission threshold for being

regulated in the existing programs in California and Quebec. See Appendix 1 for a list of these entities.

How much GHG pollution would be reduced?
This would also depend on the design of the cap-and-trade program, including the breadth of emission sources covered and the level of the cap. One of the most important features cap-and-trade offers is the ability for the state to directly set a limit on emissions and the rate that emissions must decline. The amount of pollution reduced is the result of how many sources of emissions are covered by the program and the declining cap on emissions. A program covering the sources listed under the previous question with a cap set at those sources' proportionate share of the cuts for the state's GHG reduction goals would assure the state achieves those goals, so long as sufficient emission reductions are also being achieved by sources not covered by the program.

How would "allowances" to emit GHGs be distributed?
There are two primary methods for the state to distribute allowances: sell them through an auction or provide them to regulated entities for free. Auctioning allowances provides a transparent and fair approach that alleviates the need for the state to determine who receives allowances and in what quantities. It also generates revenue which can be put to furthering state, local, or industry initiatives to cut GHG emissions or mitigating the impact of the program on specific groups, such as utility ratepayers or disadvantaged communities. Freely providing allowances to regulated entities can reduce their costs, but in some situations can profit companies without passing that benefit down to consumers.

A combination of these techniques may offer the advantages of each where they are needed most. Free allocation to certain businesses exposed to trade pressure from competitors outside of the state may be an important tool to avoid pressure on businesses to shift operations and associated jobs outside of the state. This would also simply shift emissions associated with economic activity to another state, and make it so the program fails to reduce global GHG emissions. Providing allowances to natural gas and electric utilities could offset increased costs for their ratepayers. Alternatively, auction revenue could be directed to these utilities and overseen by the Public Utility Commission, or the elected boards of smaller utilities, to assure it benefits utility ratepayers. Auctioning the remainder of allowances is important to clearly establish a market price on GHG emissions and, as noted below, to generate revenue that can benefit disadvantaged and rural communities.

How would revenue be used?
Revenue generated from the sale of allowances to cover emissions from sources other than transportation fuels could be used for a wide variety of purposes, including to offset costs to utility ratepayers, mitigate effects to disadvantaged and rural communities, and further reduce GHG emissions. Oregon's Constitution restricts the use of revenue generated from fees or taxes on transportation fuels. The sale of allowances to cover compliance obligations of transportation fuel suppliers may be subject to this restriction. If that is the case, then revenue from transportation fuels – likely a majority of the revenue generated by the program – would need to be used for the construction, maintenance, and operation of the state's roads and bridges.

What are the economic implications?
Effects on statewide economic output would likely be very small. Modeling conducted for this study suggests that the overall effect on Oregon's economy from a cap-and-trade program could by slightly positive or slightly negative, but either effect would be very small relative to the size of the state

economy. However, this modeling did not take into account the health benefits to Oregonians from the reduction of pollutants with local health impacts that comes from reducing GHGs. Thus, the modeling likely understates the economic benefits from a cap-and-trade program in Oregon. While statewide economic effects are likely small, effects in certain industries are stronger. Sectors more reliant on fossil fuels such as mining and transportation are more negatively impacted, while the transfer of money from emission sources to other parts of the state's economy tends to benefit sectors that would receive the additional spending such as construction, retail, and media. See Appendix 3 for a full description of the economic modeling conducted for this study.

How can impacts to specific industries be mitigated?

Certain industries, such as food processing and pulp and paper mills, that compete with firms outside Oregon may not be able to pass the cost of purchasing allowances down to their consumers. This could pressure these local businesses to close or move out of state. This would directly impact jobs in Oregon and may merely shift GHG emissions to another location, undermining the goal of the program. Minimizing this outcome is a critical consideration for designing a cap-and-trade program. Fortunately, cap-and-trade provides the state with a tool for mitigating this potential effect: free provision of allowances to certain business exposed to competition from businesses in other jurisdictions. Freely allocating some allowances to industries regulated by the program that are exposed to competition in other jurisdictions should defray additional costs created by cap-and-trade while still creating an economic incentive for these businesses to reduce their emissions.

How would disadvantaged or rural communities be affected?

A cap-and-trade program increases the cost of fossil fuels. This could place a larger burden on low-income households because they generally spend a higher proportion of their income on energy. These households are also less able to make investments to adapt to higher energy prices, such as buying more efficient vehicles and appliances. Rural parts of Oregon tend to be less economically diverse than urban areas, meaning impacts on industries in rural communities could be felt more acutely. For these reasons, a cap-and-trade program could disproportionately impact disadvantaged households and rural areas unless it includes measures designed to neutralize negative effects on these communities.

Targeted revenue spending is the primary mechanism for addressing impacts to these communities from a cap-and-trade program. This could include energy bill assistance or rebates for households in certain income brackets, and targeting investments in projects located in and directly benefiting disadvantaged or rural communities. Additionally, revenue generated by a program could be used for worker training, helping to empower communities to transition to jobs in a low-carbon economy.

How would this program work with Oregon's existing climate policies?

A cap-and-trade program could be designed to complement Oregon's existing climate policies, including the Renewable Portfolio Standard and the Clean Fuels Program. These policies' requirements to transition the electricity and transportation fuel sectors to low-carbon energy helps prepare Oregon's economy to achieve the long-term reductions required by a cap-and-trade program aligned with the state's GHG goals. Similarly, a cap-and-trade program reinforces these sectoral policies by making clean sources of electricity and transportation fuels more cost-competitive with fossil fuels. The cap-and-trade program also provides a back-stop that responds to the performance of these sectoral policies. If the sectoral policies achieve greater reductions, there would be less work for the cap-and-trade program to do. Should these sectoral policies achieve fewer reductions than expected, the cap-and-trade program would compensate by doing more.

DEQ Study of a Market Approach to Reducing Greenhouse Gas Emissions

http://www.oregon.gov/deq/aq/programs/Pages/GHG-Market.aspx

Study of a Market Approach to Reducing Greenhouse Gas Emissions

What is this study?

In March 2016, the Oregon Legislature directed the Department of Environmental Quality to study considerations for implementing a market-based greenhouse gas (GHG) reduction program in Oregon. The legislature specified several areas for DEQ to focus on, including general policy design necessary to achieve Oregon's statewide GHG reduction goals, methods to design a program to minimize negative effects on businesses, disadvantaged communities and rural parts of the state, and how the program would interact with Oregon's existing climate policies.

What did DEQ evaluate?

DEQ's study focused on a "cap-and-trade" program that would establish a firm and declining limit on most of Oregon's GHG emissions and create a marketplace that could be linked to existing cap-and-trade programs in California and Quebec.

A cap-and-trade program establishes an overall limit (the cap) on GHG emissions from certain sources of pollution, such as electricity providers, industrial facilities, and fossil fuel suppliers. Permits or "allowances" are issued by the state to regulated entities. Each allowance permits a business to emit or supply fuel that emits one ton of emissions. For example, if a program has a cap of 50 million tons of pollution in a given year, the state would issue 50 million allowances in that year. These allowances can be bought and sold on the market (the trade).

What did DEQ find?

Our study highlights a dozen key findings. Below is a partial list of these findings.

- **Cap-and-trade provides a firm limit on GHG emissions:** The establishment of a cap provides assurance that, overall, emissions from covered sources of GHGs will not exceed the set limit.
- **Cap-and-trade offers a flexible, cost-effective mechanism for reducing GHGs:** The trading mechanism provided by this policy should drive down emissions where it is cheapest to do so allowing the program to achieve the planned emission reductions at least cost.
- **Economic effects are likely to be small statewide:** Modeling conducted for this study suggests that the overall effect on Oregon's economy from a cap-and-trade program could be slightly positive or slightly negative, but either effect would be very small relative to the size of the state economy. However, this modeling did not take into account the health benefits provided by reducing GHG emissions and the consequential reduction in pollutants linked to local health issues. Thus, the modeling likely understates the economic benefits from a cap-and-trade program in Oregon.
- **Economic effects of the program will vary across the state:** Though economic effects would be small at the statewide level, some communities and business sectors are likely to be more significantly affected by the carbon price.
- **Effects to businesses exposed to competition outside the state should be mitigated:** Industries that are in particularly competitive markets might face pressure to relocate some or all of their economic activity due to the carbon price imposed by a cap-and-trade policy. However, DEQ's study finds that cap-and-trade offers the state tools to directly offset costs to these businesses and preserve the integrity of the program.

- **Revenue generated by the program should be used to benefit disadvantaged and rural communities.** A cap-and-trade program should include methods to mitigate the inherently regressive nature of a price on carbon and address the concerns and needs of the most vulnerable communities in the state. For example, revenue generated by a cap-trade-program could be used for worker training, to empower community transition to jobs in a low-carbon economy, and to develop energy efficiency projects for low-income housing.
- **A cap-and-trade program can work with Oregon's existing climate policies.** The emission reductions achieved by policies such as the Renewable Portfolio Standard and the Clean Fuels Program would ease compliance with a carbon market, while a cap-and-trade program can be designed to avoid duplicating costs on regulated businesses and households.

Where can I learn more?

View complete documentation of DEQ's study:

- Considerations for Designing a Cap-and-Trade Program in Oregon - Final Study
- Appendix 2: Macroeconomic Impacts And Design Considerations for Carbon Markets: A Literature Review
- Appendix 3: Memorandum on Macroeconomic Modeling

Email questions for DEQ

What was DEQ's public process?

DEQ held three public meetings to gather stakeholder input on this study. At the outset, the well-attended public meeting generated robust input on our planned approach and study outline. We issued a draft of this study in November 2016 for public comment and held a meeting in early December 2016 to solicit verbal feedback. Finally, in January 2017 we held a public workshop to discuss the economic modeling conducted to inform this study.

- Partial draft study
  DEQ released a partial draft of the study on Nov. 21, 2016. The comment period closed on Thursday, Dec. 22, 2016.
- View comments submitted to DEQ

Contact

For more information, contact Colin McConnaha at 503-229-5094 (toll-free in Oregon at 800-452-4011, ex. 5094)

Sign up for text or email updates via GovDelivery

Climate Change Programs Implemented by the State of Oregon (Brennan & Jantjies, UO School of Law)

M E M O R A N D U M

TO: Senator Michael Dembrow
Representative Ken Helm
Representative Karin Power
Oregon State Legislature

FROM: Sara Brennan
Third-Year Law Student
University of Oregon School of Law

Najmia Jantjies
L.L.M. Student
University of Oregon School of Law

CC: Gregory Dotson
Assistant Professor
University of Oregon School of Law

DATE: September 19, 2017

SUBJECT: Climate Change Programs Implemented by the State of Oregon

INTRODUCTION

The State of Oregon, through various departments and governmental entities, currently has numerous programs in place to address climate change. While no overarching governing structure seems to be in place to coordinate these initiatives, Oregon as a state is moving forward in the fight to protect its people and environment from the detrimental effects of climate change. The programs address a wide array of issues, including but not limited to, researching climate change, determining the effects on the state and the region, examining potential policy responses, enhancing the energy efficiency of infrastructure, increasing the deployment of renewable energy, and even accelerating the adoption of electric vehicles.[1]

Per the request, we have produced a chart (see below) that provides information on the programs we have identified over the past two weeks. The programs are listed along with the agency in charge of administering the program, the corresponding administrative rule where applicable, and a brief description of the program itself. In order to provide better context, the programs are further separated into three categories: (1) programs to cut emissions, (2) programs to build resilience, and (3) programs to educate or better understand climate change. It should be noted that this is a working document, subject to change if necessary.

[1] Oregon has primacy in implementing the federal Clean Air Act, which includes requirements for the control of greenhouse gas emissions from stationary sources pursuant to the Prevention of Significant Deterioration program pursuant to 42 U.S.C. §7401 (1970). This program is not described in detail below, but is also not anticipated to achieve major additional emissions reductions.

STATE PROGRAM CHARTS

PROGRAMS THAT INTENTIONALLY OR INCIDENTALLY CUT EMISSIONS[2]			
PROGRAM	**AGENCY**	**AUTHORITY**	**DESCRIPTION**
Multi-State Zero Emissions Vehicle Action Plan (ZEV Alliance International)	Public Utility Commission; Department of Environmental Quality	OAR 860-087-001[3]; Federal Clean Air Act[4]; HB 2017 (2017)	Oregon joined other states with zero emission vehicle rules to develop the plan that provides for a coordinated approach to the increased use of ZEVs by specifying actions needed to remove barriers to their adoption. Oregon's commitment to zero emission vehicles has been reaffirmed many times over the past decade. For instance, the state adopted California's Zero Emission Vehicle program effective with the 2009 model year. Additionally, 2013, Gov. Kitzhaber joined seven other Governors in committing to coordinated action to ensure the successful implementation of their state zero-emission vehicle programs.
Zero Emissions Vehicle Rebate Program	Department of Environmental Quality	HB 2017 (2017)	Program allows the DEQ to offer rebates on purchase of electric vehicles that operate with zero emissions.
Oregon Global Warming Commission	Department of Energy	HB 3543 (2007)	Charged with tracking trends in greenhouse gas emissions and recommending ways to

[2] These programs reduce carbon dioxide emissions. However, in some cases this pollution reduction is a secondary benefit, as some programs were established primarily to provide a variety of other benefits to Oregonians.

[3] OAR refers to the PUC's rules regarding Transportation Electrification Programs.

[4] Under the federal Clean Air Act, California may adopt rules regulating emissions from new vehicles that are more stringent than those issued by the U.S. EPA; however, once California adopts such rules, other states may adopt the same requirements. *See* http://www.oregon.gov/deq/aq/programs/Pages/ORLEV.aspx.

			coordinate state and local efforts to reduce emissions in Oregon.
Energy Efficient Schools Program	Department of Energy	ORS 470.810 (2011)	Helps schools understand their energy needs, identify improvements, and connect with financial resources to improve learning environments.
Carbon Dioxide Standard	Department of Energy	OAR 345-024-0500; ORS 469.470 (1999)	Sets carbon dioxide emission standards for new energy facilities that emit carbon dioxide. Includes requirement to pay fees for carbon offsets for higher emitting facilities.
Public Purpose Charge	Department of Energy	SB 1149 (1999)	Directs both Portland General Electric and PacifiCorp to collect a "public purpose" charge from customers and then put those funds towards conservation projects and renewable resources are usually sent to the Energy Trust of Oregon to help fund conservation, efficiency, and renewable energy projects.
State Energy Efficient Design (SEED) Program	Department of Energy	ORS 276.900-915 (1991)	Requires state agencies to build new or renovate existing buildings using energy efficient design methods.
1.5% for Green Energy Technology	Department of Energy	OAR 330-135-0010; ORS 279C.527 (2007)	Requires that public entities spend 1.5% of public building construction costs on green energy technology.
Oregon Sustainable Transportation Initiative	Department of Transportation	ORS 468A.205 (2007)	Integrated statewide effort to reduce greenhouse gas emissions from transportation while creating healthier, more livable, communities and greater economic opportunity.
Solar Photovoltaic Program	Public Utility Commission	OAR 860-084-0000 (2010)	Addresses Renewable Energy Certificates and Compliance with the RPS.

Renewable Portfolio Standard	Department of Energy; Public Utility Commission	OAR 330-160-0005 (2007); SB 1547[5] (2016)	Requires 50 percent of electricity Oregonians use to come from renewable resources by 2040.
Community Solar Program	Public Utility Commission	OAR 860-088-0005 (2016)	Utilities are required to approve and allow the interconnection of certified non-utility-owned community solar projects.
Energy Trust of Oregon	Public Utility Commission	SB 1149 (1999)	Trust is an independent, customer-focused, nonprofit aimed at helping 1.6 million utility customers in Oregon save energy and generate renewable power.
Oregon Clean Fuels Program	Department of Environmental Quality	OAR 340-253-0000 (2012)	Assists in the reduction of greenhouse gases in the transportation sector by supporting creating cleaner cars, using cleaner fuels, and reducing the amount that Oregonians drive.
Forestry Carbon Offsets	Department of Forestry	ORS 526.780 (2001)	Creates a platform for the State Forester to enter into agreements with nonfederal forest landowners as a means to market, register, transfer or sell forestry carbon offsets on behalf of the landowners to provide a stewardship incentive for nonfederal forestlands.

[5] As of March 2016 and the passage of SB 1547, the PUC requires electric companies to retail electricity consumers located in Oregon to eliminate coal-fired resources from electric company's electricity supply. Increasing the RPS requirement to 50% by 2040.

PROGRAMS TO BUILD RESILIENCE			
PROGRAM	**AGENCY**	**AUTHORITY**	**DESCRIPTION**
Climate Change Response Preparedness and Action Plan	Oregon Parks and Recreation Department	Governor's recommendation (2007)	Under OPRD's mission and statutory responsibilities, OPRD has created a plan to identify potential impacts and suggest actions to reduce and increase the resiliency to climate change and aid in taking informed actions.
Oregon Sustainability Board	Oregon State Legislature	ORS 184.423 (2001)	By establishing Oregon's overall sustainability policy, OSB encourages activities that best sustain, protect, and enhance the environment, economy and community for the present and future benefit of Oregonians.
Climate and Health Program	Oregon Health Authority	Grant from the CDC (2017)	OHA works with the CDC as part of a Climate Ready States and Cities Initiative intended to help agencies address the public health effects of climate change.

PROGRAMS TO EDUCATE AND BETTER UNDERSTAND CLIMATE CHANGE			
PROGRAM	**AGENCY**	**AUTHORITY**	**DESCRIPTION**
Oregon Climate Change Research Institute	Department of Higher Education	HB 3542 (2007)	OCCRIS is a network of researchers at OSU, UP, PSU, SOU and federal and state labs steered at achieving a climate-prepared Northwest by building a climate knowledge network.
Oregon Climate Service	Oregon State University	ORS 352.816; Oregon State Legislature (1970s)	Located at Oregon State University, OCS acquires, maintains, disseminates, and interprets climate data and information for the state.

Overview of the Western Climate Initiative

Overview of the Western Climate Initiative (WCI) and considerations for linking*

WCI Background

Many states and provinces across western North America, including Oregon, participated in development of the design framework of a regional cap-and-trade program known as the Western Climate Initiative. Of these jurisdictions, California and Quebec have implemented the WCI program design. Ontario launched a cap-and-trade program in 2017 and plans to link with WCI next year. These jurisdictions' programs include a broad scope encompassing emissions from transportation fuels, natural gas, industrial processes, and electricity generation – including emissions associated with imported electricity. The linked jurisdictions participate in joint auctions of allowances, and allowances issued by one jurisdiction can be used by any compliance entity within the linked programs.

The WCI program began in 2013. The 2015 emissions cap was 460 million metric tons of CO2 equivalent (MMTCO2e), which is scheduled to decline to 389 MMTCO2e (a 15.4% reduction) by 2020. Each WCI jurisdiction's program has elements in common with the others, and all jurisdictions have certain unique elements. Some of these are touched on below.

California: In July 2017, California passed legislation extending their cap-and-trade program through 2030. This extension retains nearly all core design elements established by the WCI program. The legislation extending the program made a variety of modest adjustments to the program that do not necessarily need to be followed by other WCI jurisdictions. One important change that will likely be closely coordinated with WCI partners is the introduction of a firm price cap on allowances.

Quebec: Quebec established their cap-and-trade program in 2013 at the same time as California. As a co-developer of the WCI program design, the Quebec and California programs are quite similar. One important difference is that Quebec's electricity sector has virtually no carbon, which necessarily narrows the portion of their economy covered by the cap.

Ontario: Ontario began a cap-and-trade program at the start of 2017 that is closely modelled after the WCI program design. There are some differences with California in how Ontario regulates imported electricity but the overall scope and stringency of the program is very similar to California and Quebec. Ontario expects to link their program to WCI at the start of 2018.

Considerations for linking to WCI

There are certain program requirements that must be met for Oregon to design a program that could link with WCI jurisdictions. There are also many areas where the WCI program design is flexible and jurisdictions can choose a design that works best for their economic and environmental characteristics. Because there has been only one

* Prepared for the Clean Energy Jobs Work Groups by Colin McConnaha, Oregon DEQ, and Jessica Shipley, Regulatory Assistance Project

linkage completed thus far (California and Quebec) and this occurred at the outset of those jurisdictions' programs, there are not many formal guidelines with specific requirements. What follows is information Oregon agencies uncovered during research that supported a study of cap-and-trade requested by Legislature[1].

A primary consideration by WCI jurisdictions for linkage is the relative stringency[2] of another jurisdiction's program. This is because a jurisdiction linking with the WCI can affect the market across the linked jurisdictions. A jurisdiction with a less or more stringent program will loosen or tighten the linked market (i.e. lower or raise the compliance cost). The stringency of a cap-and-trade program can be defined as the rate at which the cap declines, but initially is also the relationship of the first cap relative to the emissions from the sources covered by the program. Stringency is likely to be judged on a jurisdiction's long-term schedule for the cap compared to a baseline year. For example, California, Quebec and Ontario have similar 2030 targets of being 40%, 37.5%, and 37% below their 1990 levels, respectively.

A broad scope is also likely necessary to link with the WCI market. These jurisdictions' programs cover approximately 80% of their emissions, including transportation fuels, natural gas, industrial processes, and electricity, including emissions from imported electricity. While there are no precisely established requirements on the necessary scope of another jurisdiction's program needed for linkage, policy documents from California,[3] Quebec,[4] and the WCI[5] indicate that a similar scope to the existing programs is likely necessary.

Establishing a stringency aligned with Oregon's GHG reduction goals is likely similar to the stringency compatible with the WCI jurisdictions' cap-and-trade programs. This similarity is not coincidence, but rather the result of those jurisdictions having similar long-term GHG reduction goals as Oregon and those jurisdictions designing their cap-and-trade programs to assure they achieve those goals. Table 4.2 compares Oregon's GHG goals to those of the WCI jurisdictions.

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[1] Considerations for Designing a Cap-and-Trade Program in Oregon. 2017. Available here: http://www.oregon.gov/deq/aq/programs/Pages/GHG-Market.aspx

[2] California Government Codes section 12894(f) and (g) require that the Governor assess any program to which California proposes to link to assess whether the linkage satisfies four requirements. One of these is that the other jurisdiction's cap-and-trade program have equivalent or stricter stringency. The 2013 "Linkage Readiness Report" documents California's review of Quebec's program that supported the approval of the linkage between the programs those two jurisdictions. This is available here: https://www.arb.ca.gov/cc/capandtrade/linkage/arb_linkage_readiness_report.pdf

[3] Air Resources Board. 2016. "Summary of the Cap-and-Trade Program in Ontario, Canada". https://www.arb.ca.gov/regact/2016/capandtrade16/appd.pdf

[4] Quebec Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques. Date unknown. "The Québec cap-and-trade system and the WCI regional carbon market: A Historical Overview". http://www.mddelcc.gouv.qc.ca/changements/carbone/documents-spede/historical-overview.pdf

[5] Western Climate Initiative. 2010. "Design for the WCI Regional Program". http://www.westernclimateinitiative.org/the-wci-cap-and-trade-program/program-design

GHG reduction targets of Oregon and WCI jurisdictions	2020	2030	2050
Oregon	10% below 1990	~32% below 1990[6]	75% below 1990
California	1990	40% below 1990	80% below 1990
Quebec	20% below 1990	37.5% below 1990	
Ontario	15% below 1990	37% below 1990	80% below 1990

The caps currently established by WCI jurisdictions generally reflect a proportional trajectory toward their 2020 goals that are noted in the table above. Because an Oregon cap-and-trade program could not likely to be developed and implemented until 2020 at the earliest (given necessary legislative action and subsequent rulemaking), the WCI programs' stringency past 2020 is more informative of the stringency and trajectory that Oregon would likely need for compatibility. The best indication of the stringency of WCI jurisdictions' programs past 2020 is the aforementioned legislation in California that extends their cap-and-trade program through 2030 and targets a reduction of 40% below 1990 levels by 2030. It is not yet known exactly how this will be implemented, but California has proposed a simple straight-line path to a 2030 target that based on their statewide 2030 goal and the proportion of capped emissions sources to the statewide total.

WCI contains several allowance price control mechanisms, such as a minimum auction price and auction prices at which additional allowances would be offered to help moderate higher prices. Because linked cap-and-trade programs require fungibility of allowances across jurisdictions, these measures must generally be common among the linked programs to prevent competitive differences. Thus, Oregon would likely need to match how WCI jurisdictions have implemented these price control mechanisms.

It's important to note the significant elements of program design that do not need to be aligned. These include how allowances are issued and how revenue from the program is used. California, Quebec and Ontario share similar approaches in these areas but include important differences.

[6] Oregon does not have a legislatively adopted GHG reduction goal for 2030. The value shown here is computed simply by a linear decrease between the 2020 goal and the 2050 goal. A similar approach was used by the Oregon Global Warming Commission in their 2015 report to legislature in order to calculate a 2035 target.

Comparison of Cap-and-Trade Programs; California, Ontario, Quebec, and Oregon SB 1070

Comparison of Cap-and-Trade Programs:
California, Ontario, Quebec and Oregon SB 1070*

	California's cap-and-trade program	Ontario's cap-and-trade program	Quebec's Carbon Market	Oregon Senate Bill 1070
Population	38 million	14 million	8 Million	4 million
Gross Regional Product	US $2.6 trillion	US $763 billion	US $380 billion	US $227 billion
Participating Jurisdictions	California, Quebec & Ontario	California, Quebec & Ontario	California, Quebec & Ontario	Designed to connect with California, Quebec & Ontario
Greenhouse Gases Covered	Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), perfluocarbons (PFCs), nitrogen trifluoride (NF_3), other fluorinated greenhouse gases	Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, nitrogen trifluoride and other such contaminants as may be prescribed by regulation	Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), perfluocarbons (PFCs), nitrogen trifluoride (NF_3), other fluorinated greenhouse gases	"Greenhouse gas" includes, but is not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexaflouride and nitrogen trifluoride
Sectors Covered	Electricity (including imports) and industry in 2013; plus ground transportation and heating fuels in 2015	Electricity (including imports), industry, and certain fuel suppliers and distributors	Electricity (including imports) and industry in 2013; plus ground transportation and heating fuels in 2015	Air contamination source as defined in ORS 468A.005, electricity (including imports), fossil fuels that generate greenhouse gases when combusted, all beginning in 2021
Emissions Threshold	Emitters of at least 25,000 metric tons CO_2e annually, except for electricity imports for which the threshold is essentially 0	A facility or natural gas distributor that emits 25,000 tons or more of greenhouse gas emissions per year, or a fuel supplier that sells more than 200 litres of fuel per year	Emitters of at least 25,000 metric tons CO_2e annually, except fuel importers for which threshold is much lower to prevent small importers crossing the Western border avoiding the program	25,000 metric tons for all sources (a higher threshold for imported power than CA and a higher threshold for fuel importers than Quebec)
Target	Approximately 40% below 1990 emissions by 2030	37% below 1990 by 2030 Interim targets may be established	37.5% below 1990 levels by 2030	45% below 1990 levels by 2035
Status	First auction on November 14, 2012; compliance obligations began January 1, 2013	Compliance obligation began January 1, 2017. Linkage with Quebec and California is now established to begin in 2018	Compliance obligations began January 1, 2013	n/a
Allocation Method[1]	Mixed – some free allocations for industry;	Enabling legislation authorizes Minister to distribute allowances registered participants in	Free allocation for some sectors, auctions for others	Similar to California; mixed – some free allocations for

[1] See information on recent changes to leakage calculations in California on page 3.

* This chart was published in the California Cap-and-Trade Program Summary by the Center for Climate and Energy Solutions (January, 2014) and has been updated to reflect recent changes in WCI jurisdictions and the provisions of Oregon Senate Bill 1070 by the Oregon Legislative Policy and Research Office staff (October, 2017).

	full auction for fuels, consignment for utilities	accordance with regulations either free of charge or at auction. Requires Minister to describe by 1/1/2021 how free allowances will be phased out.		industry; full auction for fuels, consignment for utilities
Price Floor at Auction	$10 per metric ton for both 2012 and 2013 before rising 5% per year (plus inflation) starting in 2014	Will need to be identical to CA & QC	$10 per metric ton price floor starting in 2012 and rising 5% for each year thereafter (plus inflation)	Will need to be identical to CA & QC
Affiliations	Helped establish Western Climate Initiative in 2007	Joined Western Climate Initiative in 2008	Joined Western Climate Initiative in 2008	Joined Western Climate Initiative in 2008
Linkage Status	Linked with Quebec starting in 2014	Linking with California and Quebec in 2018	Linked with California in 2014	Would enable linking with WCI
Offset Limit	Offsets can now account for 8% of a regulated entity's compliance obligation; changing to 4% for 2021-2025, and 6% for 2026-2030. Post-2020, one-half of offsets must come from inside CA.	Can account for 8% of a regulated entity's compliance obligation	Can account for 8% of a regulated entity's compliance obligation	Can account for 8% of a regulated entity's compliance obligation, however this can be reduced for entities in impacted communities
2013 Offset Use Limit - Millions of Offset Credits	13	N/A	2.1	N/A
Types of Offset Categories	1) U.S. forest and urban forest project resources; 2) Livestock projects; 3) Ozone depleting substances projects; 4) Urban forest projects	Developing 11 new offset protocols tailored to Ontario. Has retained Climate Action Reserve to develop up to 13 protocols; 3 priority projects types: landfill gas capture and destruction, ozone depleting substances capture and destruction, and mine methane capture and destruction. Other protocals to include: afforestation and reforestation, anaerobic digestion (organic waste and manure), conservation cropping, emission reductions from livestock (enteric), forest (avoided conversion and improved forest management), grassland, N_2O reductions from fertilizer management, organic waste management, refrigeration systems, urban forest	1) Covered manure storage facilities – CH_4 destruction; 2) Landfill sites – CH_4 destruction; 3) Destruction of ozone depleting substances (ODS) contained in insulating foam recovered from appliances. Developing 11 new offset protocols tailored to the environmental and economic landscape in Quebec	Directs Oregon to develop standards in a manner that allows DEQ to explore and encourage opportunities for development in Oregon

Leakage – Recent Changes in California

For background on emissions leakage, see "Considerations for Designing a Cap-and-Trade Program in Oregon, Department of Environmental Quality, February 14, 2017, pages 38-39.

The original metrics for determining emissions leakage risk (trade exposure and emission intensity) in California have been modified by recent changes to the regulation, as discussed below. The final regulation order which contains all recent changes made to the cap-and-trade program can be found here: https://www.arb.ca.gov/regact/2016/capandtrade16/ctfinro.pdf For a specific discussion of the changes California Air Resources Board staff considered and implemented to industry assistance factors due to the leakage studies conducted, see this attachment: https://www.arb.ca.gov/regact/2016/capandtrade16/attachb.pdf

The formula for allocation to prevent leakage is generally summarized as:

Allocation = AF x B x c x o

Where:

- AF is the assistance factor given to a particular level of leakage risk;
- B is the industry benchmark
- C is the cap adjustment factor to reflect the declining overall emissions cap; and
- O is the entity-specific output

The assistance factor declines over time for some industries that are deemed low or medium risk for leakage. Three studies of potential emissions leakage in California were completed in 2016 and staff have made some changes to the metrics used to determine leakage risk for the program post-2020. The primary change appears to be that staff are now calculating assistance factors and leakage risk based on a summation of an international assistance factor to minimize potential international leakage and a domestic assistance factor to minimize potential domestic leakage. Both components range between zero and 100 percent and are summed to yield the total assistance factor for a sector. Determining each part of the new assistance factor formula requires a separate set of calculations which are based, in part, on the studies of emissions leakage that California ARB commissioned.