

HB 4001 -3, -5, -6, -7, -8 STAFF MEASURE SUMMARY

House Committee On Energy and Environment

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/5, 2/7, 2/12

WHAT THE MEASURE DOES:

Directs Environmental Quality Commission (EQC) to adopt a program that establishes a **cap** on total anthropogenic greenhouse gas (GHG) emissions by covered entities and a **market-based compliance mechanism** (program). Establishes **program purposes** to reduce GHG emissions consistent with statewide GHG emissions limits and to promote carbon sequestration and adaptation and resilience by the state's working lands, communities, and economy in the face of climate change and ocean acidification. Requires EQC to adopt an **annual allowance budget** starting in 2021, with a schedule for the budget to decrease by a pre-determined amount each year until 2050. Requires schedule reflect the total emissions by all covered entities as a proportionate share of the statewide GHG emissions that must be reduced to prevent exceeding emissions limits. Directs EQC to designate certain entities as covered entities subject to regulation. Authorizes EQC to adopt rules for the market-based compliance mechanism, including rules addressing allowance allocation, offset projects and use of offset credits, auction administration, trading of compliance instruments, opt-in and general market entity participation, and compliance. Directs EQC to require each covered entity to surrender to DEQ a quantity of compliance instruments equal to its obligation. Authorizes EQC to require an entity who fails to comply to surrender an adjusted amount, in addition to any other penalties provided by law. Requires **covered entities**, opt-in entities, and general market participants to register to participate in the program. Requires EQC to establish requirements by rule for registrants to participate in auctions and allows for the adoption of a schedule of registration fees reasonably calculated not to exceed DEQ's program administration costs.

Repeals statutory GHG emission reduction goals and requires EQC to adopt a 2025 goal and 2035 and 2050 **limits on statewide GHG emissions** by rule.

Establishes 21-member **Program Advisory Committee** (PAC) appointed by the Governor to advise the Governor, DEQ, EQC, and other relevant state agencies on program rule development and implementation and the expenditure and investment of state auction proceeds. Directs PAC to prepare and submit a biennial report to the **Governor** and interim legislative committees related to climate by July 1 of each even-numbered year. Directs Governor when preparing **budget** to consider recommendations in PAC biennial report for expenditures and investments of auction proceeds.

Establishes **Joint Legislative Committee on Climate** (JLCC) to provide general legislative oversight of policy related to climate, including program, and to examine and make recommendations to the Joint Legislative Committee on Ways and Means on expenditures and investment of state auction proceeds. Requires JLCC to consider recommendations of PAC, Oregon Global Warming Commission, Oregon Climate Change Research Institute, and Environmental Justice Task Force when developing recommendations.

Directs DEQ to allocate a percentage of allowances from each annual allowance budget directly into a **price containment reserve**. Directs EQC, in consultation with the Public Utility Commission (PUC), to adopt rules for **allowance distribution** to covered entities that are **electric companies and natural gas utilities**. Requires adopted rules to include a methodology for allowance allocation based on the following principles: 1) in 2021, direct distribution of allowances should equal 100 percent of covered entity's proportionate share of regulated emissions during representative calendar years prior to 2018; and 2) in years after 2021, the direct distribution of allowances

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should decline annually at a rate equal to the predetermined rate of decline for annual allowance budgets. Requires allocation of allowances to electric companies and natural gas utilities at no cost and that allowances be consigned to auction. Requires DEQ to allocate allowances to **consumer-owned utilities** (COUs) at no cost and permits EQC to adopt rules allowing a COU to consign such allowances to auction. Requires that auction proceeds be used by COUs to benefit rate-payers, consistent with program purposes and as further required by COU board. No later than September 15 of each even-numbered year, requires COU board to submit a report to JLCC on the uses of the allowances and auction proceeds. Requires EQC to adopt rules for allocating allowances to **emissions-intensive, trade-exposed (EITE) industries** at no cost using an output-based benchmarking methodology. Requires EITE allowance allocation to decline annually at a rate equal to the predetermined rate of decline for annual allowance budgets. Requires EQC, by 2024 and once every three years after, to review rules to determine if update is necessary to mitigate **leakage** or prevent allocation to covered entities in excess of what is necessary to mitigate leakage. Authorizes EQC to update list of covered entities if a covered entity makes a proposal that an update is needed to mitigate leakage. Prohibits allowance allocation under leakage mitigation section to fossil fuel distribution and storage facility or infrastructure, or an electric generating unit. Directs EQC to allocate to auction all allowances remaining after distribution to utilities and EITEs.

Requires **offset projects** to: 1) be located in the United States or a jurisdiction with which EQC has entered into a **linkage** agreement; and 2) not otherwise be required by law; and result in GHG emissions reductions or removals that are real, permanent, quantifiable, verifiable, enforceable, and in addition to other required emissions reductions. Stipulates no more than four percent of a covered entity's compliance obligation may be met with offset credits, and no more than two percent may be met with credits from offset projects that do not provide direct environmental benefits in Oregon. Authorizes EQC to adopt rules further restricting the number of offset credits that may be used by a covered entity under certain circumstances. Directs EQC, in adopting rules on offset projects and credit use, to: 1) consider standards and protocols adopted in other jurisdictions; 2) encourage opportunities in Oregon by adopting protocols that reduce transactions costs related to a project, including aggregation; 3) consult and consider the recommendations of PAC, Departments of Agriculture and Forestry, and the Environmental Justice Task Force; and 4) authorize a process for DEQ to investigate and invalidate issued offset credits. Requires DEQ to appoint a **Compliance Offsets Protocol Advisory Committee** to aid and advise EQC in rulemaking.

Directs DEQ to **auction allowances** at least once a year. Requires EQC to set an **auction floor price** for 2021 and scheduled increases by a pre-determined amount each year and to take actions to minimize market manipulation and guard against bidder collusion. Requires that **reserve auctions** be held separately to address high cost of compliance instruments. Directs **auction proceeds** from sale of consigned allowances be transferred to utilities that consigned the allowances and auction proceeds payable to the state must be transferred to the State Treasury and deposited into the Auction Proceed Distribution Fund.

Directs EQC and DEQ to consider similar programs in other jurisdictions during rulemaking and implement the program in a manner that avoids double-counting of emissions or emission reductions and enables the state to pursue **linkage agreements** with other jurisdictions. Requires EQC to notify Governor prior to linking. Requires Governor to make specified findings within 45 days of receiving notice and provide findings to Legislative Assembly.

Requires EQC, in consultation with listed entities, to **designate impacted communities** by census tract based on methodology that considers geographic, socioeconomic, public health, and environmental hazard criteria. Requires that methodology give greater weight to criteria that EQC determines are most accurate predictors of vulnerability to impacts of climate change and ocean acidification and to review and update the methodology and designation at least once every 5 years.

Requires entities that report annual GHG emissions to DEQ in excess of 25,000 metric tons to pay **annual program development fee** (amount not specified). Appropriates fee revenue to DEQ for expenses and to EQC for

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development, preparation, and implementation of program. Repeals annual program development fee on January 2, 2021.

Requires electric company and natural gas utility to use **auction proceeds** within their service territory to benefit low-income residential customers, including tenants; and then all other customers, including residential, small commercial, and energy-intensive industrial that are not EITEs. Directs electric company and natural gas utility to prioritize use of auction proceeds for bill assistance, weatherization, and energy efficiency measures. Except for use of a portion of auction proceeds each year to fund volumetric bill assistance to low-income customers, requires all other bill assistance be returned in non-volumetric manner. Requires PUC, in consultation with Housing and Community Services Department and PAC, to adopt rules to implement and enforce provisions regarding use of consigned allowance auction proceeds.

Establishes **Auction Proceeds Distribution Account** consisting of proceeds from auction of non-consigned allowances. Directs DEQ to: certify amount of money available; transfer all revenues described in Article IX, section 3a of the Oregon Constitution to the Transportation Decarbonization Investment Fund; transfer 85 percent of remaining moneys to the Climate Investments Fund; and transfer the remaining 15 percent to the Just Transition Fund.

Establishes the **Climate Investments Fund** and restricts use of moneys to projects, programs, and activities that further program purposes. Directs Legislature to allocate money as follows: 60 percent to benefit or be geographically located in impacted communities; of this 60 percent, at least 33 percent for activities that benefit rural areas, as defined, that are designated as impacted communities; 20 percent to investments in natural and working lands; and 20 percent to any project, program, or activity that furthers Program purposes. Establishes the **Transportation Decarbonization Investments Fund** and restricts use of moneys to purposes stated in Article IX, section 3a of Oregon Constitution and activities that further program purposes. Directs Legislature to allocate 60 percent of moneys for purposes that benefit impacted communities. Authorizes Department of Administrative Services to ensure fund recipients comply and to obtain refunds for noncompliance.

Allocates Climate Investment Fund and Transportation Decarbonization Fund monies to program purposes, where applicable to the extent feasible, cost-effective, and consistent with law, and to: 1) complement efforts to achieve and maintain local air quality; 2) provide opportunities for tribes, members of impacted communities, and businesses owned by women and minorities to participate in and benefit from statewide efforts to reduce GHG emissions; 3) make use of domestically produced products to the maximum extent feasible, or 4) promote low carbon economic development opportunities and jobs that sustain living wages. Lists examples of the investments for which monies may be used. Establishes requirements for construction projects funded in whole or part with moneys in either fund. Requires all entities receiving funds to report annually to DAS and DAS to make an annual report to the Legislative Assembly, including JLCC. Specifies that if a court determines an allocation of money is inconsistent with law, the allocation is independent and severable, not affecting other allocations. Authorizes DAS to adopt rules to implement fund allocation provisions in consultation with PAC and relevant agencies.

Establishes **Just Transition Fund** and appropriates monies in fund to the Higher Education Coordinating Commission (HECC). Directs HECC to set aside 50 percent of funds in a reserve account and to continue to credit funds to such account until the balance is the lesser of \$2.5 million or an amount that HECC determines is adequate to provide financial support for workers dislocated or adversely affected by climate change or climate change policies. Directs HECC to establish a **Just Transition Program** in consultation with PAC, Employment Department, and other agencies. Establishes purposes of distributing funds. Authorizes a competitive grant program. Authorizes HECC to ensure compliance of fund recipients and obtain refunds for noncompliance.

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Authorizes EQC by rule to require **registration and reporting** of information necessary to determine GHG emissions by persons in control of certain air contamination sources.

Establishes intent of Legislative Assembly that provisions of Act related to receipt of monies through sale of allowances at auction does not render Act a bill for raising revenue. Confers jurisdiction on Supreme Court for an **expedited review** of proceeding filed by person who is or will be adversely affected by provisions related to receipt of money by state through sale of allowances at auction. Sets filing requirements and contents of petition.

Appropriates unspecified funds to the **Environmental Justice Task Force** for member expenses and clerical/administrative support.

Requires DEQ to **report** to interim legislative committees on environment and natural resources on actions being taken by EQC to prepare for implementation on or before September 15, 2020 and implementation of offset provisions on or before September 15, 2031.

Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 • Modifies whereas clauses.

- Removes “anthropogenic” from definition of “statewide greenhouse gas emissions” (GHG).”
- Adds criteria for Governor to consider when appointing members to program advisory committee (PAC). Revises provisions identifying PAC rulemaking and program oversight duties.
- Adds to program purposes the promotion of carbon sequestration and adaptation and resilience by state’s fish and wildlife resources.
- States annual allowance budgets must reflect total emissions from covered entities as a proportionate share of anthropogenic statewide GHG emissions.
- Exempts from regulation: (1) a land disposal site if site was closed before effective date of Act and is closed and remains in compliance with state law governing closure of such sites and (2) a cogeneration facility owned or operated by a public university or hospital.
- Requires non-compliance penalty in rules adopted by Environmental Quality Commission (EQC) to include the submission of additional compliance instruments.
- Requires EQC to, beginning in 2024 and once every three years thereafter, update the applicable emissions efficiency benchmarks for any emissions-intensive, trade-exposed processes.
- Directs Department of Environmental Quality (DEQ) to allocate a percentage of allowances from each annual allowance budget to be retired each year for eligible voluntary renewable electricity generated in the previous year.
- Modifies provisions authorizing EQC to restrict the use of offset credits by a covered entity that is an air contamination source in violation of state or regional air quality permit.
- Makes permissive the adoption of offset protocols that include elements encouraging opportunities for in-state projects.
- Remove requirement that Governor’s linkage findings include equivalent or stricter offset requirements.
- Requires EQC to consult with listed entities prior to designation of impacted communities. Add criteria identifying impacted communities. Requires Public Utility Commission to consult with listed entities before rule adoption.
- Directs moneys that constitute revenues described in Article VIII, section 2 (1)(g) of Oregon Constitution be transferred to Common School Fund.
- Revises allocation of Climate Investment Fund to require 50 percent to impacted communities, 10 percent to Indian Tribes, and 20 percent to natural and working lands.
- Establishes Transportation Decarbonization Investments Account in the State Highway Fund and continuously

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appropriates moneys in account to Department of Transportation. Retains uses of moneys. Directs Oregon Transportation Commission (OTC) to prepare a biennial transportation decarbonization proposal with a list of recommended projects and submit proposal to Joint Legislative Committee on Climate and the Department of Administrative Services (DAS) to be submitted to Legislature with Governor's recommended budget. Requires OTC consider following when selecting projects: (1) prior to selection, PAC recommendations and input, (2) how project selection may affect state's ability to carry out purposes of Article IX, section 3a (3) or Oregon Constitution, and (3) how much of the cost of a proposed project may be funded by another source.

- Adds to uses of Climate Investments Fund and Transportation Account: (1) maximizing GHG emissions reductions, technical assistance for specified entities, and strengthening resilience of fish, wildlife, and ecosystems. Removes funding for metropolitan planning organizations.
- Modifies Transportation Account allocation to add investments in implementation and development of land use and transportation scenarios required to be adopted by local governments and metropolitan service districts.
- Revises requirements on primary contractor for construction project funded in whole or part by Climate Investment Fund or Transportation Account. Directs DAS to adopt model rules that specify labor, workforce, and contracting procedures for all state agencies to use in administering funds for such projects. Specifies requirements for model rules.
- Removes requirement that Higher Education Coordinating Commission, Employment Department, and other interested state agencies establish Just Transition Program jointly.
- Requires moneys deposited in Common School Fund (Fund) under Act be continuously appropriated to Department of State Lands to be used for purposes for which other moneys in Fund are used, and that are consistent with purposes of the Act.
- Changes effective date of program development fee from July 1, 2019 to July 1, 2018.
- Removes emergency clause; makes Act effective on 91st day after date on which 2018 regular legislative session adjourns.

-5 Removes emergency clause. Removes January 1, 2019 operative date and authority for the Environmental Quality Commission to take actions before operative date.

-6 Prohibits entity that receives money from Climate Investment Fund or Transportation Decarbonization Investments Fund from using any of the money to make contributions to candidate, petition a committee or political committee. Requires entity that receives money from Climate Investment Fund or Transportation Decarbonization Investments Fund to complete certificate of compliance in form required by Secretary of State attesting that the contribution is in compliance.

-7 Authorizes money in Climate Investment Fund or Transportation Decarbonization Investments Fund to be used to provide financial support to counties with population of less than 120,000 to offset increased transportation and fuel costs resulting from program.

-8 Stipulates investments made from Climate Investment Fund or Transportation Decarbonization Investments Fund are in addition to and do not replace existing allocations to projects, programs, activities, communities and other funds.

BACKGROUND:

A cap-and-trade program is a market-based system designed to reduce greenhouse gas emissions. Total allowed emissions are capped at a given level that decreases each year. Polluters are required to buy an allowance for each ton of greenhouse gas they emit above a specified amount, as quantified through mandatory reporting of emissions to the government. Allowances are purchased at auctions held either by the government or a contracted third party. Allowances may also be distributed for free, often to emissions-intensive, trade-exposed industries. A floor price is set for allowances and rises annually. Covered entities can also purchase offset credits to meet their compliance

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obligations. Offsets represent a verified emission reduction of one ton of carbon dioxide equivalent from an uncapped sector. At the end of each compliance period, polluters must remit a number of allowances equal to their emissions or face a penalty. Companies may sell surplus allowances to other companies. A cap-and-invest program uses the proceeds generated from the auction of allowances for designated purposes, which may include such uses as bill assistance for low-income utility customers, transportation infrastructure projects, and grant programs for clean energy and economic development.

Ten states currently have cap-and-trade systems. Nine are Northeastern states that joined together in 2009 to create a common carbon market through the Regional Greenhouse Gas Initiative. California runs a separate program that began in 2012 and is linked to the Canadian province of Quebec's cap-and-trade program through the Western Climate Initiative (WCI). Ontario began a cap-and-trade program in 2017 and plans to link with WCI next year. These programs include 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.