

B-Engrossed
House Bill 2020

Ordered by the House June 12
Including House Amendments dated May 21 and June 12

Sponsored by JOINT COMMITTEE ON CARBON REDUCTION

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.

Establishes Climate Policy Office within Oregon Department of Administrative Services and directs office to adopt Oregon Climate Action Program by rule. Creates Oregon Climate Board to advise office.

Modifies statewide greenhouse gas emissions reduction goals.

Establishes Joint Committee on Climate Action.

Becomes operative on effective date of Act.

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

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

Authorizes commission to allow rate or rate schedule to reflect amounts for investments in infrastructure measures that support adoption of alternative forms of transportation vehicles.

Amends greenhouse gas reporting statute.

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

Repeals authority for State Forester to establish forestry carbon offset program.

Becomes operative January 1, 2021.

Requires Environmental Quality Commission to adopt by rule standards and requirements for reducing methane gas emissions from landfills. Becomes operative on effective date of Act.

Abolishes Oregon Global Warming Commission and transfers duties to Oregon Climate Board. Becomes operative January 1, 2020.

Transfers to Climate Policy Office duties, functions and powers of Environmental Quality Commission and Department of Environmental Quality related to greenhouse gas reporting. Becomes operative January 1, 2022.

Provides for expedited review of certain questions on Act to Supreme Court upon petition by adversely affected party. **If Supreme Court declares upon expedited review that auctions conducted under Act do not impose tax subject to Article IX, section 3a, Oregon Constitution, requires Climate Policy Office to identify certain specific opportunities for using certain state proceeds from auctions.**

Requires certain reports and proposals. **Modifies study related to highway maintenance, operation and improvement costs.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to greenhouse gas emissions; creating new provisions; amending ORS 244.050, 352.823,
3 468.953, 468A.205, 468A.235, 468A.240, 468A.245, 468A.255, 468A.260, 468A.265, 468A.279,
4 468A.280, 469.300, 469.310, 469.373, 469.405, 469.407, 469.501, 469.503, 469.504, 469.505, 530.050,
5 530.500, 757.259 and 757.528 and section 12, chapter 751, Oregon Laws 2009, and sections 75 and
6 76, chapter 750, Oregon Laws 2017; repealing ORS 469.409, 468A.200, 468A.210, 468A.215,
7 468A.220, 468A.225, 468A.230, 468A.250, 526.780, 526.783, 526.786 and 526.789; and declaring an

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

1 emergency.

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

5 Whereas the potential impacts of climate change and ocean acidification include increasingly
6 devastating wildfires, communities overwhelmed by smoke, drinking water compromised by algal
7 blooms, a rise in sea levels resulting in flooding and the displacement of thousands of coastal busi-
8 nesses and residences, damage to marine ecosystems and food sources, extreme weather events, se-
9 vere harm to this state's agriculture, forestry and tourism industries, and an increase in the
10 incidences of infectious diseases, asthma and other human health-related problems; and

11 Whereas climate change has a disproportionate effect on fish and wildlife populations, many of
12 which require specific habitat conditions and are therefore particularly vulnerable to warmer tem-
13 peratures, modified precipitation patterns, diminished snowpack, ocean acidification and other ef-
14 fects of climate change; and

15 Whereas climate change has a disproportionate effect on impacted communities, such as Indian
16 tribes, rural communities, coastal communities, workers, low-income households and people of color,
17 who typically have fewer resources for adapting to climate change and are therefore the most vul-
18 nerable to displacement, adverse health effects, job loss, property damage and other effects of cli-
19 mate change; and

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

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

26 Whereas by joining together with other leadership jurisdictions similarly resolved to address
27 climate change and ocean acidification, Oregon will help encourage other states, the federal gov-
28 ernment and the international community to act; and

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

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

36 Whereas Oregon's forests and other natural and working lands include Indian trust lands, the
37 utilization of which as part of Oregon's sequestration strategies produces trust revenues for the
38 benefit of Indian tribes and individual Indians; and

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

43 Whereas Oregon's emissions reduction policies must be designed to protect climate impacted
44 communities and promote the resiliency of these communities through providing opportunities for
45 job creation and training, investments in both natural and built infrastructure and economic devel-

1 opment and increased utilization of clean energy technologies; and

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

4 Whereas the carbon pricing program must support a just economic transition to a clean energy
5 future by protecting the existing workforce and creating new pathways to employment through
6 workforce development in clean energy, energy efficiency, adaptation and carbon sequestration sec-
7 tors; and

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

11 Whereas the carbon pricing program must respect the rights and ability of Indian tribes to ex-
12 ercise their stewardship and sovereign authority over their sovereign trust lands and resources, and
13 the state must make reasonable efforts to cooperate with tribes in the development and implemen-
14 tation of programs that affect Indian tribes; and

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

18 Whereas resilient, healthy forests produce many added benefits, including clean water and good
19 jobs; and

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

27 Whereas linkage with other jurisdictions will create efficiencies, spur innovation and create
28 simplicity for businesses, and can be balanced with the ability to maintain Oregon's authority over
29 its carbon reduction, sequestration, mitigation, adaptation, resilience and transition activities; and

30 Whereas any resources generated by the carbon pricing program must be invested to maximize
31 multiple cobenefits aligned with the program's goals in an efficient and cost-effective manner over-
32 seen by the Legislative Assembly and inclusive of communities throughout Oregon to ensure state-
33 wide benefits; and

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

36 Whereas the Legislative Assembly must maintain transparent oversight of program design, im-
37 plementation, evaluation and subsequent decision-making; now, therefore,

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

39
40 **STATEWIDE GREENHOUSE GAS EMISSIONS**
41 **REDUCTION GOALS**

42
43 **SECTION 1.** ORS 468A.205 is amended to read:

44 468A.205. (1) The Legislative Assembly declares that it is the *[policy]* **goal** of this state to
45 **achieve a reduction in anthropogenic greenhouse gas emissions levels in Oregon:** *[reduce*

1 *greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction*
2 *goals:]*

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

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

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

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

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

9 (2) The Legislative Assembly declares that it is the policy of this state for state and local gov-
10 ernments, businesses, nonprofit organizations and individual residents to prepare for the effects of
11 global warming and by doing so, prevent and reduce the social, economic and environmental effects
12 of global warming.

13 (3) This section does not create any additional regulatory authority for an agency of the exec-
14 utive department as defined in ORS 174.112.

15
16 **JOINT COMMITTEE ON CLIMATE ACTION**

17
18 **SECTION 2. (1) There is established the Joint Committee on Climate Action.**

19 **(2) The joint committee consists of members of the Senate appointed by the President**
20 **of the Senate and members of the House of Representatives appointed by the Speaker of the**
21 **House of Representatives.**

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

25 **(4) The joint committee has a continuing existence and may meet, act and conduct its**
26 **business during sessions of the Legislative Assembly or any recess thereof and in the interim**
27 **between sessions.**

28 **(5) The term of a member shall expire upon the date of the convening of the odd-**
29 **numbered year regular session of the Legislative Assembly next following the commence-**
30 **ment of the member's term.**

31 **(6)(a) If there is a vacancy for any cause, the appointing authority shall make an ap-**
32 **pointment to become immediately effective.**

33 **(b) When a vacancy occurs in the membership of the joint committee in the interim be-**
34 **tween odd-numbered year regular sessions, until the vacancy is filled:**

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

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

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

42 **(b) Notwithstanding paragraph (a) of this subsection, when engaged in out-of-state travel,**
43 **members shall be entitled to receive their actual and necessary expenses in lieu of the**
44 **amount authorized by this subsection. Payment shall be made from funds appropriated to the**
45 **Legislative Assembly.**

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

5 (9) Action by the joint committee requires the affirmative vote of a majority of joint
6 committee members from the House of Representatives and a majority of joint committee
7 members from the Senate.

8 (10) The joint committee may adopt rules necessary for the operation of the joint com-
9 mittee.

10 (11) The Legislative Policy and Research Director may employ persons necessary for the
11 performance of the functions of the joint committee. The director shall fix the duties and
12 amounts of compensation of the employees. The joint committee shall use the services of
13 continuing legislative staff, without employing additional persons, to the greatest extent
14 practicable.

15 (12) All agencies of state government, as defined in ORS 174.111, are directed to assist
16 the joint committee in the performance of the duties of the joint committee and, to the ex-
17 tent permitted by laws relating to confidentiality, to furnish information and advice the
18 members of the joint committee consider necessary to perform their duties.

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

20 (a) Provide general legislative oversight of policy related to climate, including but not
21 limited to the Oregon Climate Action Program established under sections 15 to 40 of this 2019
22 Act;

23 (b) Examine and prioritize the uses of state proceeds from auctions conducted under
24 section 34 of this 2019 Act; and

25 (c) Make recommendations related to the uses of state proceeds from auctions conducted
26 under section 34 of this 2019 Act to the Joint Committee on Ways and Means.

27 (2) In developing recommendations under subsection (1)(c) of this section, the Joint
28 Committee on Climate Action shall consider:

29 (a) The biennial expenditure reports and audit report required by sections 54 and 55 of
30 this 2019 Act;

31 (b) The biennial climate action investment plan required by section 57 of this 2019 Act;

32 (c) The recommendations of the Environmental Justice Task Force required by section
33 61 of this 2019 Act; and

34 (d) The Just Transition Plan required by section 52 of this 2019 Act.

35
36 **CLIMATE POLICY OFFICE ESTABLISHED**

37 (Establishment; Duties)

38
39 **SECTION 4. Climate Policy Office.** (1) The Climate Policy Office is established within the
40 Oregon Department of Administrative Services.

41 (2) The office shall:

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

45 (b) Carry out the duties, functions and powers vested in the office by law.

- 1 (h) The following state officers:
- 2 (A) Adjutant General.
- 3 (B) Director of Agriculture.
- 4 (C) Manager of State Accident Insurance Fund Corporation.
- 5 (D) Water Resources Director.
- 6 (E) Director of Department of Environmental Quality.
- 7 (F) Director of Oregon Department of Administrative Services.
- 8 (G) State Fish and Wildlife Director.
- 9 (H) State Forester.
- 10 (I) State Geologist.
- 11 (J) Director of Human Services.
- 12 (K) Director of the Department of Consumer and Business Services.
- 13 (L) Director of the Department of State Lands.
- 14 (M) State Librarian.
- 15 (N) Administrator of Oregon Liquor Control Commission.
- 16 (O) Superintendent of State Police.
- 17 (P) Director of the Public Employees Retirement System.
- 18 (Q) Director of Department of Revenue.
- 19 (R) Director of Transportation.
- 20 (S) Public Utility Commissioner.
- 21 (T) Director of Veterans' Affairs.
- 22 (U) Executive director of Oregon Government Ethics Commission.
- 23 (V) Director of the State Department of Energy.
- 24 (W) Director and each assistant director of the Oregon State Lottery.
- 25 (X) Director of the Department of Corrections.
- 26 (Y) Director of the Oregon Department of Aviation.
- 27 (Z) Executive director of the Oregon Criminal Justice Commission.
- 28 (AA) Director of the Oregon Business Development Department.
- 29 (BB) Director of the Office of Emergency Management.
- 30 (CC) Director of the Employment Department.
- 31 (DD) Chief of staff for the Governor.
- 32 (EE) Director of the Housing and Community Services Department.
- 33 (FF) State Court Administrator.
- 34 (GG) Director of the Department of Land Conservation and Development.
- 35 (HH) Board chairperson of the Land Use Board of Appeals.
- 36 (II) State Marine Director.
- 37 (JJ) Executive director of the Oregon Racing Commission.
- 38 (KK) State Parks and Recreation Director.
- 39 (LL) Public defense services executive director.
- 40 (MM) Chairperson of the Public Employees' Benefit Board.
- 41 (NN) Director of the Department of Public Safety Standards and Training.
- 42 (OO) Executive director of the Higher Education Coordinating Commission.
- 43 (PP) Executive director of the Oregon Watershed Enhancement Board.
- 44 (QQ) Director of the Oregon Youth Authority.
- 45 (RR) Director of the Oregon Health Authority.

- 1 (SS) Deputy Superintendent of Public Instruction.
2 **(TT) Director of the Climate Policy Office.**
3 (i) The First Partner, the legal counsel, the deputy legal counsel and all policy advisors within
4 the Governor's office.
5 (j) Every elected city or county official.
6 (k) Every member of a city or county planning, zoning or development commission.
7 (L) The chief executive officer of a city or county who performs the duties of manager or prin-
8 cipal administrator of the city or county.
9 (m) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
10 (n) Every member of a governing body of a metropolitan service district and the auditor and
11 executive officer thereof.
12 (o) Each member of the board of directors of the State Accident Insurance Fund Corporation.
13 (p) The chief administrative officer and the financial officer of each common and union high
14 school district, education service district and community college district.
15 (q) Every member of the following state boards and commissions:
16 (A) Governing board of the State Department of Geology and Mineral Industries.
17 (B) Oregon Business Development Commission.
18 (C) State Board of Education.
19 (D) Environmental Quality Commission.
20 (E) Fish and Wildlife Commission of the State of Oregon.
21 (F) State Board of Forestry.
22 (G) Oregon Government Ethics Commission.
23 (H) Oregon Health Policy Board.
24 (I) Oregon Investment Council.
25 (J) Land Conservation and Development Commission.
26 (K) Oregon Liquor Control Commission.
27 (L) Oregon Short Term Fund Board.
28 (M) State Marine Board.
29 (N) Mass transit district boards.
30 (O) Energy Facility Siting Council.
31 (P) Board of Commissioners of the Port of Portland.
32 (Q) Employment Relations Board.
33 (R) Public Employees Retirement Board.
34 (S) Oregon Racing Commission.
35 (T) Oregon Transportation Commission.
36 (U) Water Resources Commission.
37 (V) Workers' Compensation Board.
38 (W) Oregon Facilities Authority.
39 (X) Oregon State Lottery Commission.
40 (Y) Pacific Northwest Electric Power and Conservation Planning Council.
41 (Z) Columbia River Gorge Commission.
42 (AA) Oregon Health and Science University Board of Directors.
43 (BB) Capitol Planning Commission.
44 (CC) Higher Education Coordinating Commission.
45 (DD) Oregon Growth Board.

- 1 (EE) Early Learning Council.
- 2 (r) The following officers of the State Treasurer:
- 3 (A) Deputy State Treasurer.
- 4 (B) Chief of staff for the office of the State Treasurer.
- 5 (C) Director of the Investment Division.
- 6 (s) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
- 7 or 777.915 to 777.953.
- 8 (t) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
- 9 (u) Every member of a governing board of a public university listed in ORS 352.002.
- 10 (v) Every member of the board of directors of an authority created under ORS 465.600 to
- 11 465.621.
- 12 (2) By April 15 next after the date an appointment takes effect, every appointed public official
- 13 on a board or commission listed in subsection (1) of this section shall file with the Oregon Govern-
- 14 ment Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070
- 15 and 244.090.
- 16 (3) By April 15 next after the filing deadline for the primary election, each candidate described
- 17 in subsection (1) of this section shall file with the commission a statement of economic interest as
- 18 required under ORS 244.060, 244.070 and 244.090.
- 19 (4) Not later than the 40th day before the date of the statewide general election, each candidate
- 20 described in subsection (1) of this section who will appear on the statewide general election ballot
- 21 and who was not required to file a statement of economic interest under subsections (1) to (3) of this
- 22 section shall file with the commission a statement of economic interest as required under ORS
- 23 244.060, 244.070 and 244.090.
- 24 (5) Subsections (1) to (3) of this section apply only to persons who are incumbent, elected or
- 25 appointed public officials as of April 15 and to persons who are candidates on April 15.
- 26 (6) If a statement required to be filed under this section has not been received by the commis-
- 27 sion within five days after the date the statement is due, the commission shall notify the public of-
- 28 ficial or candidate and give the public official or candidate not less than 15 days to comply with the
- 29 requirements of this section. If the public official or candidate fails to comply by the date set by the
- 30 commission, the commission may impose a civil penalty as provided in ORS 244.350.

31
32 (Oregon Climate Board)

33
34 **SECTION 7. (1) In order to ensure close correspondence among the Climate Policy Office,**

35 **the public interest and state climate policies, there is created the Oregon Climate Board.**

36 **(2) The following shall serve as nonvoting, ex officio members of the board:**

37 **(a) One member jointly appointed by the President of the Senate and the Speaker of the**

38 **House of Representatives who is a member of either the Senate or the House of Represen-**

39 **tatives and who is also a member of the Republican party and serves as a member of a**

40 **committee of the Legislative Assembly related to climate;**

41 **(b) One member jointly appointed by the President of the Senate and the Speaker of the**

42 **House of Representatives who is a member of either the Senate or the House of Represen-**

43 **tatives and who is also a member of the Democratic party and serves as a member of a**

44 **committee of the Legislative Assembly related to climate;**

45 **(c) One member who represents the Oregon Climate Change Research Institute;**

- 1 (d) The chairperson of the Environmental Justice Task Force;
- 2 (e) The Director of Agriculture;
- 3 (f) The Director of the Department of Environmental Quality;
- 4 (g) A member of the Public Utility Commission;
- 5 (h) The Director of Transportation;
- 6 (i) The Director of the Housing and Community Services Department;
- 7 (j) The Water Resources Director;
- 8 (k) The Director of the State Department of Energy;
- 9 (L) The Director of the Oregon Health Authority; and
- 10 (m) The State Forester.

11 (3) The Governor shall appoint nine voting members to the board, subject to confirmation
12 by the Senate as provided in ORS 171.562 and 171.565. Members of the board appointed under
13 this subsection must be residents of this state well informed in energy and climate issues
14 and shall include the following:

- 15 (a) One member who is a tribal representative;
- 16 (b) Two members who have expertise in the energy sector;
- 17 (c) One member who represents environmental interests;
- 18 (d) One member who is an economist or who has experience and expertise in conserva-
19 tion finance;
- 20 (e) One member who has expertise in industrial energy use;
- 21 (f) One member with expertise in sustainable transportation issues; and
- 22 (g) Two at-large members.

23 **SECTION 8.** (1) The term of office of each voting member appointed to the Oregon Cli-
24 mate Board is four years, but the members of the board may be removed by the Governor.
25 Before the expiration of the term of a voting member, the Governor shall appoint a succes-
26 sor to assume the duties of the voting member on July 1 of the next following year.

27 (2) A voting member is eligible for reappointment, but no voting member may serve more
28 than two consecutive terms. In case of a vacancy for any cause, the Governor shall make
29 an appointment to become immediately effective for the unexpired term.

30 (3) The Governor shall select one of the voting members as chairperson and another as
31 vice chairperson, for terms and with duties and powers necessary for the performance of the
32 functions of the offices as the board determines.

33 (4) A majority of the voting members of the board constitutes a quorum for the trans-
34 action of business.

35 (5) The board shall meet once during each calendar quarter at a time and place deter-
36 mined by the chairperson. The board shall endeavor to hold meetings at various locations
37 throughout this state. The board may hold additional meetings at times and places deter-
38 mined by the chairperson or the Director of the Climate Policy Office, or as requested by a
39 majority of the voting members.

40 (6)(a) Members of the board who are not members of the Legislative Assembly are not
41 entitled to compensation but may be reimbursed from funds available to the board for actual
42 and necessary travel and other expenses the members incur in the performance of the
43 members' official duties in the manner and amount provided in ORS 292.495.

44 (b) Members of the committee who are members of the Legislative Assembly shall be
45 entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from

1 funds appropriated to the Legislative Assembly.

2 **SECTION 9. Notwithstanding the term of office specified by section 8 of this 2019 Act,**
3 **of the voting members first appointed by the Governor to the Oregon Climate Board:**

4 (1) Two shall serve for terms ending July 1, 2020.

5 (2) Two shall serve for terms ending July 1, 2021.

6 (3) Two shall serve for terms ending July 1, 2022.

7 (4) Three shall serve for terms ending July 1, 2023.

8 **SECTION 10. (1) The Oregon Climate Board shall:**

9 (a) Advise the Climate Policy Office regarding:

10 (A) The implementation, administration and enforcement of the programs and activities
11 of the Climate Policy Office; and

12 (B) The development of the rules and policies of the office under sections 15 to 40 and
13 54 to 59 of this 2019 Act; and

14 (b) Carry out any other duties, functions and powers vested in the office by law.

15 (2) In advising the office pursuant to subsection (1)(a) of this section, the board shall take
16 into consideration best available science. As used in this subsection, “best available
17 science” means science that:

18 (a) Maximizes the quality, objectivity and integrity of information, including statistical
19 information;

20 (b) Uses peer-reviewed and publicly available data; and

21 (c) Clearly documents and communicates risks and uncertainties in scientific citations.

22 (3) The board shall hold public hearings and provide an opportunity for public comment
23 in carrying out the board’s activities under this section.

24 (4) The office shall provide clerical, technical and management personnel to serve the
25 board. Other agencies shall provide support as requested by the office or the board.

26 (5) The board may adopt by rule such standards and procedures as the board considers
27 necessary for the operation of the board.

28
29 (Enforcement)

30
31 **SECTION 11. Enforcement procedures; status of procedures.** (1) Whenever the Climate
32 Policy Office has good cause to believe that any person is engaged in or is about to engage
33 in any acts or practices that constitute a violation of sections 15 to 40 of this 2019 Act, or
34 any rule, standard or order adopted or entered pursuant sections 15 to 40 of this 2019 Act,
35 the office may institute actions or proceedings for legal or equitable remedies to enforce
36 compliance or to restrain further violations.

37 (2) The proceedings authorized by subsection (1) of this section may be instituted without
38 the necessity of prior agency notice, hearing and order, or during an agency hearing if the
39 hearing has been initially commenced by the office.

40 (3) The provisions of this section are in addition to and not in substitution of any other
41 civil or criminal enforcement provisions available to the office.

42 **SECTION 12. Civil penalties.** (1) As used in this section:

43 (a) “Intentional” means conduct by a person with a conscious objective to cause the re-
44 sult of the conduct.

45 (b) “Reckless” means conduct by a person who is aware of and consciously disregards a

1 substantial and unjustifiable risk that the result will occur or that the circumstance exists.
2 The risk must be of such nature and degree that disregard thereof constitutes a gross devi-
3 ation from the standard of care a reasonable person would observe in that situation.

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

6 (a) A violation of a provision of sections 15 to 40 of this 2019 Act or rules adopted under
7 sections 15 to 40 of this 2019 Act.

8 (b) Submitting any record, information or report required by sections 15 to 40 of this 2019
9 Act or rules adopted under sections 15 to 40 of this 2019 Act that falsifies or conceals a
10 material fact or makes any false or fraudulent representation.

11 (3) Each day of violation under subsection (2) of this section constitutes a separate of-
12 fense.

13 (4)(a) The office shall adopt by rule a schedule of civil penalties that may be imposed for
14 violations described in subsection (2) of this section. Except as provided in paragraphs (b)
15 and (c) of this subsection, a civil penalty may not exceed \$10,000 per offense.

16 (b) Except as provided in paragraph (c) of this subsection, the civil penalty for a violation
17 described in subsection (2) of this section arising from an intentional, reckless or negligent
18 act may not exceed \$25,000 per offense.

19 (c) In addition to any other civil penalty provided by law, the civil penalty for a violation
20 described in subsection (2) of this section may include an amount equal to an estimate of the
21 economic benefit received as a result of the violation.

22 (5) In imposing a civil penalty pursuant to this section, the office shall consider the fol-
23 lowing factors:

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

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

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

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

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

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

31 (g) Whether the cause of the violation was an unavoidable accident, negligence or an in-
32 tentional act.

33 (h) The person's cooperativeness and efforts to correct the violation.

34 (i) Whether the person incurring the civil penalty gained an economic benefit as a result
35 of the violation.

36 (6) Civil penalties under this section must be imposed in the manner provided by ORS
37 183.745. All civil penalties recovered under this section shall be paid to the Oregon Depart-
38 ment of Administrative Services for deposit with the State Treasurer to the credit of the
39 Oregon Climate Action Program Operating Fund established under section 39 of this 2019
40 Act and may be used only pursuant to section 39 (3) of this 2019 Act.

41 **SECTION 13.** ORS 468.953 is amended to read:

42 468.953. (1) A person commits the crime of supplying false information to any agency if the
43 person:

44 (a) Makes any false material statement, representation or certification knowing it to be false,
45 in any application, notice, plan, record, report or other document required by any provision of ORS

1 chapter 465, 466, 468, 468A or 468B **or sections 15 to 40 of this 2019 Act** or any rule adopted
2 pursuant to ORS chapter 465, 466, 468, 468A or 468B **or sections 15 to 40 of this 2019 Act**;

3 (b) Omits any material or required information, knowing it to be required, from any document
4 described in paragraph (a) of this subsection; or

5 (c) Alters, conceals or fails to file or maintain any document described in paragraph (a) of this
6 subsection in knowing violation of any provision of ORS chapter 465, 466, 468, 468A or 468B **or**
7 **sections 15 to 40 of this 2019 Act** or any rule adopted pursuant to ORS chapter 465, 466, 468, 468A
8 or 468B **or sections 15 to 40 of this 2019 Act**.

9 (2) Supplying false information is a Class C felony.

10
11 **OREGON CLIMATE ACTION PROGRAM**

12 **(Statement of Purpose)**

13
14 **SECTION 14.** (1) **The Legislative Assembly finds and declares that the purposes of**
15 **sections 14, 15 to 40, 41 to 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 to 59, 60 and 61 of this 2019 Act**
16 **are:**

17 (a) **To achieve a reduction in total levels of regulated emissions under sections 15 to 40**
18 **of this 2019 Act to at least 45 percent below 1990 emissions levels by 2035 and to achieve a**
19 **reduction in total regulated emissions levels to at least 80 percent below 1990 emissions levels**
20 **by 2050;**

21 (b) **To promote greenhouse gas emissions sequestration and mitigation;**

22 (c) **To promote the adaptation and resilience of natural and working lands, fish and**
23 **wildlife resources, communities, the economy and this state’s infrastructure in the face of**
24 **climate change and ocean acidification; and**

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

28 (2) **Sections 14, 15 to 40, 41 to 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 to 59, 60 and 61 of this**
29 **2019 Act and the rules adopted pursuant to sections 14, 15 to 40, 41 to 45, 46, 47, 48, 49, 50,**
30 **51, 52, 53, 54 to 59, 60 and 61 of this 2019 Act may not be interpreted to limit the authority**
31 **of any state agency to adopt and implement measures to reduce greenhouse gas emissions.**

32
33 **(Greenhouse Gas Cap and Market-Based Compliance Mechanism)**

34
35 **SECTION 15. Definitions.** **As used in sections 14 and 15 to 40 of this 2019 Act:**

36 (1) **“Aggregation” means an approach for qualifying and quantifying offset projects, for**
37 **the purposes of reducing costs and increasing the development of offset projects, that allows**
38 **for the grouping together of two or more geographically separate activities undertaken by**
39 **one or more parties that result in reductions or removals of greenhouse gases in a similar**
40 **manner.**

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

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

45 (4) **“Anthropogenic greenhouse gas emissions” means greenhouse gas emissions that are**

1 not biogenic emissions.

2 (5) “Best available science” means science that:

3 (a) Maximizes the quality, objectivity and integrity of information, including statistical
4 information;

5 (b) Uses peer-reviewed and publicly available data; and

6 (c) Clearly documents and communicates risks and uncertainties in scientific citations.

7 (6) “Biogenic emissions” means carbon dioxide emissions generated from the combustion
8 of biomass-derived fuels.

9 (7) “Biomass-derived fuels” includes:

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

12 (b) Products, by-products, residues or waste from agriculture, forestry or related indus-
13 tries; and

14 (c) The nonfossilized and biodegradable organic fractions of industrial and municipal
15 wastes, including gases and liquids recovered from:

16 (A) The decomposition of nonfossilized and biodegradable organic material originating
17 from plants, animals or microorganisms; or

18 (B) Municipal solid waste disposed of in a landfill.

19 (8)(a) “Business unit” means a business operation that is located at a facility permitted
20 as a single air contamination source under ORS 468.065, 468A.040 or 468A.155, but that is
21 distinguishable from one or more other business operations located at the facility by:

22 (A) The short title and six-digit code in the North American Industry Classification Sys-
23 tem applicable to the business operation;

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

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

29 (b) “Business unit” does not mean a cogeneration facility.

30 (9) “Carbon dioxide equivalent” means the amount of carbon dioxide by weight that would
31 produce the same global warming impact as a given weight of another greenhouse gas, based
32 on considerations including but not limited to the best available science, including informa-
33 tion from the Intergovernmental Panel on Climate Change.

34 (10) “Compliance instrument” means one allowance or one offset credit that may be used
35 to fulfill a compliance obligation.

36 (11) “Compliance obligation” means the quantity of regulated emissions that are attrib-
37 utable to a covered entity, and for which compliance instruments must be retired, for a
38 compliance period.

39 (12) “Consumer-owned utility” has the meaning given that term in ORS 757.270.

40 (13) “Covered entity” means a person that is designated by the Climate Policy Office as
41 subject to the Oregon Climate Action Program.

42 (14) “Direct environmental benefits in this state” means:

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

45 (b) A reduction in or avoidance of pollution of any of the waters of the state, as the

1 terms “pollution” and “the waters of the state” are defined in ORS 468B.005; or

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

3 (15) “EITE entity” means a covered entity or an opt-in entity that is engaged in the
4 manufacture of goods through one or more emissions-intensive, trade-exposed processes, as
5 further designated by the office pursuant to section 24 of this 2019 Act.

6 (16) “Electric company” has the meaning given that term in ORS 757.600.

7 (17) “Electricity service supplier” has the meaning given that term in ORS 757.600.

8 (18) “Electric system manager” includes any entity that, as needed, operates or markets
9 electricity generating facilities, or purchases wholesale electricity, to manage the load for
10 wholesale or retail electricity customers within a balancing authority area that is at least
11 partially located in Oregon, including but not limited to the following types of entities:

12 (a) Electric companies.

13 (b) Electricity service suppliers.

14 (c) Consumer-owned utilities.

15 (d) The Bonneville Power Administration.

16 (e) Electric generation and transmission cooperatives.

17 (19) “Eligible Indian tribe” means each of the Burns Paiute Tribe, the Confederated
18 Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand
19 Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Con-
20 federated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm
21 Springs Reservation of Oregon, the Coquille Indian Tribe, the Cow Creek Band of Umpqua
22 Tribe of Indians and the Klamath Tribes.

23 (20) “General market participant” means a person that is not a covered entity or an
24 opt-in entity and that intends to purchase, hold, sell or voluntarily surrender compliance
25 instruments.

26 (21) “Greenhouse gas” includes, but is not limited to, carbon dioxide, methane, nitrous
27 oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.

28 (22) “Impacted community” means a community at risk of being disproportionately im-
29 pacted by climate change as designated by the office under section 33 of this 2019 Act.

30 (23) “Indian trust lands” means lands within this state held in trust by the United States
31 for the benefit of an eligible Indian tribe or individual members of an eligible Indian tribe.

32 (24) “Multistate jurisdictional electric company” means an electric company that serves
33 electricity customers in both Oregon and one or more other states.

34 (25) “Natural and working lands” means:

35 (a) Lands and waters:

36 (A) Actively used by an agricultural owner or operator for an agricultural operation that
37 includes, but need not be limited to, active engagement in farming or ranching;

38 (B) Producing forest products;

39 (C) Consisting of forests, woodlands, grasslands, sagebrush steppes, deserts, freshwater
40 and riparian systems, wetlands, coastal and estuarine areas, the submerged and submersible
41 lands within Oregon’s territorial sea, watersheds, wildlands or wildlife habitats; or

42 (D) Used for recreational purposes such as parks, urban and community forests, trails,
43 greenbelts and other similar open space land; and

44 (b) Lands and waters described in paragraph (a) of this subsection that are Indian trust
45 lands or lands within the boundaries of the reservation of an eligible Indian tribe.

1 (26) “Natural gas supplier” means any entity that is not a natural gas utility and:

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

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

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

6 (28) “Offset credit” means a tradable credit generated by an offset project that repres-
7 ents a greenhouse gas emissions reduction or removal of one metric ton of carbon dioxide
8 equivalent.

9 (29) “Offset project” means a project that reduces or removes greenhouse gas emissions
10 that are not regulated emissions.

11 (30) “Opt-in entity” means a person that is not designated as a covered entity by the of-
12 fice and that voluntarily chooses to participate in the Oregon Climate Action Program as if
13 the entity were a covered entity.

14 (31) “Oregon Climate Action Program” means the program adopted by rule by the office
15 under section 16 (1) of this 2019 Act and in accordance with the provisions of sections 15 to
16 40 of this 2019 Act.

17 (32) “Permitted air contamination source” means an air contamination source as defined
18 in ORS 468A.005 for which a permit is issued by the Department of Environmental Quality
19 pursuant to ORS 468.065, 468A.040 or 468A.155.

20 (33) “Person” includes individuals, corporations, associations, firms, partnerships, joint
21 stock companies, public and municipal corporations, political subdivisions, the state and any
22 agencies thereof and the federal government and any agencies thereof.

23 (34) “Registered entity” means a covered entity, opt-in entity or general market partic-
24 ipant that has successfully registered to participate in the Oregon Climate Action Program.

25 (35) “Regulated emissions” means the verified anthropogenic greenhouse gas emissions
26 reported by or assigned to a covered entity or opt-in entity under ORS 468A.280 that the of-
27 fice determines by rule are anthropogenic greenhouse gas emissions regulated under sections
28 15 to 40 of this 2019 Act.

29 (36) “Surrender” means to transfer a compliance instrument to the office to fulfill a
30 compliance obligation or on a voluntary basis.

31 **SECTION 16. Adoption of program; general provisions.** (1)(a) The Climate Policy Office
32 shall adopt an Oregon Climate Action Program by rule in accordance with ORS chapter 183
33 and sections 15 to 40 of this 2019 Act. The program shall:

34 (A) Place a cap on the total anthropogenic greenhouse gas emissions that are regulated
35 emissions through setting annual allowance budgets for 2021 to 2050; and

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

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

40 (B) Beginning in 2022 and for each following year until and including 2035, the number
41 of allowances available in each annual allowance budget shall decline by a constant amount
42 as necessary to accomplish a reduction in total regulated emissions levels to at least 45
43 percent below 1990 emissions levels by 2035.

44 (C) Beginning in 2036 and for each following year until and including 2050, the number
45 of allowances available in each annual allowance budget shall decline by a constant amount

1 as necessary to accomplish a reduction in total regulated emissions levels to at least 80
2 percent below 1990 emissions levels by 2050.

3 (c) The office shall calculate baseline emissions to be equal to a forecast of regulated
4 emissions for 2021, informed by the three-year average of the total, expressed in metric tons
5 of carbon dioxide equivalent, of anthropogenic greenhouse gas emissions attributable to all
6 persons that the office designates to be covered entities under the program. In calculating
7 baseline emissions, the office shall use greenhouse gas emissions information from the three
8 most recent years prior to 2021 for which greenhouse gas emissions information is available
9 and confirmed by the office. The office shall exclude from the calculation of baseline emis-
10 sions those greenhouse gas emissions during the three most recent years prior to 2021 that
11 would not have been regulated emissions if the Oregon Climate Action Program had been in
12 effect during the time that the greenhouse gas emissions occurred.

13 (2) Subject to section 17 of this 2019 Act, the office shall designate persons as covered
14 entities as follows:

15 (a) Except as provided in paragraphs (b) and (c) of this subsection, the office shall des-
16 ignate a permitted air contamination source as a covered entity if the annual regulated
17 emissions attributable to the air contamination source meet or exceed 25,000 metric tons of
18 carbon dioxide equivalent.

19 (b) For the purpose of regulating anthropogenic greenhouse gas emissions attributable
20 to the generation of electricity in this state, the office shall designate a permitted air con-
21 tamination source as a covered entity if the applicable code to the permitted air contam-
22 ination source under the North American Industry Classification System is 221112 and the
23 permitted air contamination source is a natural gas powered electric power generation fa-
24 cility, regardless of whether the annual regulated emissions attributable to the permitted air
25 contamination source meet or exceed 25,000 metric tons of carbon dioxide equivalent.

26 (c) If a permitted air contamination source is a facility composed of two or more business
27 units colocated with a cogeneration facility that generates energy utilized by the permitted
28 air contamination source, the office shall designate the permitted air contamination source
29 as a covered entity for each individual business unit with annual regulated emissions attrib-
30 utable to the business unit that meet or exceed 25,000 metric tons of carbon dioxide equiv-
31 alent. A person designated as a covered entity under this paragraph shall be a covered entity
32 only for addressing the annual regulated emissions attributable to the business units for
33 which the person is designated as a covered entity. For the purposes of this paragraph, the
34 office shall attribute to a business unit the annual regulated emissions from the cogeneration
35 facility colocated with the business unit that are proportionate to the annual energy usage
36 of the business unit.

37 (d) The office shall designate an electric system manager as a covered entity for the
38 purpose of addressing annual regulated emissions from outside this state that are attribut-
39 able to the generation of electricity that the electric system manager schedules for delivery
40 and consumption in this state, including wholesale market purchases for which the energy
41 source for the electricity is not known, and accounting for transmission and distribution line
42 losses. For the purposes of this paragraph, the office may adopt rules as necessary to ad-
43 dress electricity scheduled for delivery and consumption in this state through an energy
44 imbalance market or other centralized market administered by a market operator.

45 (e) The office shall designate a natural gas supplier as a covered entity for the purpose

1 of addressing annual regulated emissions that are attributable to the combustion of natural
2 gas that is sold by the natural gas supplier for use in this state and that is either directly
3 consumed by or resold to persons that are not designated as covered entities under para-
4 graph (a), (b) or (c) of this subsection.

5 (f) The office shall designate a natural gas utility as a covered entity for the purpose of
6 addressing annual regulated emissions that are attributable to the combustion of natural gas
7 that the natural gas utility imports, sells or distributes for use in this state and that are not
8 emissions accounted for through the regulation of permitted air contamination sources un-
9 der paragraph (a), (b) or (c) of this subsection or natural gas suppliers under paragraph (e)
10 of this subsection.

11 (g) The office shall designate as covered entities persons not described in paragraphs (e)
12 and (f) of this subsection that produce in Oregon, or import into Oregon, fuel that is sold
13 or distributed for use in this state, as necessary to address annual regulated emissions that
14 are attributable to the combustion of the fuel.

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

17 (a) Rules allowing for the trading of compliance instruments;

18 (b) Rules allowing registered entities to bank and carry forward allowances;

19 (c) Rules prohibiting the borrowing of allowances from future compliance periods;

20 (d) Rules allowing opt-in entities and general market participants to participate in the
21 Oregon Climate Action Program; and

22 (e) Compliance periods, standards for calculating compliance obligations and procedures
23 for covered entities and opt-in entities to fulfill their compliance obligations.

24 (4) The office shall require a covered entity or opt-in entity to surrender to the office the
25 quantity of compliance instruments necessary to fulfill the covered entity's or opt-in entity's
26 compliance obligation no later than the surrender date specified by the office by rule or or-
27 der.

28 (5) For purposes of determining the compliance obligation for a covered entity that is an
29 electric system manager, electricity scheduled by the electric system manager that is gen-
30 erated from a renewable energy resource, regardless of the disposition of the renewable en-
31 ergy certificate associated with the electricity, shall be considered to have the emissions
32 attributes of the underlying renewable energy resource.

33 (6) A natural gas utility or natural gas supplier that delivers natural gas to a customer
34 that is a covered entity or opt-in entity may not include in the rate or bill charged to the
35 customer any costs associated with compliance by the natural gas utility or natural gas
36 supplier with sections 15 to 40 of this 2019 Act.

37 (7) In addition to any penalty provided by law, rules adopted by the office:

38 (a) Shall require a covered entity or opt-in entity that fails to timely surrender to the
39 office a sufficient quantity of compliance instruments to fulfill a compliance obligation to
40 surrender to the office a number of compliance instruments that is in addition to the entity's
41 compliance obligation; and

42 (b) May establish a process for placing restrictions on the holding account of a registered
43 entity determined to have engaged in a violation described in section 12 of this 2019 Act.

44 (8) A compliance instrument issued by the office does not constitute property or a prop-
45 erty right.

1 (9)(a) All covered entities, opt-in entities and general market participants must register
2 as registered entities to participate in the Oregon Climate Action Program.

3 (b) The office shall adopt by rule registration requirements and any additional require-
4 ments necessary for registered entities to participate in auctions administered pursuant to
5 section 34 of this 2019 Act.

6 SECTION 17. Exemptions and exclusions. (1) The Climate Policy Office shall exempt from
7 regulation as a covered entity under sections 15 to 40 of this 2019 Act a cogeneration facility,
8 as defined in ORS 758.505, that is owned or operated by a public university listed in ORS
9 352.002 or by the Oregon Health and Science University established under ORS 353.020.

10 (2) The office shall exclude from regulated emissions under sections 15 to 40 of this 2019
11 Act:

12 (a) Greenhouse gas emissions from the combustion of fuel that is demonstrated to have
13 been used as aviation fuel or as fuel in watercraft or railroad locomotives; and

14 (b) The emissions attributable to a landfill, as defined in ORS 459.005.

15 (3) For purposes of section 16 (2)(g) of this 2019 Act, the office may exempt from desig-
16 nation as a covered entity any person that imports in a calendar year less than a de minimis
17 amount of gasoline and diesel fuel, in total, as determined by the office by rule. Gasoline and
18 diesel fuel imported by persons that are related or share common ownership or control shall
19 be aggregated in determining whether a person may be exempted under this subsection.

20 SECTION 18. Allocation of allowances, generally. (1) The Climate Policy Office shall al-
21 locate the allowances available in each annual allowance budget as follows:

22 (a) The office shall allocate a number of the allowances for deposit in an allowance price
23 containment reserve.

24 (b) The office may allocate a number of the allowances for deposit in a voluntary
25 renewable electricity generation reserve. The office shall adopt rules for the distribution of
26 allowances from the voluntary renewable electricity generation reserve for voluntary
27 renewable electricity generated by generating facilities that begin operations on or after
28 January 1, 2021.

29 (c) The office shall allocate a number of the allowances for retirement pursuant to sec-
30 tion 19 of this 2019 Act.

31 (d) The office shall allocate a number of the allowances for direct distribution at no cost
32 to covered entities that are electric companies pursuant to rules adopted under section 20
33 of this 2019 Act.

34 (e) The office shall allocate a number of the allowances for direct distribution at no cost
35 to covered entities that are electric system managers other than electric companies pursu-
36 ant to section 21 of this 2019 Act.

37 (f) The office shall allocate a number of the allowances for deposit in an electricity price
38 containment reserve. Allowances may be directly distributed at no cost from the electricity
39 price containment reserve only when the distribution is necessary to protect electricity
40 ratepayers from cost increases associated with unexpected increases in regulated emissions
41 attributable to an electric system manager that are outside of the control of the electric
42 system manager, including but not limited to unexpected increases in regulated emissions
43 due to hydroelectric power generation variability. The office shall adopt rules for electric
44 system managers to apply for direct distribution at no cost of allowances from the electricity
45 price containment reserve. The rules shall prioritize distribution of allowances from the

1 electricity price containment reserve to electric system managers that experience unex-
2 pected increases in regulated emissions attributable to variation in hydroelectric power
3 generation to serve the load of electricity customers in Oregon.

4 (g) The office shall allocate a number of the allowances for direct distribution at no cost
5 to covered entities that are natural gas utilities pursuant to rules adopted under section 23
6 of this 2019 Act.

7 (h) In order to mitigate leakage and pursuant to sections 24 and 26 of this 2019 Act, the
8 office shall allocate a number of the allowances for direct distribution at no cost to covered
9 entities and opt-in entities that are EITE entities.

10 (i) The office shall allocate a number of the allowances for deposit in an emissions-
11 intensive, trade-exposed process reserve. Allowances in the emissions-intensive, trade-
12 exposed process reserve may be directly distributed at no cost only to:

13 (A) EITE entities pursuant to rules adopted under section 26 (8) of this 2019 Act; or

14 (B) An EITE entity designated as such pursuant to section 24 (2)(a) of this 2019 Act.

15 (j) The office may allocate a number of the allowances for deposit in any other reserves
16 or accounts that the office establishes by rule and as the office determines is necessary.

17 (k) The office shall allocate the allowances that are not otherwise allocated pursuant to
18 paragraphs (a) to (j) of this subsection for deposit in an auction holding account for auction
19 pursuant to section 34 of this 2019 Act. If allowances deposited in the auction holding account
20 under this paragraph remain unsold after two or more consecutive auctions held pursuant
21 to section 34 of this 2019 Act, the office may redistribute the unsold allowances to the al-
22 lowance price containment reserve described in subsection (1)(a) of this section.

23 (2) The receipt by a covered entity of an allowance directly distributed by the office at
24 no cost to the covered entity is exempt from taxation under ORS chapters 316, 317 and 318.

25 **SECTION 19. Retirement of allowances.** (1) Beginning in 2021 and for each following year
26 until and including 2026, the Climate Policy Office shall retire from the annual allowance
27 budget, on behalf of a covered entity described in section 16 (2)(b) of this 2019 Act, a number
28 of allowances equal to the regulated emissions that are attributable to the generation in this
29 state by the covered entity of electricity that is:

30 (a) Delivered to and consumed in another state, accounting for transmission and dis-
31 tribution line losses; and

32 (b) For which the capital and fuel costs associated with the generation are included in
33 the rates of a multistate jurisdictional electric company that are charged to electricity cus-
34 tomers in a state other than Oregon.

35 (2) Beginning in 2021 and for each following year until and including 2050, the office shall
36 retire from the annual allowance budget, on behalf of a covered entity that is an electric
37 system manager, a number of allowances equal to the regulated emissions attributable to a
38 consumer-owned utility, if the three-year average of the annual anthropogenic greenhouse
39 gas emissions attributable to electricity that is scheduled, by the consumer-owned utility or
40 by an electric generation and transmissions cooperative, for final delivery by the consumer-
41 owned utility for consumption in this state is less than 25,000 metric tons of carbon dioxide
42 equivalent.

43 (3) Allowances directly retired by the office on behalf of a covered entity under this sec-
44 tion shall count toward fulfilling the covered entity's compliance obligation for the compli-
45 ance period during which the allowances are directly retired.

1 **SECTION 20. Direct distribution of allowances for electric companies.** The Climate Policy
2 Office shall, in consultation with the Public Utility Commission, adopt rules for allocating
3 allowances for direct distribution at no cost to covered entities that are electric companies.
4 Direct distributions under this section must be for the exclusive benefit of retail customers
5 that are supplied electricity by the electric company. Rules adopted under this section must
6 allow for an electric company to use allowances directly distributed under this section to
7 fulfill the compliance obligation associated with electricity supplied by the electric company
8 to serve the load of the electric company's retail customers in Oregon, subject to the over-
9 sight of the commission. The rules must include provisions necessary to implement direct
10 distributions of allowances to electric companies as follows:

11 (1)(a) For the purpose of aligning the effects of sections 15 to 40 of this 2019 Act with the
12 trajectory of emissions reductions by electric companies resulting from the requirements of
13 ORS 469A.005 to 469A.210 and 757.518:

14 (A) The annual direct distributions to an electric company during 2021 and for each fol-
15 lowing year until and including 2029 must be in a number of allowances such that the electric
16 company receives a total direct distribution of allowances over that time period equal to 100
17 percent of the electric company's forecast regulated emissions for 2021 and for each following
18 year until and including 2029 associated with the electricity supplied to serve the load of the
19 electric company's retail customers in Oregon; and

20 (B) The direct distribution to an electric company during 2030 must be in a number of
21 allowances equal to 100 percent of the electric company's forecast regulated emissions asso-
22 ciated with the electricity supplied to serve the load of the electric company's retail elec-
23 tricity customers in Oregon for the calendar year 2030.

24 (b) For purposes of this subsection, forecast regulated emissions for an electric company
25 must be based on or contained in the following, as of January 1, 2021:

26 (A) The most recent integrated resource plan filed by the electric company and ac-
27 knowledged by order by the commission;

28 (B) Any updates to the integrated resource plan filed by the electric company with the
29 commission; or

30 (C) In the case of a multistate jurisdictional electric company, other information devel-
31 oped consistent with a methodology approved by the commission.

32 (2) Beginning in 2031 and for each following year until and including 2050, the direct dis-
33 tribution to an electric company under this section shall decline annually from the number
34 of allowances directly distributed to the electric company in 2030 by a constant amount, as
35 necessary to reduce the annual direct distributions such that the direct distribution in 2050
36 is a number of allowances equal to 20 percent of the average of the annual emissions of the
37 electric company for the five most recent years prior to the effective date of this 2019 Act,
38 as reported under ORS 468A.280.

39 **SECTION 21. Direct distribution of allowances for certain electric system managers.** (1)
40 The Climate Policy Office shall allocate allowances for direct distribution at no cost to cov-
41 ered entities that are electric system managers other than electric companies as follows:

42 (a) The direct distribution to an electric system manager under this subsection during
43 2021 shall be in a number of allowances equal to 100 percent of the anthropogenic greenhouse
44 gas emissions that are:

45 (A) The electric system manager's 2021 baseline emissions attributable to electricity

1 scheduled by the electric system manager for final delivery by consumer-owned utilities for
2 consumption in this state; and

3 (B) Not regulated emissions for which the office has retired allowances pursuant to sec-
4 tion 19 of this 2019 Act.

5 (b) Beginning in 2022 and for each following year until and including 2050, the direct dis-
6 tribution received by an electric system manager for emissions described in paragraph (a)
7 of this subsection shall decline annually by a constant amount proportionate to the decline
8 in the number of allowances available in annual allowance budgets pursuant to section 16
9 (1)(b) of this 2019 Act.

10 (c) Notwithstanding paragraph (b) of this subsection, the direct distribution to an electric
11 system manager in any year may not be in a number of allowances that is less than 20 per-
12 cent of the number of allowances directly distributed to the electric system manager in 2021.

13 (2) Proceeds from the sale by a consumer-owned utility of allowances distributed at no
14 cost under this section must be used by the consumer-owned utility for the benefit of
15 ratepayers, in furtherance of the purposes set forth in section 14 of this 2019 Act and as
16 further required by the governing body of the consumer-owned utility.

17 (3) The governing body of a consumer-owned utility that receives or sells directly dis-
18 tributed allowances under this section shall, no later than September 15 of each even-
19 numbered year, submit a report to the Joint Committee on Climate Action on the use by the
20 consumer-owned utility of the directly distributed allowances. The report must include, but
21 not be limited to, a description of the uses by the consumer-owned utility of proceeds from
22 the sale of allowances distributed to the consumer-owned utility under this section.

23 **SECTION 22. 2021 emissions baseline for electric system managers.** In determining the
24 baseline of anthropogenic greenhouse gas emissions for 2021 for an electric system manager
25 as required by section 21 (1)(a)(A) of this 2019 Act, the Climate Policy Office shall consider:

26 (1) Anthropogenic greenhouse gas emissions information available for the electric system
27 manager for representative years prior to 2021, as reported under ORS 468A.280;

28 (2) Hydroelectric power generation variability;

29 (3) Increases in load requirements anticipated to occur on or before January 1, 2025, due
30 to acquisitions of large industrial customers not previously served by the electric system
31 manager; and

32 (4) Any other indicators of changes in load requirements on or before January 1, 2025,
33 that are relevant to determining an electric system manager's 2021 baseline anthropogenic
34 greenhouse gas emissions.

35 **SECTION 23. Direct distribution of allowances for natural gas utilities.** (1) The Climate
36 Policy Office shall, in consultation with the Public Utility Commission, adopt rules for allo-
37 cating allowances for direct distribution at no cost to covered entities that are natural gas
38 utilities.

39 (2) Rules adopted under this section must allow for a natural gas utility to receive, di-
40 rectly distributed at no cost, a number of allowances equal to the regulated emissions at-
41 tributable to the provision of natural gas service to the natural gas utility's low-income
42 residential sales customers. By January 1 of the first year of each compliance period, the
43 office shall determine, after consultation with the commission, the quantity of allowances to
44 distribute directly at no cost to a natural gas utility under this subsection. Allowances dis-
45 tributed to a natural gas utility under this subsection must be used by the natural gas utility

1 only to fulfill a compliance obligation, with the benefit of the use accruing to the natural gas
2 utility's low-income residential sales customers in a manner authorized by the commission
3 pursuant to section 70 of this 2019 Act.

4 (3) Subject to subsection (4) of this section and in addition to the direct distribution
5 provided under subsection (2) of this section, rules adopted under this section must allow for
6 a natural gas utility to receive directly distributed allowances at no cost as follows:

7 (a) The annual direct distribution to a natural gas utility during 2021 must be a number
8 of allowances equal to 60 percent of the weather normalized anthropogenic greenhouse gas
9 emissions forecast, for 2021, to be regulated emissions attributable to the natural gas utility.

10 (b) Beginning in 2022 and for each following year until and including 2050, the direct dis-
11 tribution received by a natural gas utility for emissions described in paragraph (a) of this
12 subsection shall decline annually by a constant amount proportionate to the decline in the
13 number of allowances available in annual allowance budgets pursuant to section 16 (1)(b) of
14 this 2019 Act.

15 (4) The total annual direct distribution of allowances to a natural gas utility under sub-
16 sections (2) and (3) of this section may not exceed a number of allowances equal to 75 percent
17 of the weather normalized anthropogenic greenhouse gas emissions attributable to the na-
18 tural gas utility for the year that the allowances are to be directly distributed. The office
19 shall reduce the number of allowances directly distributed under subsection (3) of this sec-
20 tion for a year if necessary to comply with this subsection.

21 (5) The office shall require a natural gas utility to consign all allowances directly dis-
22 tributed under subsection (3) of this section to the state to be auctioned pursuant to section
23 34 of this 2019 Act.

24 **SECTION 24. Designation of covered entities and opt-in entities engaged in emissions-**
25 **intensive, trade-exposed processes as EITE entities.** (1) The Climate Policy Office shall des-
26 ignate a covered entity or opt-in entity as an EITE entity, if the covered entity or opt-in
27 entity is a permitted air contamination source and is engaged, as of the operative date of this
28 section and as may be verified by the office, in the manufacture of goods through one or
29 more of the following emissions-intensive, trade-exposed processes, as identified by industry
30 group and code in the North American Industry Classification System:

31 (a) Aerospace Product and Parts Manufacturing, code 3364.

32 (b) Basic Chemical Manufacturing, code 3251.

33 (c) Cement and Concrete Product Manufacturing, code 3273.

34 (d) Foundries, code 3315.

35 (e) Fruit and Vegetable Preserving and Specialty Food Manufacturing, code 3114.

36 (f) Glass and Glass Product Manufacturing, code 3272.

37 (g) Iron and Steel Mills and Ferroalloy Manufacturing, code 3311.

38 (h) Lime and Gypsum Product Manufacturing, code 3274.

39 (i) Nonmetallic Mineral Mining and Quarrying, code 2123.

40 (j) Other Nonmetallic Mineral Product Manufacturing, code 3279.

41 (k) Plastics Product Manufacturing, code 3261.

42 (L) Pulp, Paper, and Paperboard Mills, code 3221.

43 (m) Sawmills and Wood Preservation, code 3211.

44 (n) Semiconductor and Other Electronic Component Manufacturing, code 3344.

45 (o) Veneer, Plywood, and Engineered Wood Product Manufacturing, code 3212.

1 (2)(a) The office shall adopt by rule a procedure for designating as an EITE entity a
2 covered entity or opt-in entity that:

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

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

8 (b) The office may hire or contract with a third-party organization to assist the office in
9 gathering data and conducting analyses as necessary to carry out the procedure required by
10 this subsection.

11 (c) Rules adopted under this subsection may allow for the office to assign a good manu-
12 factured by a covered entity or opt-in entity designated as an EITE entity pursuant to this
13 subsection a temporary benchmark, consistent with the processes for calculating
14 benchmarks under section 26 of this 2019 Act, and to adjust the temporary benchmark after
15 the close of the first compliance period for which the EITE entity must fulfill a compliance
16 obligation.

17 (3) A covered entity or opt-in entity that is a fossil fuel distribution and storage facility
18 or infrastructure, or an electric generating unit, may not be designated as an EITE entity
19 and may not receive allowances at no cost under section 26 of this 2019 Act.

20 **SECTION 25. Leakage risk study.** (1) No later than September 15, 2020, the Climate Policy
21 Office shall complete a study on the leakage risk of permitted air contamination sources in
22 this state that report annual verified anthropogenic greenhouse gas emissions under ORS
23 468A.280 of between 10,000 and 25,000 metric tons of carbon dioxide equivalent. The Director
24 of the Climate Policy Office may hire or contract with a third-party organization to assist
25 the office in gathering data and conducting analyses as necessary to assist the director in
26 carrying out the study required by this section.

27 (2) The purpose of the study shall be to evaluate the emissions intensiveness and trade
28 exposure of the permitted air contamination sources described in subsection (1) of this sec-
29 tion and to aid the office in implementing the process for designation of EITE entities
30 adopted by rule under section 24 (2) of this 2019 Act.

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

33 **SECTION 26. Direct distribution of allowances for EITE entities.** (1) As used in this sec-
34 tion, “annual benchmarked emissions calculation” means the product of an emissions effi-
35 ciency benchmark for a good or group of goods, multiplied by the EITE entity’s output,
36 during the calendar year prior to the calendar year in which allowances will be allocated for
37 direct distribution at no cost to the EITE entity, of the good or group of goods to which the
38 emissions efficiency benchmark applies.

39 (2) The annual allocation of allowances for direct distribution at no cost to an EITE en-
40 tity shall be a number of allowances equal to the sum total of the annual benchmarked
41 emissions calculations for the goods manufactured by the EITE entity, multiplied by 95 per-
42 cent.

43 (3) The Climate Policy Office shall establish, by order, the emissions efficiency
44 benchmarks for goods manufactured in this state by EITE entities.

45 (4) In establishing the emissions efficiency benchmarks, the office may:

1 (a) Establish an emissions efficiency benchmark separately for each individual good
2 manufactured in this state by an EITE entity; or

3 (b) Establish a single emissions efficiency benchmark for a group of goods manufactured
4 in this state by an EITE entity, if the office determines that the anthropogenic greenhouse
5 gas emissions attributable to the manufacture of each of the goods in the group:

6 (A) Are not materially different in quantity; or

7 (B) Cannot be distinguished as emissions attributable to any one of the goods in the
8 group.

9 (5)(a) The office shall establish emissions efficiency benchmarks based on recent years'
10 efficiency as provided in this subsection. An emissions efficiency benchmark established
11 based on recent years' efficiency shall be applicable for the period beginning January 1, 2021,
12 and ending December 31, 2024. To determine each emissions efficiency benchmark, the office
13 shall:

14 (A) Calculate the three-year average of the total, expressed in metric tons of carbon
15 dioxide equivalent, of the anthropogenic greenhouse gas emissions attributable to the man-
16 ufacture of the good or group of goods for which the EITE entity would have been the reg-
17 ulated covered entity if the Oregon Climate Action Program had been in effect during the
18 time that the anthropogenic greenhouse gas emissions occurred; and

19 (B) Divide the number calculated under subparagraph (A) of this paragraph by the
20 three-year average of the total annual output of the good or group of goods in this state by
21 the EITE entity, using output data from the three most recent years prior to 2021.

22 (b) In conducting the calculation required by paragraph (a)(A) of this subsection, the of-
23 fice shall use anthropogenic greenhouse gas emissions information from the three most re-
24 cent years prior to 2021 for which anthropogenic greenhouse gas emissions information is
25 available and verified by the office.

26 (6) An EITE entity may file with the office a written request for a contested case hearing
27 to challenge an order establishing the emissions efficiency benchmarks for goods produced
28 by the EITE entity. The request shall be filed within 30 days after the date the order was
29 entered. If an EITE entity requests a hearing, the hearing shall be conducted in accordance
30 with the provisions applicable to contested case proceedings under ORS chapter 183.

31 (7) In order to implement this section, the office shall adopt by rule:

32 (a) A means for attributing an EITE entity's anthropogenic greenhouse gas emissions to
33 the manufacture of individual goods or groups of goods;

34 (b) Requirements for EITE entities to provide any pertinent records necessary for the
35 office to verify output data; and

36 (c) A process for adjusting an allocation of allowances for direct distribution at no cost,
37 if necessary, to reconcile for output variability or type of good.

38 (8) The office shall adopt by rule a process for EITE entities to apply to the office for
39 an adjustment to the allocation of allowances for direct distribution at no cost that the EITE
40 entity may receive. The office may grant an adjustment under this subsection only for a
41 significant change beyond the control of the EITE entity in the anthropogenic greenhouse
42 gas emissions attributable to the manufacture of a good or group of goods in this state by
43 the EITE entity, based on a finding by the office that the adjustment is necessary to ac-
44 commodate changes to the manufacturing process that have a material impact on
45 anthropogenic greenhouse gas emissions. Rules adopted under this subsection may provide

1 for the office to contract with an external third-party expert to assist the office in making
2 individual determinations on applications for adjustments.

3 **SECTION 27. Operation of emissions efficiency benchmarks based on best available**
4 **technology.** (1) The amendments to section 26 of this 2019 Act by section 28 of this 2019 Act
5 become operative on January 1, 2025.

6 (2) The Climate Policy Office shall first establish, by order, emissions efficiency
7 benchmarks based on best available technology for EITE entities under the amendments to
8 section 26 of this 2019 Act by section 28 of this 2019 Act no later than January 1, 2024. An
9 order issued under this subsection may not become effective prior to January 1, 2025.

10 (3) The office may adopt or amend rules, issue orders or take any actions before the op-
11 erative date specified in subsection (1) of this section that are necessary to enable the office,
12 on and after the operative date specified in subsection (1) of this section, to carry out sub-
13 section (2) of this section and the amendments to section 26 by section 28 of this 2019 Act.

14 **SECTION 28.** Section 26 of this 2019 Act is amended to read:

15 **Sec. 26.** (1) As used in this section[,]:

16 (a) “Annual benchmarked emissions calculation” means the product of an emissions efficiency
17 benchmark for a good or group of goods, multiplied by the EITE entity’s output, during the calendar
18 year prior to the calendar year in which allowances will be allocated for direct distribution at no
19 cost to the EITE entity, of the good or group of goods to which the emissions efficiency benchmark
20 applies.

21 (b) “Best available technology” means the fuels, processes, equipment and technology
22 that will most effectively reduce the regulated emissions:

23 (A) For which an EITE entity must meet a compliance obligation; and

24 (B) That are associated with the manufacture by an EITE entity of a good, without
25 changing the characteristics of the good being manufactured, that is technically feasible,
26 commercially available, economically viable and compliant with all applicable laws.

27 (2) The annual allocation of allowances for direct distribution at no cost to an EITE entity shall
28 be a number of allowances equal to the sum total of the annual benchmarked emissions calculations
29 for the goods manufactured by the EITE entity, multiplied by 95 percent.

30 (3) The Climate Policy Office shall establish, by order, the emissions efficiency benchmarks for
31 goods manufactured in this state by EITE entities.

32 (4) In establishing the emissions efficiency benchmarks, the office may:

33 (a) Establish an emissions efficiency benchmark separately for each individual good manufac-
34 tured in this state by an EITE entity; or

35 (b) Establish a single emissions efficiency benchmark for a group of goods manufactured in this
36 state by an EITE entity, if the office determines that the anthropogenic greenhouse gas emissions
37 attributable to the manufacture of each of the goods in the group:

38 (A) Are not materially different in quantity; or

39 (B) Cannot be distinguished as emissions attributable to any one of the goods in the group.

40 *[(5)(a) The office shall establish emissions efficiency benchmarks based on recent years’ efficiency*
41 *as provided in this subsection. An emissions efficiency benchmark established based on recent years’*
42 *efficiency shall be applicable for the period beginning January 1, 2021, and ending December 31, 2024.*
43 *To determine each emissions efficiency benchmark, the office shall:]*

44 *[(A) Calculate the three-year average of the total, expressed in metric tons of carbon dioxide*
45 *equivalent, of the anthropogenic greenhouse gas emissions attributable to the manufacture of the good*

1 or group of goods for which the EITE entity would have been the regulated covered entity if the Oregon
2 Climate Action Program had been in effect during the time that the anthropogenic greenhouse gas
3 emissions occurred; and]

4 [(B) Divide the number calculated under subparagraph (A) of this paragraph by the three-year
5 average of the total annual output of the good or group of goods in this state by the EITE entity, using
6 output data from the three most recent years prior to 2021.]

7 [(b) In conducting the calculation required by paragraph (a)(A) of this subsection, the office shall
8 use anthropogenic greenhouse gas emissions information from the three most recent years prior to 2021
9 for which anthropogenic greenhouse gas emissions information is available and verified by the office.]

10 **(5)(a) The office shall establish emissions efficiency benchmarks based on best available
11 technology as provided in this subsection. The office shall update each emissions efficiency
12 benchmark once every nine years. Each emissions efficiency benchmark must represent the
13 anthropogenic greenhouse gas emissions that would be the resulting regulated emissions at-
14 tributable to an EITE entity for the manufacture of a good or group of goods in this state,
15 if the EITE entity were to use the best available technology, as of the date that the emis-
16 sions intensity benchmark was last updated, that materially contributes to the regulated
17 emissions of the EITE entity.**

18 **(b) In determining an emissions efficiency benchmark, the office shall consider:**

19 **(A) Any anthropogenic greenhouse gas emissions intensity audit reports specific to the
20 EITE entity submitted under paragraph (c) of this subsection;**

21 **(B) The commercial availability, technical feasibility and economic viability of options to
22 reduce anthropogenic greenhouse gas emissions, including whether pursuing those options
23 would lead to a substantial increase in leakage risk;**

24 **(C) The fuels, processes, equipment and technology used by facilities in this state or in
25 other jurisdictions to produce goods of comparable type, quantity and quality; and**

26 **(D) Barriers that would prevent adoption of best available technology by the EITE entity.**

27 **(c) An EITE entity may submit to the office, for consideration in adopting emissions ef-
28 ficiency benchmarks, an anthropogenic greenhouse gas emissions intensity audit report
29 produced by a qualified, independent third-party organization. The audit report must:**

30 **(A) Include an analysis of the current fuels, processes, equipment and technology that
31 materially contribute to the regulated emissions of the EITE entity attributable to the
32 manufacture of each good or group of goods by the EITE entity and the resulting emissions
33 intensity per unit of output for each good or group of goods.**

34 **(B) Include an analysis of the best available technology to produce the goods manufac-
35 tured by the EITE entity and the resulting anthropogenic greenhouse gas emissions intensity
36 per unit of output for each good or group of goods if best available technology were used by
37 the EITE entity. The analysis required by this subparagraph must, to the greatest extent
38 practical, consider the factors described in paragraph (b)(C) and (D) of this subsection.**

39 **(C) Based on the analyses required under subparagraphs (A) and (B) of this paragraph,
40 provide an estimate of the anthropogenic greenhouse gas emissions intensity per unit of
41 output to produce the same goods or groups of goods at the same facility if the facility used
42 the best available technology.**

43 **(6) An EITE entity may file with the office a written request for a contested case hearing to
44 challenge an order establishing the emissions efficiency benchmarks for goods produced by the EITE
45 entity. The request shall be filed within 30 days after the date the order was entered. If an EITE**

1 entity requests a hearing, the hearing shall be conducted in accordance with the provisions appli-
2 cable to contested case proceedings under ORS chapter 183.

3 (7) In order to implement this section, the office shall adopt by rule:

4 (a) A means for attributing an EITE entity's anthropogenic greenhouse gas emissions to the
5 manufacture of individual goods or groups of goods;

6 (b) Requirements for EITE entities to provide any pertinent records necessary for the office to
7 verify output data; and

8 (c) A process for adjusting an allocation of allowances for direct distribution at no cost, if nec-
9 essary, to reconcile for output variability or type of good.

10 (8) The office shall adopt by rule a process for EITE entities to apply to the office for an ad-
11 justment to the allocation of allowances for direct distribution at no cost that the EITE entity may
12 receive. The office may grant an adjustment under this subsection only for a significant change be-
13 yond the control of the EITE entity in the anthropogenic greenhouse gas emissions attributable to
14 the manufacture of a good or group of goods in this state by the EITE entity, based on a finding
15 by the office that the adjustment is necessary to accommodate changes to the manufacturing process
16 that have a material impact on anthropogenic greenhouse gas emissions. Rules adopted under this
17 subsection may provide for the office to contract with an external third-party expert to assist the
18 office in making individual determinations on applications for adjustments.

19 **SECTION 29. Benchmark report. No later than September 15, 2030, the Climate Policy**
20 **Office shall provide a report to the Joint Committee on Climate Action, in the manner pro-**
21 **vided in ORS 192.245, on the emissions efficiency benchmarks established pursuant to section**
22 **26 of this 2019 Act. The report may include recommendations for legislation. The report shall**
23 **assess:**

24 (1) **The anthropogenic greenhouse gas emissions intensity and trade exposure of covered**
25 **entities and opt-in entities that have been designated as EITE entities pursuant to section**
26 **24 of this 2019 Act;**

27 (2) **The anthropogenic greenhouse gas emissions reduction opportunities available to the**
28 **covered entities and opt-in entities described in subsection (1) of this section; and**

29 (3) **Whether the conclusions of the assessments required under subsections (1) and (2)**
30 **of this section warrant an adjustment to the methods of calculating the emissions efficiency**
31 **benchmarks developed pursuant to section 26 of this 2019 Act.**

32 **SECTION 30. Offsets generally; rules. (1) Offset projects:**

33 (a) **Must be located in the United States or approved by a jurisdiction with which the**
34 **State of Oregon has entered into a linkage agreement pursuant to section 38 of this 2019 Act;**

35 (b) **May not be otherwise required by law; and**

36 (c) **Must result in greenhouse gas emissions reductions or removals that:**

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

38 (B) **Are in addition to greenhouse gas emissions reductions or removals otherwise re-**
39 **quired by law or legally enforceable mandate and that exceed any other greenhouse gas**
40 **emissions reductions or removals that would otherwise occur in a conservative business-as-**
41 **usual scenario.**

42 (2)(a) **A total of no more than eight percent of a covered entity's or opt-in entity's com-**
43 **pliance obligation may be fulfilled by surrendering offset credits. A total of no more than**
44 **four percent of a covered entity's or opt-in entity's compliance obligation may be fulfilled by**
45 **surrendering offset credits generated by offset projects that do not provide direct environ-**

1 **mental benefits in this state.**

2 **(b) The Climate Policy Office may by rule adopt additional restrictions on the number**
3 **of offset credits that may be surrendered by a covered entity or opt-in entity that is a per-**
4 **mitted air contamination source and that is geographically located in an impacted commu-**
5 **nity if:**

6 **(A) The geographic area within which the permitted air contamination source is located**
7 **is also a nonattainment area and the permitted air contamination source substantially con-**
8 **tributes to or causes the nonattainment of air quality standards; or**

9 **(B) The permitted air contamination source is in violation of the terms or conditions of**
10 **any permit required or authorized under ORS 468.065 or ORS chapter 468A and issued by the**
11 **Department of Environmental Quality or a regional air quality control authority formed un-**
12 **der ORS 468A.105.**

13 **(3) The office shall adopt rules governing offset projects and the generation, issuance and**
14 **use of offset credits. The rules must:**

15 **(a) Provide for the development of offset protocols in a manner that enables the state**
16 **to pursue linkage agreements with other jurisdictions pursuant to section 38 of this 2019 Act;**

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

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

21 **(B) Voluntary offset projects and the generation, issuance and use of offset credits, as**
22 **established by organizations that operate offset credit registries;**

23 **(c) Allow for the broadest possible participation by landowners in developing and operat-**
24 **ing offset projects across the broadest possible variety of types and sizes of lands;**

25 **(d) Encourage opportunities for developing offset projects that provide direct environ-**
26 **mental benefits in this state;**

27 **(e) Prioritize offset projects that benefit impacted communities, members of eligible In-**
28 **dian tribes and natural and working lands; and**

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

31 **(4) The office shall adopt by rule a process for issuing early action offset credits for**
32 **greenhouse gas emissions reductions or removals that occur during the period beginning on**
33 **January 1, 2019, and ending on January 1, 2021. Rules adopted under this subsection may**
34 **include:**

35 **(a) Designation of offset protocols under which an offset project may qualify for early**
36 **action offset credits;**

37 **(b) Requirements for offset projects to be registered with qualified third-party organiza-**
38 **tions that operate offset credit registries to receive early action offset credits; and**

39 **(c) Requirements for offset credits issued by qualified third-party organizations that op-**
40 **erate offset credit registries to be converted to offset credits issued by or acceptable under**
41 **the Oregon Climate Action Program.**

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

45 **(a) A misstatement, of more than five percent, of the amount of greenhouse gas emis-**

1 sions reductions or removals attributable to an offset project for which offset credits were
2 issued;

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

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

8 (6) The office shall establish by rule one or more offset integrity accounts. The office
9 shall withhold a percentage of the offset credits issued by the office for each offset project
10 and deposit the withheld offset credits in an offset integrity account. Uses of offset integrity
11 accounts may include, but need not be limited to, using offset credits deposited in an offset
12 integrity account to replace offset credits that are invalidated pursuant to rules adopted
13 under subsection (5) of this section.

14 **SECTION 31. Offset protocols.** (1) Offset protocols, and any greenhouse gas emission in-
15 ventory and monitoring requirements related to the offset protocols, developed pursuant to
16 rules adopted under section 30 of this 2019 Act:

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

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

21 (c) Must establish, for each offset protocol, a predetermined crediting period for which
22 an offset project will remain eligible to receive offset credits for greenhouse gas emissions
23 reductions or removals; and

24 (d) May make use of aggregation or other mechanisms, including cost-effective inventory
25 and monitoring provisions, to increase the development of offset projects by landowners
26 across the broadest possible variety of types and sizes of lands.

27 (2)(a) The Climate Policy Office shall collaborate and consult with the State Forestry
28 Department in developing and monitoring offset protocols related to forestry. Offset proto-
29 cols related to forestry that are developed pursuant to this subsection:

30 (A) Must prioritize reforestation, avoided forest conversion and improved forest man-
31 agement.

32 (B) Must, to the extent practicable, prioritize low-carbon-impact building materials and
33 urban forestry.

34 (C) Must have the ability to be administered consistently with the applicable state and
35 local land use laws of Oregon.

36 (D) May account for differences in forest management practices between private owners
37 of forestland and state or other owners of nonfederal forestlands in establishing the baselines
38 for the generation of offset credits by offset projects on the private, state or other nonfed-
39 eral forestlands.

40 (E) May not authorize the generation or issuance of offset credits for greenhouse gas
41 emissions reductions or removals that occur during the period beginning on January 1, 2021,
42 and ending on December 31, 2026, as the result of offset projects on state forestlands, unless
43 as of the effective date of this 2019 Act the state forestlands are:

44 (i) Trust lands as defined in ORS 273.462;

45 (ii) Lands in the Elliott State Forest as described in ORS 530.450;

1 (iii) Common School Forest Lands as described in ORS 530.460; or

2 (iv) Any other lands placed under the jurisdiction of the State Land Board consistent
3 with Article VIII, section 5, Oregon Constitution.

4 (b) In developing offset protocols related to forestry, the office and the department shall
5 avoid permanent or temporary net cumulative reductions, attributable to offset projects, in
6 the regional supply of wood fiber available to wood products manufacturing facilities in this
7 state. This paragraph does not apply to offset projects located on Indian trust lands or Indian
8 fee lands.

9 (c) The office and the department shall jointly convene a technical advisory committee
10 to advise the office and the department in developing and monitoring offset protocols related
11 to forestry. The technical advisory committee must include members with expertise in offset
12 protocols related to forestry.

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

18 (a) Consider developing offset protocols for:

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

20 (B) Avoided grassland conversion; and

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

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

25 (4) In developing any offset protocol related to a matter not addressed by subsections (2)
26 and (3) of this section, the office shall convene a technical advisory committee composed of
27 persons with expertise relevant to the development of the offset protocol.

28 (5) The office shall regularly review and update offset protocols developed pursuant to
29 rules adopted under section 30 of this 2019 Act. The reviews and updates of offset protocols
30 shall include any updates, as necessary, to the methods or technologies used for measuring
31 and monitoring the greenhouse gas emissions reductions or removals attributable to the
32 offset projects addressed by the offset protocols.

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

35 **SECTION 32. Offsets; consultation and reporting.** (1) In developing and updating rules
36 and offset protocols pursuant to sections 30 and 31 of this 2019 Act, the Climate Policy Office:

37 (a) Shall consult with and consider the recommendations of:

38 (A) The State Department of Agriculture, the State Forestry Department, the Environ-
39 mental Justice Task Force, the Oregon Watershed Enhancement Board, other relevant state
40 agencies and eligible Indian tribes; and

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

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

1 **(2) The office shall convene a compliance offsets program advisory committee to advise**
2 **the office in developing and updating rules and offset protocols pursuant to sections 30 and**
3 **31 of this 2019 Act. The compliance offsets program advisory committee shall provide guid-**
4 **ance to the office in designing the rules and offset protocols to promote offset projects that**
5 **provide direct environmental benefits in this state and to prioritize offset projects that ben-**
6 **efit impacted communities, members of eligible Indian tribes and natural and working lands.**
7 **The office shall appoint at least one member to the advisory committee from each of the**
8 **following groups:**

- 9 **(a) Scientists;**
- 10 **(b) Public health experts;**
- 11 **(c) Carbon market experts;**
- 12 **(d) Representatives of eligible Indian tribes;**
- 13 **(e) Environmental justice advocates;**
- 14 **(f) Labor and workforce representatives;**
- 15 **(g) Forestry experts;**
- 16 **(h) Agriculture experts;**
- 17 **(i) Environmental advocates;**
- 18 **(j) Conservation advocates; and**
- 19 **(k) Dairy experts.**

20 **(3)(a) No later than September 15 of the final year of each compliance period, the State**
21 **Forestry Department, in collaboration with the office, shall submit a report to the Joint**
22 **Committee on Climate Action that provides an analysis of the implementation in Oregon of**
23 **offset protocols related to forestry. The report shall:**

24 **(A) Describe the location and scope of offset projects in Oregon registered under offset**
25 **protocols related to forestry developed pursuant to sections 30 and 31 of this 2019 Act for**
26 **which offset credits have been issued under the Oregon Climate Action Program, to date,**
27 **and the number of offset credits issued;**

28 **(B) Describe forestry carbon offsets marketed, registered, transferred or sold, to date,**
29 **by the State Forester under ORS 526.725, 530.050 and 530.500.**

30 **(C) Include information and analysis of any cobenefits attributable to the forestry offset**
31 **projects and forestry carbon offsets described under subparagraphs (A) and (B) of this par-**
32 **agraph; and**

33 **(D) Identify and address any significant effects attributable to the forestry offset projects**
34 **and forestry carbon offsets described in subparagraphs (A) and (B) of this paragraph on the**
35 **supply of wood fiber available from nonfederal forestlands to wood products manufacturing**
36 **facilities in this state.**

37 **(b) The information and analysis required under paragraph (a)(D) of this subsection shall**
38 **include and consider:**

39 **(A) Data identifying the exports and imports of logs harvested from nonfederal**
40 **forestlands in Oregon; and**

41 **(B) Significant effects attributable to the forestry offset projects and forestry carbon**
42 **offsets on the supply of wood fiber that are applicable to specific geographic areas of this**
43 **state.**

44 **(c) The report required by this subsection may include recommendations by the State**
45 **Forestry Department on whether a temporary suspension of acceptance of new offset project**

1 applications under offset protocols related to forestry developed pursuant to sections 30 and
2 31 of this 2019 Act is necessary to address any significant effects attributable to forestry
3 offset projects on the supply of wood fiber available from nonfederal forestlands to wood
4 products manufacturing facilities in this state. If the department recommends a temporary
5 suspension, the recommendation must also include recommendations for measures to mini-
6 mize adverse effects on landowners developing offset projects.

7 **SECTION 33. Methodology for designating impacted communities.** (1) The Climate Policy
8 Office, by rule and in consultation with the Portland State University Population Research
9 Center, the Oregon Health Authority and other relevant state agencies and local agencies
10 and officials, shall designate impacted communities. In carrying out this section, the office
11 shall identify impacted communities based on a methodology that takes into consideration
12 geographic, socioeconomic, historic disadvantage, public health and environmental hazard
13 criteria. Impacted communities may include, but are not limited to:

14 (a) Rural communities.

15 (b) Coastal communities.

16 (c) Areas with above-average concentrations of low-income households, historically dis-
17 advantaged households, high unemployment, high linguistic isolation, low levels of
18 homeownership, high rent burden, sensitive populations or residents with low levels of edu-
19 cational attainment.

20 (d) Areas disproportionately affected by environmental pollution and other hazards that
21 can lead to negative public health effects, exposure or environmental degradation.

22 (2) The methodology required by this section must give greater weight to those criteria
23 that the office determines are the most accurate measurements of vulnerability to the im-
24 pacts of climate change and ocean acidification.

25 (3) The office shall review and update the methodology required by this section and the
26 designation of impacted communities at least once every five years.

27 **SECTION 34. Auctions.** (1) Except as provided in subsection (7) of this section, auctions
28 of allowances are open to registered entities.

29 (2) The Climate Policy Office shall hold auctions at least annually.

30 (3) The office may engage:

31 (a) A qualified, independent auction administrator to administer auctions; or

32 (b) A qualified financial services administrator to conduct financial transactions related
33 to the auction.

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

35 (5) The office shall:

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

38 (b) Set an allowance price containment reserve floor price for 2021 and a schedule for the
39 allowance price containment reserve floor price to increase by a fixed percentage over in-
40 flation each calendar year.

41 (c) Set a hard price ceiling for 2021 and a schedule for the hard price ceiling to increase
42 by a fixed percentage over inflation each calendar year, and adopt rules for making an un-
43 limited number of allowances available for auction upon exceedance of the hard price ceiling.

44 (d) Take actions to minimize the potential for market manipulation and to guard against
45 bidder collusion, including but not limited to specifying as holding limits the maximum

1 number of allowances that may be held for use or trade by a registered entity at any time.

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

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

6 (b) Setting price requirements in a manner that enables the state to pursue linkage
7 agreements pursuant to section 38 of this 2019 Act with other jurisdictions.

8 (7) Sales of allowances from the allowance price containment reserve shall be conducted
9 separately from the auction of other allowances for the purpose of addressing high costs of
10 compliance instruments. Allowances unsold from the reserve sale must be made available
11 again at future reserve sales. General market participants may not purchase allowances at
12 reserve sales.

13 (8)(a) If the hard price ceiling for an auction is reached, the office shall offer for sale,
14 at the hard price ceiling, allowances from any reserve described in section 18 of this 2019
15 Act or established by rule pursuant to section 18 of this 2019 Act, as necessary to meet de-
16 mand from covered entities and opt-in entities. If the supplies of all allowances from all re-
17 serves are exhausted and additional sales of allowances are necessary for one or more
18 covered entities or opt-in entities to fulfill a compliance obligation, the office may sell price
19 ceiling allowances in addition to the allowances available in the annual allowance budget at
20 the hard price ceiling.

21 (b) The proceeds from any sales of allowances pursuant to this subsection shall be paid
22 to the Oregon Department of Administrative Services and deposited with the State Treasurer
23 to be credited as follows:

24 (A) All moneys that constitute revenues described in Article IX, section 3a, of the Oregon
25 Constitution, shall be credited to the Transportation Decarbonization Investments Account
26 established in section 42 of this 2019 Act;

27 (B) All moneys that constitute revenues described in Article VIII, section 2 (1)(g), of the
28 Oregon Constitution, shall be credited to the Common School Fund; and

29 (C) Moneys remaining after meeting the requirements of subparagraphs (A) and (B) of
30 this paragraph shall be credited to the Oregon Climate Action Program Operating Fund es-
31 tablished under section 39 of this 2019 Act, to be used only as described in section 39 (4) of
32 this 2019 Act.

33 (9) The proceeds of an auction shall be paid to the Oregon Department of Administrative
34 Services and deposited with the State Treasurer to be credited as follows:

35 (a) Auction proceeds from the sale of allowances consigned to the state for auction by a
36 natural gas utility pursuant to section 23 of this 2019 Act shall be credited to the appropriate
37 trust account established by the Public Utility Commission pursuant to section 65 of this 2019
38 Act; and

39 (b) Auction proceeds payable to the state shall be credited to the Auction Proceeds Dis-
40 tribution Fund established under section 35 of this 2019 Act.

41 (10) The office may adopt rules necessary to administer auctions.

42 **SECTION 35. Auction Proceeds Distribution Fund.** (1) The Auction Proceeds Distribution
43 Fund is established in the State Treasury, separate and distinct from the General Fund.

44 (2) The Auction Proceeds Distribution Fund shall consist of moneys transferred to the
45 fund under section 34 of this 2019 Act. Interest earned by the fund shall be credited to the

1 fund.

2 (3) The Climate Policy Office shall certify the amount of moneys deposited in the Auction
3 Proceeds Distribution Fund available for distribution and shall cause the moneys to be dis-
4 tributed as follows:

5 (a) All moneys that constitute revenues described in Article IX, section 3a, of the Oregon
6 Constitution, shall be transferred to the Transportation Decarbonization Investments Ac-
7 count established in section 42 of this 2019 Act;

8 (b) All moneys that constitute revenues described in Article VIII, section 2 (1)(g), of the
9 Oregon Constitution, shall be transferred to the Common School Fund;

10 (c) An amount necessary for administration of sections 7, 8, 9, 10, 11, 12, 14, 15 to 40 and
11 54 to 59 of this 2019 Act and rules adopted pursuant to sections 7, 8, 9, 10, 11, 12, 14, 15 to
12 40 and 54 to 59 of this 2019 Act shall be transferred to the Oregon Climate Action Program
13 Operating Fund established under section 39 of this 2019 Act; and

14 (d) Moneys remaining after the transfers under paragraphs (a) to (c) of this subsection
15 shall be transferred to the Climate Investments Fund established under section 46 of this
16 2019 Act.

17 **SECTION 36. Annual Oregon Climate Action Program report.** The Climate Policy Office
18 shall annually submit a report in the manner provided by ORS 192.245 to the Joint Committee
19 on Climate Action detailing activity during the compliance period under the market-based
20 compliance mechanism adopted by the office by rule under section 16 of this 2019 Act. A re-
21 port required by this section must include, but need not be limited to, aggregated informa-
22 tion on the following for the compliance period:

23 (1) The number of allowances bought and sold at each auction held and all auction prices,
24 including the floor and ceiling prices, for the allowances bought and sold at each auction;

25 (2) The beginning and ending balances of all auction holding accounts and reserves held
26 by the office;

27 (3) The anthropogenic greenhouse gas emissions reductions achieved during the compli-
28 ance period and progress made toward achieving a reduction in total anthropogenic
29 greenhouse gas emissions levels to at least 45 percent below 1990 levels by 2035 and a re-
30 duction in total anthropogenic greenhouse gas emissions levels to at least 80 percent below
31 1990 emissions levels by 2050; and

32 (4) The estimated impacts of the Oregon Climate Action Program on fuel prices, and on
33 electricity and natural gas bills, in Oregon.

34 **SECTION 37. Participation in nonprofit corporation for administrative and technical**
35 **support.** (1) It is the intent of the Legislative Assembly that the State of Oregon pursue
36 membership on the board of directors of, participation in and the receipt of services from a
37 nonprofit corporation established for the purpose of providing administrative and technical
38 support to state and provincial greenhouse gas emissions trading programs, through which
39 the nonprofit corporation provides for enhanced security, enhanced effectiveness of
40 greenhouse gas emissions trading program infrastructure and lower administrative costs.

41 (2) The Governor may enter into agreements to secure membership for the State of
42 Oregon on the board of directors of the nonprofit corporation described in subsection (1) of
43 this section, and to access the benefits of the administrative and technical support provided
44 by the nonprofit corporation, including but not limited to access to an auction platform, al-
45 lowance tracking systems, market monitoring services, financial services administration and

1 other administrative services.

2 (3) An agreement authorized under this section to secure membership on the board of
3 directors of the nonprofit corporation described in subsection (1) of this section or to receive
4 the services provided by the nonprofit corporation does not constitute a linkage agreement
5 pursuant to section 38 of this 2019 Act.

6 **SECTION 38. Linkage with market-based compliance mechanisms in other jurisdictions.**

7 (1) In adopting and implementing rules under sections 15 to 40 of this 2019 Act, the Climate
8 Policy Office shall:

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

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

12 (A) Avoids double counting of greenhouse gas emissions or emissions reductions; and

13 (B) Enables the state to pursue linkage agreements pursuant to this section with other
14 jurisdictions.

15 (2) The State of Oregon may not link the market-based compliance mechanism estab-
16 lished pursuant to sections 15 to 40 of this 2019 Act and rules adopted under sections 15 to
17 40 of this 2019 Act with the market-based compliance mechanism of any other jurisdiction
18 unless the office notifies the Governor that the office intends to link the market-based
19 compliance mechanism and the Governor approves the proposed linkage agreement by mak-
20 ing the following findings, as applicable to the proposed linkage agreement:

21 (a) The jurisdiction with which the office proposes to enter an agreement to link has
22 adopted program requirements for greenhouse gas emission reductions that are consistent
23 with those required by sections 15 to 40 of this 2019 Act and will not have the effect of
24 undermining the greenhouse gas emissions reductions or removals required or effectuated
25 by the Oregon Climate Action Program;

26 (b) Under the proposed linkage agreement, the State of Oregon has sufficient authority
27 to enforce sections 15 to 40 of this 2019 Act against any person subject to regulation under
28 sections 15 to 40 of this 2019 Act, including any person located within the linking jurisdiction,
29 to the maximum extent permitted by law;

30 (c) The proposed linkage agreement provides for enforcement of applicable laws by the
31 Climate Policy Office or by the linking jurisdiction of program requirements that are con-
32 sistent with those required by sections 15 to 40 of this 2019 Act; and

33 (d) The proposed linkage agreement and any related engagement by the State of Oregon
34 of an independent third-party organization to provide administrative or technical services to
35 support the implementation of sections 15 to 40 of this 2019 Act will not impose any signif-
36 icant liability on the state or any state agency for any failure associated with the linkage.

37 (3) The Governor shall issue findings pursuant to subsection (2) of this section within 45
38 days of receiving a notice from the office that the office intends to link the market-based
39 compliance mechanism and shall provide the findings to the Legislative Assembly. The Gov-
40 ernor, in making the findings, shall consider the advice of the Attorney General.

41 (4) The State of Oregon may not enter a finalized linkage agreement unless the office has
42 first provided a report on the proposed linkage agreement to the Joint Committee on Climate
43 Action. The report shall include:

44 (a) A description of the scope of the proposed linkage agreement;

45 (b) An analysis by the office of the proposed linkage agreement; and

1 (c) The findings issued by the Governor pursuant to subsections (2) and (3) of this sec-
2 tion.

3 **SECTION 39. Operating fund.** (1) The Oregon Climate Action Program Operating Fund is
4 established in the State Treasury, separate and distinct from the General Fund. Interest
5 earned by the Oregon Climate Action Program Operating Fund shall be credited to the fund.
6 Moneys in the Oregon Climate Action Program Operating Fund are continuously appropri-
7 ated to the Oregon Department of Administrative Services for use by the Climate Policy
8 Office in the performance of the duties, functions and powers vested in the office by law.

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

10 (a) Moneys deposited in the fund pursuant to sections 12, 34 and 35 of this 2019 Act;

11 (b) Moneys appropriated or otherwise transferred to the fund by the Legislative Assem-
12 bly; and

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

14 (3) Civil penalties deposited in the fund under section 12 of this 2019 Act shall be depos-
15 ited in a separate subaccount created in the fund and must be used only for providing tech-
16 nical assistance to covered entities and opt-in entities.

17 (4) The proceeds from sales of allowances at the hard price ceiling pursuant to section
18 34 (8) of this 2019 Act shall be deposited in a separate subaccount created in the fund and
19 must be used by the office only for the purchase and retirement of offset credits.

20 **SECTION 40. Public records law; application.** (1) The Legislative Assembly finds and de-
21 clares that it is the policy of this state that the market-based compliance mechanism of the
22 Oregon Climate Action Program operate free of abuse and disruptive activity. It is therefore
23 the intent of the Legislative Assembly that the provisions of this section and sections 16 (3),
24 34, 36, 37 and 38 of this 2019 Act be implemented in a manner necessary to prevent fraud,
25 abuse or market manipulation to the greatest extent possible while upholding the public in-
26 terest in transparency in public process and government through making certain market
27 activity information available in aggregated form.

28 (2) The following information obtained by the State of Oregon pursuant to sections 15 to
29 40 of this 2019 Act, or rules adopted pursuant to sections 15 to 40 of this 2019 Act, shall be
30 treated as confidential business information, is exempt from disclosure under the public re-
31 cords law, ORS 192.311 to 192.478, and may not be disclosed to any person or entity except
32 as provided in subsection (3) or (4) of this section:

33 (a) Individually identifiable information related to a registered entity's application to
34 participate, and participation, in auctions held under section 34 of this 2019 Act, including
35 but not limited to bid activity and auction results for the registered entity.

36 (b) Other individually identifiable information not described in paragraph (a) of this sub-
37 section related to the holding, transfer or surrender of compliance instruments by registered
38 entities.

39 (c) Any individually identifiable information on the manufacturing output of goods, other
40 than emissions data submitted under ORS 468A.280, obtained by the Climate Policy Office as
41 necessary to administer and implement sections 24, 25, 26 and 29 of this 2019 Act.

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

44 (4) This section does not prohibit the disclosure of information between the Climate
45 Policy Office and other agencies of the executive department, as defined in ORS 174.112, ju-

1 jurisdictions with which the State of Oregon has entered into a linkage agreement under sec-
2 tion 38 of this 2019 Act or persons engaged by the State of Oregon to provide administrative
3 or technical services to support implementation of sections 15 to 40 of this 2019 Act if the
4 disclosure is necessary for purposes of the administration and implementation of sections
5 15 to 40 of this 2019 Act.

6 (5) Any person to whom information described in subsection (2) of this section is dis-
7 closed under subsection (4) of this section shall treat the information as confidential business
8 information, exempt from disclosure under the public records law, ORS 192.311 to 192.478.
9 Redislosure of individually identifiable information outside the Climate Policy Office remains
10 subject to the provisions of this section.

11
12 **INVESTMENT OF STATE PROCEEDS FROM OREGON**
13 **CLIMATE ACTION PROGRAM AUCTIONS**
14 **(Transportation Decarbonization Investments Account)**
15

16 **SECTION 41. Definitions.** As used in sections 41 to 45 of this 2019 Act:

17 (1) “Eligible Indian tribe” has the meaning given that term in section 15 of this 2019 Act.

18 (2) “Impacted community” has the meaning given that term in section 15 of this 2019
19 Act.

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

21 **SECTION 42. Transportation Decarbonization Investments Account.** (1) The Transporta-
22 tion Decarbonization Investments Account is established as a separate account within the
23 State Highway Fund. Interest earned by the Transportation Decarbonization Investments
24 Account shall be credited to the account.

25 (2) Moneys in the Transportation Decarbonization Investments Account are continuously
26 appropriated to the Department of Transportation for the purposes described in subsections
27 (4) and (5) of this section and sections 43 and 44 of this 2019 Act.

28 (3) The Transportation Decarbonization Investments Account consists of moneys depos-
29 ited in the account under sections 34 and 35 of this 2019 Act.

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

32 (a) 50 percent shall be used by the Department of Transportation for transportation
33 projects selected by the Oregon Transportation Commission pursuant to section 44 of this
34 2019 Act; and

35 (b) 50 percent shall be used to provide grants for transportation projects pursuant to
36 sections 43 and 44 of this 2019 Act and to provide technical assistance, which may include
37 grant writing assistance, to applicants for and recipients of the grants.

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

41 (6) Expenditures from the Transportation Decarbonization Investments Account shall,
42 to the extent feasible and consistent with law, be in addition to and not in replacement of
43 any existing allocation or appropriation for transportation projects.

44 (7) Examples of uses of moneys deposited in the Transportation Decarbonization Invest-
45 ments Account may include, but are not limited to, uses related to:

1 (a) Enhancing roadway drainage, improving slope stability, investment in the safe routes
2 to schools program established under ORS 184.741, the repower, retrofit or replacement of
3 certain diesel engines, reducing vehicle miles traveled through bike, pedestrian or other
4 multimodal improvements and traffic signal optimization; and

5 (b) Increasing the resilience of transportation infrastructure and evacuation routes
6 against the effects of climate change, extreme precipitation, sea level rise, and extreme
7 temperatures and wildfires.

8 **SECTION 43. Grant program.** (1) The Department of Transportation may provide, pur-
9 suant to section 44 of this 2019 Act and from moneys in the Transportation Decarbonization
10 Investments Account established under section 42 of this 2019 Act, grants for transportation
11 projects to cities, counties and metropolitan planning organizations.

12 (2)(a) The department shall adopt rules specifying the competitive process by which a
13 city, county or metropolitan planning organization may apply for a grant under this section
14 and prescribing the terms and conditions of grants.

15 (b) In adopting rules under this section, the department shall consult with the Oregon
16 Climate Board established under section 7 of this 2019 Act.

17 **SECTION 44. Selection of transportation projects.** (1) The Oregon Transportation Com-
18 mission shall select the transportation projects to be funded with moneys in the Transpor-
19 tation Decarbonization Investments Account established under section 42 of this 2019 Act.

20 (2) A transportation project may not be funded with moneys in the Transportation
21 Decarbonization Investments Account unless the commission determines that the transpor-
22 tation project furthers one or more of the purposes set forth in section 14 of this 2019 Act
23 and that the project may constitutionally be funded by revenues described in Article IX,
24 section 3a, of the Oregon Constitution.

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

27 (4) In selecting transportation projects, the Oregon Transportation Commission shall
28 consider whether a proposed transportation project:

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

31 (b) Will further the objectives of the biennial climate action investment plan delivered
32 by the Climate Policy Office under section 57 of this 2019 Act; and

33 (c) Is consistent with or complements investments that may be funded by moneys in the
34 Climate Investments Fund established under section 46 of this 2019 Act.

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

37 (a) Benefit impacted communities.

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

39 (c) Provide opportunities for businesses that are owned by members of impacted com-
40 munities and eligible Indian tribes to participate in and benefit from statewide efforts to re-
41 duce greenhouse gas emissions.

42 (d) Promote low carbon economic development opportunities and the creation of jobs that
43 sustain living wages.

44 (e) Will facilitate:

45 (A) The implementation of land use and transportation scenarios required to be adopted

1 by metropolitan service districts under section 37, chapter 865, Oregon Laws 2009, and that
2 have been approved by the Land Conservation and Development Commission; or

3 (B) The planning, development or implementation of land use and transportation sce-
4 narios by local governments and metropolitan planning organizations in accordance with the
5 guidelines established by the Department of Transportation and the Department of Land
6 Conservation and Development under ORS 184.893.

7 (f) Will, to the greatest extent practicable, serve to conserve, restore, preserve and en-
8 hance adjacent natural resources through the use of roadside vegetation in a manner de-
9 signed to:

10 (A) Minimize soil erosion;

11 (B) Improve or maintain slope stability;

12 (C) Reduce storm water runoff volume and velocity;

13 (D) Promote water conservation and plant survivability; and

14 (E) Otherwise best address the full range of impacts associated with the use of the
15 roadside vegetation.

16 (6) In selecting transportation projects, the commission shall:

17 (a) Strive to provide for a balanced distribution over time of moneys in the Transporta-
18 tion Decarbonization Investments Account:

19 (A) Among all geographic areas of this state; and

20 (B) To the extent practicable, in a manner that provides equal funding support between
21 transportation projects that result in greenhouse gas emissions reductions and transporta-
22 tion projects that support climate change adaptation; and

23 (b) To the extent practicable, provide for a distribution of moneys in the Transportation
24 Decarbonization Investments Account during each biennium that considers the requirements
25 of fairness and proportionality required by Article IX, section 3a (3), of the Oregon Consti-
26 tution.

27 (7) If a transportation project is eligible only in part to be funded by moneys deposited
28 in the Transportation Decarbonization Investments Account, the transportation project may
29 also be eligible to receive funding through the allocation of moneys in the Climate Invest-
30 ments Fund established in section 46 of this 2019 Act for those portions of the transportation
31 project that may not be constitutionally funded by revenues described in Article IX, section
32 3a, of the Oregon Constitution.

33 (8) Transportation projects selected by the commission under this section are subject to
34 the provisions of section 50 of this 2019 Act.

35 **SECTION 45. Procurement provisions related to transportation projects.** (1) As used in
36 this section:

37 (a) "Building materials" means asphalt, cement, concrete or any other aggregate prod-
38 uct, aluminum, steel, iron, coatings for steel and iron, glass, manufactured wood products
39 and copper.

40 (b) "Contracting agency" has the meaning given that term in ORS 279A.010.

41 (c) "Nursery stock" has the meaning given that term in ORS 571.005.

42 (d) "Oregon Climate Action Program" has the meaning given that term in section 15 of
43 this 2019 Act.

44 (e) "State contracting agency" has the meaning given that term in ORS 279A.010.

45 (f) "Subject to a carbon pricing program" means a building materials manufacturer

1 whose emissions from the manufacture of goods:

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

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

8 (2) Notwithstanding provisions of law requiring a contracting agency to award a contract
9 to the lowest responsible bidder or best proposer or provider of a quotation, and except as
10 provided in subsection (4) of this section or as prohibited by federal law, a state contracting
11 agency, when using funds from the Transportation Decarbonization Investments Account,
12 shall give a preference of not more than 10 percent to building materials procured from
13 manufacturers subject to a carbon pricing program.

14 (3) Notwithstanding provisions of law requiring a contracting agency to award a contract
15 to the lowest responsible bidder or best proposer or provider of a quotation, and except as
16 provided in subsection (4) of this section or as prohibited by federal law, a contracting agency
17 other than a state contracting agency, when using funds from the Transportation
18 Decarbonization Investments Account, may give a preference of not more than 10 percent
19 to building materials procured from manufacturers subject to a carbon pricing program.

20 (4) If the contracting agency finds in a written determination that the building material
21 is not available in the quantity, quality, type or time frame required for the procurement,
22 or if the cost of the building material is more than 10 percent more than the building mate-
23 rial costs from manufacturers not subject to a carbon pricing program, the contracting
24 agency may decline to give the building material preference.

25 (5) If a transportation project described in section 42 (4)(a) of this 2019 Act that involves
26 the use of roadside vegetation is funded by moneys deposited in the Transportation
27 Decarbonization Investments Account, the Department of Transportation shall purchase the
28 roadside vegetation from nursery stock that is grown and propagated entirely within this
29 state. The Oregon Transportation Commission may specify by rule grades, standards, con-
30 siderations and processes for roadside vegetation expenditures conducted pursuant to this
31 subsection.

32 (6) This section does not apply to emergency work, minor alterations, ordinary repairs
33 or maintenance work for public improvements or to other construction contracts described
34 in ORS 279C.320 (1).

35
36 (Climate Investments Fund)

37
38 **SECTION 46. Climate Investments Fund.** (1) The Climate Investments Fund is established
39 in the State Treasury, separate and distinct from the General Fund. The Climate Invest-
40 ments Fund shall consist of moneys deposited in the fund under sections 34 and 35 of this
41 2019 Act. Interest earned by the fund shall be credited to the fund. The Oregon Department
42 of Administrative Services shall administer the fund.

43 (2) Moneys in the fund are continuously appropriated to be used only for programs,
44 projects and activities that further one or more of the purposes set forth in section 14 of this
45 2019 Act consistent with section 59 of this 2019 Act.

1 **(3) The Legislative Assembly shall allocate the moneys deposited in the fund as informed**
2 **by the biennial climate action investment plan delivered by the Climate Policy Office under**
3 **section 57 of this 2019 Act.**

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

5 **(a) 10 percent shall be allocated for uses that directly benefit eligible Indian tribes, as**
6 **defined in section 15 of this 2019 Act;**

7 **(b) 40 percent shall be allocated for uses that benefit impacted communities, as defined**
8 **in section 15 of this 2019 Act;**

9 **(c) 20 percent shall be allocated for uses that benefit natural and working lands, as de-**
10 **defined in section 15 of this 2019 Act;**

11 **(d) No more than one percent shall be allocated to provide technical assistance to appli-**
12 **cants for or recipients of moneys described in paragraphs (a) to (c) of this subsection; and**

13 **(e) \$10 million shall be allocated for deposit in the Just Transition Fund established in**
14 **section 51 of this 2019 Act to be used to establish a Just Transition Program and develop a**
15 **Just Transition Plan pursuant to section 52 of this 2019 Act.**

16 **(5) Moneys allocated for investments and expenditures that benefit natural and working**
17 **lands pursuant to subsection (4)(c) of this section shall be allocated to promote adaptation**
18 **and resilience in the face of climate change and ocean acidification through actions that may**
19 **include, but need not be limited to:**

20 **(a) Programs, projects or activities that achieve energy efficiency or emissions re-**
21 **ductions in the agricultural sector such as through fertilizer management, soil management,**
22 **bioenergy or biofuels;**

23 **(b) Programs, projects or activities that result in sequestration of carbon in forests, ag-**
24 **ricultural soils, and other terrestrial and aquatic areas;**

25 **(c) Improving forest and natural and working lands health and resilience to climate**
26 **change impacts through actions including thinning, prescribed fire and wildland fire pre-**
27 **vention;**

28 **(d) Project-specific planning, design and construction projects that reduce the storm**
29 **water impacts of existing infrastructure and development;**

30 **(e) Reducing the risk of flooding by restoring natural floodplain ecological functions,**
31 **protecting against damage caused by floods and protecting or restoring naturally functioning**
32 **areas where floods occur;**

33 **(f) Improving the availability and reliability of water supplies for instream uses and out-**
34 **of-stream uses;**

35 **(g) Projects to prepare for sea level rise and to restore and protect estuaries, fisheries,**
36 **marine shoreline and inland habitats; and**

37 **(h) Increasing the ability to adapt to and remediate the impacts of ocean acidification.**

38 **(6) Allocations from the Climate Investments Fund shall, to the maximum extent feasible**
39 **and consistent with law, be in addition to and not in replacement of any existing allocations**
40 **or appropriations for programs, projects and activities.**

41 **SECTION 47. Adjustment of certain funding percentage requirements.** **The amendments**
42 **to section 46 of this 2019 Act by section 48 of this 2019 Act become operative on July 1, 2027.**

43 **SECTION 48.** **Section 46 of this 2019 Act is amended to read:**

44 **Sec. 46. (1) The Climate Investments Fund is established in the State Treasury, separate and**
45 **distinct from the General Fund. The Climate Investments Fund shall consist of moneys deposited**

1 in the fund under sections 34 and 35 of this 2019 Act. Interest earned by the fund shall be credited
2 to the fund. The Oregon Department of Administrative Services shall administer the fund.

3 (2) Moneys in the fund are continuously appropriated to be used only for programs, projects and
4 activities that further one or more of the purposes set forth in section 14 of this 2019 Act consistent
5 with section 59 of this 2019 Act.

6 (3) The Legislative Assembly shall allocate the moneys deposited in the fund as informed by the
7 biennial climate action investment plan delivered by the Climate Policy Office under section 57 of
8 this 2019 Act.

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

10 [(a)] 10 percent shall be allocated for uses that directly benefit eligible Indian tribes, as defined
11 in section 15 of this 2019 Act[;].

12 [(b) 40 percent shall be allocated for uses that benefit impacted communities, as defined in section
13 15 of this 2019 Act;]

14 [(c) 20 percent shall be allocated for uses that benefit natural and working lands, as defined in
15 section 15 of this 2019 Act;]

16 [(d) No more than one percent shall be allocated to provide technical assistance to applicants for
17 or recipients of moneys described in paragraphs (a) to (c) of this subsection; and]

18 [(e) \$10 million shall be allocated for deposit in the Just Transition Fund established in section
19 51 of this 2019 Act to be used to establish a Just Transition Program and develop a Just Transition
20 Plan pursuant to section 52 of this 2019 Act.]

21 [(5) Moneys allocated for investments and expenditures that benefit natural and working lands
22 pursuant to subsection (4)(c) of this section shall be allocated to promote adaptation and resilience in
23 the face of climate change and ocean acidification through actions that may include, but need not be
24 limited to:]

25 [(a) Programs, projects or activities that achieve energy efficiency or emissions reductions in the
26 agricultural sector such as through fertilizer management, soil management, bioenergy or biofuels;]

27 [(b) Programs, projects or activities that result in sequestration of carbon in forests, agricultural
28 soils, and other terrestrial and aquatic areas;]

29 [(c) Improving forest and natural and working lands health and resilience to climate change im-
30 pacts through actions including thinning, prescribed fire and wildland fire prevention;]

31 [(d) Project-specific planning, design and construction projects that reduce the storm water impacts
32 of existing infrastructure and development;]

33 [(e) Reducing the risk of flooding by restoring natural floodplain ecological functions, protecting
34 against damage caused by floods and protecting or restoring naturally functioning areas where floods
35 occur;]

36 [(f) Improving the availability and reliability of water supplies for instream uses and out-of-stream
37 uses;]

38 [(g) Projects to prepare for sea level rise and to restore and protect estuaries, fisheries, marine
39 shoreline and inland habitats; and]

40 [(h) Increasing the ability to adapt to and remediate the impacts of ocean acidification.]

41 [(6)] (5) Allocations from the Climate Investments Fund shall, to the maximum extent feasible
42 and consistent with law, be in addition to and not in replacement of any existing allocations or ap-
43 propriations for programs, projects and activities.

44 **SECTION 49. Procurement preferences. (1) As used in this section:**

45 (a) **“Building materials” means asphalt, cement, concrete or any other aggregate prod-**

1 uct, aluminum, steel, iron, coatings for steel and iron, glass, manufactured wood products
2 and copper.

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

4 (c) “Oregon Climate Action Program” has the meaning given that term in section 15 of
5 this 2019 Act.

6 (d) “State contracting agency” has the meaning given that term in ORS 279A.010.

7 (e) “Subject to a carbon pricing program” means building materials manufactured by a
8 manufacturing facility that:

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

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

15 (2) Notwithstanding provisions of law requiring a contracting agency to award a contract
16 to the lowest responsible bidder or best proposer or provider of a quotation, and except as
17 provided in subsection (3) of this section or as prohibited by federal law, a state contracting
18 agency, when using funds from the Climate Investments Fund, shall give a preference of not
19 more than 10 percent to building materials procured from manufacturers subject to a carbon
20 pricing program.

21 (3) Notwithstanding provisions of law requiring a contracting agency to award a contract
22 to the lowest responsible bidder or best proposer or provider of a quotation, and except as
23 provided in subsection (4) of this section or as prohibited by federal law, a contracting agency
24 other than a state contracting agency, when using funds from the Climate Investments
25 Fund, may give a preference of not more than 10 percent to building materials procured from
26 manufacturers subject to a carbon pricing program.

27 (4) If the contracting agency finds in a written determination that the building material
28 is not available in the quantity, quality, type or time frame required for the procurement,
29 or if the building material cost is more than 10 percent more than the building material costs
30 from producers not subject to a carbon pricing program, the contracting agency may decline
31 to give the building material preference.

32
33 (Labor and Contracting Provisions)
34

35 **SECTION 50. Construction projects funded by certain auction proceeds; requirements.** (1)

36 If a construction project receives more than \$50,000 in funding from moneys in the Climate
37 Investments Fund established under section 46 of this 2019 Act or the Transportation
38 Decarbonization Investments Account established under section 42 of this 2019 Act, the pri-
39 mary contractor participating in the construction project:

40 (a) Shall pay the prevailing rate of wage for an hour’s work in the same trade or occu-
41 pation in the locality where the labor is performed;

42 (b) Shall offer health care and retirement benefits to the employees performing the labor
43 on the construction project;

44 (c) Shall participate in an apprenticeship program registered with the State Apprentice-
45 ship and Training Council;

1 (d) May not be a contractor listed by the Commissioner of the Bureau of Labor and In-
2 dustries under ORS 279C.860 as ineligible to receive a contract or subcontract for public
3 works;

4 (e) Must demonstrate a history of material compliance with the rules and other re-
5 quirements of the Construction Contractors Board and of the Workers' Compensation Divi-
6 sion, the Building Codes Division and the Occupational Safety and Health Division of the
7 Department of Consumer and Business Services; and

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

9 (2) A farm labor contractor, as defined in ORS 658.405, may not receive moneys allocated
10 by the Legislative Assembly from the Climate Investments Fund or the Transportation
11 Decarbonization Investments Account unless the farm labor contractor is in compliance with
12 all licensing and any other requirements or regulations imposed upon farm labor contractors
13 pursuant to ORS 658.405 to 658.503.

14 (3)(a) The Oregon Department of Administrative Services, in consultation with the At-
15 torney General, shall adopt model rules that specify labor, workforce and contracting pro-
16 cedures for state agencies to use in administering funds for construction projects that
17 receive more than \$50,000 in funding from moneys in the Climate Investments Fund or the
18 Transportation Decarbonization Investments Account. The department shall adopt the rules
19 in accordance with ORS chapter 183.

20 (b) Model rules adopted under this subsection shall require the use of a project labor
21 agreement for construction projects that receive more than \$200,000 in funding from moneys
22 in the Climate Investments Fund or the Transportation Decarbonization Investments Ac-
23 count. For all other construction projects funded as described in paragraph (a) of this sub-
24 section, the model rules shall:

25 (A) Establish measurable, enforceable goals for the training and hiring of persons who
26 are members of impacted communities, as defined in section 15 of this 2019 Act, and for
27 contracting with businesses that are owned or operated by members of impacted communi-
28 ties; and

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

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

32 (d)(A) The model rules shall require that, in each contract awarded by a state agency for
33 a construction project funded as described in paragraph (a) of this subsection, cement, con-
34 crete, steel, iron, coatings for steel and iron and manufactured products that the contractor
35 purchases for the project and that become part of a permanent structure be produced in the
36 United States.

37 (B) The requirement in subparagraph (A) of this paragraph shall not apply if the admin-
38 istering agency finds that:

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

40 (ii) Cement, concrete, steel, iron, coatings for steel and iron and manufactured products
41 required for the project are not produced in the United States in sufficient and reasonably
42 available quantities and with satisfactory quality; or

43 (iii) The requirement set forth in subparagraph (A) of this paragraph will increase the
44 costs of the project, exclusive of labor costs involved in final assembly for manufactured
45 products, by 25 percent or more.

1 (C) Notwithstanding a finding by the administering agency under paragraph (d)(B) of this
2 subsection, a contractor shall spend at least 75 percent of the total amount the contractor
3 spends in connection with the construction project on cement, concrete, steel, iron, coatings
4 for steel and iron and manufactured products that become part of a permanent structure to
5 purchase cement, concrete, steel, iron, coatings for steel and iron and manufactured pro-
6 ducts that are produced in the United States.

7 (e) Before adopting or amending a rule under this subsection, the department shall con-
8 sult with representatives of labor, contractors and other knowledgeable persons.

9 (4) Except as provided in subsection (5) of this section, a state agency charged with ad-
10 ministering funds for construction projects that receive more than \$50,000 in funding from
11 moneys in the Climate Investments Fund or the Transportation Decarbonization Invest-
12 ments Account may not adopt the administering agency's own rules for labor and workforce
13 procedures related to administering funds allocated from the Climate Investments Fund or
14 the Transportation Decarbonization Investments Account and shall be subject to the model
15 rules adopted by the department under this section.

16 (5) The Department of Transportation may adopt the department's own rules specifying
17 labor, workforce and contracting procedures for use in administering funds for transporta-
18 tion projects that receive more than \$50,000 in funding from moneys in the Transportation
19 Decarbonization Investments Account. Rules adopted by the department pursuant to this
20 subsection must meet the requirements of subsection (3) of this section.

21
22 (Just Transition)
23

24 **SECTION 51.** (1) The Just Transition Fund is established in the State Treasury, separate
25 and distinct from the General Fund. Interest earned by the Just Transition Fund shall be
26 credited to the fund. Moneys in the fund are continuously appropriated to the Higher Edu-
27 cation Coordinating Commission to be used to carry out the purposes described in section
28 52 of this 2019 Act.

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

30 (3) The fund shall include a reserve account, which shall consist of moneys allocated or
31 appropriated to the fund by the Legislative Assembly for deposit in the reserve account. The
32 reserve account shall be maintained and used by the commission only for the purposes de-
33 scribed in section 52 (2)(b) of this 2019 Act.

34 **SECTION 52.** (1) The Higher Education Coordinating Commission, in consultation with
35 the State Workforce and Talent Development Board, the Employment Department and other
36 interested state agencies, shall:

37 (a) Establish a Just Transition Program for the purpose of distributing moneys, other
38 than moneys deposited in the reserve account, that are deposited in the Just Transition Fund
39 established under section 51 of this 2019 Act; and

40 (b) A Just Transition Plan for:

41 (A) The implementation and administration of the Just Transition Program; and

42 (B) The use of moneys deposited in the reserve account of the Just Transition Fund.

43 (2)(a) Moneys distributed through the Just Transition Program shall be distributed to
44 support economic diversification, job creation, job training and other employment services.

45 (b) Moneys deposited in the reserve account of the Just Transition Fund may be used

1 only to fund programs and activities that provide financial support for workers dislocated
2 or adversely affected by climate change or climate change policies.

3 (3) Each even-numbered year, the commission shall deliver a report, in the manner pro-
4 vided in ORS 192.245, to the Governor and the Joint Committee on Climate Action on the
5 Just Transition Plan. The report shall include:

6 (a) Information on implementing the Just Transition Program;

7 (b) Recommendations regarding the level of funding necessary to carry out activities
8 pursuant to the Just Transition Program; and

9 (c) Recommendations regarding the maintenance and use of the reserve account of the
10 Just Transition Fund, including but not limited to recommendations regarding:

11 (A) The funding necessary to maintain the reserve account at a level necessary to carry
12 out the provisions of subsection (2)(b) of this section, based on an evaluation of the impacts
13 of climate change or climate change policies on workers; and

14 (B) The use of moneys deposited in the reserve account for the replacement of wages or
15 benefits for workers dislocated or adversely affected by climate change or climate change
16 policies.

17 (4) The commission shall seek to develop and implement the Just Transition Program in
18 a manner that is consistent with and complementary to other local, state and federal pro-
19 grams, policies and incentives that serve to carry out the activities described in subsection
20 (2) of this section, including but not limited to activities undertaken by the commission un-
21 der ORS 660.318. The Just Transition Program may include, but need not be limited to, a
22 competitive grant program.

23 (5) The commission may adopt rules as necessary to administer this section, including
24 but not limited to rules that set standards for awarding grants.

25 (6) A grant program adopted as part of the Just Transition Program may:

26 (a) Encourage, but not require, a grant applicant to provide matching funds for com-
27 pletion of the project, program or activity for which a grant is awarded; and

28 (b) Allow a grant applicant to appeal to the commission for reevaluation of any determi-
29 nation of grant funding.

30 (7) The commission may perform activities necessary to ensure that recipients of moneys
31 distributed from the Just Transition Fund comply with applicable requirements. If the com-
32 mission determines that a recipient has not complied with applicable requirements, the
33 commission may order the recipient to refund all moneys distributed from the fund. Moneys
34 refunded pursuant to this subsection shall be paid to the commission and deposited with the
35 State Treasurer for credit to the Just Transition Fund.

36 (8) The commission shall appoint a just transition advisory committee. The committee
37 shall be composed of representatives from communities and work places that have the po-
38 tential to be adversely affected by climate change or climate change policies and shall include
39 members representing labor and management. The committee shall:

40 (a) Advise the commission in developing rules under this section;

41 (b) Provide recommendations for grant awards and other expenditures from the Just
42 Transition Fund, including expenditures from the reserve account of the Just Transition
43 Fund; and

44 (c) Provide other recommendations related to the Just Transition Plan and the Just
45 Transition Program.

(Common School Fund)

SECTION 53. Moneys deposited in the Common School Fund under sections 34 and 35 of this 2019 Act are continuously appropriated to the Department of State Lands to be used in a manner that:

- (1) Is consistent with the requirements of the Oregon Constitution; and
- (2) Furthers one or more of the purposes set forth in section 14 of this 2019 Act.

(Distribution of Auction Proceeds; Expenditure Reporting)

SECTION 54. Biennial expenditure reporting. (1) All agencies of the executive department as defined in ORS 174.112, counties, cities and all other public and private entities receiving moneys allocated from the Climate Investments Fund shall annually report to the Climate Policy Office on the expenditure of the moneys received and the results of the expenditures. No later than January 1 of each even-numbered year, the office shall deliver a biennial report, in the manner provided in ORS 192.245, to the Governor and the Joint Committee on Climate Action describing:

- (a) The investments from the Climate Investments Fund;
- (b) Whether the investments met the requirements for allocations under section 46 of this 2019 Act; and
- (c) The effectiveness of those investments in furthering the purposes set forth in section 14 of this 2019 Act.

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

- (a) The transportation projects funded by moneys from the Transportation Decarbonization Investments Account;
- (b) How the transportation projects met the requirements of section 44 of this 2019 Act; and
- (c) The results of the transportation projects in furthering the purposes set forth in section 14 of this 2019 Act.

SECTION 55. Biennial expenditure audit. (1) The Climate Policy Office and the Department of Transportation jointly shall select an independent third-party organization to prepare a biennial audit of:

- (a) All programs, projects or activities funded by moneys from the Climate Investments Fund; and
- (b) All transportation projects funded by moneys from the Transportation Decarbonization Investments Account.

(2) The office and the department shall provide for the audit report prepared by the independent third-party organization under this section to be transmitted, together with the reports required under section 54 of this 2019 Act, to the Oregon Transportation Commission,

1 the Governor, the Joint Committee on Climate Action and the Joint Committee on Trans-
2 portation.

3
4 (Biennial Climate Action Investments Plan)

5
6 **SECTION 56. Definitions.** As used in sections 57 and 59 of this 2019 Act:

7 (1) “Best available science” has the meaning given that term in section 15 of this 2019
8 Act.

9 (2) “Eligible Indian tribe” has the meaning given that term in section 15 of this 2019 Act.

10 (3) “Impacted community” has the meaning given that term in section 15 of this 2019
11 Act.

12 **SECTION 57. Biennial climate action investment plan.** (1) No later than June 1 of each
13 even-numbered year and in the manner provided in ORS 192.245, the Climate Policy Office
14 shall deliver a biennial climate action investment plan to the Environmental Justice Task
15 Force, the Oregon Transportation Commission, the Governor, the Joint Committee on Cli-
16 mate Action and the Joint Committee on Transportation. The climate action investment plan
17 shall identify the short-term and long-term opportunities for uses of state proceeds from
18 auctions conducted under section 34 of this 2019 Act that further the purposes set forth in
19 section 14 of this 2019 Act and that are consistent with the requirements of the Oregon
20 Constitution.

21 (2) The biennial climate action investment plan must:

22 (a) Be based on consideration of the best available science, and the best economic infor-
23 mation available, as of the time of the preparation of the plan; and

24 (b) Include an analysis of how the programs, projects and activities that may be funded
25 by the investment or expenditure of state proceeds from auctions conducted under section
26 34 of this 2019 Act would serve to effectively further the purposes set forth in section 14 of
27 this 2019 Act.

28 (3) In preparing the biennial climate action investment plan, the office shall consult with:

29 (a) The Department of Transportation, the Public Utility Commission, the Environmental
30 Justice Task Force and any other relevant agencies of the executive department as defined
31 in ORS 174.112;

32 (b) Representatives of eligible Indian tribes; and

33 (c) The citizens’ advisory committee required by subsection (4) of this section.

34 (4) The Director of the Climate Policy Office shall convene a 13-member citizens’ advisory
35 committee to advise the office in carrying out the requirements of this section. The members
36 of the committee must reflect the geographic, socioeconomic, racial and cultural diversity
37 of this state and shall be appointed by the director as follows:

38 (a) One member to represent the interests of urban environmental justice communities.

39 (b) One member to represent the interests of rural environmental justice communities.

40 (c) One member to represent eligible Indian tribes.

41 (d) One member to represent agriculture or forestry.

42 (e) One member to represent fisheries.

43 (f) One member to represent covered entities, as defined in section 15 of this 2019 Act.

44 (g) One member to represent the clean energy industry.

45 (h) One member to represent local governments.

1 (i) One member to represent labor.

2 (j) One member to represent environmental or conservation interests.

3 (k) One member who is a scientist at public university listed in ORS 352.002 or Oregon
4 Health and Science University.

5 (L) One member to represent home weatherization interests.

6 (m) One member to represent public health equity.

7 **SECTION 58.** The Climate Policy Office shall deliver the first biennial climate action in-
8 vestment plan as required by section 57 of this 2019 Act no later than June 1, 2022.

9 **SECTION 59. Priorities for investment of moneys from Climate Investments Fund.** (1) In
10 conducting the analysis required under section 57 (2) of this 2019 Act for potential uses of
11 moneys deposited in the Climate Investments Fund, the Climate Policy Office shall give first
12 priority to considering whether a potential use will:

13 (a) Further the state's objectives in meeting the requirements under section 46 of this
14 2019 Act for allocations of moneys deposited in the Climate Investments Fund;

15 (b) Benefit impacted communities;

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

17 (d) Provide opportunities for eligible Indian tribes, members of impacted communities
18 and businesses owned by women or members of minority groups to participate in and benefit
19 from statewide efforts to reduce greenhouse gas emissions, including technical assistance for
20 businesses owned by women or members of minority groups, nonprofit organizations and
21 other community institutions that serve or represent impacted communities or low-income
22 households;

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

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

27 (2) The analysis required by section 57 (2) of this 2019 Act shall address use of moneys
28 deposited in the Climate Investments Fund each biennium in a manner that, in total, would
29 result in:

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

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

39 (3) In addition to and not exclusive of the considerations required by subsections (1) and
40 (2) of this section, the analysis for use of moneys deposited in the Climate Investments Fund
41 shall prioritize funding to:

42 (a) Reduce greenhouse gas emissions or promote adaptation or resiliency through energy
43 efficiency and energy conservation in buildings, low-income weatherization and activities to
44 address energy burden in this state.

45 (b) Reduce greenhouse gas emissions through electrical grid decarbonization efforts, in-

1 cluding but not limited to investments in energy generation from renewable resources, dis-
2 tributed energy resources, transmission and storage projects for renewable energy, demand
3 response, community solar projects and other community-scale renewable energy projects.

4 (c) Reduce greenhouse gas emissions associated with transportation, including but not
5 limited to investments in transportation electrification, compressed natural gas and hydro-
6 gen fuel vehicle infrastructure, transit, fuel and energy efficiency in vessels powered by
7 marine engines and roadside landscape management efforts that promote carbon
8 sequestration.

9 (d) Support planning or the implementation of planning by local governments and met-
10 ropolitan planning organizations for reducing greenhouse gas emissions or promoting carbon
11 sequestration, adaptation or resilience.

12 (e) Reduce greenhouse gas emissions, support greenhouse gas sequestration or support
13 adaptation or resiliency through investments in natural and working lands, including but not
14 limited to investments in agricultural or forestry practices or forest products manufacturing
15 that serve to reduce greenhouse gas emissions or promote carbon sequestration, wildfire
16 prevention, restoration of tidal marsh or intertidal areas of estuaries, irrigation efficiency
17 projects, riparian zone restoration projects, methane emissions reduction or recovery
18 projects, soil health and biomass pyrolysis projects.

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

22 (g) Assist air contamination sources for which a permit is issued pursuant to ORS
23 468.065, 468A.040 or 468A.155 in reducing greenhouse gas emissions.

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

27 (i) Strengthen the resilience of fish, wildlife and ecosystems in the face of climate change
28 through investments that include but are not limited to projects involving instream flow
29 acquisition and protection, fish barrier removal, habitat restoration and enhancement and
30 protection of wildlife corridors, cold water refugia areas and species strongholds.

31 (j) Protect sources of domestic drinking water.

32 (k) Promote research by nonprofit organizations or public universities listed in ORS
33 352.002 into methods for reducing greenhouse gas emissions, sequestering carbon or adapting
34 to climate change, including but not limited to research investigating feedstocks to reduce
35 emissions from dairy cows and cattle, research investigating crops and agricultural practices
36 that reduce greenhouse gas emissions or promote resilience to climate change, and research
37 to promote resilience to ocean acidification.

38 (L) Provide youth training for employment in, and youth educational opportunities for,
39 careers in the natural resources sector, the clean technologies sector and other public or
40 private sector jobs in activities that serve to reduce greenhouse gas emissions.

41 (m) Reduce greenhouse gas emissions related to agriculture, with a priority given to the
42 replacement, repowering or retrofitting of nonroad equipment to reduce emissions that
43 present serious risks to farmworker health.

44 **SECTION 60. Use of biennial climate investments plan in budget process.** In preparing
45 the Governor's budget as required under ORS 291.202, the Governor shall consider the rec-

1 ommendations contained in the biennial climate action investment plan prepared by the Cli-
2 mate Policy Office under section 57 of this 2019 Act.

3 **SECTION 61. Environmental Justice Task Force review of biennial climate action in-**
4 **vestment plan; report.** The Environmental Justice Task Force shall review and develop rec-
5 ommendations in response to the biennial climate action investment plan required under
6 section 57 of this 2019 Act and shall, no later than August 1 of each even-numbered year and
7 in the manner provided in ORS 192.245, deliver a report on the task force’s recommendations
8 to the Governor and the Joint Committee on Climate Action.

9
10 **PROVISIONS RELATED TO THE PUBLIC UTILITY COMMISSION**

11
12 **SECTION 62.** Sections 63 to 68, 70 and 71 of this 2019 Act are added to and made a part
13 of ORS chapter 757.

14 **SECTION 63.** As used in sections 63 to 68 of this 2019 Act:

15 (1) “Allowance” has the meaning given that term in section 15 of this 2019 Act.

16 (2) “Electric company” has the meaning given that term in ORS 757.600.

17 (3) “Natural gas utility” has the meaning given that term in section 15 of this 2019 Act.

18 (4) “Oregon Climate Action Program” has the meaning given that term in section 15 of
19 this 2019 Act.

20 **SECTION 64.** (1) If, rather than surrendering the allowances to fulfill its compliance ob-
21 ligation, an electric company sells allowances that were directly distributed at no cost to the
22 electric company under sections 18 and 20 of this 2019 Act, the Public Utility Commission
23 shall require the proceeds received by the electric company through the sale:

24 (a) To be spent by the electric company for the exclusive benefit of retail customers that
25 are supplied electricity by the electric company; and

26 (b) To be used only for activities that serve to reduce greenhouse gas emissions or pro-
27 vide assistance to the electric company’s retail customers, in furtherance of the purposes
28 set forth in section 14 of this 2019 Act.

29 (2) Subject to subsection (1) of this section, an electric company shall prioritize the use
30 of proceeds received by the electric company from the sale of allowances that were directly
31 distributed at no cost to the electric company for:

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

34 (b) Accelerated transportation electrification;

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

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

41 (3) An electric company that receives allowances directly distributed at no cost under
42 sections 18 and 20 of this 2019 Act shall develop a plan for the use of the allowances and file
43 the plan with the commission. The plan must be revised and updated on a schedule estab-
44 lished by the commission by rule. At a minimum, a plan must contain:

45 (a) A strategy for the use of proceeds received by the electric company from the sale of

1 the allowances in compliance with this section; and

2 (b) A description of any previous uses of proceeds received by the electric company from
3 the sale of the allowances.

4 (4) The commission shall, pursuant to ORS 756.040 and after consultation with the
5 Housing and Community Services Department, adopt rules for the implementation and
6 enforcement of this section.

7 **SECTION 65.** (1) The Public Utility Commission, as trustee, shall establish a separate
8 trust account for the benefit of each natural gas utility. Moneys in each trust account shall
9 consist of proceeds from the sale of allowances consigned to the state for auction, pursuant
10 to section 23 of this 2019 Act, by the natural gas utility for which the trust account is es-
11 tablished. The commission shall establish the trust account with the State Treasurer for the
12 natural gas utility. The State Treasurer may invest moneys deposited in the trust accounts
13 as provided in ORS 293.701 to 293.857. Interest earned by a trust account must be credited
14 to the account. Upon request by a natural gas utility, the commission shall require the State
15 Treasurer to transfer from the natural gas utility's trust account to the natural gas utility
16 amounts necessary to pay for programs or activities found to be consistent with the plan
17 required under subsection (2) of this section.

18 (2) A natural gas utility shall develop a plan for meeting the requirements of this section
19 and file the plan for acknowledgment with the commission as part of each of the natural gas
20 utility's integrated resource plan filings, as further specified by the commission by rule.

21 (3) A plan must:

22 (a) Identify a portfolio of approaches in furtherance of the purposes set forth in section
23 14 of this 2019 Act;

24 (b) Provide that no less than 25 percent of the proceeds from the sale of allowances
25 consigned to the state for auction by the natural gas utilities pursuant to section 23 of this
26 2019 Act be used for nonvolumetric bill credits or other rate relief for residential, commer-
27 cial and industrial sales customers; and

28 (c) Address the impacts of the regulated emissions attributable to the natural gas utility
29 with due consideration of the risks associated with climate change and the need for urgent
30 action to address greenhouse gas reductions, through one or more of the following ap-
31 proaches:

32 (A) Implementation of programs, activities or technologies designed to reduce
33 greenhouse gas emissions through weatherization and more efficient residential, commercial
34 and industrial use of natural gas by sales customers, including programs for low and mod-
35 erate income residential customers;

36 (B) Development of renewable natural gas or renewable hydrogen infrastructure and the
37 provision of renewable natural gas or renewable hydrogen to the natural gas utility's sales
38 customers;

39 (C) Provision of renewable thermal resources for sales customers;

40 (D) Provision of natural gas or renewable natural gas to vehicles and the necessary re-
41 lated infrastructure in the utility's service territory as consistent with section 71 of this 2019
42 Act; or

43 (E) Implementation of pilot projects or research, development and demonstration activ-
44 ities to determine the cost and viability of activities described in subparagraphs (A) to (D)
45 of this paragraph.

1 (4) The commission may adopt rules for the implementation and enforcement of this
2 section.

3 **SECTION 66.** (1) An electric company shall develop and file with the Public Utility Com-
4 mission an initial plan under section 64 of this 2019 Act no later than December 31, 2021.

5 (2) A natural gas utility shall develop and file with the Public Utility Commission an ini-
6 tial plan under section 65 of this 2019 Act no later than June 30, 2021.

7 **SECTION 67.** No later than September 15 of each even-numbered year, the Public Utility
8 Commission shall, in the manner provided by ORS 192.245, provide a report to the Joint
9 Committee on Climate Action and to the Climate Policy Office on:

10 (1) How electric companies have made use of allowances that were directly distributed
11 at no cost to each electric company, including a description of how any proceeds received
12 by the electric company from the sale of the allowances were used; and

13 (2) How natural gas utilities have expended proceeds from the sale of allowances con-
14 signed to the state for auction by the natural gas utilities pursuant to section 23 of this 2019
15 Act.

16 **SECTION 68.** The Public Utility Commission shall establish processes and mechanisms
17 to ensure timely cost recovery for prudent and reasonable costs incurred by public utilities
18 associated with compliance with the Oregon Climate Action Program. The processes and
19 mechanisms shall be established to address situations in which compliance with the Oregon
20 Climate Action Program results in public utilities incurring costs for which cost recovery
21 mechanisms otherwise authorized by law are not adequate.

22 **SECTION 69.** ORS 757.259 is amended to read:

23 757.259. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject
24 to the limitations contained in this section, under amortization schedules set by the commission, a
25 rate or rate schedule:

26 (a) May reflect:

27 (A) Amounts lawfully imposed retroactively by order of another governmental agency; or

28 (B) Amounts deferred under subsection (2) of this section.

29 (b) Shall reflect amounts deferred under subsection (3) of this section if the public utility so re-
30 quests.

31 (2) Upon application of a utility or ratepayer or upon the commission's own motion and after
32 public notice, opportunity for comment and a hearing if any party requests a hearing, the commis-
33 sion by order may authorize deferral of the following amounts for later incorporation in rates:

34 (a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas
35 or electricity approved by the Federal Energy Regulatory Commission;

36 (b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric
37 Power Planning and Conservation Act of 1980;

38 (c) Direct or indirect costs arising from any purchase made by a public utility from the
39 Bonneville Power Administration pursuant to ORS 757.663, provided that such costs shall be recov-
40 ered only from residential and small-farm retail electricity consumers;

41 (d) Amounts accruing under a plan for the protection of short-term earnings under ORS 757.262
42 (2); or

43 (e) Identifiable utility [*expenses*] **costs** or revenues, **including the cost of capital**, the recovery
44 or refund of which the commission finds should be deferred in order to minimize the frequency of
45 rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and

1 benefits received by ratepayers.

2 (3) Upon request of the public utility, the commission by order shall allow deferral of amounts
3 provided as financial assistance under an agreement entered into under ORS 757.072 for later in-
4 corporation in rates.

5 (4) The commission may authorize deferrals under subsection (2) of this section beginning with
6 the date of application, together with interest established by the commission. A deferral may be
7 authorized for a period not to exceed 12 months beginning on or after the date of application.
8 However, amounts deferred under subsection (2)(c) and (d) or (3) of this section are not subject to
9 subsection (5), (6), (7), (8) or (10) of this section, but are subject to such limitations and requirements
10 that the commission may prescribe and that are consistent with the provisions of this section.

11 (5) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described
12 in this section shall be allowed in rates only to the extent authorized by the commission in a pro-
13 ceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of
14 application to amortize the deferral. The commission may require that amortization of deferred
15 amounts be subject to refund. The commission's final determination on the amount of deferrals al-
16 lowable in the rates of the utility is subject to a finding by the commission that the amount was
17 prudently incurred by the utility.

18 (6) Except as provided in subsections (7), (8) and (10) of this section, the overall average rate
19 impact of the amortizations authorized under this section in any one year may not exceed three
20 percent of the utility's gross revenues for the preceding calendar year.

21 (7) The commission may allow an overall average rate impact greater than that specified in
22 subsection (6) of this section for natural gas commodity and pipeline transportation costs incurred
23 by a natural gas utility if the commission finds that allowing a higher amortization rate is reason-
24 able under the circumstances.

25 (8) The commission may authorize amortizations for an electric utility under this section with
26 an overall average rate impact not to exceed six percent of the electric utility's gross revenues for
27 the preceding calendar year. If the commission allows an overall average rate impact greater than
28 that specified in subsection (6) of this section, the commission shall estimate the electric utility's
29 cost of capital for the deferral period and may also consider estimated changes in the electric
30 utility's costs and revenues during the deferral period for the purpose of reviewing the earnings of
31 the electric utility under the provisions of subsection (5) of this section.

32 (9) The commission may impose requirements similar to those described in subsection (8) of this
33 section for the amortization of other deferrals under this section, but may not impose such require-
34 ments for deferrals under subsection (2)(c) or (d) or (3) of this section.

35 (10) The commission may authorize amortization of a deferred amount for an electric utility
36 under this section with an overall average rate impact greater than that allowed by subsections (6)
37 and (8) of this section if:

38 (a) The deferral was directly related to extraordinary power supply expenses incurred during
39 2001;

40 (b) The amount to be deferred was greater than 40 percent of the revenue received by the
41 electric utility in 2001 from Oregon customers; and

42 (c) The commission determines that the higher rate impact is reasonable under the circum-
43 stances.

44 (11) If the commission authorizes amortization of a deferred amount under subsection (10) of this
45 section, an electric utility customer that uses more than one average megawatt of electricity at any

1 site in the immediately preceding calendar year may prepay the customer's share of the deferred
2 amount. The commission shall adopt rules governing the manner in which:

- 3 (a) The customer's share of the deferred amount is calculated; and
 - 4 (b) The customer's rates are to be adjusted to reflect the prepayment of the deferred amount.
- 5 (12) The provisions of this section do not apply to a telecommunications utility.

6 **SECTION 70. The Public Utility Commission may, in such manner as the commission**
7 **considers proper, allow a rate or rate schedule of a public utility to include differential rates**
8 **or to reflect amounts for programs that enable the public utility to assist low-income resi-**
9 **dential customers. Rates or rate schedules allowed under this section must minimize the**
10 **shifting of costs to ratepayers that do not qualify for low-income assistance.**

11 **SECTION 71. (1) As used in this section:**

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

13 (b) "Natural gas utility" means a natural gas utility regulated by the Public Utility
14 Commission under this chapter.

15 (2) The Public Utility Commission may allow a rate or rate schedule of an electric com-
16 pany or natural gas utility to reflect amounts for investments in infrastructure measures
17 that support the adoption of alternative forms of transportation vehicles if the investments
18 are consistent with and meet the requirements of subsection (3) of this section.

19 (3) An investment in infrastructure measures that support the adoption of alternative
20 forms of transportation vehicles is a utility service and a benefit to utility ratepayers if:

21 (a) The infrastructure measures will support the adoption of alternative vehicles that are
22 powered by electricity, compressed natural gas or hydrogen; and

23 (b) The investment can be reasonably anticipated to:

24 (A) Cost-effectively reduce transportation sector greenhouse gas emissions over time;
25 and

26 (B) Benefit the electric company's or natural gas utility's customers. Benefits may in-
27 clude, but need not be limited to:

28 (i) Distribution or transmission management benefits;

29 (ii) System efficiencies or other economic values inuring to the benefit of ratepayers over
30 the long term; or

31 (iii) Increased ratepayer choice by providing greater deployment of a variety of fueling
32 technologies to increase availability and access to publicly available fueling stations for al-
33 ternative forms of transportation vehicles.

34 **SECTION 72.** Section 12, chapter 751, Oregon Laws 2009, is amended to read:

35 **Sec. 12.** Section 9 [of this 2009 Act], chapter 751, Oregon Laws 2009, is repealed on [January
36 2, 2020] the effective date of this 2019 Act.

37
38 **BIENNIAL STATEWIDE ENERGY BURDEN REPORT**
39

40 **SECTION 73. (1) No later than November 1 of each even-numbered year, the Housing and**
41 **Community Services Department and the State Department of Energy shall jointly transmit**
42 **to the Governor and the Legislative Assembly a biennial statewide energy burden report. The**
43 **Housing and Community Services Department and the State Department of Energy shall**
44 **jointly adopt rules for gathering data necessary to prepare the report. In adopting rules un-**
45 **der this section, the Housing and Community Services Department and the State Department**

1 of Energy shall consult with consumer-owned utilities as defined in ORS 757.600 regarding
2 the availability and collection of data necessary to develop the report.

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

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

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

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

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

17 (e) Develop and provide recommendations for improving the delivery of services for re-
18 ducing energy burden by improving data gathering and knowledge sharing between state
19 agencies, utilities, community action agencies and other organizations that implement en-
20 ergy assistance programs.

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

32
33 **GREENHOUSE GAS EMISSIONS REGISTRATION AND REPORTING**

34 **(Amendments to Statutes, Operative on Effective Date of Act)**

35
36 **SECTION 74.** ORS 468A.280 is amended to read:

37 468A.280. [(1) In addition to any registration and reporting that may be required under ORS
38 468A.050, the Environmental Quality Commission by rule may require registration and reporting by:]

39 (1) As used in this section:

40 (a) "Air contamination source" has the meaning given that term in ORS 468A.005.

41 (b) "Greenhouse gas" has the meaning given that term in section 15 of this 2019 Act.

42 (2) The Environmental Quality Commission by rule may require registration and report-
43 ing of information necessary to determine greenhouse gas emissions by:

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

1 [(a)] (b) [Any] A person who imports, sells, allocates or distributes **electricity** for use in this
2 state [*electricity, the generation of which emits greenhouse gases*].

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

5 **(3) A person required to register and report under subsection (2) of this section shall**
6 **register with the Department of Environmental Quality and make reports containing infor-**
7 **mation that the commission by rule may require that is relevant to determining and verify-**
8 **ing greenhouse gas emissions. The commission may by rule require the person to provide an**
9 **audit by an independent and disinterested third party to verify that the greenhouse gas**
10 **emissions information reported by the person is true and accurate.**

11 [(2)] (4) Rules adopted by the commission under this section for electricity that is imported, sold,
12 allocated or distributed for use in this state may require reporting of information necessary to de-
13 termine greenhouse gas emissions from generating facilities used to produce the electricity and re-
14 lated electricity transmission line losses.

15 [(3)(a)] (5)(a) The commission shall allow consumer-owned utilities, as defined in ORS 757.270,
16 to comply with reporting requirements imposed under this section by the submission of a report
17 prepared by a third party. A report submitted under this paragraph may include information for
18 more than one consumer-owned utility, but must include all information required by the commission
19 for each individual utility.

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

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

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

28 [(4)(a)] (6)(a) Rules adopted by the commission pursuant to this section for electricity that is
29 purchased, imported, sold, allocated or distributed for use in this state by an electric company, as
30 defined in ORS 757.600, must be limited to the reporting of:

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

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

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

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

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

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

41 [(D)] (E) An estimate of the amount of greenhouse gas emissions[, *using default greenhouse gas*
42 *emissions factors established by the commission by rule,*] attributable to:

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

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

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

3 *[(iv)]* **(iii)** Electricity transmitted for others by the electric company; and

4 *[(v)]* **(iv)** Total energy losses from electricity transmission and distribution equipment owned or
5 operated by the electric company.

6 (b) Pursuant to paragraph (a) of this subsection, a *[multijurisdictional]* **multistate jurisdictional**
7 electric company may rely upon a cost allocation methodology approved by the Public Utility Com-
8 mission for reporting emissions allocated in this state.

9 *[(5)]* **(7)** Rules adopted by the commission under this section for *[fossil]* fuel that is imported, sold
10 or distributed for use in this state may require reporting of the type and quantity of the fuel and
11 any additional information necessary to determine the *[carbon content]* **greenhouse gas emissions**
12 **associated with the use or combustion** of the fuel. *[For the purpose of determining greenhouse gas*
13 *emissions related to liquefied petroleum gas, the commission shall allow reporting using publications*
14 *or submission of data by the American Petroleum Institute but may require reporting of such other*
15 *information necessary to achieve the purposes of the rules adopted by the commission under this sec-*
16 *tion.]*

17 *[(6)]* **(8)** To an extent that is consistent with the purposes of the rules adopted by the commission
18 under this section, the commission shall minimize the burden of the reporting required under this
19 section by:

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

21 (b) Allowing electronic reporting;

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

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

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

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

29 *[(7) As used in this section, “greenhouse gas” has the meaning given that term in ORS*
30 *468A.210.]*

31 **(9) The commission may adjust by rule the registration and reporting requirements under**
32 **subsection (2) of this section if necessary to accommodate participation in an energy imbal-**
33 **ance market by persons that import, sell, allocate or distribute electricity, or as necessary**
34 **to otherwise address developments in electricity markets.**

35 **(10) The department may require a person for which registration and reporting is re-**
36 **quired under subsection (2) of this section to provide any pertinent records related to ver-**
37 **ification of greenhouse gas emissions in order to determine compliance with and to enforce**
38 **this section and rules adopted pursuant to this section.**

39 **(11) If a person required to register and report under subsection (2) of this section fails**
40 **to submit a report under this section, the department may develop an assigned emissions**
41 **level for the person if necessary for the purpose of regulating persons under sections 15 to**
42 **40 of this 2019 Act.**

43 **(12)(a) By rule, the commission may establish a schedule of fees for registration and re-**
44 **porting under this section. Before establishing fees pursuant to this subsection, the com-**
45 **mission shall consider the total fees for each person subject to registration and reporting**

1 under this section.

2 (b) The commission shall limit the fees established under this subsection to the antic-
3 ipated cost of developing, implementing and analyzing data collected under greenhouse gas
4 emissions registration and reporting programs.

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

8
9 (Transfer from Department of Environmental Quality to Climate
10 Policy Office, Operative January 1, 2022)

11
12 SECTION 75. Transfer. The duties, functions and powers of the Environmental Quality
13 Commission and the Department of Environmental Quality relating to ORS 468A.280 and
14 rules adopted pursuant to ORS 468A.280 are imposed upon, transferred to and vested in the
15 Climate Policy Office.

16 SECTION 76. Records, property, employees. (1) The Director of the Department of Envi-
17 ronmental Quality shall:

18 (a) Deliver to the Climate Policy Office all records and property within the jurisdiction
19 of the director that relate to the duties, functions and powers transferred by section 75 of
20 this 2019 Act; and

21 (b) Transfer to the Climate Policy Office those employees engaged primarily in the exer-
22 cise of the duties, functions and powers transferred by section 75 of this 2019 Act.

23 (2) The Director of the Climate Policy Office shall take possession of the records and
24 property, and shall take charge of the employees and employ them in the exercise of the
25 duties, functions and powers transferred by section 75 of this 2019 Act, without reduction
26 of compensation but subject to change or termination of employment or compensation as
27 provided by law.

28 (3) The Governor shall resolve any dispute between the Department of Environmental
29 Quality and the Climate Policy Office relating to transfers of records, property and employ-
30 ees under this section, and the Governor's decision is final.

31 SECTION 77. Unexpended revenues. (1) The unexpended balances of amounts authorized
32 to be expended by the Environmental Quality Commission or the Department of Environ-
33 mental Quality for the biennium beginning July 1, 2021, from revenues dedicated, contin-
34 uously appropriated, appropriated or otherwise made available for the purpose of
35 administering and enforcing the duties, functions and powers transferred by section 75 of
36 this 2019 Act are transferred to and are available for expenditure by the Climate Policy Office
37 for the biennium beginning July 1, 2021, for the purpose of administering and enforcing the
38 duties, functions and powers transferred by section 75 of this 2019 Act.

39 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
40 expenditures by the Department of Environmental Quality remain applicable to expenditures
41 by the Climate Policy Office under this section.

42 SECTION 78. Action, proceeding, prosecution. The transfer of duties, functions and
43 powers to the Climate Policy Office by section 75 of this 2019 Act does not affect any action,
44 proceeding or prosecution involving or with respect to the duties, functions and powers be-
45 gun before and pending at the time of the transfer, except that the Climate Policy Office is

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

3 **SECTION 79. Liability, duty, obligation.** (1) Nothing in sections 75 to 81 of this 2019 Act
4 relieves a person of a liability, duty or obligation accruing under or with respect to the du-
5 ties, functions and powers transferred by section 75 of this 2019 Act. The Climate Policy Of-
6 fice may undertake the collection or enforcement of any such liability, duty or obligation.

7 (2) The rights and obligations of the Environmental Quality Commission or the Depart-
8 ment of Environmental Quality legally incurred under contracts, leases and business trans-
9 actions executed, entered into or begun before the operative date of section 75 of this 2019
10 Act accruing under or with respect to the duties, functions and powers transferred by sec-
11 tion 75 of this 2019 Act are transferred to the Climate Policy Office. For the purpose of
12 succession to these rights and obligations, the Climate Policy Office is a continuation of the
13 Environmental Quality Commission or the Department of Environmental Quality, as appro-
14 priate, and not a new authority.

15 **SECTION 80. Rules.** (1) Notwithstanding the transfer of duties, functions and powers by
16 section 75 of this 2019 Act, the rules of the Environmental Quality Commission with respect
17 to such duties, functions or powers that are in effect on the operative date of section 75 of
18 this 2019 Act continue in effect until superseded or repealed by rules of the Climate Policy
19 Office. References in the rules of the Environmental Quality Commission to the Environ-
20 mental Quality Commission are considered to be references to the Director of the Climate
21 Policy Office. References in the rules of the Environmental Quality Commission to the De-
22 partment of Environmental Quality or an officer or employee of the Department of Envi-
23 ronmental Quality are considered to be references to the Climate Policy Office or an officer
24 or employee of the Climate Policy Office.

25 (2) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any
26 rule, document, record or proceeding authorized by the Legislative Assembly, in the context
27 of the duties, functions and powers transferred by section 75 of this 2019 Act, reference is
28 made to the Environmental Quality Commission, with relation to the duties, functions or
29 powers transferred by section 75 of this 2019 Act, the reference is considered to be a refer-
30 ence to the Director of the Climate Policy Office for purposes of being charged by the terms
31 of this 2019 Act with carrying out the duties, functions and powers.

32 (3) Whenever, in any uncodified law or resolution of the Legislative Assembly or in any
33 rule, document, record or proceeding authorized by the Legislative Assembly, in the context
34 of the duties, functions and powers transferred by section 75 of this 2019 Act, reference is
35 made to the Department of Environmental Quality, or an officer or employee of the De-
36 partment of Environmental Quality, whose duties, functions or powers are transferred by
37 section 75 of this 2019 Act, the reference is considered to be a reference to the Climate Policy
38 Office or an officer or employee of the Climate Policy Office who by this 2019 Act is charged
39 with carrying out the duties, functions and powers.

40
41 (Housekeeping in ORS)

42
43 **SECTION 81.** Notwithstanding any other provision of law, ORS 468A.280 shall not be
44 considered to have been added to or made a part of ORS chapter 468A for the purpose of
45 statutory compilation or for the application of definitions, penalties or administrative pro-

1 **visions applicable to statute sections in that series.**

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(Conforming Amendments)

SECTION 82. ORS 468A.280, as amended by section 74 of this 2019 Act, is amended to read:
468A.280. (1) As used in this section:

- (a) “Air contamination source” has the meaning given that term in ORS 468A.005.
- (b) “Greenhouse gas” has the meaning given that term in section 15 of this 2019 Act.

(2) The [*Environmental Quality Commission*] **Climate Policy Office** by rule may require registration and reporting of information necessary to determine greenhouse gas emissions by:

- (a) A person in control of an air contamination source of any class for which registration and reporting is required under ORS 468A.050.
- (b) A person who imports, sells, allocates or distributes electricity for use in this state.
- (c) A person who imports, sells or distributes for use in this state fuel that generates greenhouse gases when combusted.

(3) A person required to register and report under subsection (2) of this section shall register with the [*Department of Environmental Quality*] **office** and make reports containing information that the [*commission*] **office** by rule may require that is relevant to determining and verifying greenhouse gas emissions. The [*commission*] **office** may by rule require the person to provide an audit by an independent and disinterested third party to verify that the greenhouse gas emissions information reported by the person is true and accurate.

(4) Rules adopted by the [*commission*] **office** 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.

(5)(a) The [*commission*] **office** 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*] **office** 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*] **office** 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.

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

- (A) The generating facility fuel type and greenhouse gas emissions emitted from generating facilities owned or operated by the electric company;
- (B) The number of megawatt-hours of electricity generated by the electric company for use in this state;

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

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

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

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

7 (E) An estimate of the amount of greenhouse gas emissions attributable to:

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

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

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

12 (iv) Total energy losses from electricity transmission and distribution equipment owned or op-
13 erated by the electric company.

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

17 (7) Rules adopted by the [*commission*] **office** under this section for fuel that is imported, sold
18 or distributed for use in this state may require reporting of the type and quantity of the fuel and
19 any additional information necessary to determine the greenhouse gas emissions associated with the
20 use or combustion of the fuel.

21 (8) To an extent that is consistent with the purposes of the rules adopted by the [*commission*]
22 **office** under this section, the [*commission*] **office** shall minimize the burden of the reporting required
23 under this section by:

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

25 (b) Allowing electronic reporting;

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

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

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

32 (f) Other appropriate means and procedures determined by the [*commission*] **office**.

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

37 (10) The [*department*] **office** may require a person for which registration and reporting is re-
38 quired under subsection (2) of this section to provide any pertinent records related to verification
39 of greenhouse gas emissions in order to determine compliance with and to enforce this section and
40 rules adopted pursuant to this section.

41 (11) If a person required to register and report under subsection (2) of this section fails to sub-
42 mit a report under this section, the [*department*] **office** may develop an assigned emissions level for
43 the person if necessary for the purpose of regulating persons under sections 15 to 40 of this 2019
44 Act.

45 (12)(a) By rule, the [*commission*] **office** may establish a schedule of fees for registration and re-

1 porting under this section. Before establishing fees pursuant to this subsection, the [*commission*]
2 **office** shall consider the total fees for each person subject to registration and reporting under this
3 section.

4 (b) The [*commission*] **office** shall limit the fees established under this subsection to the antic-
5 ipated cost of developing, implementing and analyzing data collected under greenhouse gas emissions
6 registration and reporting programs.

7 (c) **All fees collected by the office under this section shall be deposited with the State**
8 **Treasurer to the credit of the Oregon Climate Action Program Operating Fund established**
9 **under section 39 of this 2019 Act.**

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

13 **SECTION 83.** Section 39 of this 2019 Act is amended to read:

14 **Sec. 39.** (1) The Oregon Climate Action Program Operating Fund is established in the State
15 Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Climate
16 Action Program Operating Fund shall be credited to the fund. Moneys in the Oregon Climate Action
17 Program Operating Fund are continuously appropriated to the Oregon Department of Administrative
18 Services for use by the Climate Policy Office in the performance of the duties, functions and powers
19 vested in the office by law.

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

21 (a) Moneys deposited in the fund pursuant to sections 12, 34 and 35 of this 2019 Act **and ORS**
22 **468A.280;**

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

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

25 (3) Civil penalties deposited in the fund under section 12 of this 2019 Act shall be deposited in
26 a separate subaccount created in the fund and must be used only for providing technical assistance
27 to covered entities and opt-in entities.

28 (4) The proceeds from sales of allowances at the hard price ceiling pursuant to section 34 (8)
29 of this 2019 Act shall be deposited in a separate subaccount created in the fund and must be used
30 by the office only for the purchase and retirement of offset credits.

31 (5) **Moneys deposited in the fund from the collection of fees under ORS 468A.280 may only**
32 **be used to develop, and to implement and analyze data collected under, greenhouse gas**
33 **emissions registration and reporting programs pursuant to ORS 468A.280.**

34 **SECTION 84.** Section 11 of this 2019 Act is amended to read:

35 **Sec. 11.** (1) Whenever the Climate Policy Office has good cause to believe that any person is
36 engaged in or is about to engage in any acts or practices that constitute a violation of sections 15
37 to 40 of this 2019 Act **or ORS 468A.280**, or any rule, standard or order adopted or entered pursuant
38 to sections 15 to 40 of this 2019 Act **or ORS 468A.280**, the office may institute actions or pro-
39 ceedings for legal or equitable remedies to enforce compliance or to restrain further violations.

40 (2) The proceedings authorized by subsection (1) of this section may be instituted without the
41 necessity of prior agency notice, hearing and order, or during an agency hearing if the hearing has
42 been initially commenced by the office.

43 (3) The provisions of this section are in addition to and not in substitution of any other civil
44 or criminal enforcement provisions available to the office.

45 **SECTION 85.** Section 12 of this 2019 Act is amended to read:

1 **Sec. 12.** (1) As used in this section:

2 (a) “Intentional” means conduct by a person with a conscious objective to cause the result of
3 the conduct.

4 (b) “Reckless” means conduct by a person who is aware of and consciously disregards a sub-
5 stantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk
6 must be of such nature and degree that disregard thereof constitutes a gross deviation from the
7 standard of care a reasonable person would observe in that situation.

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

10 (a) A violation of a provision of sections 15 to 40 of this 2019 Act or rules adopted under
11 sections 15 to 40 of this 2019 Act.

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

13 **[(b)] (c)** Submitting any record, information or report required by sections 15 to 40 of this 2019
14 Act **or ORS 468A.280** or rules adopted under sections 15 to 40 of this 2019 Act **or ORS 468A.280**
15 that falsifies or conceals a material fact or makes any false or fraudulent representation.

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

17 (4)(a) The office shall adopt by rule a schedule of civil penalties that may be imposed for vio-
18 lations described in subsection (2) of this section. Except as provided in paragraphs (b) and (c) of
19 this subsection, a civil penalty may not exceed \$10,000 per offense.

20 (b) Except as provided in paragraph (c) of this subsection, the civil penalty for a violation de-
21 scribed in subsection (2) of this section arising from an intentional, reckless or negligent act may
22 not exceed \$25,000 per offense.

23 (c) In addition to any other civil penalty provided by law, the civil penalty for a violation de-
24 scribed in subsection (2) of this section may include an amount equal to an estimate of the economic
25 benefit received as a result of the violation.

26 (5) In imposing a civil penalty pursuant to this section, the office shall consider the following
27 factors:

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

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

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

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

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

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

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

37 (h) The person’s cooperativeness and efforts to correct the violation.

38 (i) Whether the person incurring the civil penalty gained an economic benefit as a result of the
39 violation.

40 (6) Civil penalties under this section must be imposed in the manner provided by ORS 183.745.
41 All civil penalties recovered under this section shall be paid to the Oregon Department of Admin-
42 istrative Services for deposit with the State Treasurer to the credit of the Oregon Climate Action
43 Program Operating Fund established under section 39 of this 2019 Act and may be used only pur-
44 suant to section 39 (3) of this 2019 Act.

45 **SECTION 86.** ORS 468.953, as amended by section 13 of this 2019 Act, is amended to read:

1 468.953. (1) A person commits the crime of supplying false information to any agency if the
2 person:

3 (a) Makes any false material statement, representation or certification knowing it to be false,
4 in any application, notice, plan, record, report or other document required by any provision of **ORS**
5 **468.280** or ORS chapter 465, 466, 468, 468A or 468B or sections 15 to 40 of this 2019 Act or any rule
6 adopted pursuant to **ORS 468A.280** or ORS chapter 465, 466, 468, 468A or 468B or sections 15 to
7 40 of this 2019 Act;

8 (b) Omits any material or required information, knowing it to be required, from any document
9 described in paragraph (a) of this subsection; or

10 (c) Alters, conceals or fails to file or maintain any document described in paragraph (a) of this
11 subsection in knowing violation of any provision of **ORS 468A.280** or ORS chapter 465, 466, 468,
12 468A or 468B or sections 15 to 40 of this 2019 Act or any rule adopted pursuant to **ORS 468A.280**
13 or ORS chapter 465, 466, 468, 468A or 468B or sections 15 to 40 of this 2019 Act.

14 (2) Supplying false information is a Class C felony.
15

16 **ENERGY FACILITY CARBON DIOXIDE EMISSIONS STANDARDS**
17 **(Repeal of Carbon Dioxide Emissions Standards)**
18

19 **SECTION 87.** ORS 469.503 is amended to read:

20 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
21 that the preponderance of the evidence on the record supports the following conclusions:

22 (1) The facility complies with the applicable standards adopted by the council pursuant to ORS
23 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or
24 interest protected by the applicable standards the facility does not meet.

25 *[(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any ap-
26 plicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load
27 gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-
28 fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant
29 to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by
30 which an applicant may comply with the applicable standard.]*

31 *[(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70
32 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide
33 emissions and net electric power output measured on a new and clean basis. Notwithstanding the
34 foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas
35 plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, na-
36 tural gas-fired energy facility that is commercially demonstrated and operating in the United States has
37 a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO condi-
38 tions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon
39 dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO con-
40 ditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.]*

41 *[(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled
42 power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or
43 amending such carbon dioxide emissions standards, the council shall consider and balance at least the
44 following principles, the findings on which shall be contained in the rulemaking record:]*

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

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

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

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

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

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

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

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

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

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

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

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

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

15 *[(c) The council shall determine whether the applicable carbon dioxide emissions standard is met*
16 *by first determining the gross carbon dioxide emissions that are reasonably likely to result from the*
17 *operation of the proposed energy facility. Such determination shall be based on the proposed design of*
18 *the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon*
19 *dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction*
20 *necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to*
21 *(D) of this paragraph, or any combination thereof. The council shall determine the amount of carbon*
22 *dioxide or other greenhouse gas emissions reduction that is reasonably likely to result from the*
23 *applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon*
24 *dioxide emissions standard. For purposes of determining the net carbon dioxide emissions, the council*
25 *shall by rule establish the global warming potential of each greenhouse gas based on a generally ac-*
26 *cepted scientific method, and convert any greenhouse gas emissions to a carbon dioxide equivalent.*
27 *Unless otherwise provided by the council by rule, the global warming potential of methane is 23 times*
28 *that of carbon dioxide, and the global warming potential of nitrous oxide is 296 times that of carbon*
29 *dioxide. If the council or a court on judicial review concludes that the applicant has not demonstrated*
30 *compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D)*
31 *of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements*
32 *of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance*
33 *based on such agreement.]*

34 *[(A) The facility will sequentially produce electrical and thermal energy from the same fuel source,*
35 *and the thermal energy will be used to displace another source of carbon dioxide emissions that would*
36 *have otherwise continued to occur, in which case the council shall adopt site certificate conditions en-*
37 *sureing that the carbon dioxide emissions reduction will be achieved.]*

38 *[(B) The applicant or a third party will implement particular offsets, in which case the council may*
39 *adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require*
40 *that predicted levels of avoidance, displacement or sequestration of greenhouse gas emissions be*
41 *achieved. The council shall determine the quantity of greenhouse gas emissions reduction that is rea-*
42 *sonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs*
43 *(i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for*
44 *offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in*
45 *another regulatory setting. In addition, the fact that an applicant or other parties involved with an*

1 *offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not,*
2 *by itself, a basis for withholding credit for an offset.]*

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

5 *[(ii) The ability of the council to determine the actual quantity of greenhouse gas emissions re-*
6 *duction resulting from the offset, taking into consideration any proposed measurement, monitoring and*
7 *evaluation of mitigation measure performance; and]*

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

10 *[(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to*
11 *produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide*
12 *emissions standard, in which case the funds shall be used as specified in paragraph (d) of this sub-*
13 *section. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to*
14 *result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset*
15 *funds using the monetary offset rate and the level of emissions reduction required to meet the applicable*
16 *standard. If a site certificate is approved based on this subparagraph, the council may not adjust the*
17 *amount of such offset funds based on the actual performance of offsets. After three years from June*
18 *26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of*
19 *carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence*
20 *of the cost of offsets and the council's finding that the standard will be economically achievable with*
21 *the modified rate for natural gas-fired power plants. Following the initial three-year period, the council*
22 *may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.]*

23 *[(D) Any other means that the council adopts by rule for demonstrating compliance with any ap-*
24 *plicable carbon dioxide emissions standard.]*

25 *[(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in*
26 *part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified organization.*
27 *The applicant may identify an organization that has applied for, but has not received, an exemption*
28 *from federal income taxation, but the council may not find that the organization is a qualified organ-*
29 *ization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal*
30 *Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide*
31 *a bond or comparable security in a form reasonably acceptable to the council to ensure the payment*
32 *of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such secu-*
33 *rity shall be provided by the date specified in the site certificate, which shall be no later than the*
34 *commencement of construction of the facility. The site certificate shall require that the offset funds be*
35 *disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified*
36 *organization exists, in which case the site certificate shall require that the offset funds be disbursed*
37 *as specified in subparagraph (B) of this paragraph.]*

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

40 *[(i) When the site certificate holder receives written notice from the qualified organization certifying*
41 *that the qualified organization is contractually obligated to pay any funds to implement offsets using*
42 *the offset funds, the site certificate holder shall make the requested amount available to the qualified*
43 *organization unless the total of the amount requested and any amounts previously requested exceeds*
44 *the offset funds, in which case only the remaining amount of the offset funds shall be made available.*
45 *The qualified organization shall use at least 80 percent of the offset funds for contracts to implement*

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

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

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

18 [(B) If the council finds there is no qualified organization, the site certificate holder shall select
19 one or more offsets to be implemented pursuant to criteria established by the council. The site certificate
20 holder shall give written notice of its selections to the council and to any person requesting notice. On
21 petition by the State Department of Energy, or by any person adversely affected or aggrieved by the
22 site certificate holder's selection of offsets, or on the council's own motion, the council may review such
23 selection. The petition must be received by the council within 30 days of the date the notice of selection
24 is placed in the United States mail, with first-class postage prepaid. The council shall approve the site
25 certificate holder's selection unless it finds that the selection is not consistent with criteria established
26 by the council. The site certificate holder shall contract to implement the selected offsets within 18
27 months after commencing construction of the facility unless good cause is shown requiring additional
28 time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the im-
29 plementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, eval-
30 uation and enforcement of the contract to implement the selected offsets. The council's criteria for
31 selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this sub-
32 section and may also consider the costs of particular types of offsets in relation to the expected benefits
33 of such offsets. The council's criteria shall not require the site certificate holder to select particular
34 offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In
35 addition, notwithstanding any other provision of this section, the site certificate holder's financial li-
36 ability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection
37 shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance,
38 negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected
39 offset shall not be a basis for revocation of the site certificate or any other enforcement action by the
40 council with respect to the site certificate holder.]

41 [(C) Every qualified organization that has received funds under this paragraph shall, at five-year
42 intervals beginning on the date of receipt of such funds, provide the council with the information the
43 council requests about the qualified organization's performance. The council shall evaluate the infor-
44 mation requested and, based on such information, shall make any recommendations to the Legislative
45 Assembly that the council deems appropriate.]

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

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

5 *[(B) “Base load gas plant” means a generating facility that is fueled by natural gas, except for*
6 *periods during which an alternative fuel may be used and when such alternative fuel use shall not*
7 *exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and*
8 *where the applicant requests and the council adopts no condition in the site certificate for the generat-*
9 *ing facility that would limit hours of operation other than restrictions on the use of alternative fuel.*
10 *The council shall assume a 100 percent capacity factor for such plants and a 30-year life for the plants*
11 *for purposes of determining gross carbon dioxide emissions.]*

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

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

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

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

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

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

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

27 *[(J) “New and clean basis” means the average carbon dioxide emissions rate per hour and net*
28 *electric power output of the energy facility, without degradation, as determined by a 100-hour test at*
29 *full power completed during the first 12 months of commercial operation of the energy facility, with the*
30 *results adjusted for the average annual site condition for temperature, barometric pressure and relative*
31 *humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million*
32 *Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel,*
33 *if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of*
34 *carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon*
35 *dioxide emissions rates for other fuels.]*

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

38 *[(L) “Offset” means an action that will be implemented by the applicant, a third party or through*
39 *the qualified organization to avoid, sequester or displace emissions.]*

40 *[(M) “Offset funds” means the amount of funds determined by the council to satisfy the applicable*
41 *carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.]*

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

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

45 *[(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do*

1 *business in the State of Oregon;]*

2 *[(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this*
3 *section are used for offsets that require that decisions on the use of the offset funds are made by a*
4 *decision-making body composed of seven voting members of which three are appointed by the council,*
5 *three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental*
6 *nonprofit organization named by the body, and one is appointed by the applicants for site certificates*
7 *that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that*
8 *require nonvoting membership on the body for holders of site certificates that have provided funds not*
9 *yet disbursed under paragraph (d)(A) of this subsection;]*

10 *[(iv) Has made available on an annual basis, beginning after the first year of operation, a signed*
11 *opinion of an independent certified public accountant stating that the qualified organization's use of*
12 *funds pursuant to this statute conforms with generally accepted accounting procedures except that the*
13 *qualified organization shall have one year to conform with generally accepted accounting principles in*
14 *the event of a nonconforming audit;]*

15 *[(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least*
16 *60 percent of the offset funds to implement offsets within two years after the commencement of con-*
17 *struction of the facility; and]*

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

20 **[(3)] (2)** Except as provided in ORS 469.504 for land use compliance and except for those statutes
21 and rules for which the decision on compliance has been delegated by the federal government to a
22 state agency other than the council, the facility complies with all other Oregon statutes and ad-
23 ministrative rules identified in the project order, as amended, as applicable to the issuance of a site
24 certificate for the proposed facility. If compliance with applicable Oregon statutes and administra-
25 tive rules, other than those involving federally delegated programs, would result in conflicting con-
26 ditions in the site certificate, the council may resolve the conflict consistent with the public interest.
27 A resolution may not result in the waiver of any applicable state statute.

28 **[(4)] (3)** The facility complies with the statewide planning goals adopted by the Land Conserva-
29 tion and Development Commission.

30 **SECTION 88.** ORS 469.501 is amended to read:

31 469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction,
32 operation and retirement of facilities. The standards may address but need not be limited to the
33 following subjects:

34 (a) The organizational, managerial and technical expertise of the applicant to construct and
35 operate the proposed facility.

36 (b) Seismic hazards.

37 (c) Areas designated for protection by the state or federal government, including but not limited
38 to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

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

40 (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threat-
41 ened and endangered fish, wildlife or plant species.

42 (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or deter-
43 mined by the State Historic Preservation Officer to be eligible for listing on, the National Register
44 of Historic Places or the Oregon State Register of Historic Properties.

45 (g) Protection of public health and safety, including necessary safety devices and procedures.

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

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

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

4 (k) Ability of the communities in the affected area to provide sewers and sewage treatment,
5 water, storm water drainage, solid waste management, housing, traffic safety, police and fire pro-
6 tection, health care and schools.

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

12 (m) Compliance with the statewide planning goals adopted by the Land Conservation and De-
13 velopment Commission as specified by ORS 469.503.

14 (n) Soil protection.

15 [*o For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change.*
16 *For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as pro-*
17 *vided for by ORS 469.503 (2).]*

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

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

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

27 (4) Notwithstanding subsection (1) of this section, the council may not impose any standard de-
28 veloped under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for
29 an energy facility producing power from wind, solar or geothermal energy. However, the council
30 may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b),
31 (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

32
33 **(Transitional Provisions)**

34
35 **SECTION 89. (1) Notwithstanding ORS 469.401 (2), any conditions in a site certificate or**
36 **amended site certificate issued before January 1, 2021, that are conditions related to any**
37 **carbon dioxide emissions standard applicable pursuant to ORS 469.501 (1)(o) (2017 Edition) or**
38 **469.503 (2017 Edition) or to rules adopted by the Energy Facility Siting Council pursuant to**
39 **ORS 469.501 (1)(o) (2017 Edition) or 469.503 (2017 Edition) cease to be enforceable on January**
40 **1, 2021.**

41 **(2) Any provision in a site certificate or amended site certificate for a generating facility**
42 **issued before January 1, 2021, requiring the holder to demonstrate the need for the facility**
43 **shall cease to be enforceable on January 1, 2021.**

44 **(3) Any site certificate amendment approved by the council on or after January 1, 2021,**
45 **shall remove from the site certificate being amended all conditions and provisions rendered**

1 unenforceable by subsections (1) and (2) of this section. Notwithstanding ORS 469.405 or any
2 council rule, the contested case hearing on a site certificate amendment subject to this
3 subsection may not include hearing on amendments necessary to comply with this sub-
4 section. The provisions of the council's order relevant to compliance with this subsection
5 are not subject to judicial review.

6 **SECTION 90.** The Energy Facility Siting Council shall, no later than January 1, 2022,
7 complete rulemaking to amend or repeal any rules adopted by the council relating to the
8 application of a carbon dioxide emissions standard to generating facilities or nongenerating
9 facilities as necessary to bring the rules of the council into compliance with the amendments
10 to ORS 469.501 and 469.503 by sections 87 and 88 of this 2019 Act and the provisions of section
11 89 of this 2019 Act.

12 **SECTION 91.** (1) As used in this section and section 92 of this 2019 Act, "qualified or-
13 ganization" has the meaning given that term in ORS 469.503 (2)(e)(N) (2017 Edition).

14 (2) On or after the operative date of this section and the amendments to ORS 469.503 by
15 section 87 of this 2019 Act and in accordance with the provisions of ORS 469.503 (2)(d) (2017
16 Edition), a qualified organization that, before the operative date of this section and the
17 amendments to ORS 469.503 by section 87 of this 2019 Act, received payment of offset funds
18 pursuant to ORS 469.503 (2)(c)(C) (2017 Edition):

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

22 (b) May use up to 20 percent of the offset funds for monitoring, evaluating, administering
23 and enforcing contracts to implement offsets; and

24 (c) Shall, at five-year intervals beginning on the date of the receipt of the offset funds
25 and ending the year after the year that the qualified organization is no longer involved in
26 the investment of offset funds received pursuant to ORS 469.503 (2)(c)(C) (2017 Edition),
27 provide the Energy Facility Siting Council with the information the council requests about
28 the qualified organization's performance. The council shall evaluate the information re-
29 quested and, based on the information, shall make any recommendations to the Legislative
30 Assembly that the council deems appropriate.

31 **SECTION 92.** Section 91 of this 2019 Act is repealed on the date that the Legislative
32 Counsel receives written notice from the Energy Facility Siting Council that the council has
33 confirmed that all qualified organizations that received payment of offset funds pursuant to
34 ORS 469.503 (2)(c)(C) (2017 Edition) have ceased to be involved in the investment of the offset
35 funds.

36
37 (Repeal)

38
39 **SECTION 93.** ORS 469.409 is repealed.

40
41 (Conforming Amendments)

42
43 **SECTION 94.** ORS 469.300 is amended to read:

44 469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the
45 context requires otherwise:

1 (1) "Applicant" means any person who makes application for a site certificate in the manner
2 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

3 (2) "Application" means a request for approval of a particular site or sites for the construction
4 and operation of an energy facility or the construction and operation of an additional energy facility
5 upon a site for which a certificate has already been issued, filed in accordance with the procedures
6 established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

7 (3) "Associated transmission lines" means new transmission lines constructed to connect an en-
8 ergy facility to the first point of junction of such transmission line or lines with either a power
9 distribution system or an interconnected primary transmission system or both or to the Northwest
10 Power Grid.

11 (4) "Average electric generating capacity" means the peak generating capacity of the facility
12 divided by one of the following factors:

13 (a) For wind facilities, 3.00;

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

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

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

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

20 (7) "Council" means the Energy Facility Siting Council established under ORS 469.450.

21 (8) "Department" means the State Department of Energy created under ORS 469.030.

22 (9) "Director" means the Director of the State Department of Energy appointed under ORS
23 469.040.

24 (10) "Electric utility" means persons, regulated electrical companies, people's utility districts,
25 joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged
26 in or authorized to engage in the business of generating, supplying, transmitting or distributing
27 electric energy.

28 (11)(a) "Energy facility" means any of the following:

29 (A) An electric power generating plant with a nominal electric generating capacity of 25 mega-
30 watts or more, including but not limited to:

31 (i) Thermal power;

32 (ii) Combustion turbine power plant; or

33 (iii) Solar thermal power plant.

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

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

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

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

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

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

43 (ii) 100 acres located on land that is predominantly cultivated or that, if not cultivated, is pre-
44 dominantly composed of soils that are in capability classes I to IV, as specified by the National
45 Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United

1 States Department of Agriculture; or

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

3 (E) A pipeline that is:

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

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

9 (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than
10 50 feet from a public road, as defined in ORS 368.001; or

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

15 (iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal
16 energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal
17 heating district established under ORS chapter 523.

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

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

24 (H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is de-
25 signed to hold at least 70,000 gallons.

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

30 (i) The underground storage reservoir;

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

32 (iii) An underground gas storage reservoir into which gas is injected solely for testing or res-
33 ervoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

34 (J) An electric power generating plant with an average electric generating capacity of 35
35 megawatts or more if the power is produced from geothermal or wind energy at a single energy fa-
36 cility or within a single energy generation area.

37 (b) "Energy facility" does not include a hydroelectric facility or an energy facility under para-
38 graph (a)(A)(iii) or (D) of this subsection that is established on the site of a decommissioned United
39 States Air Force facility that has adequate transmission capacity to serve the energy facility.

40 (12) "Energy generation area" means an area within which the effects of two or more small
41 generating plants may accumulate so the small generating plants have effects of a magnitude similar
42 to a single generating plant of 35 megawatts average electric generating capacity or more. An "en-
43 ergy generation area" for facilities using a geothermal resource and covered by a unit agreement,
44 as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If
45 no such unit agreement exists, an energy generation area for facilities using a geothermal resource

1 shall be the area that is within two miles, measured from the electrical generating equipment of the
2 facility, of an existing or proposed geothermal electric power generating plant, not including the site
3 of any other such plant not owned or controlled by the same person.

4 (13) “Extraordinary nuclear occurrence” means any event causing a discharge or dispersal of
5 source material, special nuclear material or by-product material as those terms are defined in ORS
6 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the
7 United States Nuclear Regulatory Commission or its successor determines to be substantial and to
8 have resulted in or to be likely to result in substantial damages to persons or property off-site.

9 (14) “Facility” means an energy facility together with any related or supporting facilities.

10 (15) **“Generating facility” means those energy facilities that are defined in subsection**
11 **(11)(a)(A), (B) and (D) of this section.**

12 [(15)] (16) “Geothermal reservoir” means an aquifer or aquifers containing a common geothermal
13 fluid.

14 [(16)] (17) “Local government” means a city or county.

15 [(17)] (18) “Nominal electric generating capacity” means the maximum net electric power output
16 of an energy facility based on the average temperature, barometric pressure and relative humidity
17 at the site during the times of the year when the facility is intended to operate.

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

20 [(18)] (20) “Nuclear incident” means any occurrence, including an extraordinary nuclear occur-
21 rence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss
22 of use of property due to the radioactive, toxic, explosive or other hazardous properties of source
23 material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

24 [(19)] (21) “Nuclear installation” means any power reactor, nuclear fuel fabrication plant, nu-
25 clear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling
26 that quantity of fissionable materials sufficient to form a critical mass. “Nuclear installation” does
27 not include any such facilities that are part of a thermal power plant.

28 [(20)] (22) “Nuclear power plant” means an electrical or any other facility using nuclear energy
29 with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution
30 of electricity, and associated transmission lines.

31 [(21)] (23) “Person” means an individual, partnership, joint venture, private or public corpo-
32 ration, association, firm, public service company, political subdivision, municipal corporation, gov-
33 ernment agency, people’s utility district, or any other entity, public or private, however organized.

34 [(22)] (24) “Project order” means the order, including any amendments, issued by the State De-
35 partment of Energy under ORS 469.330.

36 [(23)(a)] (25)(a) “Radioactive waste” means all material which is discarded, unwanted or has no
37 present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator
38 produced isotopes and by-product material, source material or special nuclear material as those
39 terms are defined in ORS 453.605. The term does not include those radioactive materials identified
40 in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and re-
41 vised periodically for the purpose of adding additional isotopes which are not referred to in OAR
42 345-50 as presenting no significant danger to the public health and safety.

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

1 [(24)] (26) “Related or supporting facilities” means any structure, proposed by the applicant, to
2 be constructed or substantially modified in connection with the construction of an energy facility,
3 including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail
4 access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.
5 “Related or supporting facilities” does not include geothermal or underground gas storage reser-
6 voirs, production, injection or monitoring wells or wellhead equipment or pumps.

7 [(25)] (27) “Site” means any proposed location of an energy facility and related or supporting
8 facilities.

9 [(26)] (28) “Site certificate” means the binding agreement between the State of Oregon and the
10 applicant, authorizing the applicant to construct and operate a facility on an approved site, incor-
11 porating all conditions imposed by the council on the applicant.

12 [(27)] (29) “Thermal power plant” means an electrical facility using any source of thermal en-
13 ergy with a nominal electric generating capacity of 25 megawatts or more, for generation and dis-
14 tribution of electricity, and associated transmission lines, including but not limited to a
15 nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power
16 plant the principal use of which is to supply power in emergencies. “Thermal power plant” includes
17 a nuclear-fueled thermal power plant that has ceased to operate.

18 [(28)] (30) “Transportation” means the transport within the borders of the State of Oregon of
19 radioactive material destined for or derived from any location.

20 [(29)] (31) “Underground gas storage reservoir” means any subsurface sand, strata, formation,
21 aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage
22 and withdrawal of natural gas or other gaseous substances. “Underground gas storage reservoir”
23 includes a pool as defined in ORS 520.005.

24 [(30)] (32) “Utility” includes:

25 (a) A person, a regulated electrical company, a people’s utility district, a joint operating agency,
26 an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage
27 in the business of generating, transmitting or distributing electric energy;

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

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

31 [(31)] (33) “Waste disposal facility” means a geographical site in or upon which radioactive
32 waste is held or placed but does not include a site at which radioactive waste used or generated
33 pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power
34 plant used for the temporary storage of radioactive waste from that plant for which a site certificate
35 has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste
36 from a reactor operated by a college, university or graduate center for research purposes and not
37 connected to the Northwest Power Grid. As used in this subsection, “temporary storage” includes
38 storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site
39 certificate has been issued until a permanent storage site is available by the federal government.

40 **SECTION 95.** ORS 469.310 is amended to read:

41 469.310. In the interests of the public health and the welfare of the people of this state, it is the
42 declared public policy of this state that the siting, construction and operation of energy facilities
43 shall be accomplished in a manner consistent with protection of the public health and safety and in
44 compliance with the energy policy and air, water, solid waste, land use and other environmental
45 protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.563, 469.590 to

1 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. It is furthermore the policy of this state, notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS 469.020, that the need for new generating facilities[, *as defined in ORS 469.503,*] is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility[, *as defined in ORS 469.503*].

10 **SECTION 96.** ORS 469.373 is amended to read:

11 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370, an applicant may apply under the provisions of this section for expedited review of an application for a site certificate for an energy facility if the energy facility:

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

13 (b) Is a permitted or conditional use allowed under an applicable local acknowledged comprehensive plan, land use regulation or federal land use plan, and is located:

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

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

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

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

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

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

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

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

22 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:

23 (i) The municipal corporation has included, or intends to include, the process wastewater load from the energy facility in an application for a National Pollutant Discharge Elimination System permit; and

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

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

7 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water
8 general permit for construction activities; or

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

11 (2) An applicant seeking expedited review under this section shall submit documentation to the
12 State Department of Energy, prior to the submission of an application for a site certificate, that
13 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
14 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
15 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

16 (3) If the department determines that the energy facility preliminarily qualifies for expedited
17 review, the applicant may submit an application for expedited review. Within 30 days after the date
18 that the application for expedited review is submitted, the department shall determine whether the
19 application is complete. If the department determines that the application is complete, the applica-
20 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-
21 mination. If the department determines that the application is not complete, the department shall
22 notify the applicant of the deficiencies in the application and shall deem the application filed on the
23 date that the department determines that the application is complete. The department or the
24 council may request additional information from the applicant at any time.

25 (4) The State Department of Energy shall send a copy of a filed application to the Department
26 of Environmental Quality, the Water Resources Department, the State Department of Fish and
27 Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agri-
28 culture, the Department of Land Conservation and Development, the Public Utility Commission and
29 any other state agency, city, county or political subdivision of the state that has regulatory or ad-
30 visory responsibility with respect to the proposed energy facility. The State Department of Energy
31 shall send with the copy of the filed application a notice specifying that:

32 (a) In the event the council issues a site certificate for the energy facility, the site certificate
33 will bind the state and all counties, cities and political subdivisions in the state as to the approval
34 of the site, the construction of the energy facility and the operation of the energy facility, and that
35 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site
36 certificate must be issued as required by ORS 469.401 (3); and

37 (b) The comments and recommendations of state agencies, counties, cities and political subdi-
38 visions concerning whether the proposed energy facility complies with any statute, rule or local
39 ordinance that the state agency, county, city or political subdivision would normally administer in
40 determining whether a permit, license or certificate required for the construction or operation of the
41 energy facility should be approved will be considered only if the comments and recommendations
42 are received by the department within a reasonable time after the date the application and notice
43 of the application are sent by the department.

44 (5) Within 90 days after the date that the application was filed, the department shall issue a
45 draft proposed order setting forth:

- 1 (a) A description of the proposed energy facility;
- 2 (b) A list of the permits, licenses and certificates that are addressed in the application and that
3 are required for the construction or operation of the proposed energy facility;
- 4 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-
5 proval of any permit, license or certificate addressed in the application and that are required for the
6 construction or operation of the proposed energy facility; and
- 7 (d) Proposed findings specifying how the proposed energy facility complies with the applicable
8 standards and criteria for approval of a site certificate.
- 9 (6) The council shall review the application for site certification in the manner set forth in
10 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council
11 determines that the facility, with any required conditions to the site certificate, will comply with:
- 12 (a) The requirements for expedited review as specified in this section;
- 13 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and
14 (L) to [(o)] (n);
- 15 (c) The requirements of ORS 469.503 [(3)] (2); and
- 16 (d) The requirements of ORS 469.504 (1)(b).
- 17 (7) Following submission of an application for a site certificate, the council shall hold a public
18 informational meeting on the application. Following the issuance of the proposed order, the council
19 shall hold at least one public hearing on the application. The public hearing shall be held in the area
20 affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior
21 to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall
22 include, but need not be limited to, the following:
- 23 (a) A description of the energy facility and the general location of the energy facility;
- 24 (b) The name of a department representative to contact and the telephone number at which
25 people may obtain additional information;
- 26 (c) A statement that copies of the application and proposed order are available for inspection
27 at no cost and will be provided at reasonable cost; and
- 28 (d) A statement that the record for public comment on the application will close at the conclu-
29 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
30 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
31 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the
32 council's decision.
- 33 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present
34 additional written evidence, arguments or testimony regarding the application. In the alternative,
35 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the
36 application. If the applicant requests an opportunity to present written evidence, arguments or tes-
37 timony, the council shall leave the record open for that purpose only for a period not to exceed 14
38 days after the date of the hearing. Following the close of the record, the department shall prepare
39 a draft final order for the council. If the applicant requests a contested case hearing, the council
40 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
41 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,
42 and the application shall be considered under the same contested case procedures used for a non-
43 expedited application for a site certificate.
- 44 (9) The council shall make its decision based on the record and the draft final order prepared
45 by the department. The council shall, within six months of the date that the application is deemed

1 filed:

- 2 (a) Grant the application;
- 3 (b) Grant the application with conditions;
- 4 (c) Deny the application; or
- 5 (d) Return the application to the site certification process required by ORS 469.320.

6 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS
7 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
8 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
9 application based on those standards.

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

12 **SECTION 97.** ORS 469.405 is amended to read:

13 469.405. (1) A site certificate may be amended with the approval of the Energy Facility Siting
14 Council. The council may establish by rule the type of amendment that must be considered in a
15 contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided
16 in ORS 469.403.

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

25 (3) An amendment to a site certificate is not required for a pipeline less than 16 inches in di-
26 ameter and less than five miles in length that is proposed to be constructed to test or maintain an
27 underground gas storage reservoir. If the proposed pipeline will connect to a council certified sur-
28 face facility related to an underground gas storage reservoir or to a council certified gas pipeline,
29 whether the proposed pipeline is to be located inside or outside the site of a council certified facil-
30 ity, the certificate holder must obtain, prior to construction, the approval of the department for the
31 construction, operation and retirement of the proposed pipeline. The department shall approve such
32 a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding
33 ORS 469.503 [(3)] (2), the department may not review the proposed pipeline for compliance with
34 other state standards. Notwithstanding ORS 469.503 [(4)] (3), or any council rule addressing com-
35 pliance with land use standards, the department shall not review such a proposed pipeline for com-
36 pliance with land use requirements. Notwithstanding ORS 469.401 (3), the approval by the
37 department of such pipeline shall not bind any state or local agency. The council may adopt appro-
38 priate procedural rules for the department review. The department shall issue an order approving
39 or rejecting the proposed pipeline. Judicial review of a department order under this section shall
40 be as provided in ORS 469.403.

41 **SECTION 98.** ORS 469.407 is amended to read:

42 469.407. (1) A recipient may by amendment of its application for a site certificate or by amend-
43 ment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council
44 finds that:

- 45 (a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the

1 council;

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

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

6 (2) A recipient is deemed to meet any applicable need standard and carbon dioxide emissions
7 standard for the nominal generating capacity of the 500-megawatt exemption provided that the re-
8 cipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies the con-
9 ditions.

10 (3) As used in this section:

11 (a) "Recipient" means any base load gas plant, as defined in ORS 469.503 **(2017 Edition)**, de-
12 termined by the council to have the lowest net monetized air emissions among the applicants par-
13 ticipating in a contested case proceeding.

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

16 **SECTION 99.** ORS 469.504 is amended to read:

17 469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals
18 under ORS 469.503 [(4)] **(3)** if:

19 (a) The facility has received local land use approval under the acknowledged comprehensive
20 plan and land use regulations of the affected local government; or

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

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

27 (B) For an energy facility or a related or supporting facility that must be evaluated against the
28 applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility
29 does not comply with one or more of the applicable substantive criteria but does otherwise comply
30 with the applicable statewide planning goals, or that an exception to any applicable statewide
31 planning goal is justified under subsection (2) of this section; or

32 (C) For a facility that the council elects to evaluate against the statewide planning goals pur-
33 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-
34 wide planning goals or that an exception to any applicable statewide planning goal is justified under
35 subsection (2) of this section.

36 (2) The council may find goal compliance for a facility that does not otherwise comply with one
37 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding
38 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process
39 or any rules of the Land Conservation and Development Commission pertaining to an exception
40 process goal, the council may take an exception to a goal if the council finds:

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

43 (b) The land subject to the exception is irrevocably committed as described by the rules of the
44 Land Conservation and Development Commission to uses not allowed by the applicable goal because
45 existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-

1 ticable; or

2 (c) The following standards are met:

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

4 (B) The significant environmental, economic, social and energy consequences anticipated as a
5 result of the proposed facility have been identified and adverse impacts will be mitigated in ac-
6 cordance with rules of the council applicable to the siting of the proposed facility; and

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

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

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

16 (5) Upon request by the State Department of Energy, the special advisory group established
17 under ORS 469.480 shall recommend to the council, within the time stated in the request, the ap-
18 plicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group
19 does not recommend applicable substantive criteria within the time established in the department's
20 request, the council may either determine and apply the applicable substantive criteria under sub-
21 section (1)(b) of this section or determine compliance with the statewide planning goals under sub-
22 section (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable
23 substantive criteria for an energy facility described in ORS 469.300 or a related or supporting fa-
24 cility that does not pass through more than one local government jurisdiction or more than three
25 zones in any one jurisdiction, the council shall apply the criteria recommended by the special advi-
26 sory group. If the special advisory group recommends applicable substantive criteria for an energy
27 facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes
28 through more than one jurisdiction or more than three zones in any one jurisdiction, the council
29 shall review the recommended criteria and determine whether to evaluate the proposed facility
30 against the applicable substantive criteria recommended by the special advisory group, against the
31 statewide planning goals or against a combination of the applicable substantive criteria and state-
32 wide planning goals. In making its determination, the council shall consult with the special advisory
33 group and shall consider:

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

35 (b) The degree to which the applicable substantive criteria reflect local government consider-
36 ation of energy facilities in the planning process; and

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

39 (6) The council is not subject to ORS 197.180 and a state agency may not require an applicant
40 for a site certificate to comply with any rules or programs adopted under ORS 197.180.

41 (7) On or before its next periodic review, each affected local government shall amend its com-
42 prehensive plan and land use regulations as necessary to reflect the decision of the council per-
43 taining to a site certificate or amended site certificate.

44 (8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local
45 government's land use approval of a proposed facility under subsection (1)(a) of this section and the

1 special advisory group's recommendation of applicable substantive criteria under subsection (5) of
2 this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant
3 elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply
4 only to proposed projects for which the land use approval of the local government occurs after the
5 date a notice of intent or an application for expedited processing is submitted to the State Depart-
6 ment of Energy.

7 (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to
8 the extent possible, technical assistance and information about the siting process to local govern-
9 ments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

10 **SECTION 100.** ORS 469.505 is amended to read:

11 469.505. (1) In making a determination regarding compliance with statutes, rules and ordinances
12 administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and
13 469.590 to 469.619 where another agency has special expertise, consultation with the other agency
14 shall occur during the notice of intent and site certificate application process. Any permit applica-
15 tion for which the permitting decision has been delegated by the federal government to a state
16 agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simul-
17 taneously with the council's review of the site certificate application. Any hearings required on such
18 permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to
19 469.563 and 469.590 to 469.619.

20 (2) Before resolving any conflicting conditions in site certificates or amended site certificates
21 under ORS 469.503 [(3)] (2) and 469.504, the council shall notify and consult with the agencies and
22 local governments responsible for administering the statutes, administrative rules or substantive lo-
23 cal criteria that result in the conflicting conditions regarding potential conflict resolution.

24
25 **REPEAL OF FORESTRY CARBON OFFSET PROVISIONS**

26
27 **SECTION 101.** ORS 526.780, 526.783, 526.786 and 526.789 are repealed.

28 **SECTION 102.** ORS 530.050 is amended to read:

29 530.050. Under the authority and direction of the State Board of Forestry except as otherwise
30 provided for the sale of forest products, the State Forester shall manage the lands acquired pursuant
31 to ORS 530.010 to 530.040 so as to secure the greatest permanent value of those lands to the state,
32 and to that end may:

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

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

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

40 (4) Enter into and administer contracts for activities necessary or convenient for the sale of
41 timber under subsection (3) of this section, either separately from or in conjunction with contracts
42 for the sale of timber, including but not limited to activities such as timber harvesting and sorting,
43 transporting, gravel pit development or operation, and road construction, maintenance or improve-
44 ment.

45 (5) Permit the use of the lands for other purposes, including but not limited to forage and browse

1 for domestic livestock, fish and wildlife environment, landscape effect, protection against floods and
2 erosion, recreation, and protection of water supplies when, in the opinion of the board, the use is
3 not detrimental to the best interest of the state.

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

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

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

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

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

19 (11) Enter into agreements, each for not more than 10 years duration, for the production of mi-
20 nor forest products.

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

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

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

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

29 **SECTION 103.** ORS 530.500 is amended to read:

30 530.500. In order to accomplish the purposes of ORS 530.490, the State Forester may:

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

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

36 (3) Enter into and administer contracts for activities necessary or convenient for the sale of
37 timber under subsection (2) of this section, either separately from or in conjunction with contracts
38 for the sale of timber, including but not limited to activities such as timber harvesting and sorting,
39 transporting, gravel pit development or operation, and road construction, maintenance or improve-
40 ment.

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

45 (5) Contract with other governmental bodies for the protection of water supplies to facilitate the

1 multiple use of publicly owned water supplies for recreational purposes as well as a source of water
2 for domestic and industrial use.

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

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

6 (8) *[Establish a forestry carbon offset program to]* Market, register, transfer or sell forestry car-
7 bon offsets. *[In establishing the program, the forester may:]*

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

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

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

14 (10) Require such undertakings as in the opinion of the State Forester are necessary or con-
15 venient to secure performance of any agreement authorized in ORS 530.450 to 530.520.

16
17 **REGULATION OF LANDFILL METHANE EMISSIONS**

18
19 **SECTION 104. Section 105 of this 2019 Act is added to and made a part of ORS chapter**
20 **468A.**

21 **SECTION 105. (1) As used in this section:**

22 (a) “Anthropogenic greenhouse gas emissions” has the meaning given that term in sec-
23 tion 15 of this 2019 Act.

24 (b) “Carbon dioxide equivalent” has the meaning given that term in section 15 of this 2019
25 Act.

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

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

28 (e) “Landfill” has the meaning given that term in ORS 459.005.

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

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

34 (3) The Environmental Quality Commission shall adopt by rule standards and require-
35 ments for reducing methane gas emissions from landfills.

36 (4) The following landfills are exempt from standards and requirements adopted by rule
37 under this section:

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

40 (b) Landfills that receive only hazardous waste.

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

42 (d) Land disposal sites that are closed as of the effective date of this 2019 Act and are
43 no longer receiving solid waste, are maintained in compliance with ORS 459.268 and have less
44 than 450,000 metric tons of waste in place.

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

1 (a) Reporting requirements related to waste in place, calculated landfill gas heat input
2 capacity, and landfill surface emissions monitoring.

3 (b) Methane gas collection and control system requirements for landfills with reported
4 calculated landfill gas heat input capacity exceeding 3 million British thermal units per hour.

5 (c) Standards and requirements for methane surface emissions, monitoring and correc-
6 tive actions.

7 (d) Alternative compliance measures and methods that may be applied for certain land-
8 fills on a case-by-case basis.

9 (e) Standards and requirements for records retention, landfill closure notification,
10 methane gas collection and control device removal or modification and annual operating re-
11 ports.

12 SECTION 106. The Environmental Quality Commission shall adopt rules under section
13 105 of this 2019 Act in time for the rules to become operative no later than July 1, 2021.

14
15 **OREGON GLOBAL WARMING COMMISSION**
16 **(Abolish and Transfer of Duties to Oregon Climate Board)**

17
18 SECTION 107. (1) The Oregon Global Warming Commission is abolished. On the operative
19 date of this section, the tenure of office of the members of the Oregon Global Warming
20 Commission ceases.

21 (2) All the duties, functions and powers of the Oregon Global Warming Commission are
22 imposed upon, transferred to and vested in the Oregon Climate Board.

23 SECTION 108. (1) The chairperson of the Oregon Global Warming Commission shall de-
24 liver to the Oregon Climate Board all records and property within the jurisdiction of the
25 chairperson that relate to the duties, functions and powers transferred by section 107 of this
26 2019 Act.

27 (2) The chairperson of the Oregon Climate Board shall take possession of the records and
28 property.

29 (3) The Governor shall resolve any dispute between the Oregon Global Warming Com-
30 mission and the Oregon Climate Board relating to transfers of records and property under
31 this section, and the Governor's decision is final.

32 SECTION 109. (1) The unexpended balances of amounts authorized to be expended by the
33 Oregon Global Warming Commission for the biennium beginning July 1, 2019, from revenues
34 dedicated, continuously appropriated, appropriated or otherwise made available for the pur-
35 pose of administering and enforcing the duties, functions and powers transferred by section
36 107 of this 2019 Act are transferred to and are available for expenditure by the Oregon Cli-
37 mate Board for the biennium beginning July 1, 2019, for the purpose of administering and
38 enforcing the duties, functions and powers transferred by section 107 of this 2019 Act.

39 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
40 expenditures by the Oregon Global Warming Commission remain applicable to expenditures
41 by the Oregon Climate Board under this section.

42 SECTION 110. The transfer of duties, functions and powers to the Oregon Climate Board
43 by section 107 of this 2019 Act does not affect any action, proceeding or prosecution involving
44 or with respect to such duties, functions and powers begun before and pending at the time
45 of the transfer, except that the Oregon Climate Board is substituted for the Oregon Global

1 **Warming Commission in the action, proceeding or prosecution.**

2 **SECTION 111. (1) Nothing in sections 107 to 114 of this 2019 Act, the amendments to**
3 **statutes by sections 116 to 121 of this 2019 Act or the repeal of statutes by section 115 of this**
4 **2019 Act relieves a person of a liability, duty or obligation accruing under or with respect to**
5 **the duties, functions and powers transferred by section 107 of this 2019 Act. The Oregon**
6 **Climate Board may undertake the collection or enforcement of any such liability, duty or**
7 **obligation.**

8 **(2) The rights and obligations of the Oregon Global Warming Commission legally incurred**
9 **under contracts, leases and business transactions executed, entered into or begun before the**
10 **operative date of section 107 of this 2019 Act are transferred to the Oregon Climate Board.**
11 **For the purpose of succession to these rights and obligations, the Oregon Climate Board is**
12 **a continuation of the Oregon Global Warming Commission and not a new authority.**

13 **SECTION 112. Notwithstanding the transfer of duties, functions and powers by section**
14 **107 of this 2019 Act, the rules of the Oregon Global Warming Commission in effect on the**
15 **operative date of section 107 of this 2019 Act continue in effect until superseded or repealed**
16 **by rules of the Oregon Climate Board. References in rules of the Oregon Global Warming**
17 **Commission to the Oregon Global Warming Commission or an officer of the Oregon Global**
18 **Warming Commission are considered to be references to the Oregon Climate Board or an**
19 **officer of the Oregon Climate Board.**

20 **SECTION 113. Whenever, in any statutory law or resolution of the Legislative Assembly**
21 **or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-**
22 **erence is made to the Oregon Global Warming Commission or an officer or employee of the**
23 **Oregon Global Warming Commission, the reference is considered to be a reference to the**
24 **Oregon Climate Board or an officer of the Oregon Climate Board.**

25 **SECTION 114. For the purpose of harmonizing and clarifying statutory law, the Legisla-**
26 **tive Counsel may substitute for words designating the “Oregon Global Warming**
27 **Commission” or its officers, wherever they occur in statutory law, words designating the**
28 **“Oregon Climate Board” or its officers.**

29
30 **(Repeals)**

31
32 **SECTION 115. ORS 468A.200, 468A.210, 468A.215, 468A.220, 468A.225, 468A.230 and 468A.250**
33 **are repealed.**

34
35 **(Amendments to Statutes)**

36
37 **SECTION 116. ORS 468A.235 is amended to read:**

38 **468A.235. The [*Oregon Global Warming Commission*] **Oregon Climate Board** shall recommend**
39 **ways to coordinate state and local efforts to reduce greenhouse gas emissions in Oregon consistent**
40 **with the greenhouse gas emissions reduction goals established by ORS 468A.205 and shall recom-**
41 **mend efforts to help Oregon prepare for the effects of [*global warming*] **climate change**. The Office**
42 **of the Governor and state agencies working on multistate and regional efforts to reduce greenhouse**
43 **gas emissions shall inform the [*commission*] **board** about these efforts and shall consider input from**
44 **the [*commission*] **board** for such efforts.**

45 **SECTION 117. ORS 468A.240 is amended to read:**

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

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

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

15 **SECTION 118.** ORS 468A.245 is amended to read:

16 468A.245. The [*Oregon Global Warming Commission*] **Oregon Climate Board** shall develop an
17 outreach strategy to educate Oregonians about the scientific aspects and economic impacts of
18 [*global warming*] **climate change** and to inform Oregonians of ways to reduce greenhouse gas
19 emissions and ways to prepare for the effects of [*global warming*] **climate change**. The
20 [*commission*] **board**, at a minimum, shall work with state and local governments, **the Climate Policy**
21 **Office**, the State Department of Energy, the Department of Education, the Higher Education Coor-
22 dinating Commission and businesses to implement the outreach strategy.

23 **SECTION 119.** ORS 468A.255 is amended to read:

24 468A.255. The [*Oregon Global Warming Commission*] **Oregon Climate Board** may recommend
25 to the Governor the formation of citizen advisory groups to explore particular areas of concern with
26 regard to the reduction of greenhouse gas emissions and the effects of [*global warming*] **climate**
27 **change**.

28 **SECTION 120.** ORS 468A.260 is amended to read:

29 468A.260. The [*Oregon Global Warming Commission*] **Oregon Climate Board** shall submit a re-
30 port to the Legislative Assembly, in the manner provided by ORS 192.245, by March 31 of each
31 odd-numbered year that describes Oregon's progress toward achievement of the greenhouse gas
32 emissions reduction goals established by ORS 468A.205. The report may include relevant issues and
33 trends of significance, including trends of greenhouse gas emissions, emerging public policy and
34 technological advances. The report also may discuss measures the state may adopt to mitigate the
35 impacts of [*global warming*] **climate change** on the environment, the economy and the residents of
36 Oregon and to prepare for those impacts.

37 **SECTION 121.** ORS 352.823 is amended to read:

38 352.823. (1) The Oregon Climate Change Research Institute is established at Oregon State Uni-
39 versity. In administering the institute, Oregon State University may seek the cooperation of other
40 public universities listed in ORS 352.002.

41 (2) The purpose of the Oregon Climate Change Research Institute is to:

42 (a) Facilitate research by faculty at public universities listed in ORS 352.002 on climate change
43 and its effects on natural and human systems in Oregon;

44 (b) Serve as a clearinghouse for climate change information;

45 (c) Provide climate change information to the public in integrated and accessible formats;

1 (d) Support the [*Oregon Global Warming Commission*] **Oregon Climate Board** in developing
2 strategies to prepare for and to mitigate the effects of climate change on natural and human sys-
3 tems; and

4 (e) Provide technical assistance to local governments to assist them in developing climate
5 change policies, practices and programs.

6 (3) The Oregon Climate Change Research Institute shall assess, at least once each biennium, the
7 state of climate change science, including biological, physical and social science, as it relates to
8 Oregon and the likely effects of climate change on the state. The institute shall submit the assess-
9 ment to the Legislative Assembly in the manner provided in ORS 192.245 and to the Governor.

10 (4) State agencies may contract with the Oregon Climate Change Research Institute to fulfill
11 agency needs regarding the collection, storage, integration, analysis, dissemination and monitoring
12 of climate change information, research and training.

13 **SECTION 121a.** ORS 468A.265 is amended to read:

14 468A.265. As used in ORS 468A.265 to 468A.277:

15 (1) “Biodiesel” means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty
16 acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm
17 oil.

18 (2) “Clean fuels program” means the program adopted by rule by the Environmental Quality
19 Commission under ORS 468A.266 (1)(b).

20 (3) “Compliance period” means the calendar year during which a regulated party must demon-
21 strate compliance with the low carbon fuel standards through participation in the clean fuels pro-
22 gram.

23 (4) “Credit” means a unit of measure generated when a fuel with a carbon intensity that is less
24 than the applicable low carbon fuel standard is produced, imported or dispensed for use in Oregon,
25 such that one credit is equal to one metric ton of carbon dioxide equivalent.

26 (5) “Credit aggregator” means a person who voluntarily registers to participate in the clean
27 fuels program to facilitate credit generation on behalf of a credit generator and to trade credits with
28 regulated parties, credit generators and other credit aggregators.

29 (6) “Credit generator” means a person eligible to generate credits by providing fuels for use in
30 Oregon with carbon intensities less than the applicable low carbon fuel standard.

31 (7) “Deferral” means a delay or change in the applicability of a scheduled applicable low carbon
32 fuel standard for a period of time, accomplished pursuant to an order issued under ORS 468A.273
33 or 468A.274.

34 (8) “Deficit” means a unit of measure generated when a fuel with a carbon intensity that is more
35 than the applicable low carbon fuel standard is produced, imported or dispensed for use in Oregon,
36 such that one deficit is equal to one metric ton of carbon dioxide equivalent.

37 (9) “Greenhouse gas” [*has the meaning given that term in ORS 468A.210*] **includes, but is not**
38 **limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,**
39 **sulfur hexafluoride and nitrogen trifluoride.**

40 (10) “Low carbon fuel standard” means a standard adopted by the commission by rule under
41 ORS 468A.266 for the reduction of greenhouse gas emissions, on average, per unit of fuel energy.

42 (11) “Motor vehicle” has the meaning given that term in ORS 801.360.

43 (12) “Regulated party” means a person responsible for complying with the low carbon fuel
44 standards.

45 (13) “Small deficit” means a net deficit balance at the end of a compliance period, after retire-

1 ment of all credits held by a regulated party, that does not exceed a percentage set by the com-
2 mission by rule of the total number of deficits that the regulated party generated for a compliance
3 period and that may not be greater than 10 percent of the total number of deficits that the regulated
4 party generated for a compliance period.

5 **SECTION 121b.** ORS 468A.279 is amended to read:

6 468A.279. (1) As used in this section:

7 (a) “Greenhouse gas” has the meaning given that term in ORS [468A.210] **468A.265**.

8 (b) “Motor vehicle” has the meaning given that term in ORS 801.360.

9 (2) The Environmental Quality Commission may adopt by rule standards and requirements de-
10 scribed in this section to reduce greenhouse gas emissions.

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

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

15 (4) The commission may adopt requirements for motor vehicle service providers to check and
16 inflate tire pressure according to the tire manufacturer’s or motor vehicle manufacturer’s recom-
17 mended specifications, provided that the requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 **SECTION 121c.** ORS 757.528 is amended to read:

44 757.528. (1) Unless modified by rule by the State Department of Energy as provided in this sec-
45 tion, the greenhouse gas emissions standard that applies to consumer-owned utilities is 1,100 pounds

1 of greenhouse gases per megawatt-hour for a generating facility.

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

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

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

12 (a) Modify the emissions standard to include other greenhouse gases as defined in ORS
13 [468A.210] **468A.265**, with the other greenhouse gases expressed as their carbon dioxide equivalent;
14 and

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

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

19 (B) Has a heat rate at high elevation within the boundaries of the Western Electricity Coordi-
20 nating Council; and

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

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

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

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

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

34
35 **EXPEDITED JUDICIAL REVIEW TO SUPREME COURT;**
36 **EXPIRATION**

37
38 **SECTION 122. (1) It is the intent of the Legislative Assembly that the provisions of this**
39 **2019 Act relating to the receipt of moneys by the state through the sale of allowances by**
40 **auction under section 34 of this 2019 Act do not render this 2019 Act a bill for raising revenue**
41 **subject to the provisions of Article IV, sections 18 and 25 (2), of the Oregon Constitution.**

42 **(2) Original jurisdiction is conferred on the Supreme Court to determine whether this**
43 **2019 Act is a bill for raising revenue subject to the provisions of Article IV, sections 18 and**
44 **25 (2), of the Oregon Constitution.**

45 **(3)(a) Any person interested in or affected or aggrieved by, or who will be affected or**

1 aggrieved by, section 34 of this 2019 Act may petition for judicial review under this section.
2 A petition for review must be filed within 60 days after the effective date of this 2019 Act.

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

5 (4) The petitioner shall serve a copy of the petition by registered or certified mail upon
6 the Oregon Department of Administrative Services, the Director of the Climate Policy Office,
7 the Attorney General and the Governor.

8 (5) Proceedings for review under this section shall be given priority over all other mat-
9 ters before the Supreme Court.

10 (6) In the event that the Supreme Court determines that there are factual issues in the
11 petition, the Supreme Court may appoint a special master to hear evidence and to prepare
12 recommended findings of fact.

13 **SECTION 123.** (1) Original jurisdiction to determine whether auctions conducted under
14 section 34 of this 2019 Act impose a tax that is subject to the provisions of Article IX, section
15 3a, of the Oregon Constitution, is conferred on the Supreme Court.

16 (2)(a) Any person interested in or affected or aggrieved by, or who will be affected or
17 aggrieved by, section 34 of this 2019 Act may petition for judicial review under this section.
18 A petition for review must be filed within 60 days after the effective date of this 2019 Act.

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

21 (3) The petitioner shall serve a copy of the petition by registered or certified mail upon
22 the Oregon Department of Administrative Services, the Director of the Climate Policy Office,
23 the Attorney General and the Governor.

24 (4) Proceedings for review under this section shall be given priority over all other mat-
25 ters before the Supreme Court.

26 (5) In the event that the Supreme Court determines that there are factual issues in the
27 petition, the Supreme Court may appoint a special master to hear evidence and to prepare
28 recommended findings of fact.

29 **SECTION 123a.** If section 34 of this 2019 Act is judicially declared by the Supreme Court
30 to not impose a tax subject to the provisions of Article IX, section 3a, of the Oregon Con-
31 stitution, then the Climate Policy Office shall, as part of the next biennial climate action
32 investment plan due pursuant to section 57 of this 2019 Act after the date of the judicial
33 declaration:

34 (1) Identify specific opportunities for using state proceeds from auctions conducted under
35 section 34 of this 2019 Act each biennium to reduce greenhouse gas emissions associated with
36 transportation through investments in transportation electrification, compressed natural gas
37 and hydrogen fuel vehicles and infrastructure, and low-emission and zero-emission transit;

38 (2) Identify specific opportunities for using state proceeds from auctions conducted under
39 section 34 of this 2019 Act each biennium to reduce greenhouse gas emissions through the
40 replacement of medium-duty trucks and heavy-duty trucks powered by diesel engines or the
41 repower or retrofit of diesel engines that power medium-duty trucks and heavy-duty trucks;

42 (3) Identify specific opportunities for using state proceeds from auctions conducted under
43 section 34 of this 2019 Act each biennium to reduce greenhouse gas emissions related to ag-
44 riculture, with a priority given to the replacement, repowering or retrofitting of nonroad
45 equipment to reduce emissions that present serious risks to farmworker health; and

1 (4) Make recommendations, including recommendations for legislation, for modifying the
2 distributions of state proceeds from auctions as provided for in sections 34, 35, 41 to 45 and
3 46 of this 2019 Act, and the repeal or amendment of any other statutes or session laws, as
4 necessary to:

5 (a) Address the judicial declaration by the Supreme Court that section 34 of this 2019 Act
6 does not impose a tax that is subject to the provisions of Article IX, section 3a, of the
7 Oregon Constitution; and

8 (b) Implement the opportunities identified pursuant to subsections (1) to (3) of this sec-
9 tion.

10 **SECTION 123b.** Section 123a of this 2019 Act becomes operative on January 2 of the year
11 following the date that section 34 of this 2019 Act is judicially declared by the Supreme Court
12 to not impose a tax that is subject to the provisions of Article IX, section 3a, of the Oregon
13 Constitution.

14 **SECTION 123c.** Sections 123a and 123b of this 2019 Act are repealed on the earlier of:

15 (1) The date that section 34 of this 2019 Act is judicially declared by the Supreme Court
16 to impose a tax that is subject to the provisions of Article IX, section 3a, of the Oregon
17 Constitution; or

18 (2) January 2, 2027.

19 **SECTION 123d.** (1) Original jurisdiction to determine whether auctions conducted under
20 section 34 of this 2019 Act impose a tax or excise that is subject to the provisions of Article
21 VIII, section 2 (1)(g), of the Oregon Constitution, is conferred on the Supreme Court.

22 (2)(a) Any person interested in or affected or aggrieved by, or who will be affected or
23 aggrieved by, section 34 of this 2019 Act may petition for judicial review under this section.
24 A petition for review must be filed within 60 days after the effective date of this 2019 Act.

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

27 (3) The petitioner shall serve a copy of the petition by registered or certified mail upon
28 the Oregon Department of Administrative Services, the Director of the Climate Policy Office,
29 the Attorney General and the Governor.

30 (4) Proceedings for review under this section shall be given priority over all other mat-
31 ters before the Supreme Court.

32 (5) In the event that the Supreme Court determines that there are factual issues in the
33 petition, the Supreme Court may appoint a special master to hear evidence and to prepare
34 recommended findings of fact.

35
36 **REPORTS AND REVIEWS**

37
38 **SECTION 124. Initial implementation report.** On or before September 15, 2020, the Oregon
39 Department of Administrative Services shall report on the actions being taken to prepare for
40 the implementation of sections 15 to 40 of this 2019 Act to the Joint Committee on Climate
41 Action.

42 **SECTION 125. Greenhouse gas emissions reporting program coordination report.** On or
43 before December 31, 2020, the Oregon Department of Administrative Services and the De-
44 partment of Environmental Quality shall jointly report, in the manner provided by ORS
45 192.245, on the coordination between the Oregon Department of Administrative Services and

1 the Department of Environmental Quality for administration of ORS 468A.280 and rules
2 adopted under ORS 468A.280, and for the sharing and administration of information collected
3 under ORS 468A.280 and rules adopted under ORS 468A.280. The report shall include recom-
4 mendations, which may include recommendations for legislation, on whether modification of
5 the transfer of duties related to greenhouse gas reporting provided in sections 75 to 81 of this
6 2019 Act should be made to ensure that the appropriate laws related to greenhouse gas re-
7 porting are administered by the appropriate department.

8 **SECTION 126. Offset implementation report.** On or before September 15, 2031, the Cli-
9 mate Policy Office shall conduct a review and provide a report to the Joint Committee on
10 Climate Action, in the manner provided by ORS 192.245, on the implementation of sections
11 30 to 32 of this 2019 Act and rules adopted under section 30 of this 2019 Act. The report may
12 include recommendations for legislation. The review and report must:

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

15 (2) Include a review of:

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

18 (b) To date, the offset projects developed and the offset credits generated and issued
19 under rules adopted and offset protocols developed pursuant to sections 30 to 32 of this 2019
20 Act;

21 (c) To date, the offset credits that have been invalidated pursuant to section 30 (5) of this
22 2019 Act;

23 (d) Offset credit prices and offset credit market conditions; and

24 (e) Advancements in the methods or technologies used for measuring and monitoring the
25 greenhouse gas emissions reductions or removals attributable to offset projects;

26 (3) Identify barriers to the adoption of offset protocols; and

27 (4) Make determinations and recommendations regarding whether changes to laws and
28 policies are necessary or advisable to address any negative impacts related to offset projects
29 or offset credits or to best align the laws or policies for offset projects and the use of offset
30 credits by covered entities with the purposes set forth in section 14 of this 2019 Act.

31 **SECTION 127. Report on certain exclusions from regulated emissions.** (1) No later than
32 January 1, 2025, the Climate Policy Office shall conduct research and submit a report, in the
33 manner provided by ORS 192.245, to the Joint Committee on Climate Action regarding the
34 exclusion from regulated emissions, as provided in section 17 (2)(a) of this 2019 Act, of the
35 greenhouse gas emissions from aviation fuel and fuel used in watercraft and railroad loco-
36 motives. The purpose of the report shall be to provide analysis of the anticipated effect of
37 amending section 17 of this 2019 Act and any other statutes as necessary such that, begin-
38 ning in the first compliance period that begins after January 1, 2027, the greenhouse gas
39 emissions from the combustion of fuel described in section 17 (2)(a) of this 2019 Act would
40 be included in regulated emissions.

41 (2) In carrying out the provisions of this section, the office shall research and provide
42 analysis on:

43 (a) Whether the aviation, marine and railroad industries in Oregon are reducing
44 greenhouse gas emissions consistent with the best available technologies and energy alter-
45 natives;

1 (b) Whether other jurisdictions that have adopted carbon pricing mechanisms require
2 aviation fuels, marine fuels or railroad fuels to comply with those carbon pricing mech-
3 anisms;

4 (c) The costs and economic impacts of eliminating the exclusion provided under section
5 17 (2)(a) of this 2019 Act, analyzed separately for each industry that would be impacted by
6 the elimination of the exclusion; and

7 (d) The environmental impacts of eliminating the exclusion provided under section 17
8 (2)(a) of this 2019 Act, analyzed separately for each industry that would be impacted by the
9 elimination of the exclusion.

10 **SECTION 128. Credit proposal.** (1) The Department of Transportation, in consultation
11 with the Department of Revenue, the Legislative Revenue Officer and any other relevant
12 state agencies, shall develop a proposal for a program or process for issuing the following
13 refunds or credits of moneys received by the state as proceeds from auctions of allowances
14 conducted under section 34 of this 2019 Act, in order to offset estimated increases in motor
15 vehicle fuel costs in Oregon attributable to the regulation of motor vehicle fuel producers
16 and importers as covered entities under sections 15 to 40 of this 2019 Act:

17 (a) A refund or credit available, in an amount up to 100 percent of the estimated increase
18 in the cost of motor vehicle fuel used to propel motor vehicles on the highways of this state,
19 to individuals with an adjusted gross income that does not exceed 250 percent of the federal
20 poverty guidelines based on the individual's household size and household members.

21 (b) One or more refunds or credits available, in order to offset the estimated increase in
22 the cost of motor vehicle fuel used to propel motor vehicles that are not operated on the
23 highways of this state, for motor vehicle fuel that is used in farm vehicles, motor vehicles
24 used in the forest products industry or motor vehicles otherwise used in the agricultural and
25 natural resource sectors.

26 (2) On or before September 15, 2019, and in the manner provided by ORS 192.245, the
27 Department of Transportation shall provide a report detailing the proposal and steps, which
28 may include recommendations for legislation, necessary to implement the proposal to the
29 Joint Committee on Climate Action and the Joint Committee on Transportation.

30 **SECTION 128a.** Section 75, chapter 750, Oregon Laws 2017, is amended to read:

31 **Sec. 75.** (1) The Oregon Transportation Commission shall conduct a **biennial** study. The purpose
32 of the study is to determine:

33 (a) The proportionate share that users of vehicles that are powered by different means should
34 pay for the costs of maintenance, operation and improvement of the highways in this state; and

35 (b) Whether users of vehicles that are powered by different means are paying that share.

36 (2) If the commission determines that users are not paying a proportionate share, then the
37 commission may include in the report recommendations for legislation.

38 (3) This section applies to users paying the vehicle registration fee under ORS 803.420 (6)(a).

39 (4) The commission shall report the results of the study to **the Road User Fee Task Force**
40 **established under ORS 184.843**, the Joint Committee on Transportation established under [section
41 26 of this 2017 Act] **ORS 171.858** and the Joint Committee on Climate Action established under
42 **section 2 of this 2019 Act**, in the manner provided by ORS 192.245, no later than September 15,
43 [2023] of each odd-numbered year, beginning in 2021.

44 **SECTION 128b.** Section 76, chapter 750, Oregon Laws 2017, is amended to read:

45 **Sec. 76.** Section 75, chapter 750, Oregon Laws 2017, [of this 2017 Act] is repealed on January

1 2, [2024] 2030.

2 **SECTION 129. Residential home heating assistance program proposal.** (1) The Housing
3 and Community Services Department, in consultation with the Climate Policy Office, the
4 Oregon Housing Stability Council and interested stakeholders, shall develop a proposal for
5 assisting households that for residential home heating use propane, fuel oil or other fossil
6 fuels that are not natural gas. The proposal shall give priority to assisting low-income
7 households or impacted communities, as defined in section 15 of this 2019 Act, through:

8 (a) Bill assistance; and

9 (b) Weatherization, including options for upgrading to more efficient home heating
10 equipment or to home heating systems powered by less greenhouse gas emissions-intensive
11 power sources.

12 (2) The department shall develop the proposal in a manner intended to achieve the fol-
13 lowing goals:

14 (a) Reducing greenhouse gas emissions;

15 (b) Saving energy;

16 (c) Reducing the energy burden experienced by households; and

17 (d) Reducing residential home heating service disparities in historically underserved
18 populations.

19 (3) The proposal required by this section may be for any combination of:

20 (a) The development of a single new program;

21 (b) The development of multiple new programs or activities to achieve different goals as
22 outlined in subsection (2) of this section; or

23 (c) Utilization of existing programs or partnerships to deliver assistance to households.

24 (4) On or before September 15, 2020, and in the manner provided by ORS 192.245, the
25 Housing and Community Services Department shall provide a report detailing the proposal,
26 and steps, which may include recommendations for legislation, necessary to implement the
27 proposal, to the Joint Committee on Climate Action.

28 **SECTION 130. Commercial and industrial natural gas and propane user emissions re-**
29 **duction program proposal.** (1) The Oregon Business Development Department shall:

30 (a) Conduct the analysis described in subsection (2) of this section; and

31 (b) Based on the analysis described in subsection (2) of this section, develop a proposal
32 for a program to serve the needs identified in the analysis in a manner that furthers one or
33 more of the purposes set forth in section 14 of this 2019 Act.

34 (2) The department shall analyze and determine the commercial needs in this state for
35 loans or other financial assistance to commercial and industrial natural gas users or propane
36 users for projects or activities to:

37 (a) Increase the energy efficiency of or reduce the greenhouse gas emissions from na-
38 tural gas or propane-fueled equipment used in industrial or commercial facilities;

39 (b) Facilitate replacing existing equipment in order to reduce greenhouse gas emissions;
40 and

41 (c) Reduce process emissions.

42 (3) In conducting the analysis and designing a proposal for a program as required by this
43 section, the department may consult and contract for services as necessary with state or
44 federal agencies or nongovernmental entities that have expertise in climate or energy policy
45 or in industrial energy efficiency, or other relevant expertise.

1 (4) On or before September 15, 2020, and in the manner provided by ORS 192.245, the de-
2 partment shall provide a report to the Joint Committee on Climate Action detailing the
3 analysis conducted and the proposal developed pursuant to this section and the steps, which
4 may include recommendations for legislation, necessary to implement the proposal.
5

6 **APPROPRIATIONS**
7

8 **SECTION 131.** (1) In addition to and not in lieu of any other appropriation, there is ap-
9 propriated to the Oregon Department of Administrative Services, for the biennium beginning
10 July 1, 2019, out of the General Fund, the amount of \$15,781,347, for carrying out the pro-
11 visions of this 2019 Act.

12 (2) In addition to and not in lieu of any other appropriation, there is appropriated to the
13 State Forestry Department, for the biennium beginning July 1, 2019, out of the General Fund,
14 the amount of \$333,310, for carrying out the provisions of this 2019 Act related to the State
15 Forestry Department.

16 (3) In addition to and not in lieu of any other appropriation, there is appropriated to the
17 Housing and Community Services Department, for the biennium beginning July 1, 2019, out
18 of the General Fund, the amount of \$568,654, for carrying out the provisions of this 2019 Act
19 related to the Housing and Community Services Department.

20 (4) Notwithstanding any other provision of law, the General Fund appropriation made to
21 the Higher Education Coordinating Commission by section 1 (1), chapter _____, Oregon
22 Laws 2019 (Enrolled House Bill 5024), for the biennium beginning July 1, 2019, is increased
23 by \$373,254, for carrying out the provisions of this 2019 Act related to the Higher Education
24 Coordinating Commission.

25 (5) Notwithstanding any other law limiting expenditures, the amount of \$250,000 is es-
26 tablished for the biennium beginning July 1, 2019, as the maximum limit for payment of ex-
27 penses from lottery moneys allocated from the Administrative Services Economic
28 Development Fund to the Oregon Business Development Department to conduct the analysis
29 and develop the program proposal required by section 130 of this 2019 Act.

30 (6) Notwithstanding any other law limited expenditures, the limitation on expenditures
31 established by section 2 (1), chapter _____, Oregon Laws 2019 (Enrolled House Bill 5017),
32 for the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from
33 fees, moneys or other revenues, including Miscellaneous Receipts, the proceeds of bonds for
34 the Orphan Site Account and federal funds from congestion mitigation and air quality grants,
35 drinking water protection, beach bacteria monitoring, laboratory accreditation and
36 woodstove grants and for smoke monitoring laboratory services, but excluding lottery funds
37 and federal funds not described in section 2, chapter _____, Oregon Laws 2019 (Enrolled
38 House Bill 5017), collected or received by the Department of Environmental Quality, for air
39 quality, is increased by \$1,039,640.

40 (7) Notwithstanding any other law limiting expenditures, the limitation on expenditures
41 established by section 2 (11), chapter _____, Oregon Laws 2019 (Enrolled House Bill 5039),
42 for the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from
43 fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received
44 as reimbursement from the United States Department of Transportation, but excluding lot-
45 tery funds and federal funds not described in section 2, chapter _____, Oregon Laws 2019

1 (Enrolled House Bill 5039), collected or received by the Department of Transportation, for
2 transportation program development, is increased by \$1,983,532.

3 (8) Notwithstanding any other law limiting expenditures, the limitation on expenditures
4 established by section 2 (15), chapter _____, Oregon Laws 2019 (Enrolled House Bill 5039),
5 for the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from
6 fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received
7 as reimbursement from the United States Department of Transportation, but excluding lot-
8 tery funds and federal funds not described in section 2, chapter _____, Oregon Laws 2019
9 (Enrolled House Bill 5039), collected or received by the Department of Transportation, for
10 central services, is increased by \$1,207,439.

11 (9) Notwithstanding any other law limiting expenditures, the limitation on expenditures
12 established by section 1 (1), chapter 185, Oregon Laws 2019 (Enrolled Senate Bill 5534), for
13 the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from
14 fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds
15 and federal funds, collected or received by the Public Utility Commission, for the utility
16 program, is increased by \$2,132,573.

17 NOTE: Section 132 was deleted by amendment. Subsequent sections were not renumbered.

18
19 **OPERATIVE DATE**

20
21 **SECTION 133.** (1)(a) Sections 107 to 114 of this 2019 Act, the amendments to statutes by
22 sections 116 to 121c of this 2019 Act and the repeal of statutes by section 115 of this 2019 Act
23 become operative on January 1, 2020.

24 (b) The Oregon Global Warming Commission and the Climate Policy Office may adopt
25 rules or take any actions before the operative date specified in paragraph (a) of this sub-
26 section that are necessary to enable the commission and the office, on and after the opera-
27 tive date specified in paragraph (a) of this subsection, to carry out the provisions of sections
28 107 to 114 of this 2019 Act, the amendments to statutes by sections 116 to 121c of this 2019
29 Act and the repeal of statutes by section 115 of this 2019 Act.

30 (2)(a) Sections 11, 12, 14 to 26, 29 to 36, 38 to 46, 49 to 68 and 89 to 92 of this 2019 Act,
31 the amendments to statutes by sections 13, 69, 87, 88, 94 to 100, 102 and 103 of this 2019 Act,
32 and the repeal of statutes by sections 93 and 101 of this 2019 Act become operative on Jan-
33 uary 1, 2021.

34 (b) The Director of the Climate Policy Office, the Climate Policy Office, the Public Utility
35 Commission, the Housing and Community Services Department, the State Department of
36 Energy, the Oregon Department of Administrative Services, the Environmental Quality
37 Commission, the Department of Environmental Quality, the Department of Transportation
38 and the Governor may adopt rules, issue orders or take any actions before the operative date
39 specified in paragraph (a) of this subsection that are necessary to enable the director, the
40 office, the commissions, the departments and the Governor, on and after the operative date
41 specified in paragraph (a) of this subsection, to carry out the provisions of sections 11, 12,
42 14 to 26, 29 to 36, 38 to 46, 49 to 68 and 89 to 92 of this 2019 Act, the amendments to statutes
43 by sections 13, 69, 87, 88, 94 to 100, 102 and 103 of this 2019 Act, and the repeal of statutes
44 by sections 93 and 101 of this 2019 Act.

45 (c)(A) If, in adopting rules, issuing orders or taking any actions before the operative date

1 specified in paragraph (a) of this subsection as authorized by paragraph (b) of this sub-
2 section, information is obtained by the State of Oregon that is information described in sec-
3 tion 40 (2)(a) to (c) of this 2019 Act, the information shall be treated as confidential business
4 information, is exempt from disclosure under the public records law, ORS 192.311 to 192.478,
5 and may not be disclosed to any person or entity except as provided in subparagraphs (B)
6 and (C) of this paragraph.

7 (B) Information described in subparagraph (A) of this paragraph may be used and dis-
8 closed in aggregated form.

9 (C) This paragraph does not prohibit the disclosure of information between the Climate
10 Policy Office and other agencies of the executive department, as defined in ORS 174.112, or
11 persons engaged by the State of Oregon to provide administrative or technical services to
12 support the implementation of sections 15 to 40 of this 2019 Act if the disclosure is necessary
13 for purposes of adopting rules, issuing orders or taking any actions before the operative date
14 specified in paragraph (a) of this subsection to carry out the provisions of sections 14 to 27,
15 29 to 36, 38 to 47, 49 to 68 and 89 to 92 of this 2019 Act, the amendments to statutes by
16 sections 69, 87, 94 to 100, 102 and 103 of this 2019 Act, and the repeal of statutes by sections
17 93 and 101 of this 2019 Act.

18 (3)(a) Sections 75 to 81 of this 2019 Act, the amendments to ORS 468.953 and 468A.280 by
19 sections 82 and 86 of this 2019 Act and the amendments to sections 11, 12 and 39 of this 2019
20 Act by sections 83 to 85 of this 2019 Act become operative on January 1, 2022.

21 (b) The Environmental Quality Commission, the Department of Environmental Quality,
22 the Oregon Department of Administrative Services, the Director of the Climate Policy Office
23 and the Climate Policy Office may adopt rules or take any actions before the operative date
24 specified in paragraph (a) of this subsection that are necessary to enable the Environmental
25 Quality Commission, the Department of Environmental Quality, the Oregon Department of
26 Administrative Services, the Director of the Climate Policy Office and the Climate Policy
27 Office, on and after the operative date specified in paragraph (a) of this subsection, to carry
28 out the provisions of sections 75 to 81 of this 2019 Act, the amendments to ORS 468.953 and
29 468A.280 by sections 82 and 86 of this 2019 Act and the amendments to sections 11, 12 and
30 39 of this 2019 Act by sections 83 to 85 of this 2019 Act.

31
32 **CAPTIONS**

33
34 **SECTION 134.** The unit and section captions used in this 2019 Act are provided only for
35 the convenience of the reader and do not become part of the statutory law of this state or
36 express any legislative intent in the enactment of this 2019 Act.

37
38 **EMERGENCY CLAUSE**

39
40 **SECTION 135.** This 2019 Act being necessary for the immediate preservation of the public
41 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
42 on its passage.