

HB 2020-31
(LC 894)
3/25/19 (MAM/ps)

At the request of JOINT COMMITTEE ON CARBON REDUCTION

**PROPOSED AMENDMENTS TO
HOUSE BILL 2020**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the
2 rest of the line and lines 3 and 4 and insert “amending ORS 468A.205,
3 468A.280, 469.300, 469.310, 469.373, 469.405, 469.407, 469.501, 469.503, 469.504,
4 469.505, 526.005, 526.725, 530.050 and 530.500 and section 12, chapter 751,
5 Oregon Laws 2009; repealing ORS 469.409, 526.780, 526.783, 526.786 and
6 526.789; and declaring an emergency.

7 “Whereas climate change and ocean acidification caused by greenhouse
8 gas emissions are having significant detrimental effects on public health and
9 on Oregon’s economic vitality, natural resources and environment; and

10 “Whereas the diverse impacts of climate change and ocean acidification
11 include increasingly devastating wildfires, communities overwhelmed by
12 deadly smoke, drinking water compromised by algal blooms, a rise in sea
13 levels resulting in flooding and the displacement of thousands of coastal
14 businesses and residences, damage to marine ecosystems and food sources,
15 extreme weather events, severe harm to this state’s agriculture, forestry and
16 tourism industries, and an increase in the incidences of infectious diseases,
17 asthma and other human health-related problems; and

18 “Whereas climate change has a disproportionate effect on fish and
19 wildlife populations, many of which require specific habitat conditions and
20 are therefore particularly vulnerable to warmer temperatures, modified pre-
21 cipitation patterns, diminished snowpack, ocean acidification and other ef-

1 facts of climate change; and

2 “Whereas climate change has a disproportionate effect on impacted com-
3 munities, such as Indian tribes, rural communities, workers, low-income
4 households and people of color, who typically have fewer resources for
5 adapting to climate change and are therefore the most vulnerable to dis-
6 placement, adverse health effects, job loss, property damage and other effects
7 of climate change; and

8 “Whereas the world’s leading climate scientists, including those in the
9 Oregon Climate Change Research Institute, predict that these serious im-
10 pacts of climate change will worsen if prompt action is not taken to curb
11 emissions; and

12 “Whereas in the absence of effective federal engagement, it is the re-
13 sponsibility of the individual states, deemed to be the laboratories of
14 progress, to take immediate leadership actions to address climate change and
15 ocean acidification; and

16 “Whereas by joining together with other leadership jurisdictions similarly
17 resolved to address climate change and ocean acidification, Oregon will help
18 encourage other states, the federal government and the international com-
19 munity to act; and

20 “Whereas by exercising a leadership role in addressing climate change
21 and ocean acidification, Oregon will position its economy, technology cen-
22 ters, financial institutions and businesses to benefit from the national and
23 international efforts that must occur to reduce greenhouse gas emissions;
24 and

25 “Whereas Oregon’s forests and other natural and working lands are
26 among the world’s most productive carbon sinks, providing many other im-
27 portant ecological, social and economic benefits, and Oregon’s sequestration
28 strategies can play an enormous and unique role in the global effort to
29 combat climate change; and

30 “Whereas after many years of study, debate and discussion, the State of

1 Oregon is prepared to design and implement a carbon pricing program that
2 balances mitigation, sequestration, adaptation and transition strategies to
3 benefit Oregon’s economy and help achieve the state’s agreed-upon
4 greenhouse gas emission reduction goals; and

5 “Whereas Oregon’s emissions reduction policies must be designed to pro-
6 tect climate impacted communities and promote the resiliency of these com-
7 munities through providing opportunities for job creation and training,
8 investments in infrastructure and economic development and increased
9 utilization of clean energy technologies; and

10 “Whereas vehicle electrification and investment in lower-carbon trans-
11 portation infrastructure can increase energy security and resilience in the
12 face of climate change; and

13 “Whereas the carbon pricing program must support a just economic
14 transition to a clean energy future by protecting the existing workforce and
15 creating new pathways to employment through workforce development in
16 clean energy, energy efficiency, adaptation and carbon sequestration sectors;
17 and

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

21 “Whereas the carbon pricing program must respect the rights and ability
22 of Indian tribes to exercise their stewardship and sovereign authority over
23 their sovereign trust lands and resources; and

24 “Whereas a key strategy in promoting net reductions of atmospheric car-
25 bon dioxide and adapting to climate change is preserving and maintaining
26 the resilient, healthy function of this state’s forests and other natural and
27 working lands; and

28 “Whereas it is the intent of the Legislative Assembly to obtain reductions
29 in greenhouse gas emissions through a comprehensive suite of existing and
30 future measures that include a legally binding, market-based carbon pricing

1 mechanism, and that must lay out a predictable pathway to success, be
2 flexible and adaptable to changing circumstances, be based on best available
3 science, recognize the benefit of Oregon’s natural and working lands in re-
4 ducing carbon, and be designed to reduce emissions and to successfully
5 transition to a clean energy economy with benefits available to all
6 Oregonians; and

7 “Whereas linkage with other jurisdictions will create efficiencies, spur
8 innovation and create simplicity for businesses, and can be balanced with the
9 ability to maintain Oregon’s authority over its carbon reduction,
10 sequestration and adaptation activities; and

11 “Whereas any resources generated by the carbon pricing program must
12 be invested to maximize multiple cobenefits aligned with the program’s goals
13 in an efficient and cost-effective manner overseen by the Legislative Assem-
14 bly and inclusive of communities throughout Oregon to ensure statewide
15 benefits; and

16 “Whereas the benefits and effectiveness of any investments must be eval-
17 uated through regular and rigorous third-party auditing; and

18 “Whereas the Legislative Assembly must maintain transparent oversight
19 of program design, implementation, evaluation and subsequent decision-
20 making; now, therefore,”.

21 Delete lines 6 through 18 and delete pages 2 through 55 and insert:

22

23 **“STATEWIDE GREENHOUSE GAS EMISSIONS REDUCTION GOALS**

24

25 **“SECTION 1.** ORS 468A.205 is amended to read:

26 “468A.205. (1) The Legislative Assembly declares that it is the [*policy*]
27 **goal** of this state to **achieve a reduction in anthropogenic greenhouse**
28 **gas emissions levels in Oregon:** [*reduce greenhouse gas emissions in Oregon*
29 *pursuant to the following greenhouse gas emissions reduction goals:*]

30 “[*(a) By 2010, arrest the growth of Oregon’s greenhouse gas emissions and*

1 *begin to reduce greenhouse gas emissions.]*

2 *“(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990*
3 *levels.]*

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

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

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

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

13 **“(3) This section does not create any additional regulatory authority for**
14 **an agency of the executive 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 Cli-**
19 **mate Action.**

20 **“(2) The joint committee consists of members of the Senate ap-**
21 **pointed by the President of the Senate and members of the House of**
22 **Representatives appointed by the Speaker of the House of Represen-**
23 **tatives.**

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

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

1 **“(5) The term of a member shall expire upon the date of the con-**
2 **vening of the odd-numbered year regular session of the Legislative**
3 **Assembly next following the commencement of the member’s term.**

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

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

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

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

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

19 **“(b) Notwithstanding paragraph (a) of this subsection, when en-**
20 **gaged in out-of-state travel, members shall be entitled to receive their**
21 **actual and necessary expenses in lieu of the amount authorized by this**
22 **subsection. Payment shall be made from funds appropriated to the**
23 **Legislative Assembly.**

24 **“(8) The joint committee may not transact business unless a quo-**
25 **rum is present. Except as provided in subsection (6)(b)(B) of this sec-**
26 **tion, a quorum consists of a majority of joint committee members**
27 **from the House of Representatives and a majority of joint committee**
28 **members from the Senate.**

29 **“(9) Action by the joint committee requires the affirmative vote of**
30 **a majority of joint committee members from the House of Represen-**

1 tatives and a majority of joint committee members from the Senate.

2 “(10) The joint committee may adopt rules necessary for the oper-
3 ation of the joint committee.

4 “(11) The Legislative Policy and Research Director may employ
5 persons necessary for the performance of the functions of the joint
6 committee. The director shall fix the duties and amounts of compen-
7 sation of the employees. The joint committee shall use the services
8 of continuing legislative staff, without employing additional persons,
9 to the greatest extent practicable.

10 “(12) All agencies of state government, as defined in ORS 174.111,
11 are directed to assist the joint committee in the performance of the
12 duties of the joint committee and, to the extent permitted by laws
13 relating to confidentiality, to furnish information and advice the
14 members of the joint committee consider necessary to perform their
15 duties.

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

17 **“(a) Provide general legislative oversight of policy related to cli-**
18 **mate, including but not limited to the Oregon Climate Action Program**
19 **established under sections 7 to 29 of this 2019 Act;**

20 **“(b) Examine and prioritize expenditures and investments of state**
21 **proceeds from auctions conducted under section 22 of this 2019 Act;**
22 **and**

23 **“(c) Make recommendations related to the expenditures and in-**
24 **vestments of state proceeds from auctions conducted under section 22**
25 **of this 2019 Act to the Joint Committee on Ways and Means.**

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

28 **“(a) The biennial expenditure reports and audit report required by**
29 **sections 43 and 44 of this 2019 Act;**

30 **“(b) The biennial climate action investment plan required by section**

1 46 of this 2019 Act; and

2 “(c) The recommendations of the Environmental Justice Task Force
3 required by section 49 of this 2019 Act.

4

5 “CARBON POLICY OFFICE ESTABLISHED

6

7 “SECTION 4. Carbon Policy Office. (1) The Carbon Policy Office is
8 established within the Oregon Department of Administrative Services.

9 “(2) The office shall:

10 “(a) Coordinate state actions toward achieving reductions in
11 greenhouse gas emissions in accordance with ORS 468A.205 and other
12 statutes, rules and policies that govern the state’s or state agencies’
13 actions to reduce greenhouse gas emissions; and

14 “(b) Carry out the duties, functions and powers committed to the
15 office under sections 7 to 29 and 43 to 47 of this 2019 Act and ORS
16 468A.280 and other statutes, rules or policies that commit functions to
17 the office.

18 “(3) The office may advise, consult and cooperate with other agen-
19 cies of the state, political subdivisions, other states or the federal
20 government, with respect to any proceedings and all matters pertain-
21 ing to the reduction of greenhouse gas emissions levels in Oregon.

22 “(4) The office may employ personnel, including specialists and
23 consultants, purchase materials and supplies and enter into contracts
24 necessary to carry out the purposes set forth in sections 7 to 29 and
25 43 to 47 of this 2019 Act and ORS 468A.280 and other statutes, rules or
26 policies that commit functions to the office.

27 “SECTION 5. Director. (1) The Carbon Policy Office is under the
28 supervision and control of a director, who is responsible for the per-
29 formance of the duties, functions and powers of the office.

30 “(2) The Governor shall appoint the Director of the Carbon Policy

1 Office, subject to confirmation by the Senate in the manner prescribed
2 in ORS 171.562 and 171.565. The director holds office at the pleasure of
3 the Governor.

4 “(3) The director may adopt rules in accordance with ORS chapter
5 183 to exercise and carry out the duties, functions and powers com-
6 mitted to the office under sections 7 to 29 and 43 to 47 of this 2019 Act
7 and ORS 468A.280 and other statutes, rules or policies that commit
8 functions to the office.

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

11 “(5) Subject to the approval of the Governor, the director may or-
12 ganize and reorganize the administrative structure of the office as the
13 director considers appropriate to properly conduct the work of the of-
14 fice.

15 “(6) The director may divide the functions of the office into ad-
16 ministrative divisions. Subject to the approval of the Governor, the
17 director may appoint an individual to administer each division. The
18 administrator of each division serves at the pleasure of the director
19 and is not subject to the provisions of ORS chapter 240. Each individ-
20 ual appointed under this subsection must be well qualified by technical
21 training and experience in the functions to be performed by the indi-
22 vidual.

23 “(7) Subject to any applicable provisions of ORS chapter 240, the
24 director shall appoint all subordinate officers and employees of the
25 office, prescribe their duties and fix their compensation.

26
27 **“OREGON CLIMATE ACTION PROGRAM**

28 **“(Statement of Purpose)**

29
30 **“SECTION 6. (1) The Legislative Assembly finds and declares that**

1 the purposes of sections 6 to 49 of this 2019 Act are:

2 “(a) To achieve a reduction in total levels of regulated emissions
3 under sections 7 to 29 of this 2019 Act to at least 45 percent below 1990
4 emissions levels by 2035 and to achieve a reduction in total regulated
5 emissions levels to at least 80 percent below 1990 emissions levels by
6 2050;

7 “(b) To promote greenhouse gas emissions sequestration and miti-
8 gation;

9 “(c) To promote the adaptation and resilience of natural and work-
10 ing lands, fish and wildlife resources, communities, the economy and
11 this state’s infrastructure in the face of climate change and ocean
12 acidification; and

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

17 “(2) Sections 6 to 49 of this 2019 Act and the rules adopted pursuant
18 to sections 6 to 49 of this 2019 Act:

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

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

23

24 “(Greenhouse Gas Cap and Market-Based Compliance Mechanism)

25

26 “SECTION 7. Definitions. As used in sections 7 to 29 of this 2019
27 Act:

28 “(1) ‘Aggregation’ means an approach for qualifying and quantify-
29 ing offset projects, for the purposes of reducing costs and increasing
30 the development of offset projects, that allows for the grouping to-

1 **gether of two or more geographically separate activities undertaken**
2 **by one or more parties that result in reductions or removals of**
3 **greenhouse gases in a similar manner.**

4 **“(2) ‘Air contamination source’ means an air contamination source**
5 **as that term is defined in ORS 468A.005 for which a permit is issued**
6 **by the Department of Environmental Quality pursuant to ORS 468.065,**
7 **468A.040 or 468A.155.**

8 **“(3) ‘Allowance’ means a tradable authorization to emit one metric**
9 **ton of carbon dioxide equivalent.**

10 **“(4) ‘Annual allowance budget’ means the number of allowances**
11 **available to be allocated during one year of the Oregon Climate Action**
12 **Program.**

13 **“(5) ‘Anthropogenic greenhouse gas emissions’ means greenhouse**
14 **gas emissions that are not biogenic greenhouse gas emissions.**

15 **“(6) ‘Best available technology’ means the technology that will most**
16 **efficiently reduce the greenhouse gas emissions associated with the**
17 **manufacture of a good, without changing the characteristics of the**
18 **good being manufactured, that is technically feasible, commercially**
19 **available, economically viable and compliant with all applicable laws.**

20 **“(7) ‘Biogenic greenhouse gas emissions’ means greenhouse gas**
21 **emissions generated from the combustion of biomass-derived fuels.**

22 **“(8) ‘Biomass-derived fuels’ includes:**

23 **“(a) Nonfossilized and biodegradable organic material originating**
24 **from plants, animals or microorganisms;**

25 **“(b) Products, by-products, residues or waste from agriculture,**
26 **forestry or related industries; and**

27 **“(c) The nonfossilized and biodegradable organic fractions of in-**
28 **dustrial and municipal wastes, including gases and liquids recovered**
29 **from the decomposition of nonfossilized and biodegradable organic**
30 **material originating from plants, animals or microorganisms.**

1 **“(9)(a) ‘Business unit’ means a business operation that is located**
2 **at a facility permitted as a single air contamination source under ORS**
3 **468.065, 468A.040 or 468A.155, but that is distinguishable from one or**
4 **more other business operations located at the facility by:**

5 **“(A) The short title and six-digit code in the North American In-**
6 **dustry Classification System applicable to the business operation;**

7 **“(B) Accounting practices for the business operation that maintain**
8 **the finances for the business operation as distinct from the finances**
9 **of other business operations located at the facility; and**

10 **“(C) The capability of the business operation to operate separately**
11 **and independently of other business operations at the facility if not**
12 **colocated with the other business operations.**

13 **“(b) ‘Business unit’ does not mean a cogeneration facility.**

14 **“(10) ‘Carbon dioxide equivalent’ means the amount of carbon**
15 **dioxide by weight that would produce the same global warming impact**
16 **as a given weight of another greenhouse gas, based on considerations**
17 **including but not limited to the best available science, including in-**
18 **formation from the Intergovernmental Panel on Climate Change.**

19 **“(11) ‘Compliance instrument’ means one allowance or one offset**
20 **credit that may be used to fulfill a compliance obligation.**

21 **“(12) ‘Compliance obligation’ means the quantity of regulated**
22 **emissions for which a covered entity must submit compliance instru-**
23 **ments to the Carbon Policy Office during a compliance period.**

24 **“(13) ‘Consumer-owned utility’ has the meaning given that term in**
25 **ORS 757.270.**

26 **“(14) ‘Covered entity’ means a person that is designated by the of-**
27 **fice as subject to the Oregon Climate Action Program.**

28 **“(15) ‘Direct environmental benefits in this state’ means:**

29 **“(a) A reduction in or avoidance of emissions of any air contam-**
30 **inant in this state other than a greenhouse gas;**

1 **“(b) A reduction in or avoidance of pollution of any of the waters**
2 **of the state, as the terms ‘pollution’ and ‘the waters of the state’ are**
3 **defined in ORS 468B.005; or**

4 **“(c) An improvement in the health of natural and working lands in**
5 **this state.**

6 **“(16) ‘EITE entity’ means a covered entity or an opt-in entity that**
7 **is engaged in the manufacture of goods through one or more**
8 **emissions-intensive, trade-exposed processes, as further designated by**
9 **the office pursuant to section 14 of this 2019 Act.**

10 **“(17) ‘Electric company’ has the meaning given that term in ORS**
11 **757.600.**

12 **“(18) ‘Electricity service supplier’ has the meaning given that term**
13 **in ORS 757.600.**

14 **“(19) ‘Electric system manager’ includes any entity that, as needed,**
15 **operates or markets electricity generating facilities, or purchases**
16 **wholesale electricity, to manage the load for wholesale or retail elec-**
17 **tricity customers within a balancing authority area that is at least**
18 **partially located in Oregon, including but not limited to the following**
19 **types of entities:**

20 **“(a) Electric companies.**

21 **“(b) Electricity service suppliers.**

22 **“(c) Consumer-owned utilities.**

23 **“(d) The Bonneville Power Administration.**

24 **“(e) Electric generation and transmission cooperatives.**

25 **“(20) ‘Eligible Indian tribe’ means each of the Burns Paiute Tribe,**
26 **the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians,**
27 **the Confederated Tribes of the Grand Ronde Community of Oregon,**
28 **the Confederated Tribes of Siletz Indians of Oregon, the Confederated**
29 **Tribes of the Umatilla Indian Reservation, the Confederated Tribes of**
30 **Warm Springs, the Coquille Indian Tribe, the Cow Creek Band of**

1 **Umpqua Tribe of Indians and the Klamath Tribes.**

2 **“(21) ‘General market participant’ means a person that:**

3 **“(a) Is a registered entity;**

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

5 **“(c) Intends to purchase, hold, sell or voluntarily surrender com-**
6 **pliance instruments.**

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

10 **“(23) ‘Impacted community’ means a community most at risk of**
11 **being disproportionately impacted by climate change as designated by**
12 **the office under section 21 of this 2019 Act.**

13 **“(24) ‘Indian trust lands’ means lands within the State of Oregon**
14 **held in trust by the United States for the benefit of an Indian tribe**
15 **of individual Indians.**

16 **“(25) ‘Multistate jurisdictional electric company’ means an electric**
17 **company that serves electricity customers in both Oregon and one or**
18 **more other states.**

19 **“(26) ‘Natural and working lands’ means lands and waters:**

20 **“(a) Actively used by an agricultural owner or operator for an ag-**
21 **ricultural operation that includes, but need not be limited to, active**
22 **engagement in farming or ranching;**

23 **“(b) Producing forest products;**

24 **“(c) Consisting of forests, woodlands, grasslands, sagebrush steppes,**
25 **deserts, freshwater and riparian systems, wetlands, coastal and**
26 **estuarine areas, the submerged and submersible lands within Oregon’s**
27 **territorial sea, watersheds, wildlands or wildlife habitats;**

28 **“(d) Used for recreational purposes such as parks, urban and com-**
29 **munity forests, trails, greenbelts and other similar open space land;**

30 **or**

1 “(e) That are Indian trust lands.

2 “(27) ‘Natural gas supplier’ means any entity that is not a natural
3 gas utility and:

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

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

7 “(28) ‘Natural gas utility’ means a natural gas utility regulated by
8 the Public Utility Commission under ORS chapter 757.

9 “(29) ‘Offset credit’ means a tradable credit generated by an offset
10 project that represents a greenhouse gas emissions reduction or re-
11 moval of one metric ton of carbon dioxide equivalent.

12 “(30) ‘Offset project’ means a project that reduces or removes
13 greenhouse gas emissions that are not regulated emissions.

14 “(31) ‘Opt-in entity’ means a person that is not designated as a
15 covered entity by the office and that voluntarily chooses to participate
16 in the Oregon Climate Action Program as if the entity were a covered
17 entity.

18 “(32) ‘Oregon Climate Action Program’ means the program adopted
19 by rule by the Director of the Carbon Policy Office under section 8 (1)
20 of this 2019 Act and in accordance with the provisions of sections 7 to
21 29 of this 2019 Act.

22 “(33) ‘Person’ includes individuals, corporations, associations,
23 firms, partnerships, joint stock companies, public and municipal cor-
24 porations, political subdivisions, the state and any agencies thereof
25 and the federal government and any agencies thereof.

26 “(34) ‘Registered entity’ means a covered entity, opt-in entity or
27 general market participant that has successfully registered to partic-
28 ipate in the Oregon Climate Action Program.

29 “(35) ‘Regulated emissions’ means the verified anthropogenic
30 greenhouse gas emissions reported by or assigned to a covered entity

1 or opt-in entity under ORS 468A.280 that the office determines by rule
2 are anthropogenic greenhouse gas emissions regulated under sections
3 7 to 29 of this 2019 Act.

4 “(36) ‘Surrender’ means to transfer a compliance instrument to the
5 office:

6 “(a) To fulfill a compliance obligation or an adjusted compliance
7 obligation; or

8 “(b) On a voluntary basis.

9 **SECTION 8. Adoption of program; general provisions.** (1)(a) The
10 Director of the Carbon Policy Office shall adopt an Oregon Climate
11 Action Program by rule in accordance with the provisions of sections
12 7 to 29 of this 2019 Act. The program shall:

13 “(A) Place a cap on the total anthropogenic greenhouse gas emis-
14 sions that are regulated emissions through setting annual allowance
15 budgets for 2021 to 2050; and

16 “(B) Provide a market-based mechanism for covered entities to
17 demonstrate compliance with the program.

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

21 “(B) Beginning in 2022 and for each following year until and in-
22 cluding 2035, the amount of allowances available in each annual al-
23 lowance budget shall decline by a constant amount as necessary to
24 accomplish a reduction in total regulated emissions levels to at least
25 45 percent below 1990 emissions levels by 2035.

26 “(C) Beginning in 2036 and for each following year until and in-
27 cluding 2050, the amount of allowances available in each annual al-
28 lowance budget shall decline by a constant amount as necessary to
29 accomplish a reduction in total regulated emissions levels to at least
30 80 percent below 1990 emissions levels by 2050.

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

14 “(2) Subject to section 9 of this 2019 Act, the office shall designate
15 persons as covered entities as follows:

16 “(a) Except as provided in paragraphs (b) and (c) of this subsection,
17 the office shall designate a person in control of an air contamination
18 source as a covered entity if the annual regulated emissions attribut-
19 able to the air contamination source meet or exceed 25,000 metric tons
20 of carbon dioxide equivalent.

21 “(b) For the purpose of regulating anthropogenic greenhouse gas
22 emissions attributable to the generation of electricity in this state, the
23 office shall designate a person in control of an air contamination
24 source as a covered entity if the industry description and code under
25 the North American Industry Classification System that is listed in
26 the permit for the air contamination source is fossil fuel electric power
27 generation, regardless of whether the annual regulated emissions at-
28 tributable to the air contamination source meet or exceed 25,000 met-
29 ric tons of carbon dioxide equivalent.

30 “(c) If an air contamination source is a facility composed of two or

1 more business units colocated with a cogeneration facility that gen-
2 erates energy utilized by the air contamination source, the office shall
3 designate the person in control of the air contamination source as a
4 covered entity for each individual business unit with annual regulated
5 emissions attributable to the business unit that meet or exceed 25,000
6 metric tons of carbon dioxide equivalent. A person designated as a
7 covered entity under this paragraph shall be a covered entity only for
8 addressing the annual regulated emissions attributable to the business
9 units for which the person is designated as a covered entity. For the
10 purposes of determining emissions attributable to an individual busi-
11 ness unit under this paragraph, the office shall attribute to the busi-
12 ness unit the emissions from the cogeneration facility colocated with
13 the business unit that are proportionate to the annual energy usage
14 of the business unit.

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

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

28 “(f) The office shall designate a natural gas utility as a covered
29 entity for the purpose of addressing annual regulated emissions that
30 are attributable to the combustion of natural gas that the natural gas

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

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

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

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

14 “(b) Rules allowing registered entities to bank and carry forward
15 allowances;

16 “(c) Rules prohibiting the borrowing of allowances from future
17 compliance periods;

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

20 “(e) Compliance periods, standards for calculating compliance obli-
21 gations and procedures for covered entities and opt-in entities to fulfill
22 their compliance obligations.

23 “(4)(a) The office shall require a covered entity or opt-in entity to
24 surrender to the office a quantity of compliance instruments equal to
25 the covered entity’s or opt-in entity’s compliance obligation no later
26 than the surrender date specified by the director by rule or order.

27 “(b) For purposes of determining the compliance obligation for a
28 covered entity that is an electric system manager, electricity sched-
29 uled by the electric system manager that is generated from a
30 renewable energy resource, regardless of the disposition of the

1 renewable energy certificate associated with the electricity, shall be
2 considered to have the emissions attributes of the underlying
3 renewable energy resource.

4 “(5) In addition to any penalty provided by law, rules adopted by the
5 director:

6 “(a) Shall require a covered entity or opt-in entity that fails to
7 timely surrender to the office a sufficient quantity of compliance in-
8 struments to fulfill a compliance obligation to surrender to the office
9 a number of compliance instruments that is in addition to the entity’s
10 compliance obligation; and

11 “(b) May establish a process for placing restrictions on the holding
12 account of a registered entity determined to have engaged in a vio-
13 lation described in section 29 of this 2019 Act.

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

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

21 **“SECTION 9. Exemptions and exclusions. (1) The Carbon Policy**
22 **Office shall exempt from regulation as a covered entity under sections**
23 **7 to 29 of this 2019 Act:**

24 “(a) A land disposal site as that term is defined in ORS 459.005.

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

28 “(2) The office shall exclude from regulated emissions under
29 sections 7 to 29 of this 2019 Act:

30 “(a) Greenhouse gas emissions attributable to an air contamination

1 source described in section 8 (2)(b) of this 2019 Act that are attribut-
2 able to the generation in this state of electricity that is:

3 “(A) Delivered to and consumed in another state, accounting for
4 transmission and distribution line losses; and

5 “(B) For which the capital and fuel costs associated with the gen-
6 eration are included in the rates of a multistate jurisdictional electric
7 company that are charged to the electricity customers in a state other
8 than Oregon.

9 “(b) Greenhouse gas emissions from the combustion of fuel that is
10 demonstrated to have been used as aviation fuel or as fuel in
11 watercraft or railroad locomotives.

12 “(c) Greenhouse gas emissions attributable to a consumer-owned
13 utility if the three-year average of the annual greenhouse gas emis-
14 sions attributable to electricity that is scheduled, by the consumer-
15 owned utility or by an electric generation and transmission
16 cooperative, for the consumer-owned utility to deliver for consumption
17 in this state is less than 25,000 metric tons of carbon dioxide equiv-
18 alent.

19 “(d) The emissions attributable to a person that is exempt from
20 designation as a covered entity under this section.

21 “(3) For purposes of section 8 (2)(g) of this 2019 Act, the office may
22 exempt from designation as a covered entity any person that imports
23 in a calendar year less than a de minimis amount of gasoline and
24 diesel fuel, in total, as determined by the office by rule. Gasoline and
25 diesel fuel imported by persons that are related or share common
26 ownership or control shall be aggregated in determining whether a
27 person may be exempted under this subsection.

28 **SECTION 10. Allocation of allowances, generally.** (1) The Carbon
29 Policy Office shall allocate the allowances available in each annual
30 allowance budget as follows:

1 “(a) The office shall allocate a percentage of the allowances for di-
2 rect distribution into an allowance price containment reserve.

3 “(b) The office may allocate a percentage of the allowances for di-
4 rect distribution into a voluntary renewable electricity generation re-
5 serve. The Director of the Carbon Policy Office shall adopt rules for
6 the distribution of allowances from the voluntary renewable electricity
7 generation reserve for voluntary renewable electricity generated by
8 generating facilities that begin operations on or after January 1, 2021.

9 “(c) The office shall allocate a number of the allowances for direct
10 distribution at no cost to covered entities that are electric companies
11 subject to rules adopted under section 11 of this 2019 Act.

12 “(d) The office shall allocate a number of the allowances for direct
13 distribution at no cost to covered entities that are electric system
14 managers other than electric companies pursuant to section 12 of this
15 2019 Act.

16 “(e) The office shall allocate a percentage of the allowances for di-
17 rect distribution into an electricity price containment reserve. Allow-
18 ances may be directly distributed at no cost from the electricity price
19 containment reserve only when the distribution is necessary to protect
20 electricity ratepayers from cost increases associated with unexpected
21 increases in regulated emissions attributable to an electric system
22 manager that are outside of the control of the electric system man-
23 ager, including but not limited to unexpected increases in regulated
24 emissions due to hydroelectric power generation variability. The di-
25 rector shall adopt by rule a process for electric system managers to
26 apply for direct distribution at no cost of allowances from the elec-
27 tricity price containment reserve.

28 “(f) The office shall allocate a number of the allowances for direct
29 distribution at no cost to covered entities that are natural gas utilities
30 subject to rules adopted under section 13 of this 2019 Act.

1 “(g) In order to mitigate leakage and pursuant to sections 14 and
2 16 of this 2019 Act, the office shall allocate a number of the allowances
3 for direct distribution at no cost to covered entities and opt-in entities
4 that are EITE entities.

5 “(h) The office shall allocate a percentage of the allowances for di-
6 rect distribution into an emissions-intensive, trade-exposed process
7 reserve account. Allowances in the emissions-intensive, trade-exposed
8 process reserve account may be distributed only to EITE entities pur-
9 suant to rules adopted by the director under section 16 (6) of this 2019
10 Act.

11 “(i) The office may allocate a number of the allowances for direct
12 distribution into any other reserves that the office establishes by rule
13 and as the office determines is necessary.

14 “(j) The office shall allocate the allowances that are otherwise un-
15 allocated pursuant to paragraphs (a) to (i) of this subsection for dis-
16 tribution into an auction holding account for auction pursuant to
17 section 22 of this 2019 Act.

18 “(2)(a) The office shall distribute the allowances available within
19 each annual allowance budget pursuant to the allocations made under
20 subsection (1) of this section.

21 “(b) If allowances distributed to the auction holding account pur-
22 suant to subsection (1)(j) of this section remain unsold after two or
23 more consecutive auctions held pursuant to section 22 of this 2019 Act,
24 the office may redistribute the unsold allowances to the allowance
25 price containment reserve described in section (1)(a) of this section.

26 “SECTION 11. Direct distribution of allowances for electric compa-
27 nies. The Director of the Carbon Policy Office shall, in consultation
28 with the Public Utility Commission, adopt rules for allocating allow-
29 ances for direct distribution at no cost to covered entities that are
30 electric companies. Direct distributions under this section must be for

1 the exclusive benefit of ratepayers. Rules adopted under this section
2 must allow for an electric company to use allowances directly distrib-
3 uted under this section to fulfill compliance obligations associated
4 with electricity used to serve the load of the electric company’s retail
5 electricity consumers, as that term is defined in ORS 757.600, in
6 Oregon, subject to the oversight of the commission. The rules must
7 include provisions necessary to implement direct distributions of al-
8 lowances to electric companies as follows:

9 “(1)(a) For the purpose of aligning the effects of sections 7 to 29 of
10 this 2019 Act with the trajectory of emissions reductions by electric
11 companies resulting from the requirements of ORS 469A.005 to 469A.210
12 and 757.518:

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

21 “(B) The direct distribution of allowances to an electric company
22 during 2030 must represent an amount equal to 100 percent of the
23 electric company’s forecast regulated emissions associated with the
24 electricity used to serve the load of the electric company’s retail
25 electricity customers in Oregon for the calendar year 2030.

26 “(b) For purposes of this subsection, forecast regulated emissions
27 for an electric company must be based on, or contained in:

28 “(A) The most recent integrated resource plan filed by the electric
29 company and acknowledged by order by the commission;

30 “(B) Any updates to the integrated resource plan filed by the elec-

1 **tric company with the commission as of January 1, 2021; or**

2 **“(C) In the case of a multistate jurisdictional electric company,**
3 **other information developed consistent with a methodology approved**
4 **by the commission.**

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

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

15 **“(a) The direct distribution to an electric system manager under**
16 **this subsection during calendar year 2021 shall represent an amount**
17 **equal to 100 percent of the verified anthropogenic greenhouse gas**
18 **emissions that are:**

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

23 **“(B) Not excluded from regulated emissions under section 9 (2)(c)**
24 **of this 2019 Act.**

25 **“(b) Beginning in 2022 and for each subsequent calendar year until**
26 **and including 2050, the direct distribution received by an electric sys-**
27 **tem manager for emissions described in paragraph (a) of this sub-**
28 **section shall decline annually by a constant amount proportionate to**
29 **the decline in the amount of allowances available in annual allowance**
30 **budgets pursuant to section 8 (1)(b) of this 2019 Act.**

1 “(2) Proceeds from the sale by a consumer-owned utility of allow-
2 ances distributed at no cost under this section must be used by the
3 consumer-owned utility for the benefit of ratepayers, consistent with
4 the purposes stated in section 6 of this 2019 Act and as further required
5 by the governing body of the consumer-owned utility.

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

14 “SECTION 13. Direct distribution of allowances for natural gas
15 utilities. (1) The Director of the Carbon Policy Office shall, in consul-
16 tation with the Public Utility Commission, adopt rules for allocating
17 allowances for direct distribution at no cost to covered entities that
18 are natural gas utilities. Rules adopted under this section must allow
19 for a natural gas utility to be directly distributed allowances at no cost
20 in an amount equal to the covered emissions attributable to the pro-
21 vision of natural gas service to the natural gas utility’s low-income
22 residential customers. By January 1 of the first year of each compli-
23 ance period, the Carbon Policy Office shall determine, after consulta-
24 tion with the commission, the quantity of allowances to allocate
25 directly to a natural gas utility over the course of the compliance pe-
26 riod.

27 “(2) Rules adopted under this section must allow for natural gas
28 utilities to, subject to the oversight of the commission, use allowances
29 directly distributed under this section to minimize the impacts of
30 sections 7 to 29 of this 2019 Act on low-income residential customers

1 through actions that may include, but need not be limited to, fulfilling
2 compliance obligations associated with serving the load of the natural
3 gas utility's retail customers in Oregon.

4 **“SECTION 14. Designation of covered entities and opt-in entities**
5 **engaged in emissions-intensive, trade-exposed processes as EITE enti-**
6 **ties.** (1) The Carbon Policy Office shall designate a covered entity or
7 opt-in entity as an EITE entity, if the covered entity or opt-in entity
8 is a person in control of an air contamination source and is engaged,
9 as of the operative date of this section, in the manufacture of goods
10 through one or more of the following emissions-intensive, trade-
11 exposed processes, as identified by industry group and code in the
12 North American Industry Classification System:

13 **“(a) Sawmills and Wood Preservation, code 3211.**

14 **“(b) Veneer, Plywood, and Engineered Wood Product Manufactur-**
15 **ing, code 3212.**

16 **“(c) Cement and Concrete Product Manufacturing, code 3273.**

17 **“(d) Fruit and Vegetable Preserving and Specialty Food Manufac-**
18 **turing, code 3114.**

19 **“(e) Iron and Steel Mills and Ferroalloy Manufacturing, code 3311.**

20 **“(f) Basic Chemical Manufacturing, code 3251.**

21 **“(g) Plastics Product Manufacturing, code 3261.**

22 **“(h) Other Nonmetallic Mineral Product Manufacturing, code 3279.**

23 **“(i) Glass and Glass Product Manufacturing, code 3272.**

24 **“(j) Lime and Gypsum Product Manufacturing, code 3274.**

25 **“(k) Pulp, Paper, and Paperboard Mills, code 3221.**

26 **“(L) Semiconductor and Other Electronic Component Manufactur-**
27 **ing, code 3344.**

28 **“(m) Foundries, code 3315.**

29 **“(2)(a) The Director of the Carbon Policy Office shall adopt by rule**
30 **a process for designating as an EITE entity a covered entity or opt-in**

1 entity that:

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

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

8 “(b) The director shall hire or contract with a third-party organ-
9 ization to assist the office in gathering data and conducting analyses
10 as necessary to assist the director in carrying out the process required
11 by this subsection.

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

19 “(3) A covered entity or opt-in entity that is a fossil fuel distrib-
20 ution and storage facility or infrastructure, or an electric generating
21 unit, may not be designated as an EITE entity and may not receive
22 allowances at no cost under section 16 of this 2019 Act.

23 “SECTION 15. Leakage risk study. (1) No later than September 15,
24 2021, the Carbon Policy Office shall complete a study on the leakage
25 risk of air contamination sources in this state that report annual
26 verified anthropogenic greenhouse gas emissions under ORS 468A.280
27 of between 10,000 and 25,000 metric tons of carbon dioxide equivalent.

28 “(2) The purpose of the study shall be to evaluate the emissions
29 intensiveness and trade exposure of the air contamination sources
30 described in subsection (1) of this section and to aid the office in im-

1 **plementing the process for designation of EITE entities adopted by**
2 **rule under section 14 (2) of this 2019 Act.**

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

5 **“SECTION 16. Direct distribution of allowances for EITE entities.**

6 **(1) The annual allocation of allowances for direct distribution at no**
7 **cost to an EITE entity shall be a number of allowances equal to the**
8 **sum total of the annual good-specific emissions calculations for the**
9 **goods manufactured by the EITE entity, multiplied by 95 percent.**

10 **“(2) The annual good-specific emissions calculation for a good**
11 **manufactured by an EITE entity shall be the product of:**

12 **“(a) The applicable benchmark for the good pursuant to subsection**
13 **(3) or (4) of this section; and**

14 **“(b) The EITE entity’s output of the good during the calendar year**
15 **prior to the calendar year in which the annual allocation of allowances**
16 **will be directly distributed.**

17 **“(3) For the calendar years beginning in 2021 and for each following**
18 **year until and including 2023, the Carbon Policy Office shall calculate**
19 **and apply a facility benchmark for each good manufactured in this**
20 **state by each EITE entity by:**

21 **“(a) Calculating the three-year average of the total, expressed in**
22 **metric tons of carbon dioxide equivalent, of anthropogenic greenhouse**
23 **gas emissions attributable to manufacture of the good in this state**
24 **each year by the EITE entity, using anthropogenic greenhouse gas**
25 **emissions information from the three most recent years prior to 2021**
26 **for which verified anthropogenic greenhouse gas emissions informa-**
27 **tion is available and verified by the office; and**

28 **“(b) Dividing the number calculated under paragraph (a) of this**
29 **subsection by the three-year average of the total annual output of the**
30 **good in this state by the EITE entity, using output data from the three**

1 most recent years prior to 2021.

2 “(4)(a) Beginning in 2024 and for each following year until and in-
3 cluding 2050, the office shall apply a best available technology
4 benchmark for each good manufactured in this state by each EITE
5 entity. The office shall first adopt best available technology
6 benchmarks for goods manufactured in this state by EITE entities no
7 later than January 1, 2024, and shall update the best available tech-
8 nology benchmarks once every six years. Each best available technol-
9 ogy benchmark must represent the anthropogenic greenhouse gas
10 emissions that would be attributable to manufacture of the good in
11 this state by the EITE entity if the EITE entity were to use the best
12 available technology as of the date that the benchmark was last up-
13 dated.

14 “(b) In adopting the best available technology benchmark for a good
15 manufactured by an EITE entity, the office may review and consider
16 emissions intensity audit reports specific to the EITE entity and that
17 are produced by qualified, independent third-party organizations.

18 “(c) An EITE entity may submit to the office, for consideration in
19 adopting best available technology benchmarks, an emissions intensity
20 audit report produced by a qualified, independent third-party organ-
21 ization. The audit report must:

22 “(A) Include an analysis of the current technologies, equipment and
23 processes used to manufacture each good at the EITE entity’s facility
24 and the resulting emissions intensity per unit of output for each good
25 manufactured by the EITE entity.

26 “(B) Include an analysis of the best available technology to produce
27 the goods manufactured by the EITE entity and the resulting emis-
28 sions intensity per unit of output for each good if best available tech-
29 nology were used at the EITE entity’s facility. The analysis required
30 by this subparagraph must take into consideration, to the greatest

1 **extent practical:**

2 **“(i) The fuels, processes, equipment and technology used by facili-**
3 **ties in this state or in other jurisdictions to produce goods of compa-**
4 **erable type, use or quality; and**

5 **“(ii) Any barriers that would prevent adoption of the best available**
6 **technology by the EITE entity’s facility.**

7 **“(C) Based on the analyses required under subparagraphs (A) and**
8 **(B) of this paragraph, provide an estimate of the emissions intensity**
9 **per unit of output to produce the same goods at the same facility if**
10 **the facility used the best available technology.**

11 **“(5) In order to implement subsections (3) and (4) of this section,**
12 **the Director of the Carbon Policy Office shall adopt by rule:**

13 **“(a) A means for attributing an EITE entity’s anthropogenic**
14 **greenhouse gas emissions to the manufacture of individual goods; and**

15 **“(b) Requirements for EITE entities to provide any pertinent re-**
16 **CORDS necessary for the office to verify the output data used to calcu-**
17 **late benchmarks pursuant to this section.**

18 **“(6) The director shall adopt by rule a process for EITE entities to**
19 **apply to the office for an adjustment to the allocation of allowances**
20 **for direct distribution at no cost that the EITE entity may receive.**
21 **The office may grant an adjustment only for a significant unantic-**
22 **ipated change in the greenhouse gas emissions attributable to the**
23 **manufacture of an individual good or goods in this state by the EITE**
24 **entity, based on a finding by the office that the adjustment is neces-**
25 **sary to accommodate changes to the manufacturing process that have**
26 **a material impact on greenhouse gas emissions. Rules adopted under**
27 **this subsection may provide for the director to contract with an ex-**
28 **ternal third-party expert to assist the office in making individual de-**
29 **terminations on applications for adjustments.**

30 **“SECTION 17. Benchmark report. No later than September 15, 2030,**

1 the Carbon Policy Office shall provide a report to the Joint Committee
2 on Climate Action, in the manner provided in ORS 192.245, on the
3 benchmarks established pursuant to section 16 of this 2019 Act. The
4 report may include recommendations for legislation. The report shall
5 assess:

6 “(1) The emissions intensity and trade exposure of covered entities
7 and opt-in entities that have been designated as EITE entities pursu-
8 ant to section 14 of this 2019 Act;

9 “(2) The emissions reduction opportunities available to the covered
10 entities and opt-in entities described in subsection (1) of this section;
11 and

12 “(3) Whether the conclusions of the assessments required under
13 subsections (1) and (2) of this section warrant an adjustment to the
14 methods of calculating benchmarks developed pursuant to section 16
15 of this 2019 Act.

16 “SECTION 18. Offsets generally; rules. (1) Offset projects:

17 “(a) Must be located in the United States or approved by a juris-
18 diction with which the State of Oregon has entered into a linkage
19 agreement pursuant to section 25 of this 2019 Act;

20 “(b) Must not be otherwise required by law; and

21 “(c) Must result in anthropogenic greenhouse gas emissions re-
22 ductions or removals that:

23 “(A) Are real, permanent, quantifiable, verifiable and enforceable;
24 and

25 “(B) Are in addition to anthropogenic greenhouse gas emissions
26 reductions or removals otherwise required by law or legally enforcea-
27 ble mandate and that exceed any other anthropogenic greenhouse gas
28 emissions reductions or removals that would otherwise occur in a
29 conservative business-as-usual scenario.

30 “(2)(a) A total of no more than eight percent of a covered entity’s

1 compliance obligation may be fulfilled by surrendering offset credits.
2 A total of no more than four percent of a covered entity’s compliance
3 obligation may be fulfilled by surrendering offset credits generated by
4 offset projects that do not provide direct environmental benefits in
5 this state.

6 “(b) The Director of the Carbon Policy Office may by rule adopt
7 additional restrictions on the number of offset credits that may be
8 surrendered by a covered entity that is an air contamination source
9 and that is geographically located in an impacted community if:

10 “(A) The geographic area within which the air contamination
11 source is located is also a nonattainment area and the air contam-
12 ination source substantially contributes to or causes the nonattain-
13 ment of air quality standards; or

14 “(B) The air contamination source is in violation of the terms or
15 conditions of any permit required or authorized under ORS 468.065 or
16 ORS chapter 468A and issued by the Department of Environmental
17 Quality or a regional air quality control authority formed under ORS
18 468A.105.

19 “(3) The director shall adopt rules governing offset projects and the
20 generation and use of offset credits. The rules shall:

21 “(a) Provide for the development of offset protocols in a manner
22 that enables the state to pursue linkage agreements with other juris-
23 dictions pursuant to section 25 of this 2019 Act;

24 “(b) Take into consideration standards, rules or protocols for:

25 “(A) Offset projects and the generation and use of offset credits,
26 as established by other states, provinces and countries with programs
27 comparable to the Oregon Climate Action Program; and

28 “(B) Voluntary offset projects and the generation and use of offset
29 credits, as established by organizations that operate offset credit reg-
30 istries;

1 “(c) Allow for the broadest possible participation by landowners in
2 developing and operating offset projects across the broadest possible
3 variety of types and sizes of lands;

4 “(d) Encourage opportunities for the development of offset projects
5 in this state, including offset projects that provide direct environ-
6 mental benefits in this state;

7 “(e) Prioritize offset projects that benefit impacted communities,
8 members of eligible Indian tribes and natural and working lands; and

9 “(f) Address qualifications for persons and agencies that provide
10 third-party verification and registration of offset projects and offset
11 credits.

12 “(4) The office shall adopt by rule a process to investigate and in-
13 validate issued offset credits as necessary to uphold the environmental
14 integrity of the Oregon Climate Action Program. Reasons for invali-
15 dating issued offset credits may include, but are not limited to:

16 “(a) A misstatement, of more than five percent, of the amount of
17 greenhouse gas emissions reductions or removals attributable to an
18 offset project for which offset credits were issued;

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

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

25 “(5) The Carbon Police Office shall withhold a percentage of the
26 offset credits issued for each offset project and deposit the withheld
27 offset credits in an offset integrity account established by rule. Offset
28 credits deposited in the offset integrity account may be used to replace
29 offset credits that are invalidated pursuant to rules adopted under
30 subsection (4) of this section.

1 **“SECTION 19. Offset protocols. (1) Offset protocols, and any**
2 **greenhouse gas emission inventory and monitoring requirements re-**
3 **lated to the offset protocols, developed pursuant to rules adopted un-**
4 **der section 18 of this 2019 Act:**

5 **“(a) Must be straightforward and effective to implement and ad-**
6 **minister, for both offset project operators and persons purchasing**
7 **offset credits;**

8 **“(b) Must provide for flexibility for landowners in the development**
9 **of offset projects; and**

10 **“(c) May make use of aggregation or other mechanisms to increase**
11 **development of offset projects by landowners across the broadest pos-**
12 **sible variety of types and sizes of lands.**

13 **“(2)(a) The Carbon Policy Office shall collaborate and consult with**
14 **the State Forestry Department in the development and monitoring of**
15 **offset protocols related to forestry. Offset protocols related to forestry**
16 **that are developed pursuant to this subsection:**

17 **“(A) Must prioritize reforestation, avoided forest conversion and**
18 **improved forest management;**

19 **“(B) Must be consistent with the Oregon Forest Practices Act and**
20 **have the ability to be administered consistently with the applicable**
21 **state and local land use laws of Oregon; and**

22 **“(C) May include offset protocols for low carbon-impact building**
23 **materials and urban forestry.**

24 **“(b) The office and the department shall jointly convene a technical**
25 **advisory committee to advise the office and the department in the**
26 **development and monitoring of offset protocols related to forestry.**

27 **“(3) The office shall collaborate and consult with all relevant state**
28 **agencies, including but not limited to the State Department of Agri-**
29 **culture and the Oregon Watershed Enhancement Board, in the devel-**
30 **opment and monitoring of offset protocols related to agriculture and**

1 conservation on natural and working lands. In developing offset pro-
2 tocols pursuant to this subsection, the office shall:

3 “(a) Consider developing offset protocols for:

4 “(A) Manure management that reduces methane emissions from
5 agricultural operations;

6 “(B) Avoided grassland conversion; and

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

10 “(b) Ensure that the offset protocols have the ability to be admin-
11 istered consistently with the applicable state and local land use laws
12 of Oregon.

13 “(4) In developing any offset protocol related to a matter not ad-
14 dressed by subsections (2) and (3) of this section, the Director of the
15 Carbon Policy Office shall appoint a technical advisory committee
16 composed of persons with expertise relevant to the development of the
17 offset protocol.

18 “(5) The office shall regularly review and update offset protocols
19 developed pursuant to rules adopted under section 18 of this 2019 Act.
20 The reviews and updates of offset protocols shall include any updates,
21 as necessary, to the methods or technologies used for measuring and
22 monitoring the greenhouse gas emissions reductions or removals at-
23 tributable to the offset projects addressed by the offset protocols.

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

26 “SECTION 20. Offsets; consultation. (1) In adopting and updating
27 rules and developing and updating offset protocols pursuant to
28 sections 18 and 19 of this 2019 Act, the Director of the Carbon Policy
29 Office:

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

1 “(A) The State Department of Agriculture, the State Forestry De-
2 partment, the Environmental Justice Task Force, the Oregon
3 Watershed Enhancement Board and other relevant state agencies; and

4 “(B) Persons and agencies that provide third-party verification and
5 registration of offset projects and offset credits; and

6 “(b) May contract with one or more persons or agencies that pro-
7 vide third-party verification and registration of offset projects and
8 offset credits to assist in the development of offset protocols.

9 “(2) The director shall appoint a compliance offsets program advi-
10 sory committee to advise the Carbon Policy Office in developing and
11 updating rules and offset protocols pursuant to sections 18 and 19 of
12 this 2019 Act. The compliance offsets program advisory committee
13 shall provide guidance to the office in designing the rules and offset
14 protocols to promote offset projects that provide direct environmental
15 benefits in this state and to prioritize offset projects that benefit im-
16 pacted communities, members of eligible Indian tribes and natural and
17 working lands. The director shall appoint at least one member to the
18 advisory committee from each of the following groups:

19 “(a) Scientists;

20 “(b) Public health experts;

21 “(c) Carbon market experts;

22 “(d) Representatives of eligible Indian tribes;

23 “(e) Environmental justice advocates;

24 “(f) Labor and workforce representatives;

25 “(g) Forestry experts;

26 “(h) Agriculture experts;

27 “(i) Environmental advocates;

28 “(j) Conservation advocates; and

29 “(k) Dairy experts.

30 “SECTION 21. Methodology for designating impacted communities.

1 (1) The Director of the Carbon Policy Office, by rule and in consulta-
2 tion with the Portland State University Population Research Center,
3 the Oregon Health Authority and other relevant state agencies and
4 local agencies and officials, shall designate impacted communities. The
5 Carbon Policy Office shall designate impacted communities based on
6 a methodology that takes into consideration geographic,
7 socioeconomic, historic disadvantage, public health and environmental
8 hazard criteria. The office may designate as impacted communities
9 areas that include, but are not limited to:

10 “(a) Rural communities.

11 “(b) Areas with above-average concentrations of low-income
12 households, historically disadvantaged households, high unemploy-
13 ment, high linguistic isolation, low levels of homeownership, high rent
14 burden, sensitive populations or residents with low levels of educa-
15 tional attainment.

16 “(c) Areas disproportionately affected by environmental pollution
17 and other hazards that can lead to negative public health effects, ex-
18 posure or environmental degradation.

19 “(2) The methodology required by this section must give greater
20 weight to those criteria that the office determines are the most accu-
21 rate predictors of vulnerability to the impacts of climate change and
22 ocean acidification.

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

26 “SECTION 22. Auctions. (1) Except as provided in subsection (8) of
27 this section, auctions of allowances are open to registered entities.

28 “(2) The Carbon Policy Office shall hold auctions at least annually.

29 “(3) The office may engage:

30 “(a) A qualified, independent auction administrator to administer

1 auctions; or

2 “(b) A qualified financial services administrator to conduct finan-
3 cial transactions related to the auction.

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

6 “(5) The office shall:

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

10 “(b) Set an allowance price containment reserve floor price for 2021
11 and a schedule for the allowance price containment reserve floor price
12 to increase by a fixed percentage over inflation each calendar year.

13 “(c) Set a hard ceiling price for 2021 and a schedule for the hard
14 ceiling price to increase by a fixed percentage over inflation each cal-
15 endar year, and adopt rules for making an unlimited amount of al-
16 lowances available for auction upon exceedance of the hard ceiling
17 price.

18 “(d) Take actions to minimize the potential for market manipu-
19 lation and to guard against bidder collusion, including but not limited
20 to specifying as holding limits the maximum number of allowances
21 that may be held for use or trade by a registered entity at any time.

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

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

26 “(b) Setting price requirements in a manner that enables the state
27 to pursue linkage agreements pursuant to section 25 of this 2019 Act
28 with other jurisdictions.

29 “(7) The proceeds of an auction shall be transferred to the State
30 Treasurer to be deposited in the Auction Proceeds Distribution Fund

1 established under section 23 of this 2019 Act.

2 “(8) Sales of allowances from the allowance price containment re-
3 serve shall be conducted separately from the auction of other allow-
4 ances for the purpose of addressing high costs of compliance
5 instruments. Allowances unsold from the reserve sale must be made
6 available again at future reserve sales. General market participants
7 may not purchase allowances at reserve sales.

8 “(9)(a) If the hard ceiling price for an auction is reached, the office
9 shall offer for sale, at the hard ceiling price, allowances from any re-
10 serve described in section 10 of this 2019 Act or established by rule
11 pursuant to section 10 of this 2019 Act, as necessary to meet demand
12 from covered entities and opt-in entities. If the supplies of all allow-
13 ances from all reserves are exhausted and additional sales of allow-
14 ances are necessary for one or more covered entities or opt-in entities
15 to fulfill a compliance obligation, the office may sell allowances in
16 addition to the allowances available in the annual allowance budget
17 at the hard ceiling price.

18 “(b) The proceeds from any sales of allowances pursuant to this
19 subsection shall be transferred to the State Treasurer to be deposited
20 in the Oregon Climate Action Program Operating Fund established
21 under section 27 of this 2019 Act and may be used only pursuant to
22 section 27 of this 2019 Act.

23 “(10) The proceeds of an auction shall be transferred to the State
24 Treasurer to be deposited in the Auction Proceeds Distribution Fund
25 established under section 23 of this 2019 Act.

26 “(11) The office may adopt rules necessary to administer auctions.

27 **“SECTION 23. Auction Proceeds Distribution Fund. (1) The Auction**
28 **Proceeds Distribution Fund is established in the State Treasury, sep-**
29 **arate and distinct from the General Fund.**

30 **“(2) The Auction Proceeds Distribution Fund shall consist of mon-**

1 eys transferred to the fund under section 22 of this 2019 Act. Interest
2 earned by the fund shall be credited to the fund.

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

6 “(a) All moneys that constitute revenues described in Article IX,
7 section 3a, of the Oregon Constitution, must be transferred to the
8 Transportation Decarbonization Investments Account established in
9 section 31 of this 2019 Act;

10 “(b) All moneys that constitute revenues described in Article VIII,
11 section 2 (1)(g), of the Oregon Constitution, must be transferred to the
12 Common School Fund; and

13 “(c) Moneys remaining after the transfers under paragraphs (a) and
14 (b) of this subsection shall be transferred in the following manner:

15 “(A) Two percent to the Oregon Climate Action Program Operating
16 Fund established under section 27 of this 2019 Act; and

17 “(B) The remainder to the Climate Investments Fund established
18 under section 35 of this 2019 Act.

19 “SECTION 24. Annual Oregon Climate Action Program report. The
20 Carbon Policy Office shall annually submit a report in the manner
21 provided by ORS 192.245 to the Joint Committee on Climate Action
22 detailing activity during the compliance period under the market-
23 based compliance mechanism adopted by the Director of the Carbon
24 Policy Office by rule under section 8 of this 2019 Act. A report required
25 by this section must include, but need not be limited to, aggregated
26 information on the following for the compliance period:

27 “(1) The number of allowances bought and sold at each auction held
28 and all auction prices, including the floor and ceiling prices, for the
29 allowances bought and sold at each auction;

30 “(2) The beginning and ending balances of all allowance reserves

1 held by the office, including but not limited to auction holding ac-
2 counts and the allowance price containment reserve;

3 “(3) The regulated emissions reductions achieved during the com-
4 pliance period and progress made toward achieving a reduction in total
5 regulated emissions levels to at least 45 percent below 1990 levels by
6 2035 and a reduction in total regulated emissions levels to at least 80
7 percent below 1990 emissions levels by 2050; and

8 “(4) The estimated impacts of the Oregon Climate Action Program
9 on fuel, electricity and natural gas prices in Oregon.

10 “SECTION 25. Linkage with market-based compliance mechanisms
11 in other jurisdictions. (1) In adopting and implementing rules under
12 sections 7 to 29 of this 2019 Act, the Director of the Carbon Policy Of-
13 fice shall:

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

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

18 “(A) Avoids double counting of greenhouse gas emissions or emis-
19 sions reductions; and

20 “(B) Enables the state to pursue linkage agreements pursuant to
21 this section with other jurisdictions.

22 “(2) The State of Oregon may not link the market-based compliance
23 mechanism established pursuant to sections 7 to 29 of this 2019 Act and
24 rules adopted under sections 7 to 29 of this 2019 Act with the market-
25 based compliance mechanism of any other jurisdiction unless the di-
26 rector notifies the Governor that the director intends to link the
27 market-based compliance mechanism and the Governor makes the
28 following findings:

29 “(a) The jurisdiction with which the director proposes to enter an
30 agreement to link has adopted program requirements for greenhouse

1 gas emission reductions that are equivalent to or stricter than those
2 required by sections 7 to 29 of this 2019 Act;

3 “(b) Under the proposed linkage agreement, the State of Oregon is
4 able to enforce sections 7 to 29 of this 2019 Act against any person
5 subject to regulation under sections 7 to 29 of this 2019 Act and against
6 any person located within the linking jurisdiction to the maximum
7 extent permitted under the United States and Oregon Constitutions;

8 “(c) The proposed linkage agreement provides for enforcement of
9 applicable laws by the Carbon Policy Office or by the linking jurisdic-
10 tion of program requirements that are equivalent to or stricter than
11 those required by sections 7 to 29 of this 2019 Act; and

12 “(d) The proposed linkage agreement and any related engagement
13 by the State of Oregon of an independent organization to provide ad-
14 ministrative or technical services to support the implementation of
15 sections 7 to 29 of this 2019 Act will not impose any significant liability
16 on the state or any state agency for any failure associated with the
17 linkage.

18 “(3) The Governor shall issue findings pursuant to subsection (2)
19 of this section within 45 days of receiving a notice from the director
20 that the director intends to link the market-based compliance mech-
21 anism and shall provide the findings to the Legislative Assembly. The
22 Governor, in making the findings, shall consider the advice of the
23 Attorney General. Findings issued pursuant to subsection (2) of this
24 section are not subject to judicial review.

25 “SECTION 26. Oregon Climate Action Program advisory committee.
26 The Governor shall appoint a nine-member Oregon Climate Action
27 Program advisory committee to advise the Director of the Carbon
28 Policy Office in adopting rules under sections 7 to 29 of this 2019 Act.
29 The advisory committee shall consist of persons impacted by or oth-
30 erwise interested in the Oregon Climate Action Program.

1 **SECTION 27. Operating fund.** (1) The Oregon Climate Action Pro-
2 gram Operating Fund is established in the State Treasury, separate
3 and distinct from the General Fund. Moneys in the Oregon Climate
4 Action Program Operating Fund are continuously appropriated to the
5 Oregon Department of Administrative Services for use by the Carbon
6 Policy Office in the performance of functions the office is statutorily
7 required or authorized to perform under sections 7 to 29 and 43 to 47
8 of this 2019 Act and ORS 468A.280.

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

11 “(a) Moneys deposited in the fund pursuant to sections 22, 23 and
12 29 of this 2019 Act;

13 “(b) Moneys appropriated or otherwise transferred to the fund by
14 the Legislative Assembly; and

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

16 “(3) Civil penalties deposited in the fund under section 29 of this
17 2019 Act shall be deposited in a separate subaccount created in the
18 Oregon Climate Action Program Operating Fund and must be used
19 only for:

20 “(a) Administering the enforcement of sections 7 to 29 of this 2019
21 Act or rules adopted under sections 7 to 29 of this 2019 Act; or

22 “(b) Providing technical assistance to covered entities and opt-in
23 entities.

24 “(4) The proceeds from sales of allowances at the hard ceiling price
25 pursuant to section 22 (9) of this 2019 Act shall be deposited in a sep-
26 arate subaccount created in the fund and must be used by the office
27 only for the purchase and retirement of offset credits.

28 **SECTION 28. Public records law; application.** (1) The Legislative
29 Assembly finds and declares that it is the policy of this state that the
30 market-based compliance mechanism of the Oregon Climate Action

1 Program operate free of abuse and disruptive activity. It is therefore
2 the intent of the Legislative Assembly that the provisions of this sec-
3 tion and sections 8 (3), 22, 24 and 25 of this 2019 Act be implemented
4 in a manner necessary to prevent fraud, abuse or market manipulation
5 to the greatest extent possible while upholding the public interest in
6 transparency in public process and government through making cer-
7 tain market activity information available in aggregated form.

8 “(2) The following information obtained by the State of Oregon
9 pursuant to sections 7 to 29 of this 2019 Act, or rules adopted pursuant
10 to sections 7 to 29 of this 2019 Act, shall be treated as confidential
11 business information, is exempt from disclosure under the public re-
12 cords law, ORS 192.311 to 192.478, and may not be disclosed to any
13 person or entity except as provided in subsection (3) or (4) of this
14 section:

15 “(a) Individually identifiable information related to a registered
16 entity’s application to participate and participation in auctions held
17 under section 22 of this 2019 Act, including but not limited to bid ac-
18 tivity and auction results for the registered entity.

19 “(b) Other individually identifiable information not described in
20 paragraph (a) of this subsection related to the holding, transfer or
21 surrender of compliance instruments by registered entities.

22 “(c) Any individually identifiable information on the manufacturing
23 output of goods, other than emissions data submitted under ORS
24 468A.280, obtained by the Carbon Policy Office as necessary to admin-
25 ister and implement sections 14, 15, 16 and 17 of this 2019 Act.

26 “(3) Information described in subsection (2) of this section may be
27 used and disclosed in aggregated form.

28 “(4) This section does not prohibit the disclosure of information
29 between the Carbon Policy Office and other agencies of the executive
30 department, as defined in ORS 174.112, jurisdictions with which the

1 **State of Oregon has entered into a linkage agreement under section**
2 **25 of this 2019 Act or persons engaged by the State of Oregon to pro-**
3 **vide administrative or technical services to support implementation**
4 **of sections 7 to 29 of this 2019 Act if the disclosure is necessary for**
5 **purposes of the administration and implementation of sections 7 to 29**
6 **of this 2019 Act.**

7 **“(5) Any person to whom information described in subsection (2)**
8 **of this section is disclosed under subsection (4) of this section shall**
9 **treat the information as confidential business information, exempt**
10 **from disclosure under the public records law, ORS 192.311 to 192.478.**
11 **Redisclosure of individually identifiable information outside the Car-**
12 **bon Policy Office remains subject to the provisions of this section.**

13 **“SECTION 29. Civil penalties. (1) As used in this section:**

14 **“(a) ‘Intentionally’ means conduct by a person with a conscious**
15 **objective to cause the result of the conduct.**

16 **“(b) ‘Recklessly’ means conduct by a person who is aware of and**
17 **consciously disregards a substantial and unjustifiable risk that the**
18 **result will occur or that the circumstance exists. The risk must be of**
19 **such nature and degree that disregard thereof constitutes a gross de-**
20 **viation from the standard of care a reasonable person would observe**
21 **in that situation.**

22 **“(2) In addition to any other liability or penalty provided by law, the**
23 **Director of the Carbon Policy Office may impose a civil penalty on a**
24 **person for any of the following:**

25 **“(a) A violation of a provision of sections 7 to 29 of this 2019 Act**
26 **or rules adopted under sections 7 to 29 of this 2019 Act.**

27 **“(b) A violation of ORS 468A.280 or rules adopted under ORS**
28 **468A.280.**

29 **“(c) Submitting any record, information or report required by**
30 **sections 7 to 29 of this 2019 Act or ORS 468A.280 or rules adopted under**

1 sections 7 to 29 of this 2019 Act or ORS 468A.280 that falsifies or con-
2 ceals a material fact or makes any false or fraudulent representation.

3 “(3) Each day of violation under subsection (2) of this section con-
4 stitutes a separate offense.

5 “(4)(a) The director shall adopt by rule a schedule of civil penalties
6 that may be imposed for violations described in subsection (2) of this
7 section. Except as provided in paragraph (b) of this subsection, a civil
8 penalty may not exceed \$10,000 per day. The civil penalty for a vio-
9 lation described in subsection (2) of this section may include an
10 amount equal to an estimate of the economic benefit received as a
11 result of the violation.

12 “(b) The civil penalty for a violation described in subsection (2) of
13 this section arising from an intentional, reckless or negligent act may
14 not exceed \$25,000 per day.

15 “(5) In imposing a civil penalty pursuant to this section, the direc-
16 tor shall consider the following factors:

17 “(a) The past history of the person incurring the civil penalty in
18 taking all feasible steps or procedures necessary or appropriate to
19 correct any violation.

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

21 “(c) Any prior act that resulted in a violation described in sub-
22 section (2) of this section.

23 “(d) The economic and financial conditions of the person incurring
24 the civil penalty.

25 “(e) The gravity and magnitude of the violation.

26 “(f) Whether the violation was repeated or continuous.

27 “(g) Whether the cause of the violation was an unavoidable acci-
28 dent, negligence or an intentional act.

29 “(h) The person’s cooperativeness and efforts to correct the vio-
30 lation.

1 “(i) Whether the person incurring the civil penalty gained an eco-
2 nomic benefit as a result of the violation.

3 “(6) Civil penalties under this section must be imposed in the
4 manner provided by ORS 183.745. All civil penalties recovered under
5 this section shall be paid into the State Treasury and credited to the
6 Oregon Climate Action Program Operating Fund established under
7 section 27 of this 2019 Act and may be used only pursuant to section
8 27 (3) of this 2019 Act.

9
10 “INVESTMENT OF STATE PROCEEDS FROM OREGON
11 CLIMATE ACTION PROGRAM AUCTIONS

12 “(Transportation Decarbonization Investments Account)

13
14 “SECTION 30. Definitions. As used in sections 30 to 34 of this 2019
15 Act:

16 “(1) ‘Eligible Indian tribe’ has the meaning given that term in sec-
17 tion 7 of this 2019 Act.

18 “(2) ‘Impacted community’ has the meaning given that term in
19 section 7 of this 2019 Act.

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

22 “SECTION 31. Transportation Decarbonization Investments Ac-
23 count. (1) The Transportation Decarbonization Investments Account
24 is established as a separate account within the State Highway Fund.
25 Interest earned by the Transportation Decarbonization Investments
26 Account shall be credited to the account.

27 “(2) Moneys in the Transportation Decarbonization Investments
28 Account are continuously appropriated to the Department of Trans-
29 portation for the purposes described in subsections (4) and (5) of this
30 section and sections 32 and 33 of this 2019 Act.

1 **“(3) The Transportation Decarbonization Investments Account**
2 **consists of moneys deposited in the account under section 23 of this**
3 **2019 Act.**

4 **“(4) Of the moneys deposited in the Transportation Decarbonization**
5 **Investments Account each biennium:**

6 **“(a) 50 percent may be expended by the Department of Transporta-**
7 **tion for transportation projects selected by the Oregon Transportation**
8 **Commission pursuant to section 33 of this 2019 Act; and**

9 **“(b) 50 percent may be used to provide grants for transportation**
10 **projects pursuant to sections 32 and 33 of this 2019 Act and to provide**
11 **technical assistance to applicants for and recipients of the grants.**

12 **“(5) The amount of moneys used to provide technical assistance**
13 **under subsection (4)(b) of this section may not exceed one percent of**
14 **the amount of moneys deposited in the account each biennium.**

15 **“SECTION 32. Grant program. (1) The Department of Transporta-**
16 **tion may provide, pursuant to section 33 of this 2019 Act and from**
17 **moneys in the Transportation Decarbonization Investments Account**
18 **established under section 31 of this 2019 Act, grants for transportation**
19 **projects to cities, counties and metropolitan planning organizations.**

20 **“(2)(a) The department shall adopt rules specifying the competitive**
21 **process by which a city, county or metropolitan planning organization**
22 **may apply for a grant under this section and prescribing the terms and**
23 **conditions of grants, including but not necessarily limited to a re-**
24 **quirement that the city, county or metropolitan planning organization**
25 **receiving the grant provide a percentage of the moneys required for**
26 **the transportation project.**

27 **“(b) In adopting rules under this section, the department shall be**
28 **advised by the Oregon Climate Action Program advisory committee**
29 **appointed under section 26 of this 2019 Act.**

30 **“SECTION 33. Selection of transportation projects. (1) The Oregon**

1 **Transportation Commission shall select the transportation projects to**
2 **be funded with moneys in the Transportation Decarbonization Invest-**
3 **ments Account established under section 31 of this 2019 Act.**

4 **“(2) A transportation project may not be funded with moneys in the**
5 **Transportation Decarbonization Investments Account unless the com-**
6 **mission determines that the transportation project furthers the pur-**
7 **poses set forth in section 6 of this 2019 Act and that the project may**
8 **constitutionally be funded by revenues described in Article IX, section**
9 **3a, of the Oregon Constitution.**

10 **“(3) Prior to selecting transportation projects, the commission shall**
11 **seek input from the applicable area commission on transportation.**

12 **“(4) In selecting transportation projects, the commission shall con-**
13 **sider whether a proposed transportation project:**

14 **“(a) Will further the objectives of the statewide transportation**
15 **strategy on greenhouse gas emissions adopted by the commission**
16 **pursuant to ORS 184.617;**

17 **“(b) Will further the objectives of the biennial climate action in-**
18 **vestment plan adopted by the Carbon Policy Office under section 46**
19 **of this 2019 Act; and**

20 **“(c) Is consistent with or complements investments that may be**
21 **funded by moneys in the Climate Investments Fund established under**
22 **section 35 of this 2019 Act.**

23 **“(5) In selecting transportation projects, the commission shall give**
24 **priority to projects that:**

25 **“(a) Benefit impacted communities.**

26 **“(b) Complement efforts to achieve and maintain local air quality.**

27 **“(c) Provide opportunities for eligible Indian tribes, members of**
28 **impacted communities or businesses owned by women or members of**
29 **minority groups to participate in and benefit from statewide efforts to**
30 **reduce greenhouse gas emissions.**

1 “(d) Promote low carbon economic development opportunities and
2 the creation of jobs that sustain living wages.

3 “(e) Will facilitate:

4 “(A) The implementation of land use and transportation scenarios
5 required to be adopted by metropolitan service districts under section
6 37, chapter 865, Oregon Laws 2009, and that have been approved by the
7 Land Conservation and Development Commission; or

8 “(B) The planning, development or implementation of land use and
9 transportation scenarios by local governments and metropolitan plan-
10 ning organizations in accordance with the guidelines established by
11 the Department of Transportation and the Department of Land Con-
12 servation and Development under ORS 184.893.

13 “(f) Will, to the greatest extent practicable, serve to conserve, re-
14 store, preserve and enhance adjacent natural resources through the
15 use of roadside vegetation in a manner designed to:

16 “(A) Minimize soil erosion;

17 “(B) Improve or maintain slope stability;

18 “(C) Reduce storm water runoff volume and velocity;

19 “(D) Promote water conservation and plant survivability; and

20 “(E) Otherwise best address the full range of impacts associated
21 with the use of the roadside vegetation.

22 “(6) In selecting transportation projects, the commission shall
23 strive to provide for a balanced distribution over time of moneys in
24 the Transportation Decarbonization Investments Account:

25 “(a) Among all geographic areas of this state; and

26 “(b) To the extent practicable, in a manner that provides equal
27 funding support between transportation projects that result in
28 greenhouse gas emissions reductions and transportation projects that
29 support climate change adaptation.

30 “(7) If a transportation project is eligible only in part to be funded

1 in part by moneys in the Transportation Decarbonization Investments
2 Account, the transportation project may also be eligible to receive
3 funding through the allocation of moneys in the Climate Investments
4 Fund for those portions of the transportation project that may not be
5 constitutionally funded by revenues described in Article IX, section 3a,
6 of the Oregon Constitution.

7 “(8) Transportation projects selected by the commission under this
8 section are subject to the provisions of section 38 of this 2019 Act.

9 **“SECTION 34. Procurement preferences. (1) As used in this section:**

10 **“(a) ‘Building materials’ means asphalt, cement, concrete or any**
11 **other aggregate product, aluminum, steel, iron, coatings for steel and**
12 **iron, glass, manufactured wood products and copper.**

13 **“(b) ‘Contracting agency’ has the meaning given that term in ORS**
14 **279A.010.**

15 **“(c) ‘Nursery stock’ has the meaning given that term in ORS**
16 **571.005.**

17 **“(d) ‘Oregon Climate Action Program’ has the meaning given that**
18 **term in section 7 of this 2019 Act.**

19 **“(e) ‘Subject to a carbon pricing program’ means a building mate-**
20 **rials manufacturer whose emissions from the manufacture of goods:**

21 **“(A) Are subject to a tax or governmental regulatory program that**
22 **has the effect of placing a price on greenhouse gas emissions and that**
23 **is at least as stringent as the Oregon Climate Action Program, as de-**
24 **termined by the Carbon Policy Office by rule; or**

25 **“(B) Are directly regulated by the jurisdiction where the manufac-**
26 **turing facility is located for the greenhouse gas emissions attributable**
27 **to the manufacturing of goods at the facility operated by the man-**
28 **ufacturer.**

29 **“(2) Notwithstanding provisions of law requiring a contracting**
30 **agency to award a contract to the lowest responsible bidder or best**

1 proposer or provider of a quotation, and except as prohibited by federal
2 law, a contracting agency, when using funds from the Transportation
3 Decarbonization Investments Account, shall give a preference of not
4 more than 10 percent to:

5 “(a) Building materials procured from manufacturers subject to a
6 carbon pricing program; and

7 “(b) Nursery stock that is grown, propagated and sold entirely
8 within this state.

9 “(3) If the contracting agency finds in a written determination that
10 the building material is not available in the quantity, quality, type or
11 timeframe required for the procurement, or if the cost of the building
12 material is more than 10 percent more than the building material costs
13 from manufacturers not subject to a carbon pricing program, the
14 contracting agency may decline to give the building material prefer-
15 ence.

16 “(4) If the contracting agency finds in a written determination that
17 the nursery stock is not available in the quantity, quality, type or
18 timeframe required for the procurement, or if the cost of the nursery
19 stock is more than 10 percent more than the cost of nursery stock that
20 is not grown, propagated and sold entirely within this state, the con-
21 tracting agency may decline to give the nursery stock preference.

22 “(5) This section does not apply to emergency work, minor alter-
23 ations, ordinary repairs or maintenance work for public improvements
24 or to other construction contracts described in ORS 279C.320 (1).

25

26

“(Climate Investments Fund)

27

28 “SECTION 35. Climate Investments Fund. (1) The Climate Invest-
29 ments Fund is established in the State Treasury, separate and distinct
30 from the General Fund. The Climate Investments Fund shall consist

1 of moneys deposited in the fund under section 23 of this 2019 Act. In-
2 terest earned by the fund shall be credited to the fund.

3 “(2) Moneys in the fund may be used only for projects, programs
4 and activities that further the purposes set forth in section 6 of this
5 2019 Act.

6 “(3) The Legislative Assembly shall allocate the moneys deposited
7 in the fund as informed by the biennial climate action investment plan
8 adopted by the Climate Policy Office under section 46 of this 2019 Act.

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

10 “(a) 10 percent shall be allocated for investments and expenditures
11 that benefit eligible Indian tribes, as defined in section 7 of this 2019
12 Act;

13 “(b) 40 percent shall be allocated for investments and expenditures
14 that benefit impacted communities, as defined in section 7 of this 2019
15 Act;

16 “(c) No more than one percent shall be allocated to provide tech-
17 nical assistance to eligible Indian tribes and impacted communities
18 that are applicants for or recipients of moneys allocated from the
19 fund; and

20 “(d) \$10 million shall be allocated for deposit in the Just Transition
21 Fund established in section 40 of this 2019 Act to be used for the pur-
22 poses described in section 40 (4) of this 2019 Act.

23 **“SECTION 36. Repeal of certain funding percentage requirements.**
24 **The amendments to section 35 of this 2019 Act by section 37 of this 2019**
25 **Act become operative July 1, 2027.**

26 **“SECTION 37.** Section 35 of this 2019 Act is amended to read:

27 **“Sec. 35.** (1) The Climate Investments Fund is established in the State
28 Treasury, separate and distinct from the General Fund. The Climate In-
29 vestments Fund shall consist of moneys deposited in the fund under section
30 23 of this 2019 Act. Interest earned by the fund shall be credited to the fund.

1 “(2) Moneys in the fund may be used only for projects, programs and ac-
2 tivities that further the purposes set forth in section 6 of this 2019 Act.

3 “(3) The Legislative Assembly shall allocate the moneys deposited in the
4 fund as informed by the biennial climate action investment plan adopted by
5 the Climate Policy Office under section 46 of this 2019 Act.

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

7 “[*(a)*] 10 percent shall be allocated for investments and expenditures that
8 benefit eligible Indian tribes, as defined in section 7 of this 2019 Act[:].

9 “[*(b)*] 40 percent shall be allocated for investments and expenditures that
10 benefit impacted communities, as defined in section 7 of this 2019 Act;]

11 “[*(c)*] No more than one percent shall be allocated to provide technical as-
12 sistance to eligible Indian tribes and impacted communities that are applicants
13 for or recipients of moneys allocated from the fund; and]

14 “[*(d)*] \$10 million shall be allocated for deposit in the Just Transition Fund
15 established in section 40 of this 2019 Act to be used for the purposes described
16 in section 40 (4) of this 2019 Act.]

17 **“SECTION 38. Procurement preferences. (1) As used in this section:**

18 **“(a) ‘Building materials’ means asphalt, cement, concrete or any**
19 **other aggregate product, aluminum, steel, iron, coatings for steel and**
20 **iron, glass, manufactured wood products and copper.**

21 **“(b) ‘Contracting agency’ has the meaning given that term in ORS**
22 **279A.010.**

23 **“(c) ‘Oregon Climate Action Program’ has the meaning given that**
24 **term in section 7 of this 2019 Act.**

25 **“(d) ‘Subject to a carbon pricing program’ means building materials**
26 **manufactured by a manufacturing facility that:**

27 **“(A) Is subject to a tax or governmental regulatory program that**
28 **has the effect of placing a price on greenhouse gas emissions and that**
29 **is at least as stringent as the Oregon Climate Action Program, as de-**
30 **termined by the Carbon Policy Office by rule; or**

1 ees performing the labor on the construction project;

2 “(c) Shall participate in an apprenticeship program registered with
3 the State Apprenticeship and Training Council;

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

7 “(e) Must demonstrate a history of compliance with the rules and
8 other requirements of the Construction Contractors Board and of the
9 Workers’ Compensation Division, the Building Codes Division and the
10 Occupational Safety and Health Division of the Department of Con-
11 sumer and Business Services; and

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

14 “(2) A farm labor contractor, as defined in ORS 658.405, may not
15 receive moneys allocated by the Legislative Assembly from the Climate
16 Investments Fund or the Transportation Decarbonization Investments
17 Account unless the farm labor contractor is in compliance with all li-
18 censing and any other requirements or regulations imposed upon farm
19 labor contractors pursuant to ORS 658.405 to 658.503.

20 “(3)(a) The Oregon Department of Administrative Services shall
21 adopt model rules that specify labor, workforce and contracting pro-
22 cedures for all state agencies to use in administering funds for con-
23 struction projects that receive more than \$50,000 in funding from
24 moneys in the Climate Investments Fund or the Transportation
25 Decarbonization Investments Account. The department shall adopt
26 the rules in accordance with ORS chapter 183.

27 “(b) Model rules adopted under this subsection shall require the use
28 of a project labor agreement for construction projects that receive
29 more than \$200,000 in funding from moneys in the Climate Investments
30 Fund or the Transportation Decarbonization Investments Account.

1 For all other construction projects funded as described in paragraph
2 (a) of this subsection, the model rules shall:

3 “(A) Establish measurable, enforceable goals for the training and
4 hiring of persons who are members of impacted communities, as de-
5 fined in section 7 of this 2019 Act, and for contracting with businesses
6 that are owned or operated by members of impacted communities; and

7 “(B) Establish wage, benefit and labor relations standards consist-
8 ent with the provisions of this section.

9 “(c) The model rules shall promote best practices in procurement
10 and contracting.

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

16 “(B) The requirement in subparagraph (A) of this paragraph shall
17 not apply if the administering agency finds that:

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

19 “(ii) Steel, iron, coatings for steel and iron and manufactured pro-
20 ducts required for the project are not produced in the United States
21 in sufficient and reasonably available quantities and with satisfactory
22 quality; or

23 “(iii) The requirement set forth in subparagraph (A) of this para-
24 graph will increase the costs of the project, exclusive of labor costs
25 involved in final assembly for manufactured products, by 25 percent
26 or more.

27 “(C) Notwithstanding a finding by the administering agency under
28 paragraph (d)(B) of this subsection, a contractor shall spend at least
29 75 percent of the total amount the contractor spends in connection
30 with the construction project on steel, iron, coatings for steel and iron

1 and manufactured products that become part of a permanent structure
2 to purchase steel, iron, coatings for steel and iron and manufactured
3 products that are produced in the United States.

4 “(e) Before adopting or amending a rule under this subsection, the
5 department shall consult with representatives of labor and workforce
6 equity and contractor equity, and other knowledgeable persons.

7 “(4) A state agency charged with administering funds for con-
8 struction projects that receive more than \$50,000 in funding from
9 moneys in the Climate Investments Fund or the Transportation
10 Decarbonization Investments Account may not adopt the administer-
11 ing agency’s own rules for labor and workforce procedures related to
12 administering funds allocated from the Climate Investments Fund or
13 the Transportation Decarbonization Investments Account.

14

15

“(Just Transition)”

16

17 **“SECTION 40. (1) The Just Transition Fund is established in the**
18 **State Treasury, separate and distinct from the General Fund. Interest**
19 **earned by the Just Transition Fund shall be credited to the fund.**
20 **Moneys in the fund are continuously appropriated to the Higher Edu-**
21 **cation Coordinating Commission to be used for the purposes described**
22 **in this section.**

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

25 “(3)(a) The fund shall include a reserve account, which shall consist
26 of moneys allocated or appropriated to the fund by the Legislative
27 Assembly for deposit in the reserve account.

28 “(b) The reserve account shall be maintained and used by the
29 commission only to fund programs or activities that provide financial
30 support for workers dislocated or adversely affected by climate change

1 or climate change policies.

2 “(4) Moneys not deposited in the reserve account shall be used to
3 carry out the provisions of section 41 of this 2019 Act.

4 **“SECTION 41. (1)(a) The Higher Education Coordinating Commis-**
5 **sion, in consultation with the Employment Department and other in-**
6 **terested state agencies, shall establish:**

7 **“(A) A Just Transition Program for the purpose of distributing**
8 **moneys in the Just Transition Fund; and**

9 **“(B) A Just Transition Plan for the implementation and adminis-**
10 **tration of the Just Transition Program.**

11 **“(b) Each even-numbered year, the commission shall deliver a re-**
12 **port, in the manner provided in ORS 192.245, to the Governor and the**
13 **Joint Committee on Climate Action that includes:**

14 **“(A) Information on implementation of the Just Transition Pro-**
15 **gram;**

16 **“(B) Recommendations regarding the level of funding necessary to**
17 **carry out activities pursuant to the Just Transition Plan; and**

18 **“(C) Recommendations regarding the level of funding necessary to**
19 **maintain the reserve account of the Just Transition Fund established**
20 **under section 40 of this 2019 Act and recommendations for how moneys**
21 **in the reserve account may be best used, including recommendations**
22 **regarding use of the moneys for the replacement of wages or benefits**
23 **for workers dislocated or adversely affected by climate change or cli-**
24 **mate change policies.**

25 **“(2) Moneys distributed through the Just Transition Program shall**
26 **be distributed to:**

27 **“(a) Support economic diversification, job creation, job training and**
28 **other employment services;**

29 **“(b) Provide financial support for workers dislocated or adversely**
30 **affected by climate change or climate change policies; or**

1 **“SECTION 42. Moneys deposited in the Common School Fund under**
2 **section 23 of this 2019 Act are continuously appropriated to the De-**
3 **partment of State Lands to be used in a manner that:**

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

6 **“(2) Carries out the purposes set forth in section 6 of this 2019 Act.**

7
8 **“(Distribution of Auction Proceeds; Expenditure Reporting)**

9
10 **“SECTION 43. Biennial expenditure reporting; audit. (1) All agen-**
11 **cies of the executive department as defined in ORS 174.112, counties,**
12 **cities and all other public and private entities receiving moneys allo-**
13 **cated from the Climate Investments Fund shall annually report to the**
14 **Carbon Policy Office on the expenditure of the moneys received and**
15 **the results of the expenditures. No later than January 1 of each**
16 **even-numbered year, the office shall deliver a biennial report, in the**
17 **manner provided in ORS 192.245, to the Governor and the Joint Com-**
18 **mittee on Climate Action describing:**

19 **“(a) The investments from the Climate Investments Fund;**

20 **“(b) Whether the investments met the requirements for allocations**
21 **under section 35 of this 2019 Act; and**

22 **“(c) The effectiveness of those investments in carrying out the**
23 **purposes set forth in section 6 of this 2019 Act.**

24 **“(2) All agencies of the executive department, counties, cities and**
25 **all other public and private entities receiving moneys allocated from**
26 **the Transportation Decarbonization Investments Account shall annu-**
27 **ally report to the Department of Transportation on expenditure of the**
28 **moneys received and the results of the expenditures. No later than**
29 **January 1 of each even-numbered year, the department shall deliver**
30 **a biennial report, in the manner provided in ORS 192.245, to the Gov-**

1 **ernor and the Joint Committee on Climate Action describing:**

2 **“(a) The transportation projects funded by moneys from the**
3 **Transportation Decarbonization Investments Account;**

4 **“(b) How the transportation projects met the requirements of sec-**
5 **tion 33 of this 2019 Act; and**

6 **“(c) The results of the transportation projects in furthering the**
7 **purposes set forth in section 6 of this 2019 Act.**

8 **“SECTION 44. Biennial expenditure audit. (1) The Carbon Policy**
9 **Office and the Department of Transportation jointly shall select an**
10 **independent third-party organization to prepare a biennial audit of:**

11 **“(a) All programs, projects or activities funded by moneys from the**
12 **Climate Investments Fund; and**

13 **“(b) All transportation projects funded by moneys from the Trans-**
14 **portation Decarbonization Investments Account.**

15 **“(2) The office and the department shall provide for the audit report**
16 **prepared by the third-party organization under this section to be**
17 **transmitted, together with the reports required under section 43 of this**
18 **2019 Act, to the Governor and to the Joint Committee on Climate**
19 **Action.**

20
21 **“(Biennial Climate Action Investments Plan)**
22

23 **“SECTION 45. Definitions. As used in section 46 and 47 of this 2019**
24 **Act:**

25 **“(1) ‘Best available technology’ has the meaning given that term in**
26 **section 7 of this 2019 Act.**

27 **“(2) ‘Eligible Indian tribe’ has the meaning given that term in sec-**
28 **tion 7 of this 2019 Act.**

29 **“(3) ‘Impacted community’ has the meaning given that term in**
30 **section 7 of this 2019 Act.**

1 **“SECTION 46. Biennial climate action investment plan. (1) No later**
2 **than June 1 of each even-numbered year and in the manner provided**
3 **in ORS 192.245, the Carbon Policy Office shall deliver a biennial cli-**
4 **mate action investment plan to the Environmental Justice Task Force,**
5 **the Governor and the Joint Committee on Climate Action. The climate**
6 **action investment plan shall identify the short-term and long-term**
7 **objectives of the state for making expenditures and investments of**
8 **state proceeds from auctions conducted under section 22 of this 2019**
9 **Act, in furtherance of the purposes set forth in section 6 of this 2019**
10 **Act and consistent with the requirements of the Oregon Constitution.**

11 **“(2) The biennial climate action investment plan must be based on**
12 **consideration of the best scientific and economic information available**
13 **at the time of the preparation of the plan and must include:**

14 **“(a) A plan, developed in consultation with the Department of**
15 **Transportation, for investments and expenditures of moneys in the**
16 **Transportation Decarbonization Investments Account pursuant to**
17 **sections 30 to 34 of this 2019 Act;**

18 **“(b) A proposal for investments and expenditures of moneys depos-**
19 **ited in the Climate Investments Fund and a description of how the**
20 **proposal:**

21 **“(A) Furthers the purposes set forth in section 6 of this 2019 Act**
22 **and is consistent with the requirements of the Oregon Constitution;**

23 **“(B) Meets the requirements under section 35 of this 2019 Act for**
24 **allocations of moneys deposited in the Climate Investments Fund; and**

25 **“(C) Carries out the priorities for expenditures of moneys in the**
26 **Climate Investments Fund set forth in section 47 of this 2019 Act; and**

27 **“(c) A description of how the plan and proposal required by para-**
28 **graphs (a) and (b) of this subsection will result in a balanced and**
29 **complementary package of investments and expenditures that repre-**
30 **sent the best opportunities available to the state during the next**

1 biennial budget period to carry out the purposes set forth in section 6
2 of this 2019 Act.

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

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

8 “(b) Representatives of eligible Indian tribes; and

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

11 “(4) The Director of the Carbon Policy Office shall convene a
12 citizens’ advisory committee to advise the office in carrying out the
13 requirements of this section. The members of the committee must
14 reflect the geographic, socioeconomic, racial and cultural diversity of
15 the State of Oregon.

16 “SECTION 47. Priorities for investment of moneys from Climate
17 Investment Fund. (1) In proposing investments and expenditures of
18 moneys in the Climate Investments Fund for inclusion in the biennial
19 climate action investment plan pursuant to section 46 (2)(b) of this
20 2019 Act, the Carbon Policy Office shall give first priority to consider-
21 ing whether an investment or expenditure will:

22 “(a) Further the state’s objectives in meeting the requirements
23 under section 35 of this 2019 Act for allocations of moneys deposited
24 in the Climate Investments Fund;

25 “(b) Benefit impacted communities;

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

27 “(d) Provide opportunities for eligible Indian tribes, members of
28 impacted communities and businesses owned by women or members
29 of minority groups to participate in and benefit from statewide efforts
30 to reduce greenhouse gas emissions, including technical assistance for

1 **businesses owned by women or members of minority groups, nonprofit**
2 **organizations and other community institutions that serve or repre-**
3 **sent impacted communities or low-income households;**

4 **“(e) Promote low carbon economic development opportunities and**
5 **the creation of jobs that sustain living wages; or**

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

9 **“(2) The office shall aim to develop the proposal required by section**
10 **46 (2)(b) of this 2019 Act in a manner that, in total, would result in:**

11 **“(a) An amount of moneys that is approximately equal to the**
12 **amount of moneys deposited in the Climate Investments Fund as pro-**
13 **ceeds received through the purchase at auction of allowances by nat-**
14 **ural gas utilities, to be invested in energy efficiency improvements**
15 **benefitting the retail customers in Oregon of natural gas utilities;**

16 **“(b) An amount of moneys that is approximately equal to half of**
17 **the amount of moneys deposited in the Climate Investments Fund as**
18 **proceeds received through the purchase at auction of allowances by**
19 **EITE entities to be used to assist the EITE entities in using best**
20 **available technology; and**

21 **“(c) An amount of moneys that is approximately equal to the**
22 **amount of moneys deposited in the Climate Investments Fund as pro-**
23 **ceeds received through the purchase of allowances related to**
24 **greenhouse gas emissions attributable to the direct combustion of**
25 **municipal solid waste to generate renewable energy to be used for**
26 **programs for reducing plastics-related greenhouse gas emissions.**

27 **“(3) In addition to and not exclusive of the considerations required**
28 **by subsections (1) and (2) of this section, in proposing expenditures and**
29 **investments of moneys in the Climate Investments Fund, the office**
30 **shall prioritize funding to:**

1 “(a) Reduce greenhouse gas emissions or promote adaptation or
2 resiliency through energy efficiency and energy conservation in
3 buildings, low-income weatherization and activities to address energy
4 burden in this state.

5 “(b) Reduce greenhouse gas emissions through electrical grid
6 decarbonization efforts, including but not limited to investments in
7 energy generation from renewable resources, distributed energy re-
8 sources, transmission and storage projects for renewable energy, de-
9 mand response, community solar projects and other community-scale
10 renewable energy projects.

11 “(c) Reduce greenhouse gas emissions associated with transporta-
12 tion, including but not limited to investments in transportation
13 electrification, transit, fuel and energy efficiency in vessels powered
14 by marine engines and roadside landscape management efforts that
15 promote carbon sequestration.

16 “(d) Support planning or implementation of planning by local gov-
17 ernments and metropolitan planning organizations for reducing
18 greenhouse gas emissions or promoting carbon sequestration, adapta-
19 tion or resilience.

20 “(e) Reduce greenhouse gas emissions, support greenhouse gas
21 sequestration or support adaptation or resiliency through investments
22 in natural and working lands, including but not limited to investments
23 in agricultural or forestry practices or forest products manufacturing
24 that serve to reduce greenhouse gas emissions or promote carbon
25 sequestration, wildfire prevention, restoration of tidal marsh or inter-
26 tidal areas of estuaries, irrigation efficiency projects, riparian zone
27 restoration projects, methane emissions reduction or recovery projects
28 and biomass pyrolysis projects.

29 “(f) Facilitate the development in Oregon of clean energy
30 infrastructure or technologies, low carbon infrastructure or technolo-

1 gies, carbon capture and storage or carbon-free infrastructure and
2 technologies.

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

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

10 “(i) Strengthen the resilience of fish, wildlife and ecosystems in the
11 face of climate change through investments that include but are not
12 limited to projects involving instream flow acquisition and protection,
13 fish barrier removal, habitat restoration and enhancement and pro-
14 tection of wildlife corridors, coldwater refugia areas and species
15 strongholds.

16 “(j) Protect sources of domestic drinking water.

17 “(k) Promote research by nonprofit organizations or public univer-
18 sities listed in ORS 352.002 into methods for reducing greenhouse gas
19 emissions, sequestering carbon on natural and working lands or
20 adapting to climate change, including but not limited to research in-
21 vestigating feedstocks to reduce emissions from dairy cows and cattle,
22 research investigating crops and agricultural practices that reduce
23 greenhouse gas emissions or promote resilience to climate change, and
24 research to promote resilience to ocean acidification.

25 **“SECTION 48. Use of biennial climate investments plan in budget**
26 **process.** In preparing the Governor’s budget as required under ORS
27 291.202, the Governor shall consider the recommendations contained
28 in the biennial climate action investment plan prepared by the Carbon
29 Policy Office under section 46 of this 2019 Act.

30 **“SECTION 49. Environmental Justice Task Force review of biennial**

1 climate action investment plan; report. The Environmental Justice
2 Task Force shall review and develop recommendations in response to
3 the biennial climate action investment plan required under section 46
4 of this 2019 Act and shall, no later than August 1 of each even-
5 numbered year and in the manner provided in ORS 192.245, deliver a
6 report on the task force’s recommendations to the Governor and the
7 Joint Committee on Climate Action.

8
9 **“PROVISIONS RELATED TO THE PUBLIC UTILITY COMMISSION**

10
11 **“SECTION 50.** Sections 51 to 53 of this 2019 Act are added to and
12 made a part of ORS chapter 757.

13 **“SECTION 51. (1) As used in this section:**

14 **“(a) ‘Allowance’ has the meaning given that term in section 7 of**
15 **this 2019 Act.**

16 **“(b) ‘Electric company’ has the meaning given that term in ORS**
17 **757.600.**

18 **“(c) ‘Retail electricity consumer’ has the meaning given that term**
19 **in ORS 757.600.**

20 **“(2) If, rather than surrendering the allowances to fulfill its com-**
21 **pliance obligation, an electric company sells allowances that were di-**
22 **rectly distributed at no cost to the electric company under sections 10**
23 **and 11 of this 2019 Act, the Public Utility Commission shall require the**
24 **proceeds received by the electric company through the sale:**

25 **“(a) To be spent by the electric company for the exclusive benefit**
26 **of the electric company’s retail electricity consumers; and**

27 **“(b) To be used only for activities that serve to reduce greenhouse**
28 **gas emissions or provide assistance to the electric company’s retail**
29 **electricity consumers, consistent with the purposes of sections 6 to 49**
30 **of this 2019 Act, as set forth in section 6 of this 2019 Act.**

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

5 **“(a) Providing weatherization, energy efficiency improvements, bill**
6 **assistance or rate assistance to the electric company’s low-income**
7 **residential customers;**

8 **“(b) Accelerated transportation electrification;**

9 **“(c) Investments and activities that serve to reduce greenhouse gas**
10 **emissions through actions such as energy efficiency improvements,**
11 **voltage optimization, portfolio optimization and renewable energy**
12 **procurement; and**

13 **“(d) Facilitating integration and utilization of variable energy re-**
14 **sources through investments in programs and technologies such as**
15 **demand response, smart grid communication and control systems, grid**
16 **connected end-uses and energy storage.**

17 **“(4)(a) The commission shall, pursuant to ORS 756.040 and after**
18 **consultation with the Housing and Community Services Department,**
19 **adopt rules for the implementation and enforcement of this section.**

20 **“(b) Rules adopted under this subsection shall include a require-**
21 **ment for electric companies to regularly report to the commission on**
22 **how the electric company has used allowances that were directly dis-**
23 **tributed at no cost to the electric company, including a description of**
24 **how any proceeds received by the electric company from the sale of**
25 **the allowances were used.**

26 **“(5) No later than September 15 of each even-numbered year, the**
27 **commission shall, in the manner provided by ORS 192.245, provide a**
28 **report to the Joint Committee on Climate Action and to the Carbon**
29 **Policy Office on how electric companies have made use of allowances**
30 **that were directly distributed at no cost to the electric company, in-**

1 cluding a description of how any proceeds received by the electric
2 company from the sale of the allowances were used.

3 **“SECTION 52.** The Public Utility Commission shall establish a pro-
4 cess to ensure prudent, appropriate and contemporaneous cost recov-
5 ery for public utilities subject to compliance with the Oregon Climate
6 Action Program established under sections 7 to 29 of this 2019 Act.

7 **“SECTION 53.** The Public Utility Commission may, in such manner
8 as the commission considers proper, allow a rate or rate schedule of
9 a public utility to include differential rates or to reflect amounts for
10 programs that enable the public utility to assist low-income residential
11 customers. Rates or rate schedules allowed under this section must
12 minimize the shifting of costs to ratepayers that do not qualify for
13 low-income assistance.

14 **“SECTION 54.** Section 12, chapter 751, Oregon Laws 2009, is amended to
15 read:

16 **“Sec. 12.** Section 9 [*of this 2009 Act*], chapter 751, Oregon Laws 2009,
17 is repealed on [*January 2, 2020*] the effective date of this 2019 Act.

18

19 **“BIENNIAL STATEWIDE ENERGY BURDEN REPORT**

20

21 **“SECTION 55. (1)** No later than November 1 of every even-numbered
22 year, the Housing and Community Services Department and the State
23 Department of Energy shall jointly transmit to the Governor and the
24 Legislative Assembly a biennial statewide energy burden report. The
25 Housing and Community Services Department and the State Depart-
26 ment of Energy shall jointly adopt rules for gathering data necessary
27 to prepare the report. In adopting rules under this section, the Hous-
28 ing and Community Services Department and the State Department
29 of Energy shall consult with consumer-owned utilities as defined in
30 ORS 757.600 regarding the availability and collection of data necessary

1 to develop the report.

2 “(2) The purposes of the biennial statewide energy burden report
3 are to:

4 “(a) Establish a baseline for assessing the energy burden experi-
5 enced by the residents of this state on a statewide level, by county and
6 by utility service territory, and for assessing the differences in re-
7 gional or demographic data that may impact the energy burden experi-
8 enced;

9 “(b) Develop and maintain an inventory of all programs in Oregon
10 that contribute to reducing energy burden that are funded through
11 state, federal or utility programs and include in the inventory a de-
12 scription of the annual funding necessary for each program and the
13 sources for funding received;

14 “(c) Explore new statewide mechanisms for reducing energy burden,
15 with an emphasis on addressing the specific needs of renters, mobile
16 home and manufactured dwelling park residents and residents of
17 multifamily housing;

18 “(d) Develop and provide recommendations for restructuring pro-
19 grams or for creating new programs to enhance efforts for addressing
20 energy burden in this state; and

21 “(e) Develop and provide recommendations for improving the de-
22 livery of services for reducing energy burden by improving data gath-
23 ering and knowledge sharing between state agencies, utilities,
24 community action agencies and other organizations that implement
25 energy assistance programs.

26 “(3) The Housing and Community Services Department, in consul-
27 tation with the State Department of Energy, shall convene an Energy
28 Burden and Poverty Working Group to provide guidance and assist-
29 ance to the departments in developing the biennial statewide energy
30 burden report. The working group shall include representatives of

1 low-income and environmental justice communities, consumer-owned
2 utilities, investor-owned utilities, at least one community action
3 agency and organizations that implement energy assistance on a
4 statewide level. The Department of Housing and Community Services
5 shall provide staff support to the working group. The working group
6 shall meet regularly, as is necessary for the working group to review
7 the statewide progress in addressing energy burden since issuance of
8 the previous biennial statewide energy burden report and to assist in
9 developing the upcoming biennial statewide energy burden report.

10
11 **“GREENHOUSE GAS EMISSIONS REGISTRATION AND REPORTING**
12 **“(Transfer of Duties Related to Greenhouse Gas**
13 **Reporting Program)**

14
15 **“SECTION 56. Transfer. The duties, functions and powers of the**
16 **Environmental Quality Commission and the Department of Environ-**
17 **mental Quality relating to ORS 468A.280 and rules adopted pursuant**
18 **to ORS 468A.280 are imposed upon, transferred to and vested in the**
19 **Carbon Policy Office.**

20 **“SECTION 57. Records, property, employees. (1) The Director of the**
21 **Department of Environmental Quality shall:**

22 **“(a) Deliver to the Carbon Policy Office all records and property**
23 **within the jurisdiction of the director that relate to the duties, func-**
24 **tions and powers transferred by section 56 of this 2019 Act; and**

25 **“(b) Transfer to the Carbon Policy Office those employees engaged**
26 **primarily in the exercise of the duties, functions and powers trans-**
27 **ferred by section 56 of this 2019 Act.**

28 **“(2) The Director of the Carbon Policy Office shall take possession**
29 **of the records and property, and shall take charge of the employees**
30 **and employ them in the exercise of the duties, functions and powers**

1 transferred by section 56 of this 2019 Act, without reduction of com-
2 pensation but subject to change or termination of employment or
3 compensation as provided by law.

4 “(3) The Governor shall resolve any dispute between the Depart-
5 ment of Environmental Quality and the Carbon Policy Office relating
6 to transfers of records, property and employees under this section, and
7 the Governor’s decision is final.

8 “SECTION 58. Unexpended revenues. (1) The unexpended balances
9 of amounts authorized to be expended by the Environmental Quality
10 Commission or the Department of Environmental Quality for the
11 biennium beginning July 1, 2019, from revenues dedicated, contin-
12 uously appropriated, appropriated or otherwise made available for the
13 purpose of administering and enforcing the duties, functions and
14 powers transferred by section 56 of this 2019 Act are transferred to and
15 are available for expenditure by the Carbon Policy Office for the
16 biennium beginning July 1, 2019, for the purpose of administering and
17 enforcing the duties, functions and powers transferred by section 56
18 of this 2019 Act.

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

23 “SECTION 59. Action, proceeding, prosecution. The transfer of du-
24 ties, functions and powers to the Carbon Policy Office by section 56
25 of this 2019 Act does not affect any action, proceeding or prosecution
26 involving or with respect to the duties, functions and powers begun
27 before and pending at the time of the transfer, except that the Carbon
28 Policy Office is substituted for the Environmental Quality Commission
29 or the Department of Environmental Quality, as appropriate, in the
30 action, proceeding or prosecution.

1 **“SECTION 60. Liability, duty, obligation. (1) Nothing in sections 56**
2 **to 62 of this 2019 Act relieves a person of a liability, duty or obligation**
3 **accruing under or with respect to the duties, functions and powers**
4 **transferred by section 56 of this 2019 Act. The Carbon Policy Office**
5 **may undertake the collection or enforcement of any such liability,**
6 **duty or obligation.**

7 **“(2) The rights and obligations of the Environmental Quality Com-**
8 **mission or the Department of Environmental Quality legally incurred**
9 **under contracts, leases and business transactions executed, entered**
10 **into or begun before the operative date of section 56 of this 2019 Act**
11 **accruing under or with respect to the duties, functions and powers**
12 **transferred by section 56 of this 2019 Act are transferred to the Carbon**
13 **Policy Office. For the purpose of succession to these rights and obli-**
14 **gations, the Carbon Policy Office is a continuation of the Environ-**
15 **mental Quality Commission or the Department of Environmental**
16 **Quality, as appropriate, and not a new authority.**

17 **“SECTION 61. Rules. (1) Notwithstanding the transfer of duties,**
18 **functions and powers by section 56 of this 2019 Act, the rules of the**
19 **Environmental Quality Commission with respect to such duties, func-**
20 **tions or powers that are in effect on the operative date of section 56**
21 **of this 2019 Act continue in effect until superseded or repealed by rules**
22 **of the Carbon Policy Office. References in the rules of the Environ-**
23 **mental Quality Commission to the Environmental Quality Commission**
24 **are considered to be references to the Director of the Carbon Policy**
25 **Office. References in the rules of the Environmental Quality Com-**
26 **mission to the Department of Environmental Quality or an officer or**
27 **employee of the Department of Environmental Quality are considered**
28 **to be references to the Carbon Policy Office or an officer or employee**
29 **of the Carbon Policy Office.**

30 **“(2) Whenever, in any uncodified law or resolution of the Legisla-**

1 tive Assembly or in any rule, document, record or proceeding author-
2 ized by the Legislative Assembly, in the context of the duties,
3 functions and powers transferred by section 56 of this 2019 Act, refer-
4 ence is made to the Environmental Quality Commission, with relation
5 to the duties, functions or powers transferred by section 56 of this 2019
6 Act, the reference is considered to be a reference to the Director of
7 the Carbon Policy Office for purposes of being charged by the terms
8 of this 2019 Act with carrying out the duties, functions and powers.

9 “(3) Whenever, in any uncodified law or resolution of the Legisla-
10 tive Assembly or in any rule, document, record or proceeding author-
11 ized by the Legislative Assembly, in the context of the duties,
12 functions and powers transferred by section 56 of this 2019 Act, refer-
13 ence is made to the Department of Environmental Quality, or an of-
14 ficer of employee of the Department of Environmental Quality, whose
15 duties, functions or powers are transferred by section 56 of this 2019
16 Act, the reference is considered to be a reference to the Carbon Policy
17 Office or an officer or employee of the Carbon Policy Office who by
18 this 2019 Act is charged with carrying out the duties, functions and
19 powers.

20

21 “(Housekeeping in ORS)

22

23 “SECTION 62. Notwithstanding any other provision of law, ORS
24 468A.280 shall not be considered to have been added to or made a part
25 of ORS chapter 468A for the purpose of statutory compilation or for
26 the application of definitions, penalties or administrative provisions
27 applicable to statute sections in that series.

28

29 “(Amendments to Statutes)

30

1 **“SECTION 63.** ORS 468A.280 is amended to read:

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

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

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

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

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

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

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

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

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

1 electricity and related electricity transmission line losses.

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

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

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

16 “(B) The percentage of each fuel or energy type used to produce electric-
17 ity purchased under each type of contract.

18 “[4)(a)] **(6)(a)** Rules adopted by the [commission] **director** pursuant to
19 this section for electricity that is purchased, imported, sold, allocated or
20 distributed for use in this state by an electric company, as defined in ORS
21 757.600, must be limited to the reporting of:

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

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

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

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

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

1 “(ii) The original generating facility fuel type or types; and
2 “[(D)] **(E)** An estimate of the amount of greenhouse gas emissions[, *using*
3 *default greenhouse gas emissions factors established by the commission by*
4 *rule,*] attributable to:
5 “(i) Electricity purchases made by a particular seller to the electric
6 company;
7 “(ii) Electricity purchases from an unknown origin or from a seller who
8 is unable to identify the original generating facility fuel type or types;
9 “[(iii) *Electricity purchases for which a renewable energy certificate under*
10 *ORS 469A.130 has been issued but subsequently transferred or sold to a person*
11 *other than the electric company;*]
12 “[(iv)] **(iii)** Electricity transmitted for others by the electric company; and
13 “[(v)] **(iv)** Total energy losses from electricity transmission and distrib-
14 ution equipment owned or operated by the electric company.
15 “(b) Pursuant to paragraph (a) of this subsection, a multijurisdictional
16 electric company may rely upon a cost allocation methodology approved by
17 the Public Utility Commission for reporting emissions allocated in this state.
18 “[(5)] **(7)** Rules adopted by the [*commission*] **director** under this section
19 for [*fossil*] fuel that is imported, sold or distributed for use in this state may
20 require reporting of the type and quantity of the fuel and any additional
21 information necessary to determine the [*carbon content*] **greenhouse gas**
22 **emissions associated with the use or combustion** of the fuel. [*For the*
23 *purpose of determining greenhouse gas emissions related to liquefied petroleum*
24 *gas, the commission shall allow reporting using publications or submission of*
25 *data by the American Petroleum Institute but may require reporting of such*
26 *other information necessary to achieve the purposes of the rules adopted by the*
27 *commission under this section.*]
28 “[(6)] **(8)** To an extent that is consistent with the purposes of the rules
29 adopted by the [*commission*] **director** under this section, the [*commission*]
30 **director** shall minimize the burden of the reporting required under this

1 section by:

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

4 “(b) Allowing electronic reporting;

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

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

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

13 “(f) Other appropriate means and procedures determined by the [commis-
14 sion] **director**.

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

17 “**(9) The office may adjust by rule the registration and reporting**
18 **requirements under subsection (2) of this section if necessary to ac-**
19 **commodate participation in an energy imbalance market by persons**
20 **who import, sell, allocate or distribute electricity, or as necessary to**
21 **otherwise address developments in electricity markets.**

22 “**(10) The office may require a person for which registration and**
23 **reporting is required under subsection (2) of this section to provide any**
24 **pertinent records related to verification of greenhouse gas emissions**
25 **in order to determine compliance with and to enforce this section and**
26 **rules adopted pursuant to this section.**

27 “**(11) If a person required to register and report under subsection**
28 **(2) of this section fails to submit a report under this section, the office**
29 **may develop an assigned emissions level for the person if necessary for**
30 **the purpose of regulating persons under sections 7 to 29 of this 2019**

1 **Act.**

2 **“(12)(a) By rule the director may establish a schedule of fees for**
3 **registration and reporting under this section. Before establishing fees**
4 **pursuant to this subsection, the director shall consider the total fees**
5 **for each person subject to registration and reporting under this sec-**
6 **tion.**

7 **“(b) The director shall limit the fees established under this sub-**
8 **section to the anticipated cost of developing, implementing and ana-**
9 **lyzing data collected under greenhouse gas emissions registration and**
10 **reporting programs.**

11 **“(13) Emissions data submitted to the office under this section is**
12 **public information and may not be designated as confidential for pur-**
13 **poses of disclosure under the public records law, ORS 192.311 to 192.478.**

14

15 **“ENERGY FACILITY CARBON DIOXIDE EMISSIONS STANDARDS**

16 **“(Repeal of Carbon Dioxide Emissions Standards)**

17

18 **“SECTION 64. ORS 469.503 is amended to read:**

19 **“469.503. In order to issue a site certificate, the Energy Facility Siting**
20 **Council shall determine that the preponderance of the evidence on the record**
21 **supports the following conclusions:**

22 **“(1) The facility complies with the applicable standards adopted by the**
23 **council pursuant to ORS 469.501 or the overall public benefits of the facility**
24 **outweigh any adverse effects on a resource or interest protected by the ap-**
25 **plicable standards the facility does not meet.**

26 **“[(2) *If the energy facility is a fossil-fueled power plant, the energy facility***
27 ***complies with any applicable carbon dioxide emissions standard adopted by the***
28 ***council or enacted by statute. Base load gas plants shall comply with the***
29 ***standard set forth in subsection (2)(a) of this section. Other fossil-fueled power***
30 ***plants shall comply with any applicable standard adopted by the council by***

1 rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d)
2 of this section prescribe the means by which an applicant may comply with the
3 applicable standard.]

4 “[a) The net carbon dioxide emissions rate of the proposed base load gas
5 plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt
6 hour of net electric power output, with carbon dioxide emissions and net elec-
7 tric power output measured on a new and clean basis. Notwithstanding the
8 foregoing, the council may by rule modify the carbon dioxide emissions stand-
9 ard for base load gas plants if the council finds that the most efficient stand-
10 alone combined cycle, combustion turbine, natural gas-fired energy facility that
11 is commercially demonstrated and operating in the United States has a net
12 heat rate of less than 7,200 Btu per kilowatt hour higher heating value ad-
13 justed to ISO conditions. In modifying the carbon dioxide emission standard,
14 the council shall determine the rate of carbon dioxide emissions per kilowatt
15 hour of net electric output of such energy facility, adjusted to ISO conditions,
16 and reset the carbon dioxide emissions standard at 17 percent below this
17 rate.]

18 “[b) The council shall adopt carbon dioxide emissions standards for other
19 types of fossil-fueled power plants. Such carbon dioxide emissions standards
20 shall be promulgated by rule. In adopting or amending such carbon dioxide
21 emissions standards, the council shall consider and balance at least the fol-
22 lowing principles, the findings on which shall be contained in the rulemaking
23 record:]

24 “[A) Promote facility fuel efficiency;]

25 “[B) Promote efficiency in the resource mix;]

26 “[C) Reduce net carbon dioxide emissions;]

27 “[D) Promote cogeneration that reduces net carbon dioxide emissions;]

28 “[E) Promote innovative technologies and creative approaches to mitigat-
29 ing, reducing or avoiding carbon dioxide emissions;]

30 “[F) Minimize transaction costs;]

1 “(G) Include an alternative process that separates decisions on the form
2 and implementation of offsets from the final decision on granting a site cer-
3 tificate;]

4 “(H) Allow either the applicant or third parties to implement offsets;]

5 “(I) Be attainable and economically achievable for various types of power
6 plants;]

7 “(J) Promote public participation in the selection and review of offsets;]

8 “(K) Promote prompt implementation of offset projects;]

9 “(L) Provide for monitoring and evaluation of the performance of offsets;
10 and]

11 “(M) Promote reliability of the regional electric system.]

12 “(c) The council shall determine whether the applicable carbon dioxide
13 emissions standard is met by first determining the gross carbon dioxide emis-
14 sions that are reasonably likely to result from the operation of the proposed
15 energy facility. Such determination shall be based on the proposed design of
16 the energy facility. The council shall adopt site certificate conditions to ensure
17 that the predicted carbon dioxide emissions are not exceeded on a new and
18 clean basis. For any remaining emissions reduction necessary to meet the ap-
19 plicable standard, the applicant may elect to use any of subparagraphs (A) to
20 (D) of this paragraph, or any combination thereof. The council shall determine
21 the amount of carbon dioxide or other greenhouse gas emissions reduction that
22 is reasonably likely to result from the applicant’s offsets and whether the re-
23 sulting net carbon dioxide emissions meet the applicable carbon dioxide emis-
24 sions standard. For purposes of determining the net carbon dioxide emissions,
25 the council shall by rule establish the global warming potential of each
26 greenhouse gas based on a generally accepted scientific method, and convert
27 any greenhouse gas emissions to a carbon dioxide equivalent. Unless otherwise
28 provided by the council by rule, the global warming potential of methane is
29 23 times that of carbon dioxide, and the global warming potential of nitrous
30 oxide is 296 times that of carbon dioxide. If the council or a court on judicial

1 review concludes that the applicant has not demonstrated compliance with the
2 applicable carbon dioxide emissions standard under subparagraphs (A), (B)
3 or (D) of this paragraph, or any combination thereof, and the applicant has
4 agreed to meet the requirements of subparagraph (C) of this paragraph for any
5 deficiency, the council or a court shall find compliance based on such agree-
6 ment.]

7 “[A] The facility will sequentially produce electrical and thermal energy
8 from the same fuel source, and the thermal energy will be used to displace
9 another source of carbon dioxide emissions that would have otherwise contin-
10 ued to occur, in which case the council shall adopt site certificate conditions
11 ensuring that the carbon dioxide emissions reduction will be achieved.]

12 “[B] The applicant or a third party will implement particular offsets, in
13 which case the council may adopt site certificate conditions ensuring that the
14 proposed offsets are implemented but shall not require that predicted levels of
15 avoidance, displacement or sequestration of greenhouse gas emissions be
16 achieved. The council shall determine the quantity of greenhouse gas emissions
17 reduction that is reasonably likely to result from each of the proposed offsets
18 based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In
19 making this determination, the council shall not allow credit for offsets that
20 have already been allocated or awarded credit for greenhouse gas emissions
21 reduction in another regulatory setting. In addition, the fact that an applicant
22 or other parties involved with an offset may derive benefits from the offset
23 other than the reduction of greenhouse gas emissions is not, by itself, a basis
24 for withholding credit for an offset.]

25 “[i] The degree of certainty that the predicted quantity of greenhouse gas
26 emissions reduction will be achieved by the offset;]

27 “[ii] The ability of the council to determine the actual quantity of
28 greenhouse gas emissions reduction resulting from the offset, taking into con-
29 sideration any proposed measurement, monitoring and evaluation of mitigation
30 measure performance; and]

1 “(iii) *The extent to which the reduction of greenhouse gas emissions would*
2 *occur in the absence of the offsets.*”]

3 “(C) *The applicant or a third party agrees to provide funds in an amount*
4 *deemed sufficient to produce the reduction in greenhouse gas emissions neces-*
5 *sary to meet the applicable carbon dioxide emissions standard, in which case*
6 *the funds shall be used as specified in paragraph (d) of this subsection. Unless*
7 *modified by the council as provided below, the payment of 57 cents shall be*
8 *deemed to result in a reduction of one ton of carbon dioxide emissions. The*
9 *council shall determine the offset funds using the monetary offset rate and the*
10 *level of emissions reduction required to meet the applicable standard. If a site*
11 *certificate is approved based on this subparagraph, the council may not adjust*
12 *the amount of such offset funds based on the actual performance of offsets.*
13 *After three years from June 26, 1997, the council may by rule increase or de-*
14 *crease the monetary offset rate of 57 cents per ton of carbon dioxide emissions.*
15 *Any change to the monetary offset rate shall be based on empirical evidence*
16 *of the cost of offsets and the council’s finding that the standard will be eco-*
17 *nomically achievable with the modified rate for natural gas-fired power plants.*
18 *Following the initial three-year period, the council may increase or decrease*
19 *the monetary offset rate no more than 50 percent in any two-year period.*”]

20 “(D) *Any other means that the council adopts by rule for demonstrating*
21 *compliance with any applicable carbon dioxide emissions standard.*”]

22 “(d) *If the applicant elects to meet the applicable carbon dioxide emissions*
23 *standard in whole or in part under paragraph (c)(C) of this subsection, the*
24 *applicant shall identify the qualified organization. The applicant may identify*
25 *an organization that has applied for, but has not received, an exemption from*
26 *federal income taxation, but the council may not find that the organization is*
27 *a qualified organization unless the organization is exempt from federal taxa-*
28 *tion under section 501(c)(3) of the Internal Revenue Code as amended and in*
29 *effect on December 31, 1996. The site certificate holder shall provide a bond*
30 *or comparable security in a form reasonably acceptable to the council to ensure*

1 *the payment of the offset funds and the amount required under subparagraph*
2 *(A)(ii) of this paragraph. Such security shall be provided by the date specified*
3 *in the site certificate, which shall be no later than the commencement of con-*
4 *struction of the facility. The site certificate shall require that the offset funds*
5 *be disbursed as specified in subparagraph (A) of this paragraph, unless the*
6 *council finds that no qualified organization exists, in which case the site cer-*
7 *tificate shall require that the offset funds be disbursed as specified in sub-*
8 *paragraph (B) of this paragraph.]*

9 *“(A) The site certificate holder shall disburse the offset funds and any*
10 *other funds required by sub-subparagraph (ii) of this subparagraph to the*
11 *qualified organization as follows:]*

12 *“(i) When the site certificate holder receives written notice from the quali-*
13 *fied organization certifying that the qualified organization is contractually*
14 *obligated to pay any funds to implement offsets using the offset funds, the site*
15 *certificate holder shall make the requested amount available to the qualified*
16 *organization unless the total of the amount requested and any amounts previ-*
17 *ously requested exceeds the offset funds, in which case only the remaining*
18 *amount of the offset funds shall be made available. The qualified organization*
19 *shall use at least 80 percent of the offset funds for contracts to implement off-*
20 *sets. The qualified organization shall assess offsets for their potential to*
21 *qualify in, generate credits in or reduce obligations in other regulatory set-*
22 *tings. The qualified organization may use up to 20 percent of the offset funds*
23 *for monitoring, evaluation, administration and enforcement of contracts to im-*
24 *plement offsets.]*

25 *“(ii) At the request of the qualified organization and in addition to the*
26 *offset funds, the site certificate holder shall pay the qualified organization an*
27 *amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286*
28 *percent of any offset funds in excess of \$500,000. This amount shall not be less*
29 *than \$50,000 unless a lesser amount is specified in the site certificate. This*
30 *amount compensates the qualified organization for its costs of selecting offsets*

1 *and contracting for the implementation of offsets.]*

2 *“[(iii) Notwithstanding any provision to the contrary, a site certificate*
3 *holder subject to this subparagraph shall have no obligation with regard to*
4 *offsets, the offset funds or the funds required by sub-subparagraph (ii) of this*
5 *subparagraph other than to make available to the qualified organization the*
6 *total amount required under paragraph (c) of this subsection and sub-*
7 *subparagraph (ii) of this subparagraph, nor shall any nonperformance,*
8 *negligence or misconduct on the part of the qualified organization be a basis*
9 *for revocation of the site certificate or any other enforcement action by the*
10 *council with respect to the site certificate holder.]*

11 *“[(B) If the council finds there is no qualified organization, the site certif-*
12 *icate holder shall select one or more offsets to be implemented pursuant to*
13 *criteria established by the council. The site certificate holder shall give written*
14 *notice of its selections to the council and to any person requesting notice. On*
15 *petition by the State Department of Energy, or by any person adversely affected*
16 *or aggrieved by the site certificate holder’s selection of offsets, or on the*
17 *council’s own motion, the council may review such selection. The petition must*
18 *be received by the council within 30 days of the date the notice of selection is*
19 *placed in the United States mail, with first-class postage prepaid. The council*
20 *shall approve the site certificate holder’s selection unless it finds that the se-*
21 *lection is not consistent with criteria established by the council. The site cer-*
22 *tificate holder shall contract to implement the selected offsets within 18 months*
23 *after commencing construction of the facility unless good cause is shown re-*
24 *quiring additional time. The contracts shall obligate the expenditure of at least*
25 *85 percent of the offset funds for the implementation of offsets. No more than*
26 *15 percent of the offset funds may be spent on monitoring, evaluation and*
27 *enforcement of the contract to implement the selected offsets. The council’s*
28 *criteria for selection of offsets shall be based on the criteria set forth in para-*
29 *graphs (b)(C) and (c)(B) of this subsection and may also consider the costs of*
30 *particular types of offsets in relation to the expected benefits of such offsets.*

1 *The council’s criteria shall not require the site certificate holder to select*
2 *particular offsets, and shall allow the site certificate holder a reasonable range*
3 *of choices in selecting offsets. In addition, notwithstanding any other provision*
4 *of this section, the site certificate holder’s financial liability for implementa-*
5 *tion, monitoring, evaluation and enforcement of offsets pursuant to this sub-*
6 *section shall be limited to the amount of any offset funds not already*
7 *contractually obligated. Nonperformance, negligence or misconduct by the en-*
8 *tity or entities implementing, monitoring or evaluating the selected offset shall*
9 *not be a basis for revocation of the site certificate or any other enforcement*
10 *action by the council with respect to the site certificate holder.]*

11 *“(C) Every qualified organization that has received funds under this par-*
12 *agraph shall, at five-year intervals beginning on the date of receipt of such*
13 *funds, provide the council with the information the council requests about the*
14 *qualified organization’s performance. The council shall evaluate the informa-*
15 *tion requested and, based on such information, shall make any recommen-*
16 *dations to the Legislative Assembly that the council deems appropriate.]*

17 *“(e) As used in this subsection:]*

18 *“(A) ‘Adjusted to ISO conditions’ means carbon dioxide emissions and net*
19 *electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per*
20 *square inch atmospheric pressure and 60 percent humidity.]*

21 *“(B) ‘Base load gas plant’ means a generating facility that is fueled by*
22 *natural gas, except for periods during which an alternative fuel may be used*
23 *and when such alternative fuel use shall not exceed 10 percent of expected fuel*
24 *use in Btu, higher heating value, on an average annual basis, and where the*
25 *applicant requests and the council adopts no condition in the site certificate*
26 *for the generating facility that would limit hours of operation other than re-*
27 *strictions on the use of alternative fuel. The council shall assume a 100 per-*
28 *cent capacity factor for such plants and a 30-year life for the plants for*
29 *purposes of determining gross carbon dioxide emissions.]*

30 *“(C) ‘Carbon dioxide equivalent’ means the global warming potential of a*

1 *greenhouse gas reflected in units of carbon dioxide.]*

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

5 “[(E) ‘Generating facility’ means those energy facilities that are defined in
6 ORS 469.300 (11)(a)(A), (B) and (D).]

7 “[(F) ‘Global warming potential’ means the determination of the atmo-
8 spheric warming resulting from the release of a unit mass of a particular
9 greenhouse gas in relation to the warming resulting from the release of the
10 equivalent mass of carbon dioxide.]

11 “[(G) ‘Greenhouse gas’ means carbon dioxide, methane and nitrous oxide.]

12 “[(H) ‘Gross carbon dioxide emissions’ means the predicted carbon dioxide
13 emissions of the proposed energy facility measured on a new and clean
14 basis.]

15 “[(I) ‘Net carbon dioxide emissions’ means gross carbon dioxide emissions
16 of the proposed energy facility, less carbon dioxide or other greenhouse gas
17 emissions avoided, displaced or sequestered by any combination of cogeneration
18 or offsets.]

19 “[(J) ‘New and clean basis’ means the average carbon dioxide emissions
20 rate per hour and net electric power output of the energy facility, without de-
21 gradation, as determined by a 100-hour test at full power completed during the
22 first 12 months of commercial operation of the energy facility, with the results
23 adjusted for the average annual site condition for temperature, barometric
24 pressure and relative humidity and use of alternative fuels, and using a rate
25 of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate
26 of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel
27 use is proposed by the applicant. The council may by rule adjust the rate of
28 pounds of carbon dioxide per million Btu for natural gas or distillate fuel.
29 The council may by rule set carbon dioxide emissions rates for other fuels.]

30 “[(K) ‘Nongenerating facility’ means those energy facilities that are defined

1 *in ORS 469.300 (11)(a)(C) and (E) to (I).]*

2 *“[(L) ‘Offset’ means an action that will be implemented by the applicant, a*
3 *third party or through the qualified organization to avoid, sequester or dis-*
4 *place emissions.]*

5 *“[(M) ‘Offset funds’ means the amount of funds determined by the council*
6 *to satisfy the applicable carbon dioxide emissions standard pursuant to para-*
7 *graph (c)(C) of this subsection.]*

8 *“[(N) ‘Qualified organization’ means an entity that:]*

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

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

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

23 *“[(iv) Has made available on an annual basis, beginning after the first year*
24 *of operation, a signed opinion of an independent certified public accountant*
25 *stating that the qualified organization’s use of funds pursuant to this statute*
26 *conforms with generally accepted accounting procedures except that the quali-*
27 *fied organization shall have one year to conform with generally accepted ac-*
28 *counting principles in the event of a nonconforming audit;]*

29 *“[(v) Has to the extent applicable, except for good cause, entered into con-*
30 *tracts obligating at least 60 percent of the offset funds to implement offsets*

1 *within two years after the commencement of construction of the facility; and]*

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

4 *“[(3)] (2) Except as provided in ORS 469.504 for land use compliance and*
5 *except for those statutes and rules for which the decision on compliance has*
6 *been delegated by the federal government to a state agency other than the*
7 *council, the facility complies with all other Oregon statutes and adminis-*
8 *trative rules identified in the project order, as amended, as applicable to the*
9 *issuance of a site certificate for the proposed facility. If compliance with*
10 *applicable Oregon statutes and administrative rules, other than those in-*
11 *volving federally delegated programs, would result in conflicting conditions*
12 *in the site certificate, the council may resolve the conflict consistent with*
13 *the public interest. A resolution may not result in the waiver of any appli-*
14 *cable state statute.*

15 *“[(4)] (3) The facility complies with the statewide planning goals adopted*
16 *by the Land Conservation and Development Commission.*

17 **“SECTION 65.** ORS 469.501 is amended to read:

18 **“469.501. (1) The Energy Facility Siting Council shall adopt standards for**
19 **the siting, construction, operation and retirement of facilities. The standards**
20 **may address but need not be limited to the following subjects:**

21 **“(a) The organizational, managerial and technical expertise of the appli-**
22 **cant to construct and operate the proposed facility.**

23 **“(b) Seismic hazards.**

24 **“(c) Areas designated for protection by the state or federal government,**
25 **including but not limited to monuments, wilderness areas, wildlife refuges,**
26 **scenic waterways and similar areas.**

27 **“(d) The financial ability and qualifications of the applicant.**

28 **“(e) Effects of the facility, taking into account mitigation, on fish and**
29 **wildlife, including threatened and endangered fish, wildlife or plant species.**

30 **“(f) Impacts of the facility on historic, cultural or archaeological re-**

1 sources listed on, or determined by the State Historic Preservation Officer
2 to be eligible for listing on, the National Register of Historic Places or the
3 Oregon State Register of Historic Properties.

4 “(g) Protection of public health and safety, including necessary safety
5 devices and procedures.

6 “(h) The accumulation, storage, disposal and transportation of nuclear
7 waste.

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

9 “(j) Reduction of solid waste and wastewater generation to the extent
10 reasonably practicable.

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

14 “(L) The need for proposed nongenerating facilities [*as defined in ORS*
15 *469.503*], consistent with the state energy policy set forth in ORS 469.010 and
16 469.310. The council may consider least-cost plans when adopting a need
17 standard or in determining whether an applicable need standard has been
18 met. The council shall not adopt a standard requiring a showing of need or
19 cost-effectiveness for generating facilities [*as defined in ORS 469.503*].

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

22 “(n) Soil protection.

23 “[*(o) For energy facilities that emit carbon dioxide, the impacts of those*
24 *emissions on climate change. For fossil-fueled power plants, as defined in ORS*
25 *469.503, the council shall apply a standard as provided for by ORS 469.503*
26 *(2).*]

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

30 “(3)(a) The council may issue a site certificate for a facility that does not

1 meet one or more of the applicable standards adopted under subsection (1)
2 of this section if the council determines that the overall public benefits of
3 the facility outweigh any adverse effects on a resource or interest protected
4 by the applicable standards the facility does not meet.

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

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

14
15 **“(Transitional Provisions)”**

16
17 **“SECTION 66. (1) Notwithstanding ORS 469.401 (2), any conditions**
18 **in a site certificate or amended site certificate issued before January**
19 **1, 2021, that are conditions related to any carbon dioxide emissions**
20 **standard applicable pursuant to ORS 469.501 (1)(o) (2017 Edition) or**
21 **469.503 (2017 Edition) or to rules adopted by the Energy Facility Siting**
22 **Council pursuant to ORS 469.501 (1)(o) (2017 Edition) or 469.503 (2017**
23 **Edition) cease to be enforceable on January 1, 2021.**

24 **“(2) Any provision in a site certificate or amended site certificate**
25 **for a generating facility issued before January 1, 2021, requiring the**
26 **holder to demonstrate the need for the facility shall cease to be en-**
27 **forceable on January 1, 2021.**

28 **“(3) Any site certificate amendment approved by the council on or**
29 **after January 1, 2021, shall remove from the site certificate being**
30 **amended all conditions and provisions rendered unenforceable by sub-**

1 sections (1) and (2) of this section. Notwithstanding ORS 469.405 or
2 any council rule, the contested case hearing on a site certificate
3 amendment subject to this subsection may not include hearing on
4 amendments necessary to comply with this subsection. The provisions
5 of the council's order relevant to compliance with this subsection is
6 not subject to judicial review.

7 **“SECTION 67.** The Energy Facility Siting Council shall, no later
8 than January 1, 2022, complete rulemaking to amend or repeal any
9 rules adopted by the council relating to the application of a carbon
10 dioxide emissions standard to generating facilities or nongenerating
11 facilities as necessary to bring the rules of the council into compliance
12 with the amendments to ORS 469.501 and 469.503 by sections 64 and 65
13 of this 2019 Act and the provisions of section 66 of this 2019 Act.

14 **“SECTION 68.** (1) As used in this section and section 69 of this 2019
15 Act, ‘qualified organization’ has the meaning given that term in ORS
16 469.503 (2)(e)(N) (2017 Edition).

17 **“(2) On or after the operative date of this section and the amend-**
18 **ments to ORS 469.503 by section 64 of this 2019 Act and in accordance**
19 **with the provisions of ORS 469.503 (2)(d) (2017 Edition), a qualified or-**
20 **ganization that, before the operative date of this section and the**
21 **amendments to ORS 469.503 by section 64 of this 2019 Act, received**
22 **payment of offset funds pursuant to ORS 469.503 (2)(c)(C) (2017 Edi-**
23 **tion):**

24 **“(a) Shall use at least 80 percent of the offset funds for contracts**
25 **to implement offsets and assess offsets for their potential to qualify**
26 **in, generate credits in or reduce obligations in other regulatory set-**
27 **tings;**

28 **“(b) May use up to 20 percent of the offset funds for monitoring,**
29 **evaluating, administering and enforcing contracts to implement off-**
30 **sets; and**

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

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

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

12 “(a) For wind facilities, 3.00;

13 “(b) For geothermal energy facilities, 1.11; or

14 “(c) For all other energy facilities, 1.00.

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

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

21 “(7) ‘Council’ means the Energy Facility Siting Council established under
22 ORS 469.450.

23 “(8) ‘Department’ means the State Department of Energy created under
24 ORS 469.030.

25 “(9) ‘Director’ means the Director of the State Department of Energy ap-
26 pointed under ORS 469.040.

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

1 electric energy.

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

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

5 “(i) Thermal power;

6 “(ii) Combustion turbine power plant; or

7 “(iii) Solar thermal power plant.

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

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

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

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

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

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

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

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

25 “(E) A pipeline that is:

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

30 “(ii) At least 16 inches in diameter, and five or more miles in length, used

1 for the transportation of natural or synthetic gas, but excluding:

2 “(I) A pipeline proposed for construction of which less than five miles of
3 the pipeline is more than 50 feet from a public road, as defined in ORS
4 368.001; or

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

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

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

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

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

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

29 “(i) The underground storage reservoir;

30 “(ii) The injection, withdrawal or monitoring wells and individual

1 wellhead equipment; and

2 “(iii) An underground gas storage reservoir into which gas is injected
3 solely for testing or reservoir maintenance purposes or to facilitate the sec-
4 ondary recovery of oil or other hydrocarbons.

5 “(J) An electric power generating plant with an average electric gener-
6 ating capacity of 35 megawatts or more if the power is produced from
7 geothermal or wind energy at a single energy facility or within a single en-
8 ergy generation area.

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

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

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

1 damages to persons or property off-site.

2 “(14) ‘Facility’ means an energy facility together with any related or
3 supporting facilities.

4 “**(15) ‘Generating facility’ means those energy facilities that are
5 defined in subsection (11)(a)(A), (B) and (D) of this section.**

6 “[~~(15)~~] **(16)** ‘Geothermal reservoir’ means an aquifer or aquifers containing
7 a common geothermal fluid.

8 “[~~(16)~~] **(17)** ‘Local government’ means a city or county.

9 “[~~(17)~~] **(18)** ‘Nominal electric generating capacity’ means the maximum net
10 electric power output of an energy facility based on the average temperature,
11 barometric pressure and relative humidity at the site during the times of the
12 year when the facility is intended to operate.

13 “**(19) ‘Nongenerating facility’ means those energy facilities that are
14 defined in subsection (11)(a)(C) and (E) to (I) of this section.**

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

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

26 “[~~(20)~~] **(22)** ‘Nuclear power plant’ means an electrical or any other facility
27 using nuclear energy with a nominal electric generating capacity of 25
28 megawatts or more, for generation and distribution of electricity, and asso-
29 ciated transmission lines.

30 “[~~(21)~~] **(23)** ‘Person’ means an individual, partnership, joint venture, pri-

1 vate or public corporation, association, firm, public service company, poli-
2 tical subdivision, municipal corporation, government agency, people’s utility
3 district, or any other entity, public or private, however organized.

4 “[22] **(24)** ‘Project order’ means the order, including any amendments,
5 issued by the State Department of Energy under ORS 469.330.

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

15 “(b) Notwithstanding paragraph (a) of this subsection, ‘radioactive
16 waste’ does not include uranium mine overburden or uranium mill tailings,
17 mill wastes or mill by-product materials as those terms are defined in Title
18 42, United States Code, section 2014, on June 25, 1979.

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

27 “[25] **(27)** ‘Site’ means any proposed location of an energy facility and
28 related or supporting facilities.

29 “[26] **(28)** ‘Site certificate’ means the binding agreement between the
30 State of Oregon and the applicant, authorizing the applicant to construct and

1 operate a facility on an approved site, incorporating all conditions imposed
2 by the council on the applicant.

3 “[27] **(29)** ‘Thermal power plant’ means an electrical facility using any
4 source of thermal energy with a nominal electric generating capacity of 25
5 megawatts or more, for generation and distribution of electricity, and asso-
6 ciated transmission lines, including but not limited to a nuclear-fueled,
7 geothermal-fueled or fossil-fueled power plant, but not including a portable
8 power plant the principal use of which is to supply power in emergencies.
9 ‘Thermal power plant’ includes a nuclear-fueled thermal power plant that has
10 ceased to operate.

11 “[28] **(30)** ‘Transportation’ means the transport within the borders of the
12 State of Oregon of radioactive material destined for or derived from any lo-
13 cation.

14 “[29] **(31)** ‘Underground gas storage reservoir’ means any subsurface
15 sand, strata, formation, aquifer, cavern or void, whether natural or arti-
16 ficially created, suitable for the injection, storage and withdrawal of natural
17 gas or other gaseous substances. ‘Underground gas storage reservoir’ in-
18 cludes a pool as defined in ORS 520.005.

19 “[30] **(32)** ‘Utility’ includes:

20 “(a) A person, a regulated electrical company, a people’s utility district,
21 a joint operating agency, an electric cooperative, municipality or any com-
22 bination thereof, engaged in or authorized to engage in the business of gen-
23 erating, transmitting or distributing electric energy;

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

26 “(c) A person engaged in this state in the transmission or distribution of
27 natural or synthetic gas.

28 “[31] **(33)** ‘Waste disposal facility’ means a geographical site in or upon
29 which radioactive waste is held or placed but does not include a site at
30 which radioactive waste used or generated pursuant to a license granted

1 under ORS 453.635 is stored temporarily, a site of a thermal power plant used
2 for the temporary storage of radioactive waste from that plant for which a
3 site certificate has been issued pursuant to this chapter or a site used for
4 temporary storage of radioactive waste from a reactor operated by a college,
5 university or graduate center for research purposes and not connected to the
6 Northwest Power Grid. As used in this subsection, ‘temporary storage’ in-
7 cludes storage of radioactive waste on the site of a nuclear-fueled thermal
8 power plant for which a site certificate has been issued until a permanent
9 storage site is available by the federal government.

10 **“SECTION 72.** ORS 469.310 is amended to read:

11 “469.310. In the interests of the public health and the welfare of the peo-
12 ple of this state, it is the declared public policy of this state that the siting,
13 construction and operation of energy facilities shall be accomplished in a
14 manner consistent with protection of the public health and safety and in
15 compliance with the energy policy and air, water, solid waste, land use and
16 other environmental protection policies of this state. It is, therefore, the
17 purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to
18 exercise the jurisdiction of the State of Oregon to the maximum extent per-
19 mitted by the United States Constitution and to establish in cooperation
20 with the federal government a comprehensive system for the siting, moni-
21 toring and regulating of the location, construction and operation of all en-
22 ergy facilities in this state. It is furthermore the policy of this state,
23 notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS
24 469.020, that the need for new generating facilities[, *as defined in ORS*
25 *469.503,*] is sufficiently addressed by reliance on competition in the market
26 rather than by consideration of cost-effectiveness and shall not be a matter
27 requiring determination by the Energy Facility Siting Council in the siting
28 of a generating facility[, *as defined in ORS 469.503*].

29 **“SECTION 73.** ORS 469.373 is amended to read:

30 “469.373. (1) Notwithstanding the expedited review process established

1 pursuant to ORS 469.370, an applicant may apply under the provisions of this
2 section for expedited review of an application for a site certificate for an
3 energy facility if the energy facility:

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

7 “(b) Is a permitted or conditional use allowed under an applicable local
8 acknowledged comprehensive plan, land use regulation or federal land use
9 plan, and is located:

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

11 “(B)(i) At, adjacent to or in close proximity to an existing industrial use;
12 and

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

14 “(c)(A) Requires no more than three miles of associated transmission lines
15 or three miles of new natural gas pipelines outside of existing rights of way
16 for transmission lines or natural gas pipelines; or

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

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

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

26 “[*f*](A)] **(e)(A)** Discharges process wastewater to a wastewater treatment
27 facility that has an existing National Pollutant Discharge Elimination Sys-
28 tem permit, can obtain an industrial pretreatment permit, if needed, within
29 the expedited review process time frame and has written confirmation from
30 the wastewater facility permit holder that the additional wastewater load

1 will be accommodated by the facility without resulting in a significant
2 thermal increase in the facility effluent or without requiring any changes to
3 the wastewater facility National Pollutant Discharge Elimination System
4 permit;

5 “(B) Plans to discharge process wastewater to a wastewater treatment
6 facility owned by a municipal corporation that will accommodate the
7 wastewater from the energy facility and supplies evidence from the municipal
8 corporation that:

9 “(i) The municipal corporation has included, or intends to include, the
10 process wastewater load from the energy facility in an application for a
11 National Pollutant Discharge Elimination System permit; and

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

14 “(C) Obtains a National Pollutant Discharge Elimination System or water
15 pollution control facility permit for process wastewater disposal, supplies
16 evidence to support a finding that the discharge can likely be permitted
17 within the expedited review process time frame and that the discharge will
18 not require:

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

21 “(ii) A change in any effluent limit or discharge location under an exist-
22 ing National Pollutant Discharge Elimination System or water pollution
23 control facility permit.

24 “(2) An applicant seeking expedited review under this section shall submit
25 documentation to the State Department of Energy, prior to the submission
26 of an application for a site certificate, that demonstrates that the energy
27 facility meets the qualifications set forth in subsection (1) of this section.
28 The department shall determine, within 14 days of receipt of the documen-
29 tation, on a preliminary, nonbinding basis, whether the energy facility qual-
30 ifies for expedited review.

1 “(3) If the department determines that the energy facility preliminarily
2 qualifies for expedited review, the applicant may submit an application for
3 expedited review. Within 30 days after the date that the application for ex-
4 pedited review is submitted, the department shall determine whether the ap-
5 plication is complete. If the department determines that the application is
6 complete, the application shall be deemed filed on the date that the depart-
7 ment sends the applicant notice of its determination. If the department de-
8 termines that the application is not complete, the department shall notify the
9 applicant of the deficiencies in the application and shall deem the applica-
10 tion filed on the date that the department determines that the application
11 is complete. The department or the council may request additional infor-
12 mation from the applicant at any time.

13 “(4) The State Department of Energy shall send a copy of a filed appli-
14 cation to the Department of Environmental Quality, the Water Resources
15 Department, the State Department of Fish and Wildlife, the State Depart-
16 ment of Geology and Mineral Industries, the State Department of Agricul-
17 ture, the Department of Land Conservation and Development, the Public
18 Utility Commission and any other state agency, city, county or political
19 subdivision of the state that has regulatory or advisory responsibility with
20 respect to the proposed energy facility. The State Department of Energy shall
21 send with the copy of the filed application a notice specifying that:

22 “(a) In the event the council issues a site certificate for the energy fa-
23 cility, the site certificate will bind the state and all counties, cities and
24 political subdivisions in the state as to the approval of the site, the con-
25 struction of the energy facility and the operation of the energy facility, and
26 that after the issuance of a site certificate, all permits, licenses and certifi-
27 cates addressed in the site certificate must be issued as required by ORS
28 469.401 (3); and

29 “(b) The comments and recommendations of state agencies, counties, cities
30 and political subdivisions concerning whether the proposed energy facility

1 complies with any statute, rule or local ordinance that the state agency,
2 county, city or political subdivision would normally administer in determin-
3 ing whether a permit, license or certificate required for the construction or
4 operation of the energy facility should be approved will be considered only
5 if the comments and recommendations are received by the department within
6 a reasonable time after the date the application and notice of the application
7 are sent by the department.

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

10 “(a) A description of the proposed energy facility;

11 “(b) A list of the permits, licenses and certificates that are addressed in
12 the application and that are required for the construction or operation of the
13 proposed energy facility;

14 “(c) A list of the statutes, rules and local ordinances that are the stan-
15 dards and criteria for approval of any permit, license or certificate addressed
16 in the application and that are required for the construction or operation
17 of the proposed energy facility; and

18 “(d) Proposed findings specifying how the proposed energy facility com-
19 plies with the applicable standards and criteria for approval of a site certifi-
20 cate.

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

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

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

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

29 “(d) The requirements of ORS 469.504 (1)(b).

30 “(7) Following submission of an application for a site certificate, the

1 council shall hold a public informational meeting on the application. Fol-
2 lowing the issuance of the proposed order, the council shall hold at least one
3 public hearing on the application. The public hearing shall be held in the
4 area affected by the energy facility. The council shall mail notice of the
5 hearing at least 20 days prior to the hearing. The notice shall comply with
6 the notice requirements of ORS 197.763 (2) and shall include, but need not
7 be limited to, the following:

8 “(a) A description of the energy facility and the general location of the
9 energy facility;

10 “(b) The name of a department representative to contact and the tele-
11 phone number at which people may obtain additional information;

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

15 “(d) A statement that the record for public comment on the application
16 will close at the conclusion of the hearing and that failure to raise an issue
17 in person or in writing prior to the close of the record, with sufficient
18 specificity to afford the decision maker an opportunity to respond to the is-
19 sue, will preclude consideration of the issue, by the council or by a court
20 on judicial review of the council’s decision.

21 “(8) Prior to the conclusion of the hearing, the applicant may request an
22 opportunity to present additional written evidence, arguments or testimony
23 regarding the application. In the alternative, prior to the conclusion of the
24 hearing, the applicant may request a contested case hearing on the applica-
25 tion. If the applicant requests an opportunity to present written evidence,
26 arguments or testimony, the council shall leave the record open for that
27 purpose only for a period not to exceed 14 days after the date of the hearing.
28 Following the close of the record, the department shall prepare a draft final
29 order for the council. If the applicant requests a contested case hearing, the
30 council may grant the request if the applicant has shown good cause for a

1 contested case hearing. If a request for a contested case hearing is granted,
2 subsections (9) to (11) of this section do not apply, and the application shall
3 be considered under the same contested case procedures used for a nonexpe-
4 dited application for a site certificate.

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

8 “(a) Grant the application;

9 “(b) Grant the application with conditions;

10 “(c) Deny the application; or

11 “(d) Return the application to the site certification process required by
12 ORS 469.320.

13 “(10) If the application is granted, the council shall issue a site certificate
14 pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this
15 section, the council may impose conditions based on standards adopted under
16 ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based
17 on those standards.

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

20 **“SECTION 74.** ORS 469.405 is amended to read:

21 “469.405. (1) A site certificate may be amended with the approval of the
22 Energy Facility Siting Council. The council may establish by rule the type
23 of amendment that must be considered in a contested case proceeding. Judi-
24 cial review of an amendment to a site certificate shall be as provided in ORS
25 469.403.

26 “(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law,
27 the land use approval by an affected local government of a proposed amend-
28 ment to a facility and the recommendation of the special advisory group of
29 applicable substantive criteria shall be subject to judicial review only as
30 provided in ORS 469.403. If the applicant elects to show compliance with the

1 statewide planning goals by demonstrating that the facility has received lo-
2 cal land use approval, the provisions of this section shall apply only to pro-
3 posed projects for which the land use approval by the local government
4 occurs after the date an application for amendment is submitted to the State
5 Department of Energy.

6 “(3) An amendment to a site certificate is not required for a pipeline less
7 than 16 inches in diameter and less than five miles in length that is proposed
8 to be constructed to test or maintain an underground gas storage reservoir.
9 If the proposed pipeline will connect to a council certified surface facility
10 related to an underground gas storage reservoir or to a council certified gas
11 pipeline, whether the proposed pipeline is to be located inside or outside the
12 site of a council certified facility, the certificate holder must obtain, prior
13 to construction, the approval of the department for the construction, opera-
14 tion and retirement of the proposed pipeline. The department shall approve
15 such a proposed pipeline if the pipeline meets applicable council substantive
16 standards. Notwithstanding ORS 469.503 [(3)] (2), the department may not
17 review the proposed pipeline for compliance with other state standards.
18 Notwithstanding ORS 469.503 [(4)] (3), or any council rule addressing com-
19 pliance with land use standards, the department shall not review such a
20 proposed pipeline for compliance with land use requirements. Notwithstand-
21 ing ORS 469.401 (3), the approval by the department of such pipeline shall
22 not bind any state or local agency. The council may adopt appropriate pro-
23 cedural rules for the department review. The department shall issue an order
24 approving or rejecting the proposed pipeline. Judicial review of a department
25 order under this section shall be as provided in ORS 469.403.

26 **“SECTION 75.** ORS 469.407 is amended to read:

27 “469.407. (1) A recipient may by amendment of its application for a site
28 certificate or by amendment of its site certificate increase the capacity of the
29 facility if the Energy Facility Siting Council finds that:

30 “(a) The facility will satisfy the conditions of the 500-megawatt ex-

1 exemption, unless modified by the council;

2 “(b) The enlarged facility does not exceed 500 megawatts and meets the
3 applicable carbon dioxide standard provided for in ORS 469.503 (2) **(2017**
4 **Edition)** for any increase in capacity beyond the capacity of the
5 500-megawatt exemption; and

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

7 “(2) A recipient is deemed to meet any applicable need standard and car-
8 bon dioxide emissions standard for the nominal generating capacity of the
9 500-megawatt exemption provided that the recipient satisfies the conditions
10 of the 500-megawatt exemption, unless the council modifies the conditions.

11 “(3) As used in this section:

12 “(a) ‘Recipient’ means any base load gas plant, as defined in ORS 469.503
13 **(2017 Edition)**, determined by the council to have the lowest net monetized
14 air emissions among the applicants participating in a contested case pro-
15 ceeding.

16 “(b) ‘500-megawatt exemption’ means the council order in which a recipi-
17 ent was determined to have the lowest net monetized air emissions.

18 **“SECTION 76.** ORS 469.504 is amended to read:

19 “469.504. (1) A proposed facility shall be found in compliance with the
20 statewide planning goals under ORS 469.503 [(4)] **(3)** if:

21 “(a) The facility has received local land use approval under the acknowl-
22 edged comprehensive plan and land use regulations of the affected local
23 government; or

24 “(b) The Energy Facility Siting Council determines that:

25 “(A) The facility complies with applicable substantive criteria from the
26 affected local government’s acknowledged comprehensive plan and land use
27 regulations that are required by the statewide planning goals and in effect
28 on the date the application is submitted, and with any Land Conservation
29 and Development Commission administrative rules and goals and any land
30 use statutes that apply directly to the facility under ORS 197.646;

1 “(B) For an energy facility or a related or supporting facility that must
2 be evaluated against the applicable substantive criteria pursuant to sub-
3 section (5) of this section, that the proposed facility does not comply with
4 one or more of the applicable substantive criteria but does otherwise comply
5 with the applicable statewide planning goals, or that an exception to any
6 applicable statewide planning goal is justified under subsection (2) of this
7 section; or

8 “(C) For a facility that the council elects to evaluate against the state-
9 wide planning goals pursuant to subsection (5) of this section, that the pro-
10 posed facility complies with the applicable statewide planning goals or that
11 an exception to any applicable statewide planning goal is justified under
12 subsection (2) of this section.

13 “(2) The council may find goal compliance for a facility that does not
14 otherwise comply with one or more statewide planning goals by taking an
15 exception to the applicable goal. Notwithstanding the requirements of ORS
16 197.732, the statewide planning goal pertaining to the exception process or
17 any rules of the Land Conservation and Development Commission pertaining
18 to an exception process goal, the council may take an exception to a goal if
19 the council finds:

20 “(a) The land subject to the exception is physically developed to the ex-
21 tent that the land is no longer available for uses allowed by the applicable
22 goal;

23 “(b) The land subject to the exception is irrevocably committed as de-
24 scribed by the rules of the Land Conservation and Development Commission
25 to uses not allowed by the applicable goal because existing adjacent uses and
26 other relevant factors make uses allowed by the applicable goal impractica-
27 ble; or

28 “(c) The following standards are met:

29 “(A) Reasons justify why the state policy embodied in the applicable goal
30 should not apply;

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

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

7 “(3) If compliance with applicable substantive local criteria and applica-
8 ble statutes and state administrative rules would result in conflicting con-
9 ditions in the site certificate or amended site certificate, the council shall
10 resolve the conflict consistent with the public interest. A resolution may not
11 result in a waiver of any applicable state statute.

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

16 “(5) Upon request by the State Department of Energy, the special advisory
17 group established under ORS 469.480 shall recommend to the council, within
18 the time stated in the request, the applicable substantive criteria under
19 subsection (1)(b)(A) of this section. If the special advisory group does not
20 recommend applicable substantive criteria within the time established in the
21 department’s request, the council may either determine and apply the appli-
22 cable substantive criteria under subsection (1)(b) of this section or determine
23 compliance with the statewide planning goals under subsection (1)(b)(B) or
24 (C) of this section. If the special advisory group recommends applicable
25 substantive criteria for an energy facility described in ORS 469.300 or a re-
26 lated or supporting facility that does not pass through more than one local
27 government jurisdiction or more than three zones in any one jurisdiction, the
28 council shall apply the criteria recommended by the special advisory group.
29 If the special advisory group recommends applicable substantive criteria for
30 an energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or

1 supporting facility that passes through more than one jurisdiction or more
2 than three zones in any one jurisdiction, the council shall review the re-
3 commended criteria and determine whether to evaluate the proposed facility
4 against the applicable substantive criteria recommended by the special advi-
5 sory group, against the statewide planning goals or against a combination
6 of the applicable substantive criteria and statewide planning goals. In mak-
7 ing its determination, the council shall consult with the special advisory
8 group and shall consider:

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

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

12 “(c) The level of consistency of the applicable substantive criteria from
13 the various zones and jurisdictions.

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

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

21 “(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law,
22 the affected local government’s land use approval of a proposed facility under
23 subsection (1)(a) of this section and the special advisory group’s recommen-
24 dation of applicable substantive criteria under subsection (5) of this section
25 shall be subject to judicial review only as provided in ORS 469.403. If the
26 applicant elects to comply with subsection (1)(a) of this section, the pro-
27 visions of this subsection shall apply only to proposed projects for which the
28 land use approval of the local government occurs after the date a notice of
29 intent or an application for expedited processing is submitted to the State
30 Department of Energy.

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

5 **“SECTION 77.** ORS 469.505 is amended to read:

6 “469.505. (1) In making a determination regarding compliance with stat-
7 utes, rules and ordinances administered by another agency or compliance
8 with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where
9 another agency has special expertise, consultation with the other agency
10 shall occur during the notice of intent and site certificate application pro-
11 cess. Any permit application for which the permitting decision has been de-
12 legated by the federal government to a state agency other than the Energy
13 Facility Siting Council shall be reviewed, whenever feasible, simultaneously
14 with the council’s review of the site certificate application. Any hearings
15 required on such permit applications shall be consolidated, whenever feasi-
16 ble, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.

17 “(2) Before resolving any conflicting conditions in site certificates or
18 amended site certificates under ORS 469.503 [(3)] (2) and 469.504, the council
19 shall notify and consult with the agencies and local governments responsible
20 for administering the statutes, administrative rules or substantive local cri-
21 teria that result in the conflicting conditions regarding potential conflict
22 resolution.

23
24 **“REPEAL OF FORESTRY CARBON OFFSET PROVISIONS**

25
26 **“SECTION 78.** ORS 526.780, 526.783, 526.786 and 526.789 are repealed.

27 **“SECTION 79.** ORS 526.005 is amended to read:

28 “526.005. As used in this chapter, unless the context otherwise requires:

29 “(1) ‘Biomass’ means any organic matter, including woody biomass, agri-
30 cultural crops, wood wastes and residues, plants, aquatic plants, grasses,

1 residues, fibers, animal wastes, municipal wastes and other waste materials.

2 “(2) ‘Board’ means the State Board of Forestry.

3 “(3) ‘Certified Burn Manager’ means an individual, other than the
4 forester, who is currently certified under a program established pursuant to
5 ORS 526.360 (3).

6 “(4) ‘Department’ means the State Forestry Department.

7 “(5) ‘Forester’ means the State Forester or the authorized representative
8 of the forester.

9 “(6)(a) ‘Forestland’ means any woodland, brushland, timberland, grazing
10 land or clearing that, during any time of the year, contains enough forest
11 growth, slashing or vegetation to constitute, in the judgment of the forester,
12 a fire hazard, regardless of how the land is zoned or taxed.

13 “(b) As used in this subsection, ‘clearing’ means any grassland, improved
14 area, lake, meadow, mechanically or manually cleared area, road, rocky area,
15 stream or other similar opening that is surrounded by or contiguous to land
16 described in paragraph (a) of this subsection and that has been included in
17 areas classified as forestland under ORS 526.305 to 526.370.

18 “[~~(7)~~ ‘Forestry carbon offset’ means a transferable unit based on a measured
19 amount of carbon storage expressed as a carbon dioxide emission equivalent,
20 or other equivalent standard, and accruing on forestland as live or dead matter
21 in trees, shrubs, forest litter and soil.]

22 “[~~(8)~~] **(7)** ‘Nonindustrial private forest landowner’ means any forest land-
23 owner who does not own a forest products manufacturing facility that em-
24 ploys more than six people.

25 “[~~(9)~~] **(8)** ‘Nonindustrial private forestland’ means any forestland owned
26 by a nonindustrial private forest landowner.

27 “[~~(10)(a)~~] **(9)(a)** ‘Woody biomass’ means material from trees and woody
28 plants, including limbs, tops, needles, leaves and other woody parts, grown
29 in a forest, woodland, farm, rangeland or wildland-urban interface environ-
30 nment that is the by-product of forest management, ecosystem restoration or

1 hazardous fuel reduction treatment.

2 “(b) ‘Woody biomass’ does not mean:

3 “(A) Wood pieces that have been treated with creosote,
4 pentachlorophenol, copper chrome arsenic or other chemical preservatives;

5 “(B) Wood that must be retained under state or federal regulations;

6 “(C) Wood required for large woody debris recruitment; or

7 “(D) Municipal solid waste.

8 **“SECTION 80.** ORS 526.725 is amended to read:

9 “526.725. (1) The State Board of Forestry or the State Forester may enter
10 into agreements with private, governmental or other organizations and may
11 accept contributions, gifts or grants from any source to carry out the duties,
12 functions and powers of the Forest Resource Trust. All moneys received by
13 the board or the State Forester pursuant to this section shall be deposited
14 in the Forest Resource Trust Fund.

15 “(2) The board may acquire, on behalf of the Forest Resource Trust,
16 through exchange, lease or purchase, land only to the extent necessary to
17 carry out the duties, functions and powers of the trust.

18 “(3) Agreements with private, governmental or other organizations under
19 subsection (1) of this section may specify the terms under which funds are
20 invested and benefits accrue to the contributing party to the extent the
21 agreement is consistent with the provisions of ORS 526.695 to 526.775.

22 “[~~(4)~~ *The State Forester may, on behalf of the Forest Resource Trust, mar-*
23 *ket, register, transfer or sell forestry carbon offsets attributable to the lands*
24 *enrolled in the stand establishment program under ORS 526.705. Prices for the*
25 *transfer or sale of forestry carbon offsets may be negotiated but must be at or*
26 *greater than fair market value.*]

27 “[~~(5)~~] (4) Nothing in ORS 526.695 to 526.775 is intended to create an en-
28 forceable trust on any agency or officer of the State of Oregon.

29 **“SECTION 81.** ORS 530.050 is amended to read:

30 “530.050. Under the authority and direction of the State Board of Forestry

1 except as otherwise provided for the sale of forest products, the State
2 Forester shall manage the lands acquired pursuant to ORS 530.010 to 530.040
3 so as to secure the greatest permanent value of those lands to the state, and
4 to that end may:

5 “(1) Protect the lands from fire, disease and insect pests, cooperate with
6 the counties and with persons owning lands within the state in the pro-
7 tection of the lands and enter into all agreements necessary or convenient
8 for the protection of the lands.

9 “(2) Sell forest products from the lands, and execute mining leases and
10 contracts as provided for in ORS 273.551.

11 “(3) Enter into and administer contracts for the sale of timber from lands
12 owned or managed by the State Board of Forestry and the State Forestry
13 Department.

14 “(4) Enter into and administer contracts for activities necessary or con-
15 venient for the sale of timber under subsection (3) of this section, either
16 separately from or in conjunction with contracts for the sale of timber, in-
17 cluding but not limited to activities such as timber harvesting and sorting,
18 transporting, gravel pit development or operation, and road construction,
19 maintenance or improvement.

20 “(5) Permit the use of the lands for other purposes, including but not
21 limited to forage and browse for domestic livestock, fish and wildlife envi-
22 ronment, landscape effect, protection against floods and erosion, recreation,
23 and protection of water supplies when, in the opinion of the board, the use
24 is not detrimental to the best interest of the state.

25 “(6) Grant easements, permits and licenses over, through and across the
26 lands. The State Forester may require and collect reasonable fees or charges
27 relating to the location and establishment of easements, permits and licenses
28 granted by the state over the lands. The fees and charges collected shall be
29 used exclusively for the expenses of locating and establishing the easements,
30 permits and licenses under this subsection and shall be placed in the State

1 Forestry Department Account.

2 “(7) Require and collect fees or charges for the use of state forest roads.
3 The fees or charges collected shall be used exclusively for purposes of
4 maintenance and improvements of the roads and shall be placed in the State
5 Forestry Department Account.

6 “(8) Reforest the lands and cooperate with the counties, and with persons
7 owning timberlands within the state, in the reforestation, and make all
8 agreements necessary or convenient for the reforestation.

9 “(9) Require such undertakings as in the opinion of the board are neces-
10 sary or convenient to secure performance of any contract entered into under
11 the terms of this section or ORS 273.551.

12 “(10) Sell rock, sand, gravel, pumice and other such materials from the
13 lands. The sale may be negotiated without bidding, provided the appraised
14 value of the materials does not exceed \$2,500.

15 “(11) Enter into agreements, each for not more than 10 years duration, for
16 the production of minor forest products.

17 “[*(12) Establish a forestry carbon offset program to market, register, trans-*
18 *fer or sell forestry carbon offsets. In establishing the program, the forester*
19 *may:*]

20 “[*(a) Execute any contracts or agreements necessary to create opportunities*
21 *for the creation of forestry carbon offsets; and*]

22 “[*(b) Negotiate prices that are at, or greater than, fair market value for the*
23 *transfer or sale of forestry carbon offsets.*]

24 “[*(13)*] **(12)** Do all things and make all rules, not inconsistent with law,
25 necessary or convenient for the management, protection, utilization and
26 conservation of the lands.

27 **“SECTION 82.** ORS 530.500 is amended to read:

28 “530.500. In order to accomplish the purposes of ORS 530.490, the State
29 Forester may:

30 “(1) Protect the lands from fire, disease and insect pests, cooperate with

1 the counties and with persons owning lands within the state in the pro-
2 tection of the lands and enter into all agreements necessary or convenient
3 for the protection of the lands.

4 “(2) Enter into and administer contracts for the sale of timber from lands
5 owned or managed by the State Board of Forestry and the State Forestry
6 Department.

7 “(3) Enter into and administer contracts for activities necessary or con-
8 venient for the sale of timber under subsection (2) of this section, either
9 separately from or in conjunction with contracts for the sale of timber, in-
10 cluding but not limited to activities such as timber harvesting and sorting,
11 transporting, gravel pit development or operation, and road construction,
12 maintenance or improvement.

13 “(4) Permit the use of the lands for other purposes, including but not
14 limited to fish and wildlife environment, landscape effect, protection against
15 flood and erosion, recreation and production and protection of water supplies
16 when the use is not detrimental to the purpose for which the lands are ded-
17 icated.

18 “(5) Contract with other governmental bodies for the protection of water
19 supplies to facilitate the multiple use of publicly owned water supplies for
20 recreational purposes as well as a source of water for domestic and indus-
21 trial use.

22 “(6) Grant permits and licenses on, over and across the lands.

23 “(7) Reforest the lands and cooperate with persons owning timberlands
24 within the state in the reforestation, and make all agreements necessary or
25 convenient for the reforestation.

26 “[8) *Establish a forestry carbon offset program to market, register, transfer*
27 *or sell forestry carbon offsets. In establishing the program, the forester may:]*

28 “[a) *Execute any contracts or agreements necessary to create opportunities*
29 *for the creation of forestry carbon offsets; and]*

30 “[b) *Negotiate prices that are at, or greater than, fair market value for the*

1 *transfer or sale of forestry carbon offsets.]*

2 “[9] (8) Do all things and make all rules and regulations, not inconsis-
3 ent with law, necessary or convenient for the management, protection, utili-
4 zation and conservation of the lands.

5 “[10] (9) Require such undertakings as in the opinion of the State
6 Forester are necessary or convenient to secure performance of any agreement
7 authorized in ORS 530.450 to 530.520.

8

9 **“REGULATION OF LANDFILL METHANE EMISSIONS**

10

11 **“SECTION 83. Section 84 of this 2019 Act is added to and made a**
12 **part of ORS chapter 468A.**

13 **“SECTION 84. (1) As used in this section:**

14 **“(a) ‘Anthropogenic greenhouse gas emissions’ has the meaning**
15 **given that term in section 7 of this 2019 Act.**

16 **“(b) ‘Carbon dioxide equivalent’ has the meaning given that term**
17 **in section 7 of this 2019 Act.**

18 **“(c) ‘Hazardous waste’ has the meaning given that term in ORS**
19 **466.005.**

20 **“(d) ‘Land disposal site’ has the meaning given that term in ORS**
21 **459.005.**

22 **“(e) ‘Landfill’ has the meaning given that term in ORS 459.005.**

23 **“(f) ‘Solid waste’ has the meaning given that term in ORS 459.005.**

24 **“(2) It is the intent of the Legislative Assembly that the standards**
25 **and requirements adopted by rule under this section be at least as**
26 **stringent as the most stringent standards and requirements for re-**
27 **ducing methane gas emissions from landfills implemented among the**
28 **states having a boundary with Oregon.**

29 **“(3) The Environmental Quality Commission shall adopt by rule**
30 **standards and requirements for reducing methane gas emissions from**

1 landfills. Before adopting standards and requirements under this sec-
2 tion, the commission shall consider the standards and requirements
3 of the State of California for reducing methane gas emissions from
4 landfills.

5 “(4) The following landfills are exempt from standards and require-
6 ments adopted by rule under this section:

7 “(a) Landfills that emit less than 25,000 metric tons of carbon
8 dioxide equivalent in anthropogenic greenhouse gas emissions annu-
9 ally, as reported under ORS 468A.280.

10 “(b) Landfills that only receive hazardous waste.

11 “(c) Landfills that only receive waste from building demolition or
12 construction.

13 “(d) Land disposal sites that are closed and no longer receiving solid
14 waste, are maintained in compliance with ORS 459.268 and have less
15 than 450,000 metric tons of waste-in-place.

16 “(5) Rules adopted under this section shall include but need not be
17 limited to:

18 “(a) Reporting requirements related to waste-in-place, calculated
19 landfill gas heat input capacity, and landfill surface emissions moni-
20 toring.

21 “(b) Methane gas collection and control system requirements for
22 landfills with reported calculated landfill gas heat input capacity ex-
23 ceeding 3.0 million British thermal units per hour recovered.

24 “(c) Standards and requirements for methane limits, monitoring
25 and corrective actions.

26 “(d) Alternative compliance measures and methods that may be
27 applied for certain landfills on a case-by-case basis.

28 “(e) Standards and requirements for records retention, landfill clo-
29 sure notification, methane gas collection and control device removal
30 or modification and annual operating reports.

1 **“SECTION 85. The Environmental Quality Commission shall adopt**
2 **rules under section 84 of this 2019 Act in time for the rules to become**
3 **operative no later than July 1, 2021.**

4
5 **“EXPEDITED JUDICIAL REVIEW TO SUPREME COURT;**
6 **EXPIRATION**

7
8 **“SECTION 86. (1) It is the intent of the Legislative Assembly that**
9 **the provisions of this 2019 Act relating to the receipt of moneys by the**
10 **state through the sale of allowances by auction under section 22 of this**
11 **2019 Act do not render this 2019 Act a bill for raising revenue subject**
12 **to the provisions of Article IV, sections 18 and 25 (2), of the Oregon**
13 **Constitution.**

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

18 **“(3)(a) Any person interested in or affected or aggrieved by section**
19 **22 of this 2019 Act may petition for judicial review under this section.**
20 **A petition for review must be filed within 60 days after the effective**
21 **date of this 2019 Act.**

22 **“(b) The petition must state facts showing how the petitioner is**
23 **interested, affected or aggrieved and the grounds upon which the pe-**
24 **tition is based.**

25 **“(4) The petitioner shall serve a copy of the petition by registered**
26 **or certified mail upon the Oregon Department of Administrative Ser-**
27 **vices, the Director of the Carbon Policy Office, the Attorney General**
28 **and the Governor.**

29 **“(5) Proceedings for review under this section shall be given priority**
30 **over all other matters before the Supreme Court.**

1 Office in the development and implementation of the Oregon Climate
2 Action Program pursuant to sections 7 to 29 of this 2019 Act and for
3 the implementation of sections 6, 43 to 47 and 56 to 62 of this 2019 Act
4 and the amendments to ORS 468A.280 by section 63 of this 2019 Act.

5 **“SECTION 89.** In addition to and not in lieu of any other appropri-
6 ation, there is appropriated to the Environmental Justice Task Force,
7 for the biennium beginning July 1, 2019, out of the General Fund, the
8 amount of \$_____, which may be expended for compensation and
9 expenses incurred by members of the task force who are not members
10 of the Legislative Assembly in the manner and amounts provided for
11 in ORS 292.495, and for provision by the Governor of clerical and ad-
12 ministrative staff support to the task force.

13
14 **“OPERATIVE DATE**

15
16 **“SECTION 90.** (1) Sections 4 to 14, 16, 18 to 53, 55 to 62 and 66 to 69
17 of this 2019 Act, the amendments to statutes and session law by
18 sections 54, 63 to 65, 71 to 77 and 79 to 82 of this 2019 Act and the repeal
19 of statutes by sections 70 and 78 of this 2019 Act become operative on
20 January 1, 2021.

21 **“(2)** The Director of the Carbon Policy Office, the Carbon Policy
22 Office, the Public Utility Commission, the Housing and Community
23 Services Department, the State Department of Energy, the Oregon
24 Department of Administrative Services, the Environmental Quality
25 Commission, the Department of Environmental Quality and the Gov-
26 ernor may adopt rules or take any actions before the operative date
27 specified in subsection (1) of this section that are necessary to enable
28 the Director of the Carbon Policy Office, the Carbon Policy Office, the
29 Public Utility Commission, the Housing and Community Services De-
30 partment, the State Department of Energy, the Oregon Department

1 of Administrative Services, the Environmental Quality Commission,
2 the Department of Environmental Quality and the Governor, on and
3 after the operative date specified in subsection (1) of this section, to
4 carry out the provisions of sections 4 to 14, 16, 18 to 53, 55 to 62 and
5 66 to 69 of this 2019 Act, the amendments to statutes and session law
6 by sections 54, 63 to 65, 71 to 77 and 79 to 82 of this 2019 Act and the
7 repeal of statutes by sections 70 and 78 of this 2019 Act.

8
9 **“REPORTS AND REVIEWS**

10
11 **“SECTION 91. On or before September 15, 2020, the Oregon Depart-**
12 **ment of Administrative Services shall report on the actions being**
13 **taken to prepare for implementation of sections 7 to 29 of this 2019**
14 **Act to the Joint Committee on Climate Action.**

15 **“SECTION 92. On or before September 15, 2031, the Carbon Policy**
16 **Office shall conduct a review and provide a report to the Joint Com-**
17 **mittee on Climate Action in the manner provided by ORS 192.245 on**
18 **the implementation of sections 18 to 20 of this 2019 Act and rules**
19 **adopted under section 18 of this 2019 Act. The report may include**
20 **recommendations for legislation. The review and report must:**

21 **“(1) Assess the implementation of laws and policies for offset**
22 **projects and the use of offset credits by covered entities;**

23 **“(2) Include a review of:**

24 **“(a) Offset project development costs and the time it takes for state**
25 **agencies to review offset projects;**

26 **“(b) To date, the offset projects developed and the offset credits**
27 **generated and issued under rules adopted and offset protocols devel-**
28 **oped pursuant to sections 18 to 20 of this 2019 Act;**

29 **“(c) To date, the offset credits that have been invalidated pursuant**
30 **to section 18 (4) of this 2019 Act;**

1 “(d) Offset credit prices and offset credit market conditions; and
2 “(e) Advancements in the methods or technologies used for meas-
3 uring and monitoring the greenhouse gas emissions reductions or re-
4 movals attributable to offset projects;
5 “(3) Identify barriers to the adoption of offset protocols; and
6 “(4) Make determinations and recommendations regarding whether
7 changes to laws and policies are necessary or advisable to address any
8 negative impacts related to offset projects or offset credits or to best
9 align the laws or policies for offset projects and the use of offset
10 credits by covered entities with the purposes set forth in section 6 of
11 this 2019 Act.

12 “SECTION 93. (1) No later than January 1, 2025, the Carbon Policy
13 Office shall conduct research and submit a report, in the manner
14 provided by ORS 192.245, to the Joint Committee on Climate Action
15 regarding the exclusion from regulated emissions, as provided for in
16 section 9 (2)(b) of this 2019 Act, of the greenhouse gas emissions from
17 aviation fuel and fuel used in watercraft and railroad locomotives. The
18 purpose of the report shall be to provide recommendations, which may
19 include recommendations for legislation, on the anticipated effect of
20 amending section 9 of this 2019 Act and any other statutes as neces-
21 sary such that, beginning in the first compliance period that begins
22 after January 1, 2027, the greenhouse gas emissions from the com-
23 bustion of fuel described in section 9 (2)(b) of this 2019 Act would be
24 included in regulated emissions.

25 “(2) In carrying out the provisions of this section, the office shall
26 research and provide recommendations on:

27 “(a) Whether the aviation, marine and railroad industries in Oregon
28 are reducing greenhouse gas emissions consistent with the best avail-
29 able technologies and energy alternatives;

30 “(b) Whether other jurisdictions that have adopted carbon pricing

1 mechanisms require aviation fuels, marine fuels or railroad fuels to
2 comply with those carbon pricing mechanisms;

3 “(c) The costs and economic impacts of eliminating the exclusion
4 provided under section 9 (2)(b) of this 2019 Act, analyzed separately for
5 each industry that would be impacted by the elimination of the ex-
6 clusion; and

7 “(d) The environmental impacts of eliminating the exclusion pro-
8 vided under section 9 (2)(b) of this 2019 Act, analyzed separately for
9 each industry that would be impacted by the elimination of the ex-
10 clusion.

11 **“SECTION 94. (1) The Department of Transportation, in consulta-**
12 **tion with the Department of Revenue and any other relevant state**
13 **agencies, shall study the creation of the following refunds or credits**
14 **of moneys deposited in the Transportation Decarbonization Invest-**
15 **ments Account established under section 31 of this 2019 Act, to be ad-**
16 **ministered by the Department of Transportation, to offset estimated**
17 **increases in motor vehicle fuel costs in Oregon attributable to the**
18 **regulation of motor vehicle fuel producers and importers as covered**
19 **entities under sections 7 to 29 of this 2019 Act:**

20 “(a) A refund or credit available in an amount up to 100 percent of
21 the estimated increase in the cost, to Oregon households of one or
22 more individuals whose combined incomes are at or below 100 percent
23 of the area median income, of motor vehicle fuel used to propel motor
24 vehicles on the highways of this state.

25 “(b) Refunds or credits available to offset the estimated increase in
26 motor vehicle fuel used to propel motor vehicles that are not operated
27 on the highways of this state and that are motor vehicles used in the
28 agricultural and natural resource sectors.

29 “(2) In conducting the study required by this section, the depart-
30 ments shall assume that:

