

HB 2020 STAFF MEASURE SUMMARY

Joint Committee On Carbon Reduction

Prepared By: Beth Reiley, LPRO Analyst

Meeting Dates: 2/8, 2/11, 2/15, 2/18, 2/22, 2/23, 2/25, 3/1, 3/2

WHAT THE MEASURE DOES:

Modifies state **GHG (GHG) reduction goals** to: at least 45 percent below 1990 emission levels by 2035; and at least 80 percent below 1990 emission levels by 2050.

Establishes the Joint Committee on Climate Action (**Joint Committee**). Requires Joint Committee to be comprised of members appointed by President of Senate and Speaker of House. Establishes parameters for the Committees operation. Requires Joint Committee to: provide general oversight of policy related to climate; and examine, prioritize and making recommendations to the Joint Committee on Ways and Means (JWM) on expenditures and investments of state auction proceeds. Requires Joint Committee to consider recommendations in: biennial expenditure reports and audit; biennial climate action investment plan; and by the Environmental Justice Task Force in developing recommendations to JWM.

Establishes the Carbon Policy Office (**CPO**) within the Department of Administrative Services (DAS). Requires CPO to coordinate state actions toward achieving GHG emission reduction goals and other statutes, rules and policies that govern the state's and agencies actions to reduce GHG emissions; and carry out the duties, functions and powers established by Act and certain other statutes, rules or policies.

Requires the CPO Director to adopt the Oregon Climate Action Program (**OCAP**) by rule. Requires Governor to appoint **nine-member advisory committee**, comprised of persons impacted by or otherwise interested in OCAP, to advise the CPO Director in **adopting rules**. Requires OCAP to: place a **cap** on the total regulated anthropogenic GHG emissions through setting **allowance budgets** starting in 2021 through 2050 and provide a **market-based mechanism** for covered entities to demonstrate compliance. Stipulates that the annual allowance budget for 2021 must be a number of allowances equal to baseline emissions. Requires allowances available each year to decline by constant amount as necessary during 2022 through 2035 and 2036 through 2050 to accomplish reduction levels. Establishes process for CPO to undertake to calculate baseline emissions attributable to covered entities.

Declares the **purpose** of the regulatory and expenditure portion (sections 7 to 41 of Act) of OCAP is to: (1) achieve a reduction in total levels of regulated emissions of at least 45 percent below 1990 emissions levels by 2035 and at least 80 percent below 1990 emissions levels by 2050; (2) promote GHG emissions sequestration and mitigation; (3) promote adaptation and resilience by natural and working lands, fish and wildlife resources, communities and the economy in the face of climate change and ocean acidification; and (4) provide assistance to households, businesses and workers impacted by the transition to an economic system that allows for the State to achieve GHG reduction goals.

Requires CPO to designate the following as **covered entities**:

- Certain permitted entities with emissions that meet or exceed 25,000 metric tons of carbon dioxide equivalent;
- Certain permitted entities if the industry description and code listed under the North American Industry Classification System is fossil fuel electric power generation;
- Electric system manager for purpose of addressing regulated emissions from outside of the state that are attributable to the electricity generated and scheduled for delivery and consumption in Oregon, including wholesale market purchases;
- Natural gas marketer for purpose of addressing emissions attributable to combustion of natural gas sold for use

in state by persons who are not designated as covered entities;

- Natural gas utility for the purpose of addressing emissions attributable to combustion of natural gas that the utility imports, sells or distributes that are not accounted for through the regulation of an air contamination source; and
- Entities that produce or import into Oregon fuel that is sold or distributed for use in this state.

Requires CPO Director to adopt rules for the **market-based compliance** mechanism that include: (1) criteria for the allocation of allowances; (2) standards for offset projects and the use of offset credits; (3) administration of auctions of allowances; (4) trading of compliance instruments; (5) banking and carrying forward allowances; (6) prohibiting allowance borrowing from future annual allowance budgets; (7) allowing opt-in entities and general market participants to participate in the market-based compliance mechanism; and (8) compliance periods, standards for calculating compliance obligations and procedures to demonstrate compliance.

Requires covered entities, opt-in entities and general market participants to **register** to participate in OCAP. Stipulates covered or opt-in entity is required to **surrender compliance instrument** equal to compliance obligation no later than date specified by rule. Establishes for purpose of determining compliance obligation for electric system manager electricity scheduled that is generated from renewable resource and acquired without acquiring renewable energy certificate is considered to have the emission attributes of the underlying renewable resource.

Provides **exemptions and exclusions** for certain entities and emissions from regulation from the OCAP program including a temporary exclusion for certain fluorinated gases. Requires CPO to report to Joint Committee regarding the temporary exclusion no later than September 15, 2024.

Requires CPO to allocate a percentage of allowances for each annual allowance budget to be distributed into an **allowance price containment reserve**. Authorizes the CPO to allocate percentage to voluntary renewable electricity generation reserve.

Requires CPO Director to adopt rules for allocating allowances for **direct distribution** at no cost to covered entities that are **electric companies** as follows: 100 percent of the electric company's forecasted emissions from 2021 – 2030 to align with the trajectory of emissions required under the renewable portfolio standard and statutes establishing the elimination of coal from the electricity supply; and from 2031 – 2050 the amount directly distributed must decline in amount proportionate to decline in the overall cap. Requires CPO to allocate allowances to **electric system managers** that are covered entities as follows: 100 percent during 2021 for eligible covered emissions; and in 2022 until 2050 a declining amount proportionate to the decline in the overall cap. Requires CPO Director to adopt rules for allocating allowances for direct distribution at no cost to covered entities that are **natural gas utilities**. Requires natural gas utility to be directly distributed allowances at amount equal to emissions attributable to providing service to natural gas utility's low-income residential customers. Requires CPO to consult with the PUC in determining the quantity of allowances to directly allocate. Requires natural gas utilities to use allocated allowances to minimize program impacts on low-income residential customers. Requires CPO to allocate allowances for direct distribution at no cost to covered or opt-in entity engaged in the manufacturing of goods through **emission-intensive, trade-exposed (EITE)** processes as identified by certain North American Industry Classification System (NAICS) codes. Prohibits covered or opt-in entity that is fossil fuel distribution and storage facility or infrastructure, or electric generating unit from receiving allowances at no cost. Establishes annual allocation of no cost allowances for covered or opt-in EITE entities are as follows: 100 percent during 2021; and in 2022 until 2050 a percentage that is adjusted annually in schedule adopted by the CPO Director by rule in amount proportionate to the decline in the overall cap. Establishes processes for calculating annual good specific emissions, and sector and facility benchmarks. Requires CPO Director to adopt process for EITE entities to apply for allowance allocation adjustment by rule. Requires CPO Director to adopt process to determine whether allowances be allocated at no cost to mitigate leakage for entities that begin manufacturing

goods on or after effective date of Act and manufactures goods through EITE process listed in certain NAICS codes by rule. Requires CPO to provide **report** to the Joint Committee no later than Nov 1 following the end of every second compliance period on the **benchmarks established and an assessment** of the EITE of included industries; reduction opportunities; and whether an adjustment of benchmarks is warranted.

Establishes **offset** projects: must be located in United States or jurisdiction that Oregon has entered into linkage agreement with; must not be otherwise required by law; and must result in GHG emissions reductions or removals that are real, permanent, quantifiable, verifiable and enforceable; and are in addition to emission reductions otherwise required by law. Stipulates no more than 8 percent of a covered entities compliance obligation may be met by surrendering offset and a no more than 4 percent may be met by surrendering credits from offset projects that do not provide direct environmental benefit in Oregon. Authorizes CPO Director to adopt by rule additional restrictions on the number of allowable offsets that may be surrendered by covered entity if air contamination source is in impacted community if: source is within nonattainment level, or area projected by Department of Environmental Quality (DEQ) to become nonattainment area within five years and source substantially contributes to or causes nonattainment or projected nonattainment; or source is in violation of any air quality permit issued by DEQ or regional air quality control authority. Requires CPO Director in adopting offset rules to: (1) take into consideration standards, rules or protocols for offset credits in similar programs; (2) encourage development of Oregon offset projects; (3) consult with certain agencies; (4) adopt process for offset credit invalidation; and (5) provisions to withhold up to three percent of the offset credits issued for each project to deposit in offset integrity account to be used to replace invalidated credits. Requires CPO Director to appoint compliance **offsets protocol advisory committee** to provide guidance in developing and updating offset protocols. Requires CPO to conduct **review and provide report** to the Joint Committee on implementation of offset portion of Act and rules adopted on or before September 15, 2031.

Requires CPO Director by rule, in consultation with Portland State University Population Research Center, Oregon Health Authority and other relevant agencies and officials, to **designate impacted communities by census tract**. Requires CPO to review and update methodology and designation of impacted communities every five years.

Requires CPO to hold **auction** annually. Authorizes CPO to engage independent auction administrator; or qualified financial services administrator. Requires CPO to set auction floor price, allowance price containment reserve floor price, and hard ceiling price for 2021 and a schedule for prices to increase by fixed percentage each year. Requires CPO to take action to minimize potential for market manipulation by specifying as **holding limits** the maximum number of allowances that may be held for use or traded by registered entity at any time. Requires CPO to consider prevailing prices for carbon in other jurisdiction and set prices in a manner that enables linkage agreements with other jurisdiction when adopting rules establishing floor and ceiling prices.

Establishes the **Auction Proceeds Distribution Fund** and requires CPO to certify amount available for distribution and distribute funds as follows: all money that constitutes revenues described in Article IX, section 3a, of the Oregon Constitution, must be transferred to the Transportation Decarbonization Investments Account; all money that constitutes revenues described in Article VIII, section 2 (1)(g), of the Oregon Constitution, must be transferred to the Common School Fund; and remaining money must be transferred to the Climate Investments Fund.

Requires CPO to submit a **market activity report** to the Joint Committee no later than six months after the close of each compliance period. Stipulates the report must detail activity during **compliance period** and include aggregated information on: number of allowances bought and sold at each auction and all auction prices; beginning and ending balances of all account reserves held by CPO; regulated emission reductions achieved during compliance period and progress towards achieving reduction levels; and estimated impacts of OCAP on fuel, electricity and natural gas prices in Oregon.

Requires CPO Director to consider **market-based compliance mechanisms** designed to reduce GHG emission in other jurisdictions; and provide for implementation of OCAP in manner that avoids double counting of emissions or emission reductions and enables state to pursue **linkage agreements** with other jurisdictions. Prohibits linking with other jurisdiction unless the CPO Director notifies the Governor of intention to link and the Governor makes certain findings. Requires Governor, in consultation with Attorney General, to issue findings within 45-days of receiving notice and directs Governor to provide findings to Legislative Assembly. Stipulates findings issued are not subject to judicial review.

Requires no later than June 1 of each even numbered year the CPO must deliver a **biennial climate action investment plan** (Investment Plan) to the EJTF, the Governor and the Joint Committee. Requires the Environmental Justice Task Force to review and develop recommendations in response to the Investment Plan to be reported to the Governor and Joint Committee no later than August 1 of each even numbered year.

Establishes **Oregon Climate Action Program Operating Fund** (OCAP Operating Fund) in the State Treasury and continuously appropriates money in OCAP Operating Fund to Oregon DAS for use by the CPO. Stipulates money in OCAP Operating Fund consists of money appropriated by Legislative Assembly and any other money deposited into OCAP Operating Fund by any other source. Places limitation on the use of civil penalties

Requires money deposited in the **Climate Investments Fund** and the **Transportation Decarbonization Investments Account** must be allocated in a manner **consistent with purposes** established in Act and requirements of the Oregon Constitution. Requires that allocations to the maximum extent feasible, cost-effective and consistent with law: prioritize projects that benefit impacted communities; complement efforts to achieve and maintain local air quality; provide opportunities for Indian tribes, members of impacted communities and businesses owned by women or members of minority groups to participate and benefit from statewide efforts to reduce GHG emissions; makes use of domestically produced products; promotes low carbon economic development opportunities; and provides assistance to help households businesses and workers transitioning to economic system that allow as state to achieve GHG emission goals.

Establishes the **Climate Investments Fund** in the State Treasury. Stipulates money in the Climate Investments Fund may be used for projects, programs, and activities to further purpose of the Act. Authorizes Legislative Assembly to allocate money in the Climate Investment Fund each biennium in the following way: 10 percent for projects, programs, and activities that benefit Indian tribes; percentage not to exceed ___ to be allocated to the Oregon Climate Action Program Operating Fund; and no less than \$___ to be allocated to the Just Transition Fund.

Establishes the **Transportation Decarbonization Investments Account** as a separate account within the State Highway Fund. Stipulates moneys deposited in account must be used only: as authorized by Article IX, section 3a of the Oregon Constitution and for activities that further the purposes of the Act. Provides direction to Legislative Assembly on allocating money from Transportation Decarbonization Investments Account.

Directs Public Utility Commission (PUC) to require that proceeds received by an electric company or natural gas utility used from the **sale of allowances that had been directly distributed** at no cost are: to be spent by the within the service territory of the electric company or natural gas utility; and are used only for activities that serve to reduce GHG emissions or provide energy assistance to retail customers, consistent with the Act. Requires an electric company or natural gas utility to **prioritize the use of auction proceeds** for energy assistance programs, including: rate design-based solutions; bill assistance, weatherization, energy efficiency, transportation electrification measures and grid modernization; and participation by low-income residential customers in conservation programs to further reduce out-of-pocket costs for energy efficiency measures. Requires the PUC, after consultation with the Oregon Housing and Community Services Department (OHCS), to adopt rules for

implementation and enforcement.

Establishes requirements for contractors of projects funded in whole or in part by moneys allocated by the Legislative Assembly from the Climate Investments Fund or the Transportation Decarbonization Investments Account. Directs DAS to adopt **model rules specifying labor, workforce, and contracting procedures** for all state agencies to use in administering funds for projects from the Climate Investments Fund or the Transportation Decarbonization Investments Account.

Requires all recipients of moneys from the Climate Investments Fund to **report annually** to the CPO on the expenditure of moneys received and the result of the expenditures. Requires that no later than January 1 of each even numbered year the CPO shall deliver a biennial report to the Governor and Joint Committee describing investments and the result of those investments in carrying out purpose of Act. Requires all recipients of moneys from the Transportation Decarbonization Investments Account to report annually to the Oregon Department of Transportation (ODOT) on the expenditure of moneys received and the result of the expenditures. Requires that no later than January 1 of each even numbered year the Oregon Department of Transportation (ODOT) deliver a biennial report to the Governor and Joint Committee describing investments and the result of those investments in carrying out purpose of Act

Requires CPO and ODOT to jointly select an independent third-party organization to prepare a **biennial audit** of all programs, projects or activities funded by the Climate Investments Fund and the Transportation Decarbonization Investments Account. Requires the CPO and ODOT to provide the audit report to the Governor and the Joint Committee.

Establishes the **Just Transition Fund** in the State Treasury and continuously appropriates moneys to the Higher Education Coordinating Commission (HECC) to be distributed for the Just Transition Program. Requires HECC to set aside 50 percent of the funds deposited each biennium in a reserve account. Requires the HECC to continue to credit the reserve account until the balance is the lesser of: an amount that, in the HECC's determination, is adequate to fund programs or activities that provide financial support for workers dislocated or adversely affected by climate change or climate change policies; or \$ _____. Requires the HECC in consultation with Employment Department and other interested agencies to establish a Just Transition Program for the purposes of distributing money from the Just Transition Fund. Requires money distributed through the **Just Transition Program** to: (1) support economic diversification, job creation, job training and other employment services; (2) provide financial support for workers dislocated or adversely affected by climate change or climate change policies; (3) provide mental health services for workers dislocated or adversely affected by climate change or climate change policies; or (4) other actions consistent with purposes of Act to provide related workforce support to communities in this state that are adversely affected by climate change or climate change policies.

Authorizes the **PUC**, in the manner it determines is proper, to allow a rate or rate schedule of a public utility to include differential rates to reflect amounts to enable the utility to assist low-income residential customers. Requires rates or rates schedules to minimize the shifting of costs to ratepayers that do not qualify for low income assistance.

Requires no later than November 1 of each even numbered year for the OHCS and the Oregon Department of Energy (ODOE) to jointly transmit to the Governor and the Legislative Assembly a **biennial statewide energy burden report**. Requires OHCS and ODOE to adopt rules, in consultation with consumer-owned utilities, for gathering necessary data to prepare report.

Transfers duties, functions and powers of Environmental Quality Commission and Department of Environmental Quality related to **GHG reporting** (ORS468A.280) to Carbon Policy Office. Makes conforming changes in GHG

reporting statute.

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

Provides that provisions related to CPO, OCAP, investment of certain moneys, PUC, transfer of duties, and repeal of Energy Facility Siting Council carbon dioxide emissions standards become **operative January 1, 2021**.

Provides for **expedited supreme court review** of: provisions of Act relating to receipt of money through sales of allowances by auction do not render Act a bill for raising revenue and that certain revenue from auctions are subject to provisions of Article IX, section 3a of the Oregon Constitution upon petition by adversely affected party.

Appropriates \$____ from the General Fund to the DAS for the biennium beginning July 1, 2019 for use by the CPO in the development and implementation of the OCAP. Appropriates \$____ from the General Fund to the EJTF for the biennium beginning July 1, 2019 which may be used for compensation and expenses incurred by non-legislative EJTF members and for provision by the Governor of clerical and administrative staff.

Requires DAS to report on actions being taken to **prepare for implementation** of Act to the Joint Committee on or before September 15, 2020.

Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

A cap-and-trade program is a market-based system designed to reduce greenhouse gas emissions. Total allowed emissions are capped at a given level that decreases each year. Polluters are required to buy an allowance for each ton of greenhouse gas they emit above a specified amount, as quantified through mandatory reporting of emissions to the government. Allowances are purchased at auctions held either by the government or a contracted third party. Allowances may also be distributed for free, often to emissions-intensive, trade-exposed industries. Covered entities can also purchase offset credits to meet their compliance obligations. Offsets represent a verified emission reduction of one ton of carbon dioxide equivalent from an uncapped sector. At the end of each compliance period, polluters must remit a number of allowances equal to their emissions or face a penalty. Companies may sell surplus allowances to other companies. A cap-and-invest program uses the proceeds generated from the auction of allowances for designated purposes.

Ten states currently have cap-and-trade systems. Nine are Northeastern states that joined together in 2009 to create a common carbon market through the Regional Greenhouse Gas Initiative. California runs a separate program that began in 2012 and is linked to the Canadian province of Quebec and Nova Scotia through the Western Climate Initiative. These programs include emissions from transportation fuels, natural gas, industrial processes, and electricity generation including emissions associated with imported electricity. The linked jurisdictions participate in joint auctions of allowances, and allowances issued by one jurisdiction can be used by any compliance entity within the linked programs.