STOEL RIVES LLP

MEMORANDUM

March 28, 2019

ATTORNEY-CLIENT PRIVILEGE; ATTORNEY WORK PRODUCT

TO: SANDRA McDONOUGH

FROM: THOMAS R. WOOD

RE: Section-by-Section Analysis of HB 2020, -31 Amendments

On March 25, 2019, the -31 amendments were introduced for HB 2020, a bill proposing a multisector cap and trade program for greenhouse gas emissions. Based on 2017 actual emissions reported to the Oregon Department of Environmental Quality, there are 52 individually permitted industrial or energy related facilities with anthropogenic emissions in excess of 25,000 metric tons ("MT"). Of those facilities, 11 are exempted under the -31 amendments. The breakdown of these facilities is shown in Table 1.

Table 1. Covered Facilities

Type of facilities	Number of facilities
Power Plants	7
Landfills (exempt*)	9
Universities (exempt)	2
Gas Transmission	4
Semiconductor	5
Food processing	5
Waste incinerator	1
General manufacturing	19**
Total facilities	52**

- While exempt from cap & trade, landfills are regulated under a new performance based standards in section 84 of HB 2020

**At least 1 of the facilities subsequently went out of business

You have requested that we provide a section-by-section analysis of the -31 amendments to draft bill. As the -31 amendments are a gut and stuff of the introduced bill, all references in this memorandum are to the -31 amendment section numbers.

Section 1: Policies/Goals

This section retains the goals in the introduced bill for greenhouse gas ("GHG") reductions. Table 2 shows the proposed reduction goals as compared to the existing policies. In the right hand column are the actual percentage reductions that would be required as compared to 2017 actual emissions.

Table 2. GHG Reduction Goals as Compared to 1990 Emission Levels

	Existing Policy (compared to 1990 emission levels)	Proposed Goal (compared to 1990 emission levels)	Proposed Goal (compared to 2017 emission levels)*
2020	10% reduction		
2035		45% reduction	52% reduction
2050	75% reduction	80% reduction	83% reduction

* Oregon Department of Environmental Quality Greenhouse Gas Sector-Based Inventory

Changes: The one significant change to this section from the introduced bill was to clarify that the reductions are limited to anthropogenic GHGs (not combined anthropogenic and biogenic GHGs).

Analysis: Limiting the reductions to anthropogenic GHGs appears to be a good revision.

Section 2: Joint Committee on Climate Action (Establishment)

This section establishes a standing Joint Committee on Climate Action of indeterminate size with Senate members appointed by the Senate President and House members appointed by the Speaker of the House and one co-chair appointed by each. Member terms would be 2 years and the Legislative Policy and research Director may hire staff to support the Joint Committee.

Changes: There were no substantive changes to this section.

Section 3: Joint Committee on Climate Action (Duties)

This section would charge the Joint Committee with (a) overseeing climate policy and (b) examining, prioritizing and making recommendations for the proceeds from allowance auctions.

Changes: There were no substantive changes to this section.

Section 4: Establishment of Carbon Policy Office

This section would establish a new agency (called here the Carbon Policy Office or "CPO") to run the cap & trade program. It authorizes CPO to hire staff.

Changes: There were no substantive changes to this section.

Section 5: Director of Carbon Policy Office

This section would establish the duties of the CPO director. The CPO director would be appointed directly by the Governor subject to confirmation by the Senate. No commission or other type of oversight is provided for and the CPO would directly adopt its rules (as opposed to other agencies, such as DEQ, where the Commission overseeing the agency adopts the rules and directs policy). The CPO director could appoint administrative division heads, such appointments subject to the approval of the Governor.

Changes: There were no substantive changes to this section.

Analysis: The proposed structure takes GHG regulation away from DEQ and places it in a new agency under direct control of the Governor who would appoint the agency head (who would serve at her pleasure) and have direct control over the appointment of each division head. This structure is not one favored in Oregon which has historically favored having Boards or Commissions appointed by the Governor overseeing agencies with the agency director appointed by the board or commission. There are over 250 such boards and commissions and the departure from this form of governance structure is concerning.

Oregon Climate Action Program

Sections 6 through 49 establish the Oregon Climate Action Program of which Sections 6 through 29 are the cap & trade program.

Changes: There was substantial reorganization of this section as compared to the introduced bill.

Section 6: Statement of Purpose

This section would establish that the purpose of the cap & trade program is to achieve a reduction in "regulated GHGs" emitted by covered and opt-in entities by at least 45% by 2035 and 80% by 2050 as compared to 1990 levels. The bill would also set the following purposes of the Climate Action Program as:

- Promote GHG sequestration
- Promote adaptation to climate change, ocean acidification and state infrastructure
- Provide assistance to households, businesses and workers impacted by the transition needed to meet the reduction goals

The bill would expressly allow other agencies to adopt additional GHG reduction measures. The bill expressly states that it shall be interpreted in a manner consistent with federal law.

Changes: The goals did not materially change from the introduced bill. However, because the definition of "regulated GHGs" was changed in the -31 amendments to just include anthropogenic GHGs, the scope of the goals is narrowed. The -31 amendments include a new reference to promoting adaptation and resilience of the state's infrastructure to climate change and adds reference to assisting workers impacted by climate change.

Analysis: This section of the bill makes the carbon reduction "goals" in Section 1 of the bill enforceable mandates for covered entities. As noted in Section 1, Table 2, this would require reductions of 52% by 2035 and 82% by 2050 as compared to 2017 emission rates. Completely eliminating all industrial and agricultural emissions (both covered and subjurisdictional entities) would only barely provide half of the required reductions. Complete elimination of all of transportation emissions would still leave Oregon 25% short of mandate for 2035 that would be established by this section of the bill.

The bill states that a goal is to promote carbon sequestration, but geologic sequestration, one of the most promising technologies, is currently illegal in Oregon as a result of DEQ regulations.

This section of the bill would make the CPO an enormous public assistance agency as the result of it providing assistance to people impacted by the implementation of the program.

This section would expressly leave DEQ and other agencies free to impose traditional command and control GHG regulations that would conflict with the market driven solution approach underlying cap & trade. In this regard, subsection (2)(a) directly contradicts the stated goal of allowing market forces to drive GHG reductions.

Section 7: Definitions

This section would establish the definitions used in the cap & trade program defined in Sections 9 to 29 of the bill.

Changes: The -31 amendments added the following definitions that did not exist in the introduced bill:

- Air contamination source
- Anthropogenic GHG emissions
- Best available technology
- Biogenic GHG emissions
- Biomass-derived fuels
- Business unit
- EITE entity
- Eligible Indian tribe
- General market participant
- Multistate jurisdictional electric company

- Natural gas supplier

In addition, the definition of "Natural and working lands" was revised to include both lands and waters used in one of the specified purposes.

Analysis: There is arguably a technical error in Line 26 as the definitions are limited to Sections 7 - 29, but they also should apply to Section 6.

Generally the addition of the definitions appears either neutral or beneficial as they relate to provisions that assist business. A key definition for later sections is "best available technology." This definition specifies that for a technology to be considered, it must be technically feasible, commercially available, economically viable and compliant with all applicable laws. These are good, but the definition does not go far enough in that it should also specify that a covered entity does not have to change its process (e.g., change from a natural gas combustion turbine power plant to a wind farm).

The definition of "carbon dioxide equivalent" does not specify the time horizon and equivalency changes depending on what horizon is used (i.e., 20 year v. 100 year). In addition, it should specify that the metric to be used are the AR4 values currently employed by DEQ and EPA. The difference between time horizon and metric can be tremendous for non-CO_2 GHGs (it makes no difference for CO_2). The definition should be revised to clarify that CO_2 equivalency is based on an AR4, 100 year horizon, consistent with GHG reporting requirements.

Section 8: Cap & Trade: General Provisions

This section would establish the basic elements of the program. The primary components proposed in this section are:

- The cap and trade program applies exclusively to anthropogenic GHG emissions (not biogenic).
    - **Changes:** None
- The program life is established as 2021 to 2050.
    - **Changes:** None
- The first step in a cap and trade program is determining the size of the pool of available allowances. This pool is referred to as the "allowance budget." The allowance budget equals the total number of allowances available in any given year.
    - **Changes:** None
- In 2021, the allowance budget would be set equal to the annual average emissions of all the covered entities over the most recent three years prior to 2021 for which the CPO has "verified" data. That would likely be 2017-2019.
    - **Note**: The allowance budget is limited to emissions from covered entities. As drafted, the opting-in of a non-jurisdictional entity would not expand the allowance budget so the more opt-in entities, the more scarce allowances would become. This appears to be a drafting error, but perhaps not. It is a nuance that should be explored.
    - **Changes:** None

- Cap and trade is like a game of musical chairs. It works by decreasing the pool of available allowances over time. Each time the music stops (i.e.,, the end of a compliance period), there are fewer chairs (i.e., allowances) to scramble for.
    - Starting in 2022, the pool of available allowances (the "allowance budget") would decrease by a constant amount for each of the first 14 years of the program (i.e., until 2035). This would require a 5.2% reduction annually to reduce 2017 emissions to 45% below 1990 levels by 2035.
    - Starting in 2036, the pool of available allowances (the "allowance budget") would decrease by a constant amount for each of the next 15 years of the program (i.e. until 2050). This would require a 6.5% reduction annually to reduce 2017 emissions to 80% below 1990 levels by 2035.
    - **Changes:** None
- The following sources would be covered entities and subject to the cap & trade program:
    - Any entity in control of one or more facilities issued a permit by DEQ if the aggregate annual GHG emissions from all of those sources equal or exceed 25,000 MT CO_2e.
        - **Changes**: As introduced, the bill required a company to aggregate all permitted sources in the state to determine if the company was over the 25,000 MT threshold. The bill also suggested that biogenic emissions would be counted in determining whether a source is a covered entity. Those errors have been fixed and it is clear that the 25,000 MT threshold applies on a facility-specific basis and looks only at anthropogenic emissions.
        - **Changes**: The -31 amendments add a new concept whereby multiple business units colocated with a cogeneration facility can be separately assessed for program applicability if they meet certain criteria.
    - Any entity in control of one or more sources in the state that holds an air permit identifying the facility as engaged in fossil fuel electric power generation. This applies regardless of emission levels.
        - **Changes:** None
    - Electric system managers distributing electricity generated out-of-state but delivered for use in-state.
        - **Changes:** None
    - Natural gas supplier distributing natural gas in-state to entities not designated as covered entities.
        - **Changes:** The introduced bill classified "natural gas marketers" as subject to the cap & trade program. The -31 amendments change the covered entity to "natural gas supplier," a term that is now defined in Section 7.
    - Natural gas utilities importing, selling natural gas in the state to the extent the emissions associated with combusting that natural gas are not attributed to another covered entity.
        - **Changes:** None
    - Fuel distributors to the extent the emissions associated with combusting that fuel are not attributed to another covered entity.

        - **Changes:** None
- Section 8 gives the CPO director the authority to adopt regulations implementing the cap & trade program. These provisions identify that:
    - Some level of banking of credits would be allowed.
        - **Note:** Banking of credits is good. It would be appropriate for the statute to specify that unlimited banking is allowed.
        - **Changes:** None
    - Borrowing of allowances from future budgets is prohibited.
        - **Note:** Prohibiting borrowing is bad. This penalizes sources implementing multi-year improvement programs.
        - **Changes:** None
    - Both opt-in entities and "general market participants" would be allowed to participate in the cap & trade program.
        - **Note:** This means that any entity outside of the program (e.g., activists, investment bankers, market speculators) can purchase, hold, sell or voluntarily retire allowances. General market participants are allowed to participate in any auction other than a reserve auction. This risks artificial allowance shortages due to market manipulation.
        - **Changes:** None
- Section 9 supplements Section 29 (Civil Penalties) by requiring that in addition to paying a civil penalty for an allowance shortfall, a covered or opt-in entity must also forfeit an unspecified number of allowances above and beyond that entity's compliance obligation.
    - **Note:** California penalizes a source by requiring that it forfeit allowances equal to 4X the compliance shortfall. So if my compliance obligation was 100,000 MT for a compliance period and I only had 97,500 MT in my account, I would receive both a civil penalty and be required to purchase and surrender an additional 10,000 MT of allowances. This is extremely punitive and should not be allowed in Oregon--particularly in the early years of the program.
    - **Changes:** None
- Section 9 requires that all entities that are covered by the program or that want to participate in auctions must register with the CPO.
    - **Changes:** None

Analysis: This section is a mix of good and bad. The changes made in the -31 amendments, however, appear to provide more clarity and fix some clear errors in the introduced bill.

<u>Section 9: Cap & Trade: Exemptions and Exclusions</u>

This section would exempt the following entities from the program:

- "Land disposal sites" defined by ORS 459.005
    - ORS 459.005 includes the following definition of "land disposal site": "a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon."
    - **Changes:** No longer contains the requirement that the landfill be closed before the effective date of the statute. Landfills are all removed from the cap & trade

program and made subject to performance standards (Section 84) reflective of their unique emissions.

- Cogeneration facilities owned by a public university or OHSU
    - **Changes:** None

This section would also exclude the following emissions from regulation under the cap & trade program:

- GHG emissions from electricity generation where (a) the electricity is delivered to and consumed in another state, and (b) capital and fuel costs are included in the rates of a multistate jurisdictional electric company charged to customers outside of Oregon
    - **Changes:** None
- GHG emissions from aviation, watercraft and railroad locomotive fuel combustion
    - **Changes:** None
- COUs where the 3-year average GHG emissions attributable to electricity delivered in Oregon are less than 25,000 MT CO_2e
    - **Changes:** None
- Importers of de minimis amounts of gasoline and diesel
    - **Changes:** None

Analysis: Most of the exemptions and exclusions are good; there are just too few of them to provide meaningful relief for the majority of sources.

Changes: Sections 11 through 13 of the introduced bill provided an exclusion through January 2, 2026 for emissions of hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, nitrogen trifluoride or other fluorinated greenhouse gases generated during semiconductor and related device manufacturing. These provisions have been deleted in their entirety. The semiconductor industry is regulated the same as other industries under the -31 amendments.

Section 10: Cap & Trade: Allocation of Allowances

This section would establish how allowances are distributed. The allowance budget equals the total actual emissions of the covered entities immediately before the program went into effect as reduced annually thereafter. The allowance budget does not necessarily reflect the number of allowances made available in a given year, but the number made available cannot exceed the allowance budget.

Once the allowance budget is determined for a given year, the allowances in the budget would be allocated as follows:

- A percentage to be decided by the CPO to an allowance price containment reserve account.
- A percentage to be decided by the CPO to a voluntary renewable electricity generation reserve account.
    - These would only be available for "voluntary renewable electricity" generated by generating facilities that start operation on or after January 1, 2021.

    - Unlike the CA cap & trade program, the term "voluntary renewable electricity" is not defined in the bill, but, based on the CA definition, presumably refers to renewable electricity which has not and will not be sold or used to meet any other mandatory requirements in Oregon or any other jurisdiction.
- Allowances to electric companies (at no cost) consistent with amounts/schedule described in Section 11.
- Allowances to electric system managers (at no cost) consistent with amounts/schedule described in Section 12.
- A percentage to be decided by the CPO to an electricity price containment reserve account.
    - Allowances in this reserve are only distributed if needed to combat cost increases associated with unexpected increases in emissions attributable to an electric system manager that are outside that manager's control.
    - Example given is of a drop in hydropower that necessitates increased thermal generation.
- Allowances to natural gas utilities (at no cost) consistent with amounts/schedule described in Section 13.
- Allowances to EITEs (at no cost) consistent with amounts/schedule described in Sections 14 and 16.
- A percentage to be decided by the CPO to an EITE reserve account that can only be distributes consistent with Section 16(6).
- A percentage to be decided by the CPO to any other reserve accounts that the CPO determines are necessary and that are established by rule.
- The remainder of the allowance budget shall be available for auction consistent with Section 22.
- If any allowances made available for auction remain unsold after two consecutive auctions, the CPO may place those allowances in the price containment reserve.

Changes: The primary changes are (1) to add the ability of the CPO to set up other reserve accounts beyond those established by statute and to fund those reserves, and (2) to allow the CPO to shift unsold allowances into the allowance price containment reserve.

Analysis: The change adding the ability for the CPO to create new reserves is concerning to the extent that those reserves are populated with allowances before the auction account is populated with allowances and the auction account only gets what is left over after all other accounts are populated. Having fewer allowances available for auction would be expected to drive the auction price up over time. This concern is also present for the new language allowing the CPO to shift unsold allowances out of the auction account and into a reserve if unsold in two consecutive auctions. Both of these measures raise concerns about the ability of the CPO to drive allowance prices higher.

Section 11: Cap & Trade: Direct Distribution of Allowances to Electric Companies

This section would establish the following structure for distributing free allowances to electric companies (i.e., IOUs):

- 2021-2030: IOUs receive free allowances equal to 100% of the emissions from forecast generation to serve Oregon load.
- 2031-2050: IOUs receive free allowances but at a declining rate equal to the rate at which the annual allowance budget is declining.

Note: IOUs get 100% of forecast need through 2030. By 2030, the allowance budget will have declined by approximately 38% to meet the bill's goals. If the IOUs remain constant during that time, there is the potential that a substantial squeeze could be placed on the other sources needing to purchase allowances at auction.

Changes: There are several changes to how this structure is implemented, but it does not appear that that basic approach to allowance allocation has changed. The -31 amendments added the requirement for the CPO to consult with the PUC when adopting rules for the allocation of allowances to IOUs and use of allowances will be subject to PUC oversight.

Section 12: Cap & Trade: Direct Distribution of Allowances to Electric System Managers

This section would establish the following structure for distributing free allowances to electric system managers other than IOUs (e.g., BPA, COUs, coops):

- 2021: 100% free allowances for forecast generation subject to cap & trade.
- 2022-2050: Free allowances at a declining rate equal to the rate at which the annual allowance budget is declining.

Proceeds generated by COUs selling allowances must be used to benefit ratepayers. Each COU must submit a biannual report on the use of proceeds from sales of allowances.

Changes: There were no substantive changes to this section.

Section 13: Cap & Trade: Direct Distribution of Allowances to Natural Gas Utilities

Retains free allowances equal to emissions attributable to gas provided to low income customers

This section would award free allowances to natural gas utilities equal to emissions corresponding to the combustion of natural gas by the utility's low-income residential customers. This allocation is determined at the start of each compliance period and is not subject to discount. The free allowances must be used for the benefit of low-income residential customers.

No other free allowances would be provided to the natural gas utilities and so allowances equal to the emissions corresponding to the combustion of natural gas by the utility's customers other than low-income residential customers would have to be purchased on the open market or at auction.

Changes: Essentially unchanged. Natural gas utilities continue to receive free allowances only for low-income residential customers. This presumably means significant natural gas price increases for commercial and manufacturing companies.

Section 14: Cap & Trade: Designation of EITEs

This section would establish a mechanism for distributing free allowances to covered and opt-in entities engaged in EITE businesses. Section 14 specifies the four-digit NAICS codes for industries considered EITE. A business engaged in the manufacture of goods under one or more of these codes is considered an EITE industry. There are provisions for establishing new EITE categories. The statute prohibits fossil fuel distribution and storage facilities or infrastructure or electric generating units, from being designated as EITEs.

Changes: This section has been extensively changed. Most changes are for the better. The number of EITE industries has been expanded consistent with the Vivid report and the NAICS codes defining EITEs have been reduced from 6-digit codes to 4-digit codes. These are all positive changes.

This section also allows for the CPO to establish a temporary benchmark and to adjust that temporary benchmark after the first compliance period. It is not clear when the CPO would do this, but the provision seems at odds with Section 16 and generally a dangerous authority to give CPO.

Section 15: Cap & Trade: Leakage Risk Study

Section 15 would require that the CPO publish a study of potential leakage from sources with anthropogenic GHG emissions between 10,000 and 25,000 MT.

Changes: This section is entirely new.

Analysis: While the stated purpose of the study is to assist the CPO in designating EITEs, there is something disconcerting about having the CPO focus so much energy on sub-jurisdictional facilities.

Section 16: Direct Distribution of Allowances for EITEs

EITEs would be given a certain amount of free allowances. The amount would be equal to the following equation:

$$A_{free} = Prod_{PY} * BM * AF$$

Where:

A_{free}	=	Amount of free allowances awarded an EITE
$Prod_{PY}$	=	Previous year's production level (i.e., number of widgets)
BM	=	Benchmark emission rate (MT CO_2e/widget)
AF	=	95 percent

For years 2021 -2023, the benchmark would essentially represent the current emission rate, i.e., the benchmark would equal the average site emissions over the previous three years divided by average production over the previous three years.

For years 2024 forward, a benchmark would be developed on a site-specific basis for each good manufactured at the facility. These benchmarks would reflect the application of Best Available Technology ("BAT") which is defined to be "the technology that will most efficiently reduce the greenhouse gas emissions associated with the manufacture of a good, without changing the characteristics of the good being manufactured, that is technically feasible, commercially available, economically viable and compliant with all applicable laws." The BAT benchmark for each good manufactured is to be developed by January 1, 2024 and must be updated every 6 years. BAT is determined by the CPO, but the source can submit reports for their consideration and, as a practical matter, the source will have to perform the majority of the work with ultimate review by the CPO.

Changes: This section is fundamentally different from that in the introduced bill. Rather than an EITE being subject to an industry-wide benchmark (for industries with 3 or more similar sources in the state) and then seeing free allowance allocations diminish annually until they are reduced to 17% of 2017 emissions (a seemingly impossible reduction to achieve in any way other than to move out of state), the -31 amendments propose a much more limited reduction. The new approach gives every source free allowances equal to 95% of what the source would emit if it employed Best Available Technology for reducing GHG emissions (regardless of whether it does so). This determination of BAT is site-specific. If the source emits at a higher level, it has the choice of either reducing or purchasing allowances. If the source emits less than the BAT level, it would get extra allowances. However, every EITE will have its allowance allocation set at 95% of the BAT emission rate, rather than 100%.[1] So if a source employs BAT for all processes, it will get 95 percent of the allowances it needs for free, with no reduction over time (other than that associated with any changes in what constitutes BAT over time).

Analysis: The changes in approach reflected by the -31 amendments are greatly favorable to EITE sources as compared to the introduced bill. The greatest improvement is that there is no reduction over time in the allocation of free allowances. The 5% automatic shave makes no sense. If an EITE is facing the threat of leakage, then there should be no shave whatsoever. If that EITE faces an automatic 5% reduction in allowances even though it is employing BAT, that could force leakage to occur. Therefore, while the 5% reduction is much better than the ultimate 83% reduction under the introduced bill, it should still be seriously questioned.

The development of the BAT benchmarks will be challenging and improvements to the statutory language are merited. If it is assumed that some type of benchmark is required, then a site-specific benchmark taking into account cost-effectiveness and technology transfer (among other criteria) is preferable to an industry driven benchmark where it is not even clear what industries are similar. However, there are risks and challenges with such an approach as the cost-effectiveness threshold will be in play and is unlikely something that is desirable to place in statute (although that point is certainly debatable). Also, there is no provision in the -31 amendments ensuring that changing the nature of your process or equipment cannot be

[1] At the hearing on March 25, 2019, Maureen McGee, Senior Deputy, Legislative Counsel, emphasized that "The percentage of allowances that an EITE entity receives will always stay at 95% of their annual good-specific emission calculation."

considered BAT (e.g., changing a waste combustor to a recycling plant or changing a natural gas fired boiler to an electric or biomass boiler).

In the March 25, 2019 hearing, Maureen McGee said that she did not think there was any recourse if a facility disagreed with CPO's final determination as to what constitutes the site-specific BAT for a company. This seems inaccurate as a matter of law, because the CPO determination would be an appealable final agency action. However, it would be prudent to flesh this out.

Requiring the site-specific benchmarks be in place by 2024 is unduly aggressive. Setting the benchmarks will take a lot of time and resources. IN addition, a source should not be subject to the new benchmark without being provided adequate time to implement any projects identified as BAT. This should be changed from 2024 to a more reasonable date further into the future.

Other approaches (e.g., an energy audit as opposed to a BAT process) may merit exploration as a replacement or alternative. However, the shift away from a benchmark driven program that reduces over time to 17% of 2017 emissions is a definite improvement and opens the way for refinement. If there is to be a program, then this handling of EITEs is a step in the right direction as compared to the introduced bill, but further steps are needed (again, if there is to be a program).

Section 17: Cap & Trade: Benchmark Report

This Section would require the CPO to prepare a report by September 15, 2030 assessing (1) the industries designated as EITEs, (2) the emission reduction opportunities available to them, and (3) whether the method for calculating benchmarks should be "adjusted."

Changes: This section is entirely new.

Analysis: While disconcerting to think that the method for establishing benchmarks could be altered, the possibility of future legislative action always exists. This could be an opportunity to argue to the Legislature that the benchmarks should be relaxed, but that is likely overly optimistic. Limits always seem to go the other direction.

Section 18: Cap & Trade: Offsets

This section would establish a process for generating offsets. Offsets are the sole means of the private sector increasing the number of available allowances as offsets function as allowances (subject to certain limits). Offsets must derive from projects that result in GHG emissions reductions that are real, permanent, quantifiable, verifiable, enforceable and go beyond what is required by law.

In order to limit the number of offsets that can be used, the bill would impose the following restrictions:

- The projects generating the offsets must occur within the U.S. or a jurisdiction with which Oregon has a cap & trade linkage agreement.

- No more than 8% of a covered entity's compliance obligations can be met through offsets.
- No more than 4% of a covered entity's compliance obligations can be met through offsets that do not provide direct environmental benefits in Oregon.

Under Subsection (2)(b), the CPO would be able to adopt further restrictions on a covered entity's use of offsets if it is located in an "impacted community" (see Section 20) and either:

- The covered entity (a) is in an area that is either a nonattainment are for air quality standards for non-GHG pollutants (e.g., particulate, ozone) or that DEQ predicts may exceed such standards in the next 5 years, and (b) causes or contributes to the exceedance.
- The covered entity experiences a violation of its air permit.

Section 18 requires the CPO to consider other comparable programs in developing rules for offsets and to encourage in-state offset projects.

The CPO must adopt rules requiring that up to 3% of the offset credits issued for a project must be retained by the CPO and placed in an offset integrity account to replace any offsets issued, but subsequently invalidated

The bill would require the formation of an Offset Advisory Committee to assist on rulemaking and development of protocols. Protocols must prioritize offset projects that benefit impacted communities, Indian tribes and natural and working lands.

Changes: This Section has changed in material ways. Reductions must be of anthropogenic GHG emissions in order to be creditable and it appears that they are trying to make the requirements for an offset more stringent. Revisions include criteria for invalidating issued offset credits if either (a) the reductions generated by the project are off by 5% or more from the total projected reductions, or (b) the project generating the offsets experiences an "environmental, health or safety violation."

Analysis: The bill places the limits on the amount of offsets that can be used exclusively on covered entities and not on opt-in entities. This benefits opt-in entities and should not hurt covered entities.

Granting the CPO the authority to reduce the use of offsets by (a) sources in nonattainment or soon-to-be nonattainment areas or (b) sources with an air permit violation is bad policy. Neither of these two possibilities has anything to do with climate change or GHGs. A permit violation could be for something as small as forgetting to perform a daily inspection for one day of the year. Any Title V source is required to report such a missed inspection as a permit deviation. It is totally inappropriate for that to then limit the source's ability to use offsets. In addition, the bill gives no indication of how severe the limitation would be or how long the limitation would be in effect. Subsection(2)(b) should be deleted.

Granting the CPO the authority to invalidate offsets if the project generating the offsets experiences an "environmental, health or safety violation" of any sort, is unduly punitive. This might get addressed by rulemaking, but it is still a basis for concern.

Section 19: Cap & Trade: Offset Protocols

This section imposes requirements on the development of offset protocols. Buried in this topic are various provisions that are presumably beneficial such as including offset protocols for low carbon-impact building materials and urban forestry.

Changes: This section is entirely new and is presumably largely beneficial. It focuses on forestry offsets and offsets generated from agriculture and conservation on natural and working lands (e.g., manure management, avoided grassland conversions and other projects reducing emissions from agricultural operations). Entities considering offset projects should review this carefully to see if there are hidden issues.

Section 20: Cap & Trade: Offsets; Consultation

This section requires the CPO to consult with various state entities (e.g., Department of Agriculture, Forestry Department, EJ Task Force and Watershed Enhancement Board) on the development of offset protocols. There is also a requirement to establish an offset program advisory committee.

Changes: This section is new, but it consists largely of provisions moved from Section 19 of the introduced bill.

Section 21: Cap & Trade: Designation of Impacted Communities

This section would direct the CPO to designate impacted communities by census tract, taking into consideration:

- Geographic
- Socioeconomic
- Historic disadvantage
- Public health, and
- Environmental hazard criteria

Changes: This section is largely unchanged other than it specifically calls out rural communities for consideration for inclusion as impacted communities.

Analysis: Designation as an impacted community potentially limits a covered entity's ability to employ offsets. However, impacted communities are also eligible for an enhanced level of investments from the Climate Investments Fund (Section 35). The bill would focus on areas of high unemployment, low levels of education, low income and several similar factors.

Section 22: Cap & Trade: Allowance Auctions

This section would establish the framework for allowance auctions. Except for reserve auctions, all auctions would be open to all registered entities. Reserve auctions would only be open to covered entities and opt-in entities. The CPO would be required to establish an auction floor price, an allowance price containment reserve floor price and a hard price ceiling. If the hard price ceiling is exceeded, an unlimited amount of allowances would be available for auction, presumably until the price dropped below the hard price ceiling. Little guidance is given as to how the ceilings should be set other than the CPO should consider prevailing allowance prices in other jurisdictions and other jurisdiction's linkage requirements.

All conventional auction proceeds go to the Auction Proceeds Distribution Fund.

Changes: The -31 amendments add a new section addressing how allowances will be sold if the hard price ceiling for an auction is reached and what happens if reserve allowances run out before demand is met. In the latter situation, the CPO would be authorized to continue selling allowances (in excess of what is available in the annual allowance budget) at the hard price ceiling until demand is all fulfilled.

Analysis: The new language in the -31 amendments addressing what happens if demand exceeds supply is an important addition. We certainly hope such a situation never arises because it means the program is seriously out of control. However, this enable a pressure release valve of sorts for the program if the auctions overheat. A good, but very ominous, revision.

Section 23: Cap & Trade: Distribution of Allowance Auction Proceeds

This section would establish the Auction Proceeds Distribution Fund. Dollars received would be reallocated as follows:

- Article IX, Section 3a of the Oregon Constitution provides that revenue from taxes on motor vehicle use or fuel may be used only for public highways, roads, streets and roadside rest areas in Oregon. All such taxes collected through allowance auctions are transferred to the Transportation Decarbonization Investments Account (see Section 31 below).
- Article VIII, Section 2(1)(g) of the Oregon Constitution provides that revenue from taxes levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas and the proceeds from any tax or excise levied on the ownership of oil or natural gas must go to the Common School Fund. Consistent with this mandate, all such taxes collected through allowance auctions are transferred to the Common School Fund.
- Of the remaining auction proceeds, 2% go to the Climate Action Program Operating Fund (See Section 27 below) and 98% go to the Climate Investments Fund (See Section 35 below).

Changes: The primary change in this section is the allocation of 2% if the remaining auction proceeds (third bullet above) to the Climate Action Program Operating Fund.

Analysis: The drafting of this section appears to acknowledge the tax status of the cap & trade program and to try to work around it. The change in allocation of some revenue to the Climate Action Program Operating Fund does not seem particularly good or bad.

Section 24: Cap & Trade: Market Activity Reports

This section would require the CPO to submit an annual report to the Joint Committee on Climate Action with information on allowance sales, reserve holdings, reductions achieved and the estimated impacts on the cap & trade program on fuel, electricity and natural gas prices in Oregon.

Changes: The report was changed from once per compliance period to annually, which seems an excessive waste of CPO time and covered entities' money.

Analysis: This Section is generally a good thing, but the required report fails to include any requirement to assess the impact on Oregon's manufacturing sector or community health as a result of price increases and job elimination. Such a requirement should be added.

Section 25: Cap & Trade: Linkage

This section would establish the criteria for linking Oregon's cap & trade program with other jurisdiction's programs. Linkage would require the Governor make several findings about any proposed linkage arrangement within 45 days of the CPO director notifying the Governor of intent to link Oregon's program with another. Such findings must consider advice from the Attorney General and be provided to the Legislature.

Changes: There were no substantive changes to this section.

Section 26: Cap & Trade: Rulemaking Advisory Committee

This section would require the Governor to appoint a 9-member rulemaking advisory committee to advise the CPO director in adopting cap & trade rules.

Changes: There were no substantive changes to this section.

Section 27: Cap & Trade: Operating Fund

This section would establish the Oregon Climate Action Program Operating Fund.

Changes: There were no substantive changes to this section.

Section 28: Cap & Trade: Public Records Law

This section states that it is the policy of the state to combat fraud and create trust in the program by "making certain market activity information available in aggregated form." As a matter of statute, this section would make "any individually identifiable information on the manufacturing output of goods, other than emissions data submitted under ORS 468A.280…" exempt from disclosure under the Public Records Act.

Changes: This section is entirely new and is an important new protection. However, note that in Section 63, a lot of information reported to DEQ now, and the CPO under this bill, must be considered public.

Section 29: Enforcement

Changes: This section is new, although much of Section 6 from the introduced bill was shifted into this section. It provides for penalties of up to $10,000 per day unless the violation is considered "intentional, reckless or negligent" in which case the penalty can go to $25,000 per day. By point of reference, DEQ considers most violations to be "negligent" because the source should have known of the issue. A point of concern in relation to this section is that all penalties go to fund the agency rather than go into the General Fund (as DEQ penalties do). This is of concern because the agency has a tremendous incentive to inflate penalties if the agency directly benefits from those penalties.

Transportation Decarbonization Investment Account

Sections 30 through 34 specify how the Transportation Decarbonization Investment Account is to be managed.

Changes: These four sections reflect a reorganization of the introduced bill provisions related to the Transportation Decarbonization Investment Account. Sections 30-33 are specific directions on how funds can be used. Section 34 is the section of particular interest.

Section 30: Definitions

Section 30 would establish definitions used in Sections 30-34.

Changes: There were no substantive changes to this section.

Section 31: Transportation Decarbonization Investments Account

This Section would establish high level guidance on the expenditure of funds from these two accounts.

Changes: There is a lot of specificity added to how funds are to be disbursed.

Section 32: DOT Grant Program

Changes: Authorizes DOT to establish a grant program for transportation projects for cities, counties and metropolitan planning organizations.

Section 33: Selection of Transportation Projects

Changes: Provides specifics on the selection of transportation projects for funding from the Transportation Decarbonization Investment Account.

Section 34: Procurement Preferences

Changes: Adds a section providing that a preference of up to 10% of bidding cost for (a) building materials procured from manufacturers subject to a carbon pricing program and (b) nursery stock grown, propagated and sold entirely within Oregon.

Analysis: This provision is good for Oregon nurseries and, to a lesser extent, to Oregon building material manufacturers. It does not make sense why the nursery provision benefits just Oregon nurseries while the building material provision benefits manufacturers in Quebec or California or any other jurisdiction with carbon pricing. Given the tremendous GHG emissions associated with moving building materials from distant jurisdictions, it would appear counter to the whole intent of the program to not limit the building material preference to Oregon manufacturers.

Section 35: Climate Investments Fund

Section 35 would establish the Climate Investment Fund to receive proceeds as described in Section 23 with the requirement that funds be allocated as specified in this section. The following requirements are specified:

- 10% of all funds must be allocated for projects that benefit Indian tribes.
- 40% to benefit impacted communities
- Up to 1% for technical assistance to tribes and impacted communities applying for or receiving funds from the Fund
- $10 million to be allocated each biennium to the Just Transition Fund (see Section 40)
- The remainder is to be allocated by the Legislature based on the CPO's biennial climate action investment plan

Changes: More specificity has been added to how funds are to be allocated.

Sections 36 and 37: Changes to Climate Investments Fund

Sections 36 and 37 would establish that on July 1, 2027, the allocations in Section 35 would change so that the only mandatory payment would be 10% to benefit eligible tribes.

Changes: These are new sections.

Section 38: Climate Investments Fund Procurement Preferences

Changes: Adds a section providing that for contracting agencies a preference of up to 10% of bidding cost for building materials procured from manufacturers subject to a carbon pricing program. No equivalent to the preference in Section 34 is given for Oregon nursery stock.

Analysis: As noted in regard to Section 34, the building material procurement preference benefits manufacturers in Quebec or California or any other jurisdiction with carbon pricing. Given the tremendous GHG emissions associated with moving building materials from distant jurisdictions, it would appear counter to the whole intent of the program to not limit the building material preference to Oregon manufacturers

Section 39: Climate Investments Fund and Transportation Decarbonization Investments Account Union and Procurement Requirements

This section would require that the primary contractor for any construction project receiving more than $50,000 from either of these two sources must:

- Pay prevailing wage
- Offer health care and retirement benefits
- Participate in a state registered apprenticeship program
- Demonstrate compliance with requirements of the Construction Contractors Board, Workers' Compensation Division, Building Codes Division and Occupational Safety and Health Division
- Demonstrate compliance with federal and state wage and hour laws

The section would also require that DAS draft model rules for agencies to use in administering funds for construction projects receiving more than $50,000 from one of these two funds. These are to include a requirement for union labor for any project receiving more than $200,000. The model rules are also to impose a "Buy American" for steel, iron, coatings for steel and iron and manufactured products (a term that is not defined), subject to certain cost and availability restrictions.

Changes: Much of this section derives from Section 39 of the introduced bill, but with a lot more detail.

Analysis: The requirement for apprenticeship program involvement and project labor agreements is inappropriate in such a bill. The purpose of the bill is to combat climate change, not to promote labor unions.

The general idea behind the Buy American provision is sound. There is no sense increasing the state's carbon footprint by buying materials that are produced far away. However, no consideration is given to the GHG emissions associated with transporting materials from far away. Additional requirements should be considered for giving preference to materials sourced from within Oregon. Also, some manufacturers should question why the provisions are limited to "steel, iron, coatings for steel and iron and manufactured products" as well as what is within the scope of "manufactured products" as used in this statute?

Sections 40 & 41: Just Transition Fund

This section would establish the Just Transition Fund to be administered by the Higher Education Coordinating Commission. 50% of the funds deposited each biennium are to be placed in a reserve account to provide financial support to workers dislocated or adversely affected by climate change or climate change policies. The remainder could be spent on a variety of other programs including economic diversification, job training, mental health services for workers impacted by climate change or climate change policies or other related workforce support.

Changes: As introduced, only 50% of the money placed into the reserve account was targeted to help those actually impacted by climate change or climate change policies. It appears that the money is exclusively available for providing financial support for workers dislocated or adversely affected by climate change or climate change policies. That is a good change. Section

41 adds the requirement for the Higher Education Coordinating Commission to report out on its activities every other year.

Section 42: Common School Fund

This section would establish that monies deposited in the Common School Fund are continuously appropriated to the Department of State Lands to carry out the goals of the program stated in Section 6.

Changes: There were no substantive changes to this section.

Section 43: Biennial Expenditure Report

This section would require entities receiving money from the Climate Investments Fund to annually report to the CPO and for the CPO to biennially deliver a report to the Governor and Joint Committee on Climate Action. Similarly, all entities receiving funds from the Transportation Decarbonization Investments Account must annually report to ODOT and for ODOT to biennially deliver a report to the Governor and the Joint Committee on Climate Action. The reports shall discuss the results achieved by those expenditures.

Changes: There were no substantive changes to this section.

Section 44: Biennial Expenditure Audit

This section would establish the requirement for the CPO and ODOT to prepare a biennial audit of programs funded by the Climate Investments Fund and the Transportation Decarbonization Investments Account. The audit report must be delivered to the Governor and the Joint Committee on Climate Action.

Changes: There were no substantive changes to this section. Additional requirements were added for identifying objectives for expenditures as well as requiring consultation with ODOT, the PUC, the EJ Task Force, relevant agencies and tribes.

Sections 45-47: Biennial Climate Action Investment Plan

These sections would require the CPO to deliver a biennial climate action investment plan to the Environmental Justice Task Force, the Governor and the Joint Committee on Climate Action. The plan is to identify best opportunities for invest allowance auction proceeds. The CPO must consult with ODOT, the PUC, the Environmental Justice Task Force, Indian tribes and a citizen's advisory committee established for this purpose.

Changes: A substantial amount of additional detail has been added to this section on how auction proceeds are to be spent. Most significant is that "approximately half" of the proceeds from selling allowances at auction to EITEs must be spent on assisting EITEs in using Best Available Technology. By contrast "approximately" all of the proceeds from selling allowances to municipal solid waste combustors generating electricity have to be used for "programs for reducing plastics-related GHG emissions." In addition, priority is given (among many other

things) to development of carbon capture and storage, assisting air permit holders in reducing GHG emissions and researching alternative feeds for dairy cows and cattle to reduce flatulence.

Analysis: The addition of a lot of detail is good, but there are so many potential priority recipients of funds as to make the list somewhat unwieldy. There is a good basis for arguing that all of the money (instead of half of the money) from selling allowances to EITEs should be spent on assisting EITEs in installing Best Available Technology.

Section 48: Use of Biennial Climate Investments Plan in Budget Process

This section requires that the Governor consider recommendations in the biennial climate action investment plan when preparing her budget.

Changes: This section is new.

Section 49: EJ Task Force Review of Biennial

This section and requires that the EJ Task Force review the biennial climate action investment plan and deliver a report to the Governor and the Joint Committee on Climate Action.

Changes: There were no substantive changes to this section.

Section 51-53: Provisions Related to the PUC

Sections 51-53 are specific to the PUC.

Section 51: Placement

Notes Sections 51 - 53 would be added to ORS 757.

Changes: There were no substantive changes to this section.

Section 52: Use of Proceeds from Allowance Sales

This section would direct the PUC to require that proceeds from the sale of free allowances by IOUs to be spent exclusively within that entity's service territory to reduce GHG emissions or provide energy assistance to customers. Subsection 3 states that IOUs should prioritize the use of auction proceeds for energy assistance programs, but these entities would not receive auction proceeds so this appears to be an error; presumably the provision was intended to address priorities for spending funds generated by allowance sales.

Changes: This section in the introduced bill addressed both IOUs and natural gas utilities. Now the section addresses solely IOUs.

Section 52 & 53: Public Utility Commission

This section would direct the PUC to establish cost recovery for public utilities and allow differential rate schedules based on income.

Changes: Section 52's directive to ensure cost recovery for public utilities is new, but the differential rate language was in the introduced bill.

Section 54: Repeal

Changes: This section would change the repeal date for Section 9, chapter 7512, Oregon Laws 2009 from January 2, 2020 to the date that this bill becomes effective.

Section 55: Biennial Statewide Energy Burden Report

This Section would require the Housing and Community Services Department and Department of Energy to jointly prepare a biennial energy burden report for the Governor and the Legislature.

Changes: The concept of preparing the report was in the introduced bill, but no specifics were given on what that report entailed. Several paragraphs of detail about the purpose of the report were added.

Transfer of GHG Reporting Program

Sections 56-61 relate to shifting DEQ's GHG reporting program to the CPO.

Section 56 & 57: Transfer

Section 56 would transfer all duties and powers held by DEQ under ORS 468A.280 (GHG reporting) to the CPO. Section 57 specifies that DEQ is to transfer the records, property, and employees related to GHG reporting to the CPO.

Changes: There were no substantive changes to this section.

Section 58: Unexpended Revenues

This Section would transfer all revenues related to GHG reporting from DEQ to the CPO.

Changes: There were no substantive changes to this section.

Section 59: Transfer

This Section would establish that the CPO is to seamlessly step into DEQ's shoes in regards to GHG reporting.

Changes: There were no substantive changes to this section.

Section 60: Liabilities, Duties and Obligations

This Section would establish that the CPO would assume all liabilities, duties and obligations related to GHG reporting from DEQ and the EQC.

Changes: There were no substantive changes to this section.

Section 61: Regulations

This Section would establish that the EQC regulations related to GHG reporting would continue in effect until superseded by CPO regulations.

Changes: There were no substantive changes to this section.

Section 62: Housekeeping

This Section would establish that ORS 468A.280 is not part of ORS 468A.

Changes: There were no substantive changes to this section.

Section 63: Amendments to ORS 468A.280

This Section would amend ORS 468A.280 to place GHG reporting authority with the CPO. It also authorizes the CPO to charge fees for GHG reporting.

Analysis: Most of this is simple changing of names. However, Subsection 7 changes the requirements for reporting fossil fuel imported, sold or distributed in the state to a requirement for all fuel. This would allow rules to require the reporting of biomass imported, sold or distributed in the state. The removal of the word "fossil" before the word "Fuel" in line 19 of page 79 should be objected to. In this same Subsection, there is a language proposed for deletion relating to estimating the emissions from LPG combustion. It is not clear whether the LPG industry cares about this deletion.

Changes: Most of this section is unchanged. However, there is a new Subsection 9 that relates to the energy imbalance market. There is also a new Subsection 13 that prohibits data submitted under this section to be designated as confidential. That puts a lot of information in the public sector.

Section 64-77: Energy Facility Siting Council

Sections 64 - 77 relate to the repeal of the EFSC CO_2 emissions standards applicable to jurisdictional energy facilities.

Analysis: When a jurisdictional power plant is built, it must pay up front to offset roughly 17% of its CO2 emissions for the next 30 years. These payments have typically been made to the Climate Trust. These provisions get rid of that requirement and require the Climate Trust to wrap up its work related to these funds. However, there is no recognition of the offsets already paid for--they just seem to evaporate. That means that any generation facility that has funded these offsets is losing years, possibly decades of offsets. This is unfair where these generation facilities were early actors that paid up front for 30 years of reductions.

Section 64: ORS 463.503

This Section would delete the provisions in ORS 469.503 imposing the CO_2 emissions standard to fossil-fueled power plants.

Analysis: It makes complete sense to delete these requirements if generation facilities within the state will have to comply with the cap & trade program.

Changes: There were no substantive changes to this section.

Section 65: ORS 469.501

This Section would delete the provisions in ORS 469.501 requiring the assessment of the impacts CO_2 emissions on climate change.

Analysis: It makes complete sense to delete these requirements if generation facilities within the state will have to comply with the cap & trade program.

Changes: There were no substantive changes to this section.

Section 66: Site Certificate Amendments

This Section would make any site certificate provisions related to the CO_2 emissions standard unenforceable effective January 1, 2021 and require EFSC to remove such provisions the next time a site certificate is amended. Removal of these provisions is not subject to a contested case hearing or judicial review.

Changes: There were no substantive changes to this section.

Section 67: EFSC Rule Revisions

This Section would require EFSC to amend its regulations to remove the CO_2 standard by January 1, 2022.

Changes: There were no substantive changes to this section.

Sections 68 & 69: Phase-out of Climate Trust Use of Funds

This Section would allow the Climate Trust to finish off the investment of all funds provided under the EFSC CO_2 standard.

Changes: There were no substantive changes to this section.

Section 70: Repeal of ORS 469.409

This Section would repeal ORS 460.409, a provision related to the old need standard under EFSC's siting provisions.

Changes: There were no substantive changes to this section.

Analysis: The need standard was eliminated in 1997, but some site certificates still had a demonstration of need requirement. ORS 469.409 allowed those sources to meet the need standard by demonstrating compliance with EFSC's CO_2 standard. It is highly unlikely that the

repeal of ORS 469.409 would result in mischief, but this should be vetted with all the site certificate holders.

Section 71: Conforming Amendments--ORS 469.300

This section would revise ORS 469.300 by adding definitions of "generating facility" and "nongenerating facility."

Changes: There were no substantive changes to this section.

Analysis: The definition of generating facility appears to have left off 11(a)(J) from the list.

Section 72: Conforming Amendments--ORS 469.310

Minor reference revisions.

Changes: There were no substantive changes to this section.

Section 73: Conforming Amendments--ORS 469.373

Minor technical amendments.

Changes: There were no substantive changes to this section.

Section 74: Conforming Amendments--ORS 469.405

Minor technical amendments.

Changes: There were no substantive changes to this section.

Section 75: Conforming Amendments--ORS 469.407

Minor technical amendments.

Changes: There were no substantive changes to this section.

Section 76: Conforming Amendments--ORS 469.504

Minor technical amendments.

Changes: There were no substantive changes to this section.

Section 77: Conforming Amendments--ORS 469.505

Minor technical amendments.

Changes: There were no substantive changes to this section.

Sections 78 - 82: Forestry Carbon Offsets

Changes: With the exception of the repeal of ORS 523.786 in Section 78, this portion of the bill is new in the -31 amendments.

Section 78: Repeal of ORS 526.780, 526.783, 523.786 and 526.789

Repeal of the existing forestry carbon offsets statutes.

Changes: The introduced bill only repealed ORS 526.786 (Rules relating to forestry carbon offsets), but the -31 amendments would repeal all four existing statutory provisions relating to forestry carbon offsets.

Section 79: Revisions to ORS 526.005

This new section would delete the definition of "forestry carbon offset" from ORS 526.005.

Section 80 - 82: Revisions to ORS 536.725, 530.050 and 530.500

These new sections would delete the State Forester's authority to generate/sell carbon offsets under the specified programs.

Sections 83 - 85: Regulation of Landfill Methane Emissions

Changes: This portion of the bill is new in the -31 amendments. They would require the Environmental Quality Commission ("EQC") to adopt command and control standards by July 1, 2021 to reduce methane emissions from non-exempt landfills. While not requiring the adoption of the California standards, the section certainly pushes the EQC in that direction.

Section 86: Expedited Review by Supreme Court

Section 86 states that the sale of allowances by auction is not intended to be a bill for raising revenue subject to Article IV, sections 18 and 25(2) of the Oregon Constitution.

This Section would give original jurisdiction to the Supreme Court for determination of whether the sale of allowances by auction is a bill for raising revenue subject to Article IV, sections 18 and 25(2) of the Oregon Constitution. Any challenge must be filed within 60 days of the effective date of the Act. Review of such a challenge by the Supreme Court is to be given expedited review.

Changes: The appeal deadline tightened in the -31 amendments. As introduced, an appeal needed to be filed by January 1, 2020 while the -31 amendments shorten the appeal period to 60 days after the bill becomes effective. Other wording changes were made, but the deadline shift appears to be the most substantive change.

Section 87: Expedited Review by Supreme Court

Section 87 would give original jurisdiction to the Supreme Court for determination of whether allowance auctions impose a tax subject to Article IX, Section 3a or Article VIII, Section 2(1)(g)

of the Oregon Constitution. Any challenge must be filed within 60 days of the effective date of the Act. Review of such a challenge by the Supreme Court is to be given expedited review.

Changes: The appeal deadline tightened in the -31 amendments. As introduced, an appeal needed to be filed by January 1, 2020 while the -31 amendments shorten the appeal period to 60 days after the bill becomes effective. In addition, as introduced the bill had language identifying specific questions for which the Supreme Court had original jurisdiction, but the -31 amendments drop out the detail.

Sections 88 - 89: Appropriations

These sections would appropriate a yet unspecified amount of General Fund for use by the CPO and by the EJ Task Force.

Changes: There were no substantive changes to this section.

Section 90: Operative Date

This section would cause Sections 4-14, 16, and 18-82 of the bill to become operative on January 1, 2021, but agencies may adopt regulations or take any actions associated with implementing the bill prior to that time.

Changes: The introduced bill had all provisions become operative on January 1, 2021.

Section 91: DAS Report

This Section would require DAS to submit a report by September 15, 2020 on actions being taken to prepare for implementation of the cap & trade program.

Changes: There were no substantive changes to this section.

Section 92: CPO Offset Report

This section would require the CPO to submit a report by September 15, 2031 on the implementation of the offsets program and whether changes to the implementing statute, policies or protocols are advisable.

Changes: No substantive changes were made although more detail was added as to the scope of the report.

Section 93: CPO Exclusion Report

This section would require the CPO to submit a report by September 15, 2025 on the exclusion of aviation fuel and fuel used in watercraft and railroad locomotives from the cap & trade program and whether changes to the implementing statute, policies or protocols are advisable.

Changes: This section is new in the -31 amendments.

Section 94: DOT Fuel Refund Report

This section would require the DOT to submit a report by September 15, 2019 on its assessment of the provision of refunds or credits to offset increased fuel costs attributable to the cap & trade program. The report would consider (a) refunds or credits equal to 100% of the added cost for households with combined incomes at or below 100% of the area median income, and (b) refunds or credits for off-road vehicles used in the agricultural and natural resource sectors.

Changes: This section is new in the -31 amendments.

Section 95: Captions

Captions are for convenience of the reader.

Changes: There were no substantive changes to this section.

Section 96: Emergency Clause

This section would declare an emergency such that the bill would take effect upon passage.

Changes: There were no substantive changes to this section.