2019 Legislative Session Report

OREGON DEPARTMENT OF ENERGY

2019 Legislative Session

Oregon's 2019 legislative session came to a close on June 30. There were 2,768 bills, memorials, and resolutions introduced during the session. Of those, the legislature passed 1,205 into law.

A number of the measures passed by the legislature directly or indirectly affect the Oregon Department of Energy. If you have questions about 2019 energy-related legislation, please contact Government Relations staff.

Agency Leadership

Janine Benner	Director
Alan Zelenka	Assistant Director, Planning and Innovation
Todd Cornett	Assistant Director, Energy Facility Siting
Ken Niles	Assistant Director, Nuclear Safety and Emergency Preparedness
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Jennifer Kalez	Communications Director

Copies of the 2019 enrolled bills (the copy the Governor signs) may be found on the legislative website: https://olis.leg.state.or.us/liz/2019R1/Measures/list/

Measures signed into law are known as "session laws" and are available on the legislative website under Oregon Laws. Permanent Laws passed during the 2019 Legislative Session will not be codified until the 2019 edition of Oregon Revised Statutes is released. The 2019 ORS will be distributed and made available online late summer 2019.

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LEGISLATION PASSED

Legislative Assembly

2020 Legislative Assembly Rules

HCR 38
Filed with Secretary of State

HCR 38 sets out the following limitations for the 2020 Legislative Session:

Each Senator may request no more than one draft of a measure from the Office of the Legislative Counsel, and for submission for introduction.

Each Representative may request no more than two drafts of measures from the Office of the Legislative Counsel, and for submission for introduction.

On behalf of the executive branch, the Governor may request no more than five drafts of measures from the Office of the Legislative Counsel, and for submission for introduction.

The Chief Justice of the Supreme Court may request no more than five drafts of measures from the Office of the Legislative Counsel, and for submission for introduction.

The limitations on introduction of measures do not apply to:

The Joint Committee on Ways and Means; measures requested and approved for introduction by the President of the Senate; measures requested and approved for introduction by the House Committee on Rules.

All requests for measures must be accompanied by brief summaries with a description of the problem to be solved and the proposed solution.

Members, committees, the Governor and the Chief Justice must submit requests for draft measures to the Office of the Legislative Counsel by 5:00 p.m. on November 22, 2019.

The Office of the Legislative Counsel must deliver drafts of measures to requesters by 5:00 p.m. on January 13, 2020.

Requestors of measure must submit drafts for introduction to the Senate Desk and the House Desk by 5:00 p.m. January 17, 2020.

The President of the Senate, the House Committee on Rules and the Joint Committee on Ways and Means are not subject to the drafting deadlines.

House Measures

Clean Diesel

HB 2007
Chapter: 645
Effective Date: August 9, 2019

HB 2007 addresses several areas associated with promoting clean diesel engines and uses of the Environmental Mitigation Trust Agreement funds.

The bill authorizes the Department of Environmental Quality to award grants beyond those currently authorized for diesel engine powered school buses. The grants must prioritize reducing diesel particulate matter emissions from diesel engines; or use by the department as matching funds under the Diesel Emission Reduction Act Program in the Energy Policy Act of 2005.

The bill creates new clean diesel conditions and specific standards for vehicle titling and/or registration for certain diesel engine powered vehicles in Clackamas, Multnomah, and Washington counties. New clean diesel engine requirements prohibiting issuance of title and registration are phased in over a number of years according to the following schedule:

> 2023: Registering medium-duty and heavy-duty vehicles model year 1996 and older.
>
> 2025: Titling medium-duty vehicles 2009 or older; and titling heavy-duty vehicles 2006 or older.
>
> 2029: Registering medium-duty vehicles model year 2009 or older; registering heavy-duty vehicles owned by a public body; model year 2009 or older and registering heavy-duty vehicles model year 2006 or older.

Alternatively, a vehicle in Clackamas, Multnomah or Washington counties that otherwise would be subject to the prohibition may be titled or registered if the engine has been retrofitted with approved retrofit technology as specified by rules to be adopted by the Environmental Quality Commission.

The bill provides exemptions from meeting the new clean diesel emission reduction program, including for farm vehicles, ambulances and other emergency vehicles, and antique vehicles, and authorizes the Department of Environmental Quality to develop rules to determine if engines meet clean diesel requirements. The DEQ is also required to adopt a voluntary emission control label program for construction equipment powered by a nonroad diesel engine and operated in Oregon.

The Department of Transportation is directed to report by September 15 every year to the interim committees of the Legislature on transportation and the environment on trends in the registration of medium- and heavy-duty trucks in the state, and to identify any effects on registrations of the prohibition on older diesel engines in the three-county area.

HB 2007 also establishes requirements for the use of clean diesel equipment in state agency public contracts valued at $20 million or more, and located in Multnomah, Clackamas, or Washington county.

The bill establishes the Supporting Business in Reducing Diesel Emissions Task Force. The Task Force will look for ways to support businesses in reducing diesel emissions by considering public funding strategies, evaluating and developing recommendations for funding, developing state-wide strategies to encourage replacement, repower or retrofitting of medium-duty and heavy-duty trucks owned outside of the tri-county area, and identify barriers that exist under clean diesel provisions in public contracting.

Electric Vehicle Facility Procurement

HB 2093
Chapter: 104 (2019 Laws)
Effective Date: January 1, 2020

HB 2093 authorizes the Department of Administrative Services (DAS) to contract or create agreements with other entities to acquire, install, maintain or operate Electric Vehicle devices or facilities.

The installation of electric vehicle chargers is currently considered a “public improvement” project which requires a separate competitive bidding process for both the equipment and the installation of the equipment. HB 2093 exempts a device or facility used for delivering electricity to the public for electric motor vehicles from being defined as a “public improvement” when the sole purpose is participating in, sponsoring, conducting or administering cooperative procurements.

The bill requires vendors under contract by the state to pay workers a prevailing rate of wage under ORS 279C.800 for any work related to electric vehicle facility installation.

The bill also modifies language which will allow for a uniform pricing agreement and permits DAS to establish a price, provided it recovers the maximum reasonable amount of operating costs and does not exceed 110 percent of the average market price.

And finally, the bill expands the requirements for the Department of Administrative Services’ report to the Legislative Assembly in 2021 and 2023 to include the implementation of the amendments to ORS 276.255 by HB 2093

Baseline Environmental Standards

HB 2250
Chapter: 158
Effective Date: January 1, 2020

HB 2250 requires the Department of Environmental Quality and the Oregon Health Authority to regularly assess changes to federal environmental law to determine whether the changes result in significantly less protection of the public health, environment, or natural resources than the federal environmental laws in effect on January 19, 2017. If changes resulting in significantly less environmental protection are found, the state agencies must take necessary actions to ensure continuance of at least the same level of environmental protection. The bill does not prevent DEQ and OHA from taking actions that are more protective than federal standards.

The bill includes two definitions:

- "Baseline federal standards" as those federal environmental laws that were in effect on January 19, 2017, in the manner in which they were in effect (e.g., stringency).
- "Federal environmental law" is defined to include the Clean Air Act, the Safe Drinking Water Act, and Federal Water Pollution Control Act, as well as any regulations related to these Acts.

Energy Facility Siting

HB 2329
Chapter: 650 (2019 Laws)
Effective Date: January 1, 2020

HB 2329 changes the definition of energy facilities by raising the jurisdictional threshold for certain renewable energy projects subject to the state's Energy Facility Siting Council's siting certificate requirements. While the bill exempts certain renewable energy facilities from EFSC review, it also establishes standards, in addition to those already required by the Land Conservation and Development Commission for local jurisdictional projects, necessary for counties to authorize siting energy facilities and issue permits.

The following projects would no longer fall under the jurisdiction of the Energy Facility Siting Council:

a. Solar PV facilities on "high value farmland" as defined in ORS 195.300 less than or equal to 160 acres (prior to passage the threshold was 100 acres)

b. Solar PV facilities on "predominantly cultivated" land or land with Class I-IV soils less than or equal to 1,280 acres or 2 square miles (prior to passage the threshold was 100 acres)
c. Solar PV facilities on "other land" less than or equal to 1,920 acres or 3 square miles (prior to passage the threshold was 320 acres)
d. Wind power facilities less than 150 MW peak capacity (prior to passage the threshold was 105 MW peak capacity)
e. Geothermal power facilities less than 55 MW peak capacity (prior to passage the threshold was 38.5 MW peak capacity)

Large "associated transmission lines" would be excluded from Energy Facility Siting Council siting certificate requirements. (Currently EFSC has jurisdiction – subject to limited exceptions - over transmission lines more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in Oregon. EFSC also has jurisdiction over "associated transmission lines," which are defined as "new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid." The bill exempts from EFSC jurisdiction large transmission lines –230 kV capacity or more, 10 miles or more - that are associated transmission lines – i.e., built to connect an energy facility to the grid – while maintaining EFSC jurisdiction over associated transmission lines that are less than 230 kV capacity and 10 miles in length or less).

The bill establishes a new category of regulated facility – a "renewable energy facility" which is defined as "an electric power generating plant that generates electricity from a renewable energy source."

An application for a land use permit to establish a renewable energy facility must be made to a County under ORS 215.416. These renewable energy facilities would have been large enough for EFSC jurisdiction under the current thresholds but are not large enough for EFSC jurisdiction under the new HB 2329 thresholds.

The definition of "renewable energy facility" expressly does not include:

- an energy facility as defined in ORS 469.300 (i.e., those facilities still subject to EFSC jurisdiction)
- solar PV facilities that are not large enough to meet the old EFSC thresholds and thus do not qualify as a "renewable energy facility" under HB 2329 – i.e., 100 acres or less on high-value farmland, 100 acres or less on land predominantly cultivated or predominantly composed of class I to IV soils or 320 acres or less on other land).
- a net metering facility as defined in ORS 757.300; or
- a community solar project as defined in ORS 757.386.

Therefore, net metering facilities and community solar projects could still feasibly be subject to EFSC jurisdiction if they meet the new EFSC jurisdictional thresholds.

Pursuant to ORS 469.501, EFSC has established several standards for the siting, construction, operation and retirement of energy facilities, which EFSC has adopted in OAR 345-022-0000 to 345-022-0120. In order to issue a land use permit to a "renewable energy facility," a county must require that the applicant comply with certain standards. These standards, described below, do not include all of the standards that EFSC applies. Further, those standards that the Counties must apply, while similar to certain EFSC standards, are not necessarily as comprehensive as those under the EFSC site certificate process.

Standards Counties Are to Apply to Renewable Energy Facilities

The bill establishes a fish and wildlife standard for renewable energy facilities sited by local jurisdictions. This standard is similar to Oregon Department of Fish and Wildlife policies but not identical. It requires local jurisdictions to consult with ODFW prior to submitting a final application to the county regarding fish and wildlife habitat impacts and any mitigation plan that is deemed necessary by the county. A habitat assessment must be conducted of the proposed development site along with a mitigation plan to address significant fish and wildlife habitat impacts consistent with the administrative rules adopted by the State Fish and Wildlife Commission. The bill remains silent on how it is determined if mitigation is necessary, how assessments must be conducted, and what constitutes a significant fish and wildlife habitat impact.

HB 2329 establishes a Cultural Resources standard for renewable energy facilities sited by local jurisdictions. The standard includes protection of archaeological objects or sites if they are determined to be significant or important and listed on the National Register of Historic Places under the National Historic Preservation Act, inventoried in a local comprehensive plan; or evaluated as a significant or important archaeological object or archaeological site. The bill does not require the evaluation and protection of resources that are "likely" to be listed on the National Register. Resources that are "likely" listed on the National Register make up the majority of tribal cultural resources. The bill also does not require field surveys to identify archaeological objects, sites, and other resources at the time of application.

The bill adds a retirement standard for renewable energy facilities sited by local jurisdictions that is similar to the EFSC retirement standard. Applicants for a local jurisdictional site certificate must demonstrate to the satisfaction of the county that the site for a renewable energy facility, taking mitigation into account, can be restored adequately to a useful, nonhazardous condition following permanent cessation or construction or operation of the facility and that the applicant has a reasonable likelihood of obtaining financing to restore the site.

Finally, HB 2329 requires that renewable energy facilities comply with any standards adopted by the Energy Facility Siting Council under ORS 469.501 "that the county determines are applicable." The bill remains silent on how counties should determine what EFSC standards are applicable.

Opt-in / Deferral to EFSC

The bill allows developers, at their discretion, to "opt-in" to the Energy Facility Siting Council process for solar photovoltaic projects and associated transmission lines, which are not automatically state jurisdictional (i.e., that don't meet the new EFSC jurisdictional thresholds). This is already allowed for wind projects.

The bill allows counties to defer regulatory authority to the Energy Facility Siting Council for solar photovoltaic projects, wind projects and associated transmission lines which are less than the new thresholds for Energy Facility Siting Council jurisdiction. The bill does not establish criteria or specific circumstances related to a county deferring authority to the Energy Facility Siting Council. However, the county must first "consult" with the developer prior to deferring authority to EFSC and may not defer regulatory authority to EFSC once a permit application has been submitted by the developer to the county. Once the permit application has been submitted, a county may not elect to defer jurisdiction to EFSC. The bill does not address what would happen should a county wish to defer to EFSC but a developer object to such deferral. Further, the bill does not require a developer to meet or "consult" with a county prior to submitting a permit application. Some counties may have such a requirement already, some may not. In the absence of such a requirement, a developer could submit its permit application to a county with no advance notice, and the county would not be allowed to defer authority to EFSC, even if it wanted to do so. This could defeat the intent of allowing a county to meaningfully consider a project and assess if it wants to manage the permitting itself or defer to EFSC.

The deferral section of the enrolled bill states that "[a]n election by a developer or a local government under this subsection is final" – thus, once a developer or county elects to defer authority to EFSC, they may not subsequently seek to go through a county permitting process.

HB 2329 requires the county, upon receipt of an application for a permit, to provide notification to the State Historic Preservation Office (SHPO), affected federally recognized tribes, Oregon Department of Energy, Oregon Department of Fish and Wildlife, Oregon Department of Aviation, and the US Department of Defense. The bill does not include notification provisions for the Department of Land Conservation and Development which has administrative rules that must be implemented by the counties, or the Oregon Department of Agriculture, which monitors the conversion of farmland and implements the threatened and endangered species program for rare plants. The bill also does not establish how it is determined which federally recognized tribes would be affected by a project.

The bill allows, but does not require, cost-recovery reimbursement through a joint agreement by the county and developer to:

a. SHPO and tribal staff to review and submit comments related to historic, cultural and archeological resources
b. ODFW to review and submit comments related to fish and wildlife habitat

c. ODOE to review and submit comments related to financial assurance/retirement, council standards the county determines are applicable to the facility and any other issues the county may require.

Each agency is required to submit a reasonable cost estimate to receive compensation. The Department of Land Conservation and Development and Oregon Department of Agriculture are not eligible for reimbursement for any review they conduct and comments they submit.

Public Records

HB 2353
Chapter: 205
Effective Date: June 4, 2019

HB 2353 would authorize the Attorney General, district attorney, or court to award a $200 penalty fee to a public records requester if a public body responded to a request with undue delay or failed to be responsive to a request. The term "undue delay" is not defined.

The bill allows the court to order a fee waiver or fee reduction if the public body responds with undue delay or fails to respond to a record request as prescribed under ORS 192.329.

Green Energy Technology

HB 2496
Chapter: 160
Effective Date: September 29, 2019

HB 2496 makes several changes to the governing statutes (ORS 279C.527 and 279C.528) for the green energy technology program administered by the Department of Energy. The program requires contracting entities to make a 1.5 percent investment in green energy technology on public improvement projects. The bill provides additional pathways for complying with the 1.5 percent requirement and gives additional rulemaking authority to the Department of Energy for development of requirements, methods and specifications for determining: the total solar resource fraction that is applied to public improvement projects or public improvement sites; costs to be included in the total contract price; and energy use efficiency. The changes made by the bill will apply to new public improvement contracts first advertised on or after January 1, 2020, or if not advertised, entered into on or after that date.

The bill reduces the current passive solar threshold from 20 percent to 10 percent. This change enables passive solar strategies that reduce energy use by at least 10 percent, compared to

building code or state energy efficiency design standards to be eligible to count toward the 1.5 percent green energy investment requirement.

Battery storage has been added to the definition of "green energy technology" if the battery storage is part of a system that generates electricity from solar or geothermal energy on the site of the public improvement. Through this measure, qualifying battery storage joins solar or geothermal energy for space/water heating or electricity generation and passive solar energy as eligible green energy technologies.

HB 2496 specifically exempts airports from the definition of "public buildings" for purposes of compliance with the green energy technology program.

The bill defines "total contract price" and specifies what is included in/excluded from the definition and provides guidance on its determination. Total contract price is defined to include all contracts and subcontracts involved in constructing, reconstructing, or performing major renovation of a public building, including elements such as design, architecture, engineering, land surveying, site preparation, labor, materials, demolition, insurance, inspections, certifications, among others. It excludes public project costs solely undertaken for the purpose of seismic retrofits.

Some other direct exclusions included in the bill are costs of advertising, soliciting or evaluating bids, costs of moving employees and equipment, cost of renting temporary facilities, storage costs, and labor costs for employees.

The bill establishes a $5 million minimum threshold for total contract price for which investment in green energy technology becomes a requirement for public contracting agencies. Public improvement contracts with a total contract price of less than $5 million are now exempt from green energy technology program requirements. This threshold was previously set at $1 million in department rules.

HB 2496 adds energy reduction or offset and associated costs, or preparing for energy reduction or offset, in the public building as an alternative eligible expenditure to meet the 1.5 percent green energy technology investment requirement if a public contracting agency determines that green energy technology is not appropriate. The public building must also meet certain solar site access conditions, including having a total solar resource fraction (TSFR) of 75 percent or less. Under this provision, a public contracting agency could meet either half, or all, of their 1.5 percent mandate with energy efficiency if investments in green energy technology is not appropriate. If TSRF is greater than 75 percent, improving energy use efficiency is not an allowable alternative to green energy technology.

The bill requires written determinations regarding whether green energy technology is an appropriate investment. Part of the determination must include the results of an analysis for total solar resource fraction (TSRF) available for use at the site on which a contracting agency intends to use solar energy to meet its green energy technology investment requirement.

The bill allows a contracting agency to consolidate into one public building or in one location away from the site of the public building, all or substantial portion of green energy technology expenditures. Alternative pathways (like energy efficiency or woody biomass) are not allowed to be consolidated. The total consolidated amount that an agency expends on green energy technology must be an aggregate of all the amounts that would have been required for each building individually.

Solar Incentive Program

HB 2618
Chapter: 655
Effective Date: September 29, 2019

This bill creates a new $2 million Rooftop Solar Incentive Fund for solar electric systems and paired solar and solar storage systems installed for residential customers and low-income service providers on real property in Oregon. HB 5050 provides $2,000,000 in funding for the Rooftop Solar Incentive Fund. ODOE's administrative costs to run the program are included in the funding.

The incentives established by the program are provided in the form of rebates, with no more than 50 percent of the rebate budget to be used for low-income service providers. A carve-out of 25 percent of the rebate budget is to be reserved for low- and moderate-income households and low-income service providers. The rebates are paid to the installing contractor of a system. An additional rebate is established for energy storage systems paired with solar electric systems.

The bill directs ODOE to develop rules and administer the incentive program which would begin on January 1, 2020. Specific rule making authority is stated for defining "low-income service providers." Rule authority also includes: establishing preferences for lower income participants and low-income service providers, establishing system eligibility requirements, enforcement including inspections, administration of the program and establishing incentive amounts.

The bill limits rebates based on a percentage of net cost. Rebates may cover up to 40 percent of net cost for a residential system installed for a customer that is not low- or moderate-income and 60 percent of net cost for a low-income participant or low-income service provider. Specific rebate caps are also provided: for residential projects (low-and moderate-income customers, and other residential customers not meeting that definition) the caps are $5,000 for a solar electric system and $2,500 for an energy storage system; for low-income service providers the caps are $30,000 for a solar electric system and $15,000 for an energy storage system.

The bill includes provisions to ensure that the customer of the contractor has received the full value of the rebate as a reduction in the net cost of the purchase, construction or installation of the system, and that the rebate was clearly reflected on an invoice provided to the customer. It

also allows ODOE to revoke and recover all or a portion of the rebate if the director finds the rebate was obtained by fraud or misrepresentation, or by mistake or miscalculation.

The bill allows ODOE to coordinate with the Housing and Community Services Department and other entities including non-profit organizations and utilities as needed to develop the incentive program.

HB 2618 requires ODOE to prepare and deliver an annual report to the Legislative Assembly by September 15 on rebates claimed for solar electric systems and paired solar and storage systems during the previous calendar year. The bill outlines specific information to be included in the report. The report must include a review by the department addressing whether the goals of the rebate program are being met and recommendations on whether the rebate amount limits set forth in the program should be modified. The report may include recommendations for legislation.

The program established by HB 2618 sunsets January 2, 2024 and any moneys remaining in the Rooftop Solar Incentive Fund on the date of the sunset that are unexpended, unobligated and not subject to any conditions shall be transferred to the General Fund.

Senate Measures

Thermal Renewable Energy Certificates

SB 38
Chapter: 76
Effective Date: January 1, 2020

SB 38 clarifies that thermal renewable energy certificates issued to a facility that generates electricity using biomass, that also generates thermal energy for a secondary purpose, are eligible compliance instruments for the Oregon Renewable Portfolio Standard and treated in the same manner and subject to the same requirements for issuance, transfer and use as all other renewable energy certificates created pursuant to the system established under ORS 146A.130.

Thermal renewable energy certificates are eligible compliance instruments for the Oregon Renewable Portfolio Standard if the generating facility meets the requirements for: age of facility (ORS 459A.020); location of both generation and point of delivery in the transmission system (ORS 469A.135); and, eligible biomass resources (ORS 469A.025(3)).

State Agency Administration

SB 72
Chapter: 278 (2019 Laws)
Effective Date: January 1, 2020

SB 72 makes changes to three areas of statute that govern the state's administration and management of travel awards, state building rentals and telecommuting. The bill also creates a new definition for "state agency" as it applies to certain payments and receipt of funds, including for managing and reporting on debt collection, to include semi-independent state agencies and to exclude the judicial and legislative branches of government.

As the bill relates to travel awards, it removes the requirements for state agencies to monitor and track travel awards earned and used by individual employees. Further, it removes the requirement for agencies to report annually to the Department of Administrative Services.

SB 72 repeals three statutes related to renting and leasing space in DAS owned and/or managed buildings. The bill allows DAS to rent any space to public or private entities and is not limited to office space and spells out conditions for leases stating the rentals will not disrupt building operations and will be done with the advice of the occupying agency.

The bill exempts "newly acquired" state-owned buildings from local parking code requirements.

It eliminates the requirement for DAS, in consultation with the Department of Energy, to provide a biennial report on telecommuting data to the Joint Committee on Technology, or a similar committee of the Legislature.

The bill directs DAS, in consultation with the State Chief Information Officer and state agencies, to work together to identify barriers and solutions to promote telecommuting for state employees.

Renewable Natural Gas Utility Program

SB 98
Chapter: 541 (2019 Laws)
Effective Date: September 29, 2019

SB 98 will allow a natural gas utility operating in Oregon to buy renewable natural gas (RNG) and sell it to their retail customers, and to invest rate payer funds in infrastructure for acquisition, processing, transport and production of biogas and renewable natural gas within Oregon.

SB 98 defines two types of natural gas utilities based on the number of active accounts (large; ≥ 200,000 accounts, and small; < 200,000 accounts) and identifies a suggested portfolio of increasing amounts of RNG to be voluntarily purchased by large natural gas utilities over a 30-year timeframe. Small natural gas utilities can enter into a similar program, with the volumes of RNG and timelines to be determined when they file with the Oregon Public Utility Commission (PUC) for an RNG program. For both large and small utilities prudent costs for procurement of RNG from third parties and investments in infrastructure may be recovered through an automatic adjustment clause. A new definition of RNG is proposed. There is an investment cap of five percent of annual revenue for large natural gas utilities and a to-be-determined investment cap for small natural gas utilities.

The bill makes legislative findings that renewable natural gas (RNG) provides benefits to natural gas customers and the citizens of Oregon and that the development of RNG resources should be encouraged to support a transition to a low carbon economy in Oregon. The bill declares that the emissions from direct use of natural gas can be reduced by procuring RNG and investing in RNG infrastructure.

The PUC is authorized to develop rules that encourage procurement of RNG and investment in RNG infrastructure, while protecting Oregon customers. These rules should include reporting requirements, and processes for natural gas utilities to fully recover prudently incurred costs associated with the RNG programs. The bill states the PUC may not prohibit an affiliated interest of a large or small gas utility from making capital investments in a biogas project if the affiliated interest, as defined in ORS 757.015, is not a public utility.

SB 98 contains a new definition of biogas as "a mixture of carbon dioxide and hydrocarbons, primarily methane gas released from the biological decomposition of organic materials." Other definitions include: large and small gas utilities (200,000 accounts or more and less than 200,000 accounts), qualified investments (any capital investment incurred in renewable natural gas infrastructure for the purpose of providing natural gas service under a renewable natural gas program), a definition of excluded projects from the classification "Qualified investment," (single livestock operation that produces more than 250 standard cubic feet of biogas per minute, or a single biogas source that produces more than 1,000 standard feet of biogas per minute would be excluded), renewable energy source (hydroelectric, geothermal, solar photovoltaic, wind, tidal, wave and biogas), and renewable natural gas (any of the following products processed to meet pipeline quality standards or transportation fuel grade requirements*:* biogas, hydrogen derived from renewable energy sources, or methane derived from a combination of two or more of the following: biogas, hydrogen derived from renewable energy sources, waste carbon dioxide), and a definition of RNG infrastructure to include all equipment and facilities for the production, processing, pipeline inter-connection and distribution of renewable natural gas to be furnished to Oregon customers.

SB 98 allows large natural gas utilities to make qualified investments to meet a portion of their sales to retail customers with RNG. The bill imposes a maximum share of a large gas utility's sales that could be met with RNG, starting at five percent in 2020 and increasing every five

years until reaching a maximum of 30 percent by 2050 (five percent 2020-2024, 10 percent 2025-2029, 15 percent 2030-2034, 20 percent 2035-2039, 25 percent 2040-2044, and 30 percent 2045-2050). Furthermore, the bill states that the PUC will adopt ratemaking mechanisms that ensure recovery of all prudently incurred costs. This includes cost of procurement of RNG from third parties, as-well-as when a qualified investment in the production of RNG occurs and it includes the cost of capital (as defined in the most recent general rate case). The bill also stipulates that prior to making a qualified investment in biogas production that is upstream of conditioning equipment, pipeline interconnection or gas cleaning, a large natural gas utility will engage in competitive bidding.

Under the bill, small gas utilities can opt into a separate RNG program by filing with the PUC. The small gas utility program will have a rate cap limiting the cost of procuring RNG from third parties and for qualified investments in RNG infrastructure. The rate cap is to be defined in the future but must be expressed as a percentage of the total revenue requirement as approved by the commission in the most recent general rate case. The rate cap must include any value received from resale of RNG and any environmental credits that the RNG producer chooses to include with the sale of the RNG, and any savings achieved through avoidance of conventional gas purchases or development. The filing with the PUC, at a minimum, must include a total volume of RNG over a specified period of time, and identification of qualified investments that the small gas utility will make in RNG infrastructure. The filing may be revised from time to time.

SB 98 directs the PUC to develop and adopt rules no later than July 31, 2020.

Division of Exclusive Farm Use Lands for Utility Facilities

SB 408
Chapter: 262 (2019 Laws)
Effective Date: January 1, 2020

SB 408 allows a county to approve a proposed division of land in an exclusive farm use zone for nonfarm uses associated with utility facilities necessary for public service. The bill adds utility facilities necessary for public service to the list of allowable divisions of EFU land for nonfarm purposes. The bill limits the division of land to no more than the minimum size necessary for the use. Land divided for this purpose may not be rezoned without following the normal rezoning procedures and land use goals, including any required goal exceptions.

Electric Vehicle Adoption

SB 1044
Chapter: 565
Effective Date: January 1, 2020

SB 1044 creates several new provisions around transportation electrification. These provisions include a new definition for "zero emission vehicles" which means a battery electric vehicle, a plug-in hybrid electric vehicle or a hydrogen fuel cell vehicle or any type of vehicle defined by the State Department of Energy or the Environmental Quality Commission by rule if the vehicle's type and fuel are consistent with the goals set forth in the legislation.

The bill establishes new legislative findings indicating that the state will not meet the greenhouse as emission reduction goals set forth in ORS. 468A.205 absent significant changes in the types of motor vehicles used by people and businesses in Oregon. Additionally, the bill cites previous findings by the Legislature, codified in ORS 757.357, that transportation electrification is necessary to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, meet this state's greenhouse gas emission reduction goals set forth in ORS 468A.205 and improve the public health and safety. The bill states that the purchase and ownership of zero-emission vehicles can reduce the overall energy cost paid by Oregon households and the specific costs associated with meeting transportation needs, that a robust and well-operating market for zero-emission vehicles is essential to meeting the state's greenhouse gas emission reduction goals, and that additional support and innovative solutions are necessary to ensure all Oregon households benefit from transportation electrification.

The bill highlights three legislative goals: transformation of the motor vehicle market must occur no later than 2035; programs and support must be provided to accelerate Oregonians' purchase and use of zero-emission vehicles until greenhouse gas emissions from vehicles are declining at a rate consistent with the state's greenhouse gas emission reduction goals as set by ORS 468A.205; and the adoption and use of zero-emission vehicles must be evaluated regularly to determine whether the rate of the adoption and use of zero-emission vehicles will put the state on course to meet its greenhouse gas reduction goals.

Executive department agencies are required to lead by example by purchasing or leasing zero emission light duty vehicles or medium duty vehicles and adopting policies and rules that promote the goals set out in the bill. Executive department agencies are required to consider recommendations submitted by the Department of Energy in their biennial report on electric vehicles to the Governor and the Legislative Assembly.

No later than September 15 of each odd-numbered year, SB 1044 requires the Oregon Department of Energy to submit a biennial report to the Governor and an interim legislative committee related to the environment on adoption of zero-emission vehicles in Oregon, and the progress the state is making to achieve reductions in greenhouse gas emissions in the

transportation sector. The report must include: a review of Oregon's market for zero-emission vehicles and any barriers to adoption; an assessment in the state's progress in meeting the goals set by the legislature in the bill; and predictions about when Oregon will meet these transformational goals. The department is allowed to contract with third parties to complete the report.

Under the bill the department is further required to assess the state's progress in promoting the goals set by the Legislative Assembly which include: transformation of the motor vehicle market must occur no later than 2035; programs and support must be provided to accelerate Oregonians' purchase and use of zero-emission vehicles until greenhouse gas emissions from vehicles are declining at a rate consistent with the state's greenhouse gas emission reduction goals as set by ORS 468A.205; and the adoption and use of zero-emission vehicles must be evaluated regularly to determine whether the rate of the adoption and use of zero-emission vehicles will put the state on course to meet its greenhouse gas reduction goals.

The bill provides further detail about how the department is to perform its assessment of Oregon's progress in the transportation sector. First, the department must focus on commercially available, or nearly available, zero-emission vehicle technology. The department must evaluate whether reductions in the share of greenhouse gas emission from motor vehicles are consistent with the greenhouse base emissions reduction goals in ORS 468A.205. Lastly, SB 1044 instructs ODOE to forecast whether zero-emission vehicle sales figures listed in the bill will be met:

- 50,000 registered motor vehicles will be zero-emission vehicles by 2020;
- At least 250,000 registered motor vehicles will be zero-emission vehicles by 2025; and,
- At least 25 percent of registered motor vehicles, and at least 50 percent of new motor vehicle sales will be zero emission vehicles by 2030; and,
- Zero-emission vehicles will represent 90 percent of annual new motor vehicle sales by 2035.

Further, the bill instructs ODOE to evaluate eleven specific areas including: sales numbers, ownership numbers, demographic distribution of zero-emission vehicles, zero-emission charging infrastructure availability and reliability, cost differences between zero-emission and fossil-fueled vehicles before and after state and federal incentives are applied, zero emission vehicle platforms available in all sectors, Oregonians' awareness of zero-emission vehicle options and benefits, the carbon intensity of Oregon's transportation sector, the general state of electrification for all transportation modes, opportunities to manage impacts to the electrical grid, and in consultation with the Oregon Department of Transportation, an assessment of impacts on revenues that would otherwise accrue to the Highway Trust Fund (ORS 366.505).

The bill allows ODOE to make recommendations in their biennial report, including recommendations for legislation, if they determine that the state is not on course to meet the emission reduction goals established by the Legislative Assembly.

The bill also requires the Department of Administrative Services to establish a goal for the state fleet of 25 percent of all light-duty vehicle purchases and leases be zero-emission vehicles by 2025. The bill defines light-duty vehicles generally as vehicles with a gross vehicle weight of 8,000 pounds or less, however police, fire and certain specialty vehicles are exempt. The bill allows state agencies to purchase or lease alternative fuel or low-emission vehicles as an alternative if procuring a zero-emission vehicle is not feasible. Eligible vehicles include all light-duty vehicles but excludes police, fire, and certain types of trucks. Beginning on January 1, 2029 all light-duty vehicle purchases, or leases are required to be zero-emission vehicles unless they meet the same feasibility criteria.

State agencies are already required to report annually to ODOE and DEQ. The bill specifically asks for information on the number of alternative fuel vehicles they own, the number they converted to an alternative fuel, and the amount of the alternative fuels used in these vehicles. The bill would add the number of zero-emission vehicles and the amount of electricity used to this report. It also requires any agency that purchases non- zero-emission vehicles to explain the reason a zero-emission vehicle purchase was not feasible and excludes cost difference as a feasibility determination.

SB 1044 makes fleet audits and the purchase or lease of zero-emission vehicles an allowable use of public purpose charge funding. Once a school district has conducted a fleet audit, they may expend funds to purchase or lease zero-emission vehicles or to install electric vehicle charging stations.

LEGISLATION CONSIDERED (not passed)

House Measures

Climate Action

HB 2020B
Did Not Pass

The legislative intent outlined in HB 2020-B included obtaining reductions in greenhouse gas (GHG) emissions through a comprehensive suite of existing and future measures that included a legally binding, market-based carbon pricing mechanism. The bill directed that the suite of measures must lay out a predictable pathway to success, be flexible and adaptable to changing circumstances, be based on best available science, recognize the benefit of Oregon's natural and working lands in reducing carbon, and be designed to reduce emissions and to successfully transition to a clean energy economy with benefits available to all Oregonians.

HB 2020-B modified Oregon's statewide GHG emissions reduction goals set forth in ORS 468A.205 to achieve a 45 percent reduction in *anthropogenic GHG emissions levels* from 1990 levels by 2035, and an 80 percent reduction below 1990 levels by 2050. The bill created a Climate Policy Office (CPO) within Oregon Department of Administrative Services (DAS) and directed the CPO to adopt by rule a market-based GHG emissions reduction mechanism, called the Oregon Climate Action Program (OCAP). The bill established four primary purposes for the OCAP:

a. To achieve a 45 percent reduction in *total levels of regulated GHG emissions* (a subset of *anthropogenic GHG emissions levels*) from 1990 levels by 2035, and an 80 percent reduction below 1990 levels by 2050;
b. To promote greenhouse gas emissions sequestration and mitigation;
c. To promote adaptation and resilience of natural and working lands, fish and wildlife resources, communities, the economy, and this state's infrastructure in the face of climate change and ocean acidification; and
d. To provide assistance to households, businesses, and workers impacted by climate change or climate change policies that allow for the State of Oregon to achieve its GHG reduction goals.

The bill created the Joint Committee on Climate Action within the Legislative Assembly to provide oversight for the CPO and OCAP. The bill also established the Oregon Climate Board to advise the CPO in developing rules and policies and in carrying out any other duties, functions, and powers vested in the office by law. The Director of the Oregon Department of Energy (ODOE) was named as an ex officio, non-voting member of the Oregon Climate Board.

HB 2020-B abolished the Oregon Global Warming Commission (OGWC), becoming operative on January 1, 2020, and repealed the statute requiring ODOE to staff the commission. The bill required transfer of OGWC records and some commission duties to the Oregon Climate Board, including: (1) making recommendations for statutory and administrative changes, policy measures and other recommendations to be carried out by state and local governments, businesses, nonprofit organizations or residents; (2) developing an outreach strategy to educate Oregonians about climate change, its impacts, and climate policy approaches, and work with ODOE and other entities to implement the outreach strategy; and (3) submitting a biennial report to the Legislative Assembly by March 31 each odd-numbered year that described Oregon's progress toward achieving its GHG emissions reduction goals in ORS 468A.205.

HB 2020-B repealed the Energy Facility Siting Council (EFSC) carbon dioxide emissions standards. The bill required that no later than January 1, 2022, EFSC must complete rulemaking to amend or repeal its rules that apply a carbon dioxide standard to fossil-fueled power plants and non-generating facilities. When a certificate holder requested a site certificate amendment on or after January 1, 2021 for an EFSC-jurisdictional facility that emits carbon dioxide, ODOE's Siting Division staff (on behalf of the Council) would have removed all site certificate conditions related to the repealed carbon dioxide standard.

The bill required the Housing and Community Services Department (HCS) and ODOE to jointly develop a biennial statewide energy burden report and transmit it to the Governor and the Legislative Assembly no later than November 2 of every even-numbered year. The bill authorized the agencies to jointly adopt rules for gathering data necessary to prepare the report. The departments were required to consult with consumer-owned utilities regarding the availability and collection of data. The bill requires that HCS, in consultation with ODOE, to convene and provide staff support to an Energy Burden and Poverty Working Group.

The bill created a detailed framework for how the OCAP shall operate and be enforced and directed the CPO to conduct rulemaking for filling in other necessary implementation and enforcement details. The OCAP was directed to place an overall limit (cap) on total levels of regulated anthropogenic GHG emissions to achieve the state's GHG reduction goals. The regulated emissions were those (1) from air contamination sources in Oregon whose annual GHG emissions meet or exceed 25,000 metric tons of carbon dioxide equivalent (CO2e); (2) from natural gas powered electric power generation facilities in Oregon regardless of the level of their annual GHG emissions; (3) attributable to the generation of electricity outside this state but that an electric system manager schedules for delivery and consumption in Oregon; (4) attributable to the combustion of natural gas that is sold by the natural gas supplier for use in this state and that is either directly consumed by or resold to persons that are not otherwise regulated; (5) attributable to the combustion of natural gas that the natural gas utility imports, sells or distributes for use in this state and that are not emissions otherwise accounted for; and (5) attributable to the combustion of the fuel that is sold or distributed for use in this state.

The cap is a limit that applied across the sectors covered by the program and not to individual sectors or entities regulated by the program. The cap declined each year by a constant tonnage amount. The bill required the program to provide a market-based mechanism based on a system of allowances to demonstrate compliance with program and state-administered auctions for entities to obtain allowances. The CPO was directed to provide free allocation of allowances to certain entities named in the bill, according to specified methodologies that include various baselines and benchmarking provisions for calculating the number of free allowances they would have received. HB 2020-B also directed how the CPO would set up an offsets program with the OCAP to allow a small percentage of an entity's compliance obligation to be met by offset credits in lieu of allowances. In particular, the bill contains detailed provisions for forestry and agricultural offset protocols, including that forestry offset protocols would have to avoid permanent or temporary net cumulative reductions, attributable to offset projects, in the regional supply of wood fiber available to wood products manufacturing facilities in this state but that did not apply to offset projects located on Indian trust lands or Indian fee lands.

HB 2020-B created certain funds as part of the administration of state proceeds coming from auctions of allowances. The bill set forth requirements for uses of moneys deposited in funds, specified requirements for certain grant programs and procurement preferences, and allocation percentages for the funds to be used for specific purposes. The bill required both retrospective reporting on the distribution and spending of state proceeds from OCAP auctions, and prospective reporting on how the funds would be spent to most effectively meet the statewide GHG reduction and OCAP's goals. Additional required reports to the Legislature included status updates on specific aspects of OCAP implementation and assessments of potential program expansion or program offshoots in the future, including assistance program proposals for residential propane and fuel oil users and commercial/industrial natural gas and propane users. HB 2020-B also required ODOT to produce five biennial reports beginning in 2021 through 2029 on proportionate shares of road user fees and whether users of vehicles powered by different means are paying that share.

HB 2020-B also impacted the authorities of the Public Utility Commission (PUC); the Environmental Quality Commission (EQC) and Department of Environmental Quality (DEQ); and the State Board of Forestry (BOF), State Forester and Oregon Department of Forestry (ODF) in the following ways:

- Authorized the PUC to allow a rate or rate schedule to include differential rates or to reflect amounts for programs that enable public utilities to assist low-income residential customers and sets forth certain requirements for PUC oversight of utility spending related to the OCAP. The bill also authorized the PUC to allow a rate or rate schedule to reflect amounts for investments in infrastructure measures that supported adoption of alternative forms of transportation vehicles.
- Transferred the duties, functions, and powers related to DEQ's GHG reporting program to the CPO, to become operative January 1, 2022, and authorized changes in data reporting processes to support OCAP implementation. Required the EQC to adopt by

rule standards and requirements that were to become operative no later than July 1, 2021 for reducing methane gas emissions from certain landfills in the state.
- Repealed authority for the State Forester and ODF to establish a forestry carbon offset program but retained their authority to market, register, transfer or sell forestry carbon offsets.

HB 2020-B provided for expedited review of certain questions on this 2019 Act to the Oregon Supreme Court upon petition by an interested or affected party:

- Whether the receipt of moneys by the state through the sale of allowances by auction under section 34 rendered this 2019 Act a bill for raising revenue subject to the provisions of Article IV, sections 18 and 25 (2), of the Oregon Constitution.
- Whether auctions conducted under section 34 imposed a tax that was subject to the provisions of Article IX, section 3a, of the Oregon Constitution.
- Whether auctions conducted under section 34 imposed a tax or excise that was subject to the provisions of Article VIII, section 2 (1)(g), of the Oregon Constitution.

And finally, HB 2020-B appropriated funding for DAS, ODF, HCS, HECC, OBBD, DEQ, ODOT, and PUC.

Goal 13 – Land Use Goal Update

HB 2322A
Did Not Pass

HB 2322A would have required the Land Conservation and Development Commission to update the scope, content and name of the statewide planning goal related to energy conservation (Goal 13) to include renewable energy development policies and directions by December 31, 2021. The updated goal would have included an assessment and consideration of the following:

- Identifying adequate and appropriate amounts and types of urban and rural lands to support renewable energy to be developed in the State of Oregon, inside and outside of urban growth boundaries, consistent with the objectives of Oregon's renewable portfolio standards and Oregon's statutory greenhouse gas emissions reduction goals.
- The Oregon Climate Agenda released by the Governor and dated November 28, 2018;
- The energy and land use needs of Oregon's communities;
- Areas where siting renewable energy projects could be appropriately prioritized over or coexist with other land uses;
- The role of efficiency and conservation in meeting energy demand;
- The role of community solar projects;
- The adequacy and appropriateness of lands within urban growth boundaries;
- Protection of agricultural and forest areas;

- Preservation of fish and wildlife habitat;
- Protection of open spaces and recreational areas;
- Location and proximity of infrastructure necessary for renewable energy generation and distribution; and
- Other important economic, environmental, social and natural items

The bill would have established an advisory committee to assist the Commission in updating the goal with prescribed members representing varying interests and directs all agencies of state government to assist the advisory committee and Commission in performing their actions. The bill would have required the Oregon Department of Energy Director to appoint a member to represent ODOE on the Commission's advisory committee to assist in the update of the statewide planning goal related to energy conservation. The bill did not specify the frequency or locations of potential advisory committee meetings.

Public Purpose Charge Sunset

HB 2494
Did Not Pass

HB 2494 would have extended the sunset for the public purpose charge that may be collected from all of the retail electricity consumers located within an electric company's or Oregon Community Power's service area until January 1, 2036.

The three percent public purpose charge was established in ORS 757.612 as an annual expenditure for electric companies and Oregon Community Power to fund new cost-effective energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. The sunset for the program is January 1, 2026.

Community Choice Aggregation Authority Formation

HB 2852
Did Not Pass

HB 2852 would have authorized local governments including cities, counties, irrigation districts and ports to form authorities to implement Community Choice Aggregation (CCA) programs. With a majority vote of the local government, this bill would have authorized the formation of an authority that could aggregate all retail consumers of electricity within the local government's jurisdiction for the purpose of procuring energy resources to serve the electric load of those consumers.

HB 2852 specifically outlined the processes for establishing and administering a CCA program, including requirements for CCA Board composition and requiring the filing of an implementation plan with the Oregon Public Utility Commission for approval. As part of an established review process, the Oregon PUC would have been charged with the development of a "cost recovery mechanism" to prevent unwarranted shifting of costs to retail electricity customers not served by the authority. In addition, any CCA formed would also be required to file a biennial power supply plan with the PUC which, among other things, would have to identify the specific actions the CCA would take over the next three years to maintain resource adequacy.

Under the bill, a CCA authority would have been required to meet the requirements of the renewable portfolio standards that were applicable to the electric company serving the territory in which the CCA served the electricity load of retail electricity consumers.

The bill also allowed direct service industrial consumers to voluntarily aggregate their electricity loads with the electricity load of a community choice aggregation authority if the direct service industrial customer was located within the area being served by the CCA.

Home Weatherization Retrofit & Affordability Program

HB 3094A
Did Not Pass

HB 3094A would have created the Home Weatherization, Retrofit and Affordability Program in the Housing and Community Services Department. The program would have provided incentive payments to construction contractors undertaking energy improvement projects.

The bill stated the Legislative Assembly's purpose for the program was protecting jobs and the state's strategic capacity in the residential energy efficiency industry; enabling broad, equitable access to energy improvement projects; improving health, safety and energy efficiency in affordable housing; and investing in upgrades and maintaining homes to contribute to the maintenance of our housing stock.

The bill focused on providing additional energy efficiency funding for very low, low- and median- income populations. The bill included an income cap for participation by homeowners of 150 percent of the state median household income, which is approximately $90,318. Participation for rental housing would be limited to affordable housing as determined by Housing and Community Services, or housing owned by a charitable nonprofit.

Electric Vehicle Charging Stations

HB 3141A
Did Not Pass

HB 3141A would have made several changes to the laws regulating vehicle charging infrastructure. The bill would have set two goals for the state; first, that newly constructed public buildings provide capacity for a 240 volt and 40-amp system suitable for electric vehicle charging to at least 20 percent of the vehicle parking spaces in the garage or parking areas for each public building. The second goal was that on or after July 1, 2020, at least 25 percent of certain types of vehicles purchased or leased annually by the motor vehicle fleet be zero emission vehicles.

The bill directed the Department of Consumer and Business Services to amend state building code to require newly constructed multifamily residential buildings with three or more dwelling units provide capacity for the charging of electric vehicles. The code would have required multifamily residential buildings provide 240 volt and 40-amp systems suitable for electric vehicle charging to at least 20 percent of the vehicle parking spaces dedicated to each building.

Department of Administrative Services would have been authorized to procure electric vehicles in bulk to reduce costs when purchasing electric vehicles for the state motor fleet, and to adopt policies encouraging the use of electric or other low emission vehicle by those using the state motor fleet.

Additionally, HB 3141A would have required the Department of Administrative Services to conduct a study on the costs and feasibility of implementing the California Innovation Clean Transit measure, which mandates all public transit agencies transition to zero-emission buses by 2040. No later than September 15, 2020, Department of Administrative Services would have reported to the legislature on the results of the study.

HB 3141A would have allowed the Department of Administrative Services and other public bodies to form cooperative agreements to contract, acquire, install and maintain or operate electric vehicle supply equipment (EVSE) to deliver electricity to the public for electric motor vehicles. Currently, public agencies must contract separately for the equipment and installation of EVSE and are required to follow a bidding process. The bill also would have excluded funds collected from public electric vehicle charging stations from public funds laws.

Small-Scale Renewable Energy Projects

HB 3274A
Did Not Pass

HB 3274A was intended to provide additional financial support to small-scale hydropower projects – for both existing projects seeking renewed contracts and new projects. Specifically, the bill would have increased the amount of energy from low-impact small-scale hydro projects that could count toward annual Renewable Portfolio Standard compliance, raising the annual cap from 40 aMW to 100 aMW.

It also would have indefinitely extended the "golden renewable energy certificate" provision to all renewable energy certificates generated by small-scale hydro projects. SB 1547 (2016) introduced a five-year shelf life for renewable energy certificates generated after the date of statute (March 8, 2016) while maintaining an unlimited shelf life for renewable energy certificates either generated before the date of statute or associated with a select pool of projects that met certain requirements for commercial operation date and contract length. HB 3274A would have extended that unlimited shelf life to renewable energy certificates generated at the low-impact small-scale hydropower projects in question.

Finally, the bill would have modified the public process for establishing "avoided cost" rates for small-scale renewable and combined heat and power projects at the Public Utility Commission. In particular, the bill would have: imposed a higher burden on the utilities to justify their rates; required the Public Utility Commission to hold public hearings within a prescribed timeline; required the utilities to include avoided transmission and distribution costs in their avoided cost rates; and required the utilities to include a capacity contribution payment in their avoided cost rates.

Net Metering

HB 3325
Did Not Pass

HB 3325 would have established additional mandates for net metering and interconnection applications received by electric utilities. The clarified procedures apply to residential net metered systems up to 25kW for all Oregon utilities and net metered systems between 25kW and 2MW for facilities in investor-owned utility territories serving 25,000 or more customers. Requirements were provided regarding how utilities would process interconnection requests, including maximum timelines for processing applications and for payment by applicants for facility interconnection costs.

Studies on Greenhouse Gas Sequestration and Renewable Technologies and Jobs

HB 3433
Did Not Pass

HB 3433 required the State Forestry Department (ODF) and the Department of State Lands (DSL) to pursue agreements for shared stewardship of national forests between the State of Oregon and the United States Forest Service Pacific Northwest Region (USFS PNWR). ODF was directed to coordinate with USFS PNWR to conduct a study on the forest carbon flux associated with wildfire on national forestland in Oregon. Oregon State University (OSU) was instructed to conduct four studies related to GHG sequestration and emissions reductions from activities related to the state's natural and working lands and forest products, agricultural, and building materials industries.

The study could have included recommendations for legislation and was required to be transmitted on September 15, 2020 to an interim committee of the Legislative Assembly related to climate or carbon reduction. In developing these studies, OSU was directed to consult with the State Department of Agriculture, the State Department of Geology and Mineral Industries, the State Forestry Department and any other interested or appropriate agencies of state government.

HB 3433 required the Oregon Department of Energy (ODOE) to complete two new studies:

- Study and develop recommendations on electric grid modernization to accommodate the capacity and infrastructure changes necessary to provide urban areas in the state adequate access to electric vehicle charging stations to support the transition to light-duty electric vehicles and buses. ODOE was directed to consult with ODOT, OPUC, TriMet, electric companies and any other interested parties or appropriate agencies of state government and submit a report on the study to an interim committee of the Legislative Assembly related to climate or carbon reduction no later than September 15, 2020.
- Complete a study investigating the potential role for small modular nuclear reactor power plants in reducing greenhouse gas emissions related to the generation of electric power to serve electricity customers in this state. The study could have included recommendations for legislation and was required to be transmitted on September 15, 2020 to an interim committee of the Legislative Assembly related to climate or carbon reduction.

HB 3433 amended Section 25, chapter 301, Oregon Laws 2007, which required ODOE to "periodically conduct a study to evaluate the impact on jobs in the state" of the sections of the 2007 Act that became ORS 469A.005 to 469A.210 (the renewable portfolio standards and goal for community-based renewable energy projects). ODOE was required to conduct the first study no later than June 6, 2007, and HB 3433 directed ODOE to complete a second study no

later than September 15, 2020. ODOE was directed to submit this study to an interim committee of the Legislative Assembly related to climate or carbon reduction. The original study requirements remain the same from Section 25, chapter 301, Oregon Laws 2007:

- "The study shall assess the number of new jobs created in the renewable energy sector in this state and the average wage rates and the provision of health care and other benefits for those jobs. In addition, the study shall investigate the extent to which workforce training opportunities are being provided to employees to prepare the employees for jobs in the renewable energy sector."

HB 3433 amended Section 170, chapter 750, Oregon Laws 2017, which required the Department of Environmental Quality to conduct a compliance and implementation review of the Clean Fuels Program and submit a report to the Legislative Assembly that answered seven specific questions about how the program was operating. HB 3433 changed the required submittal date of the report to September 15, 2020 and added a requirement for a second review and report due no later than February 1, 2022. Both reports were required to be submitted to the interim committees of the Legislative Assembly related to environment and natural resources.

Senate Measures

Renewable Portfolio Standard – Eligibility for Municipal Solid Waste Facilities

SB 451A
Did Not Pass

SB 451A would have removed a requirement for Oregon municipal solid waste facilities with a pre-1995 commercial operation date to have registered in the Western Renewable Energy Generation Identification System (WREGIS) on or before January 1, 2011 to be eligible to participate in the Renewable Portfolio Standard. It also would have required that only electricity from pre-1995 biomass facilities generated from the combustion of biogenic material be RPS-eligible.

Neither the Oregon RPS statute nor the bill provide definitions for "biogenic" but the Oregon DEQ reporting program defines it as carbon dioxide emissions generated as the result of biomass combustion. Biomass means non-fossilized and biodegradable organic material originating from plants, animals or microorganisms, including products, byproducts, residues

and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal waste, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material.

The bill would have allowed municipal solid waste facilities that generate electricity from the direct combustion of municipal solid waste, are located in Oregon, and have a commercial operating date before January 1, 1995 to generate renewable energy certificates eligible for the Oregon renewable portfolio standard if they have registered the generating facility with WREGIS at any time.

Oregon Climate Authority

SB 928A
Did Not Pass

SB 928A would have established a new Oregon Climate Authority and established an Oregon Climate Board to advise the director on the implementation, administration, and enforcement of the rules, programs and activities of the new agency; develop policies in accordance with the new energy, environment and climate responsibilities, and assist in the preparation of a biennial budget.

This bill established a new Oregon Climate Authority to focus state government efforts to reduce greenhouse gas emissions. It made legislative findings and declarations that climate change is negatively impacting public health and Oregon's economy, natural resources, and environment. Provided new goals for Oregon including 1) to reduce GHG emissions, to sequester and store GHG emissions on natural and working lands, and to help communities and industries adapt to climate change; and 2) to promote the efficient use of energy resources, to develop low-carbon technologies, and to assist Oregon industries and households with the equitable transition to an affordable and reliable energy system and a mix of energy resources that can achieve the state's GHG reduction goals. The bill made declaratory statements that a need exists for comprehensive state leadership on climate change, GHG mitigation, and the transition to low-carbon, clean energy resources, and aligns state policy to the goals.

The bill would have abolished the Oregon Department of Energy and transferred ODOE's records, programs, and employees to the Oregon Climate Authority. It would have also transferred the duties, functions, and powers of the Environmental Quality Commission and DEQ relating to greenhouse gas registration and reporting to the new authority. This includes unexpended revenues made available for the program and program administrative rules. The transfer of ODOE and DEQ programs to the new authority would have included unexpended revenues made available for the programs as well as program administrative rules.

In addition to GHG emissions emitted that are already reported to DEQ, the bill required reporting of generating facility fuel type and megawatt-hours of electricity generated by an

electric company for use in Oregon. It authorized the OCA to develop an assigned emissions level for the purposes of a GHG emissions regulatory program. Under the bill, the OCA was authorized to establish limited fees for registration and reporting.

SB 928A modified statutes outlining the allowed uses of the energy supplier assessment by limiting its use outside of the Energy Facility Siting Council to "the energy services programs of the authority" and the administrative overhead and shared services costs of authority. "Energy Services Program" was defined in the bill as a program or activity that 1) provides expertise or technical or research support related to the administration of state energy policies and programs; 2) provides energy data, analysis and tools; or 3) supports energy conservation, energy efficiency, energy system planning, reliability and safety, energy storage, renewable energy resources, or alternative energy resources or fuels. The bill changed the ESA cap of .375% of Gross Operating Revenue to .25%. In addition, the bill declared that ESA could not be used for any cap and trade program for GHG emissions.

The bill modified the purview of the Energy Advisory Work Group to 1) planning, policy, and technical analysis as it pertains to the provision of energy in Oregon; 2) the energy services programs; and 3) the portion of the OCA's biennial budget that is eligible for funding through the ESA.

The bill established an Energy Program Review Task Force. The Task Force was charged with reviewing and providing recommendations to the Governor and Legislative Assembly regarding the most appropriate state agency to provide for the administration of the duties of the Energy Facility Siting Council. If the Task Force determined that EFSC should be transferred to another state agency, the bill directed the Task Force to provide recommendations to transfer it no later than July 1, 2021. The Task Force was also required to review all the duties, functions, and powers of the OCA to assess whether the programs and activities carried out pursuant to those duties, functions, and powers properly alight with the new OCA policy, and provide recommendations on which duties, functions, and powers of ODOE that will be transferred to the OCA should be abolished, amended, or transferred to other agencies in order to ensure that the programs and activities of the OCA aligned with the policy and duties of the new agency. The Task Force was directed to submit an initial report to the Governor and Legislature no later than Nov. 30, 2019 and had permission to submit an additional report no later than Sept. 15, 2020. The OCA was directed to provide staff support to the task force.

Transportation Fuel Allowance Refund

SB 1051
Did Not Pass

If the state of Oregon had adopted a cap and trade program (HB 2020) during the 2019 legislative session, SB 1051 would have established two programs to assist with fuel costs for individuals with an adjusted gross income (AGI) that does not exceed 250 percent of the federal

poverty guidelines, farmers, and foresters. This assistance would be based on a general formula of gallons of fuel multiplied by a "per-gallon carbon price," which is a determination of the portion of the price of a gallon of fuel in Oregon that is attributable to the cost to a fuel producer or importer being regulated under the Oregon Climate Action Program. The bill required Oregon Department of Transportation (ODOT), in consultation with the Climate Policy Office, to annually prepare an estimate of the per-gallon carbon price; ODOT would also be allowed to contract with a third party to assist with preparing the estimate.

One program would have provided eligible persons (those with an AGI below 250 percent of the federal poverty guidelines) with a credit to be used primarily when filing their taxes. The credit would have been based on the per-gallon carbon price, an estimate of the median vehicle miles traveled for each county in Oregon, and the median number of gallons of fuel used by a vehicle traveling in a particular county. The bill required the Department of Revenue to allow for an eligible person who is not required to file a personal income tax return to apply for the credit in a form prescribed by the department by rule.

The bill established a Climate Action Reimbursement Fund for the purpose of allowing the Department of Revenue to process and pay out credits. The Climate Action Reimbursement Fund would have consisted of moneys transferred to the fund from the Transportation Decarbonization Investments Account established under HB 2020 that would have received auction proceeds under the Oregon Climate Action Program.

The second program would have provided certain farming and forestry activities with a refund based on the per-gallon carbon price and sworn statement regarding the number of gallons of fuel used for eligible farm and forest activities. For farmers, eligibility involved fuel used in farming operations in any motor vehicle on any road, thoroughfare or property in private ownership. For forestry operations, the eligibility involved fuel used in the operation of any vehicle on any road, thoroughfare or property, other than a state highway, county road or city street for the removal of forest products, or the product of forest products as converted to a form other than logs at or near the harvesting site, or when used for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance with certain entities.

SB 1051 established a Farm and Forest Climate Action Reimbursement Fund to allow ODOT to process and pay out refunds from the program. An amount necessary to pay refunds for farm and forestry activities would have been transferred to the Farm and Forest Climate Action Reimbursement Fund from the Transportation Decarbonization Investments Fund established under HB 2020 for refunds constitutionally authorized to receive funding from the Transportation Decarbonization Investments Fund. To cover the portion of refunds for farm and forestry uses that are not constitutionally authorized to receive funding from the Transportation Decarbonization Investments Fund, funds would be transferred to the Farm and Forest Climate Action Reimbursement Fund from the Climate Investments Fund established under HB 2020 that would have received auction proceeds under the Oregon Climate Action Program.

BUDGET BILLS

Department of Energy Budget

SB 5545
Chapter: 689 (2019 Laws)
Effective Date: August 8, 2019

SB 5545 is the budget bill for the Department of Energy. The bill established $81.9 million in expenditure authority for the department in the 2019-21 biennium and included both budget increases and budget decreases. The bill increased the department's Other Funds expenditure authority by $411,789 and two limited duration positions (2.00 FTE) to address increased workload in the Energy Facility Siting Division. It also provided $4.3 million in General Fund to support a projected shortfall in the Small-Scale Local Energy Loan Program. The bill reduced Other Funds expenditure authority by $2,143,982 and eight positions, eliminating vacant positions in the Energy Planning and Innovation, Energy Development Services, and Administration divisions, reducing Services and Supplies budgets, and reducing limitation for rent.

The bill included a budget note:

> The Department of Energy is directed to report back to the Joint Committee on Ways and Means during the 2020 session, as the Governor did not propose a 2019-21 budget for the agency. Additionally, many of the Department's long-standing programs have sunset or are no longer active. The report should include an analysis of existing programs, the Department's key performance measures, a review of agency administration, the level of internal support versus services that could be provided through the Department of Administrative Services, and review of the agency's indirect rate and usage of the Energy Supplier Assessment.

Budget Reconciliation Bill

HB 5050
Chapter: 644 (2019 Laws)
Effective Date: August 9, 2019

HB 5050 is a budget reconciliation bill that implements the remaining end of session pieces of the state budget for the 2019-21 biennium. This bill adjusted ODOE's budget for the final approved Public Employees Retirement System, Department of Administrative Services, and

Department of Justice rates and debt service amounts. The bill established a one-time $2 million General Fund appropriation for the Rooftop Solar Incentive Fund established by House Bill 2618 and granted the department $2 million in Other Funds expenditure limitation and three limited duration positions (1.25 FTE) to implement the program.

BILL EFFECTIVE & OPERATIONAL DATES

Normal Effective Dates

ORS 171.022 provides that unless otherwise stated all bills take effect on January 1 of the year after the bill is signed into law. So, unless a bill specifically names a different effective date or has an emergency clause, the bill will take effect on January 1 of the next year.

Emergency Clause

The Oregon Constitution prohibits a bill from taking effect "until ninety days from the end of the session" unless an emergency is declared. An emergency clause will appear in the bill if it is to take effect before the 91st day after adjournment sine die. Bills with emergency clauses are not subject to a referendum of the voters, all other bills are subject to possible referral under the Oregon Constitution. Because of this provision, the Constitution gives the Governor the power to veto an emergency clause without affecting the rest of the bill. The Constitution also prohibits the use of an emergency clause in bills that regulate taxation or exemption. An emergency clause must apply to an entire bill.

Operative Date

If a bill requires administrative preparation before the bill is fully operative, an operative date is used to delay operation of all or part of the bill. If an operative date is used, the entire bill takes effect on its effective date. However, a specified part of the Act does not become operational until a later specified date. It is important to distinguish between items that are authorized on and after the effective date and items that are not authorized until the operative date.

Example of an emergency clause for a bill that will take effect on its passage:

> SECTION 30. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Note: A bill with an emergency clause takes effect when the Governor signs it, not when passed by both houses of the Legislative Assembly.

Example of an emergency clause for a bill that takes effect on a specific date after passage but before the 91st day after the end of session:

> SECTION 30. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect July 1, 2009.

Note: If the July 1 date is used and the Governor signs the bill before July 1, the bill takes effect on July 1. If the Governor signs the bill after July 1, the bill takes effect on the date the Governor signs it.

FOR MORE INFORMATION

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