

Oregon cap and trade: How would Gov. Kate Brown's executive order let her use \$5 million to carry out climate change policy

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The Legislature's emergency board met Monday. Courtesy OLIS

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The Legislature's emergency board appropriated \$5 million Monday to fund rulemaking by the Department of Environmental Quality to set up a climate change policy that Gov. Kate Brown is set to establish via executive order.

Brown is expected to issue the executive order imminently, but the vote on the funding came beforehand, leading to some consternation among lawmakers at Monday's hearing.

Brown's strategy is likely a version of the one California used in establishing its cap and trade system. Lawmakers there passed Assembly Bill 32 in 2006, establishing goals to sharply reduce greenhouse gas emissions in the state. It was then left up to the California Air Resources Board to come up with a program and administrative rules to get there. California lawmakers subsequently ratified that program.

Brown had previously said she would act by executive authority to establish a climate change program if lawmakers failed to act. The extent of her legal authority is still unclear, and she may not have the authority to establish the cap and trade system contemplated by the Legislature. But her decision to do an end run around Republicans would be the most far reaching use of the governor's executive powers during her tenure.

Richard Whitman, executive director of the Department of Environmental Quality, declined to describe the governor's executive order in detail on Monday, but said the objective would be to have rules to implement a cap and trade program in place by the beginning of 2022. That's the same time frame that was contemplated by Democrats' climate change bill, Senate Bill 1530, which died with the Republican walkout during the recently ended short Legislative session.

In order to meet that deadline, Whitman told lawmakers, the agency needs to have “started yesterday.”

Whitman told lawmakers the newly allocated money will be used to fund 10 permanent position within the department, some contract work and legal costs expected to be incurred by the Department of Justice.

Meeting for the first time together since the Republican walkout, several lawmakers expressed their surprise, and perhaps indignation, that they were being asked to provide emergency funding for a program that had yet to be passed by the Legislature, by voters or even addressed via executive order.

Sen. Republican Leader Herman Baertschiger said Monday that the governor’s executive action would inevitably end up in court.

“All this is going to do is initiate a whole bunch of lawsuits, and given the governors track record of winning lawsuits, I’m afraid think this is going to be a huge waste of taxpayers’ money,” he said, referring to the \$1.1 billion verdict a jury in Linn County delivered against the state in November for failing to maximize timber harvests on state lands.

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