

**E2SSB 5126** - H AMD TO APP COMM AMD (H-1619.1/21) **754**  
By Representative Fitzgibbon

**ADOPTED 04/23/2021**

1 Beginning on page 1, after line 2, strike all material through  
2 "affected." on page 73, line 33, and insert the following:

3 "NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature  
4 finds that climate change is one of the greatest challenges facing  
5 our state and the world today, an existential crisis with major  
6 negative impacts on environmental and human health. Washington is  
7 experiencing environmental and community impacts due to climate  
8 change through increasingly devastating wildfires, flooding,  
9 droughts, rising temperatures and sea levels, and ocean  
10 acidification. Greenhouse gas emissions already in the atmosphere  
11 will increase impacts for some period of time. Actions to increase  
12 resilience of our communities, natural resource lands, and ecosystems  
13 can prevent and reduce impacts to communities and our environment and  
14 improve their ability to recover.

15 (2) In 2020, the legislature updated the state's greenhouse gas  
16 emissions limits that are to be achieved by 2030, 2040, and 2050,  
17 based on current science and emissions trends, to support local and  
18 global efforts to avoid the most significant impacts from climate  
19 change. Meeting these limits will require coordinated, comprehensive,  
20 and multisectoral implementation of policies, programs, and laws, as  
21 other enacted policies are insufficient to meet the limits.

22 (3) The legislature further finds that while climate change is a  
23 global problem, there are communities that have historically borne  
24 the disproportionate impacts of environmental burdens and that now  
25 bear the disproportionate negative impacts of climate change.  
26 Although the state has done significant work in the past to highlight  
27 these environmental health disparities, beginning with senator Rosa  
28 Franklin's environmental equity study, and continuing through the  
29 work of the governor's interagency council on health disparities, the  
30 creation of the Washington environmental health disparities map, and  
31 recommendations of the environmental justice task force, the state

1 can do much more to ensure that state programs address environmental  
2 equity.

3 (4) The legislature further finds that while enacted carbon  
4 policies can be well-intended to reduce greenhouse gas emissions and  
5 provide environmental benefits to communities, the policies may not  
6 do enough to ensure environmental health disparities are reduced and  
7 environmental benefits are provided to those communities most  
8 impacted by environmental harms from greenhouse gas and air pollutant  
9 emissions.

10 (5) The legislature further finds that wildfires have become one  
11 of the largest sources of black carbon in the last five years. From  
12 2014 through 2018, wildfires in Washington state generated 39,200,000  
13 metric tons of carbon, the equivalent of more than 8,500,000 cars on  
14 the road a year. In 2015, when 1,130,000 acres burned in Washington,  
15 wildfires were the second largest source of greenhouse gas emissions  
16 releasing 17,975,112 metric tons of carbon dioxide into the  
17 atmosphere. Wildfire pollution affects all Washingtonians, but has  
18 disproportionate health effects on low-income communities,  
19 communities of color, and the most vulnerable of our population.  
20 Restoring the health of our forests and investing in wildfire  
21 prevention and preparedness will therefore contribute to improved air  
22 quality and improved public health outcomes.

23 (6) The legislature further finds that by exercising a leadership  
24 role in addressing climate change, Washington will position its  
25 economy, technology centers, financial institutions, and  
26 manufacturers to benefit from national and international efforts that  
27 must occur to reduce greenhouse gases. The legislature intends to  
28 create climate policy that recognizes the special nature of  
29 emissions-intensive, trade-exposed industries by minimizing leakage  
30 and increased life-cycle emissions associated with product imports.  
31 The legislature further finds that climate policies must be  
32 appropriately designed, in order to avoid leakage that results in net  
33 increases in global greenhouse gas emissions and increased negative  
34 impacts to those communities most impacted by environmental harms  
35 from climate change. The legislature further intends to encourage  
36 these industries to continue to innovate, find new ways to be more  
37 energy efficient, use lower carbon products, and be positioned to be  
38 global leaders in a low carbon economy.

39 (7) Under the program, the legislature intends to identify  
40 overburdened communities where the highest concentrations of criteria

1 pollutants occur, determine the sources of those emissions and  
2 pollutants, and pursue significant reductions of emissions and  
3 pollutants in those communities. The legislature further intends for  
4 the department of ecology to conduct environmental justice  
5 assessments to ensure that funds and programs created under this  
6 chapter provide direct and meaningful benefits to vulnerable  
7 populations and overburdened communities. Additionally, the  
8 legislature intends to prevent job loss and provide protective  
9 measures if workers are adversely impacted by the transition to a  
10 clean energy economy through transition and assistance programs,  
11 worker-support projects, and workforce development and other  
12 activities designed to grow and expand the clean manufacturing sector  
13 in communities across Washington state. The legislature further  
14 intends to empower the environmental justice council established  
15 under RCW 70A.---.--- (section 20, chapter . . ., Laws of 2021  
16 (Engrossed Second Substitute Senate Bill No. 5141)) to provide  
17 recommendations for the development and implementation of the  
18 program, the distribution of funds, and the establishment of  
19 programs, activities, and projects to achieve environmental justice  
20 and environmental health goals. The legislature further intends for  
21 the department of ecology to create and adopt community engagement  
22 plans and tribal consultation frameworks in the administration of the  
23 program to ensure equitable practices for meaningful community and  
24 federally recognized tribal involvement. Finally, the legislature  
25 intends to establish this program to contribute to a healthy  
26 environment for all of Washington's communities.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
28 section apply throughout this chapter unless the context clearly  
29 requires otherwise.

30 (1) "Allowance" means an authorization to emit up to one metric  
31 ton of carbon dioxide equivalent.

32 (2) "Allowance price containment reserve" means an account  
33 maintained by the department with allowances available for sale  
34 through separate reserve auctions at predefined prices to assist in  
35 containing compliance costs for covered and opt-in entities in the  
36 event of unanticipated high costs for compliance instruments.

37 (3) "Annual allowance budget" means the total number of  
38 greenhouse gas allowances allocated for auction and distribution for  
39 one calendar year by the department.

1 (4) "Asset controlling supplier" means any entity that owns or  
2 operates interconnected electricity generating facilities or serves  
3 as an exclusive marketer for these facilities even though it does not  
4 own them, and has been designated by the department and received a  
5 department-published emissions factor for the wholesale electricity  
6 procured from its system. The department shall use a methodology  
7 consistent with the methodology used by an external greenhouse gas  
8 emissions trading program that shares the regional electricity  
9 transmission system. Electricity from an asset controlling supplier  
10 is considered a specified source of electricity.

11 (5) "Auction" means the process of selling greenhouse gas  
12 allowances by offering them up for bid, taking bids, and then  
13 distributing the allowances to winning bidders.

14 (6) "Auction floor price" means a price for allowances below  
15 which bids at auction are not eligible to be accepted.

16 (7) "Auction purchase limit" means the limit on the number of  
17 allowances one registered entity or a group of affiliated registered  
18 entities may purchase from the share of allowances sold at an  
19 auction.

20 (8) "Balancing authority" means the responsible entity that  
21 integrates resource plans ahead of time, maintains load-interchange-  
22 generation balance within a balancing authority area, and supports  
23 interconnection frequency in real time.

24 (9) "Balancing authority area" means the collection of  
25 generation, transmission, and load within the metered boundaries of a  
26 balancing authority. A balancing authority maintains load-resource  
27 balance within this area.

28 (10) "Best available technology" means a technology or  
29 technologies that will achieve the greatest reduction in greenhouse  
30 gas emissions, taking into account the fuels, processes, and  
31 equipment used by facilities to produce goods of comparable type,  
32 quantity, and quality. Best available technology must be technically  
33 feasible, commercially available, economically viable, not create  
34 excessive environmental impacts, and be compliant with all applicable  
35 laws while not changing the characteristics of the good being  
36 manufactured.

37 (11) "Biomass" means nonfossilized and biodegradable organic  
38 material originating from plants, animals, and microorganisms,  
39 including products, by-products, residues, and waste from  
40 agriculture, forestry, and related industries as well as the

1 nonfossilized and biodegradable organic fractions of industrial  
2 waste, including gases and liquids recovered from the decomposition  
3 of nonfossilized and biodegradable organic material.

4 (12) "Biomass-derived fuels," "biomass fuels," or "biofuels"  
5 means fuels derived from biomass that have at least 40 percent lower  
6 greenhouse gas emissions based on a full life-cycle analysis when  
7 compared to petroleum fuels for which biofuels are capable as serving  
8 as a substitute.

9 (13) "Carbon dioxide equivalents" means a measure used to compare  
10 the emissions from various greenhouse gases based on their global  
11 warming potential.

12 (14) "Carbon dioxide removal" means deliberate human activities  
13 removing carbon dioxide from the atmosphere and durably storing it in  
14 geological, terrestrial, or ocean reservoirs, or in products. "Carbon  
15 dioxide removal" includes existing and potential anthropogenic  
16 enhancement of biological or geochemical sinks and including, but not  
17 limited to, carbon mineralization and direct air capture and storage.

18 (15) "Climate commitment" means the process and mechanisms to  
19 ensure a coordinated and strategic approach to advancing climate  
20 resilience and environmental justice and achieving an equitable and  
21 inclusive transition to a carbon neutral economy.

22 (16) "Climate resilience" is the ongoing process of anticipating,  
23 preparing for, and adapting to changes in climate and minimizing  
24 negative impacts to our natural systems, infrastructure, and  
25 communities. For natural systems, increasing climate resilience  
26 involves restoring and increasing the health, function, and integrity  
27 of our ecosystems and improving their ability to absorb and recover  
28 from climate-affected disturbances. For communities, increasing  
29 climate resilience means enhancing their ability to understand,  
30 prevent, adapt, and recover from climate impacts to people and  
31 infrastructure.

32 (17) "Closed facility" means a facility at which the current  
33 owner or operator has elected to permanently stop production and will  
34 no longer be an emissions source.

35 (18) "Compliance instrument" means an allowance or offset credit  
36 issued by the department or by an external greenhouse gas emissions  
37 trading program to which Washington has linked its greenhouse gas  
38 emissions cap and invest program. One compliance instrument is equal  
39 to one metric ton of carbon dioxide equivalent.

1 (19) "Compliance obligation" means the requirement to submit to  
2 the department the number of compliance instruments equivalent to a  
3 covered or opt-in entity's covered emissions during the compliance  
4 period.

5 (20) "Compliance period" means the four-year period for which the  
6 compliance obligation is calculated for covered entities.

7 (21) "Cost burden" means the impact on rates or charges to  
8 customers of electric utilities in Washington state for the  
9 incremental cost of electricity service to serve load due to the  
10 compliance cost for greenhouse gas emissions caused by the program.  
11 Cost burden includes administrative costs from the utility's  
12 participation in the program.

13 (22) "Covered emissions" means the emissions for which a covered  
14 entity has a compliance obligation under section 10 of this act.

15 (23) "Covered entity" means a person that is designated by the  
16 department as subject to sections 8 through 24 of this act.

17 (24) "Cumulative environmental health impact" has the same  
18 meaning as provided in RCW 70A.---.--- (section 2, chapter . . . ,  
19 Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

20 (25) "Curtailed facility" means a facility at which the owner or  
21 operator has temporarily suspended production but for which the owner  
22 or operator maintains operating permits and retains the option to  
23 resume production if conditions become amenable.

24 (26) "Department" means the department of ecology.

25 (27) "Electricity importer" means:

26 (a) For electricity that is scheduled with a NERC e-tag to a  
27 final point of delivery into a balancing authority area located  
28 entirely within the state of Washington, the electricity importer is  
29 identified on the NERC e-tag as the purchasing-selling entity on the  
30 last segment of the tag's physical path with the point of receipt  
31 located outside the state of Washington and the point of delivery  
32 located inside the state of Washington;

33 (b) For facilities physically located outside the state of  
34 Washington with the first point of interconnection to a balancing  
35 authority area located entirely within the state of Washington when  
36 the electricity is not scheduled on a NERC e-tag, the electricity  
37 importer is the facility operator or owner;

38 (c) For electricity imported through a centralized market, the  
39 electricity importer will be defined by rule consistent with the  
40 rules required under section 10(1)(c) of this act;

1 (d) For electricity from facilities allocated to serve retail  
2 electricity customers of a multijurisdictional electric company, the  
3 electricity importer is the multijurisdictional electric company;

4 (e) If the importer identified under (a) of this subsection is a  
5 federal power marketing administration over which the state of  
6 Washington does not have jurisdiction, and the federal power  
7 marketing administration has not voluntarily elected to comply with  
8 the program, then the electricity importer is the next purchasing-  
9 selling entity in the physical path on the NERC e-tag, or if no  
10 additional purchasing-selling entity over which the state of  
11 Washington has jurisdiction, then the electricity importer is the  
12 electric utility that operates the Washington transmission or  
13 distribution system, or the generation balancing authority;

14 (f) For electricity that is imported into the state by a federal  
15 power marketing administration and sold to a public body or  
16 cooperative customer or direct service industrial customer located in  
17 Washington pursuant to section 5(b) or (d) of the Pacific Northwest  
18 electric power planning and conservation act of 1980, P.L. 96-501,  
19 the electricity importer is the federal marketing administration;

20 (g) If the importer identified under (f) of this subsection has  
21 not voluntarily elected to comply with the program, then the  
22 electricity importer is the public body or cooperative customer or  
23 direct service industrial customer; or

24 (h) For electricity from facilities allocated to a consumer-owned  
25 utility inside the state of Washington from a multijurisdictional  
26 consumer-owned utility, the electricity importer is the consumer-  
27 owned utility inside the state of Washington.

28 (28) "Emissions containment reserve allowance" means a  
29 conditional allowance that is withheld from sale at an auction by the  
30 department or its agent to secure additional emissions reductions in  
31 the event prices fall below the emissions containment reserve trigger  
32 price.

33 (29) "Emissions containment reserve trigger price" means the  
34 price below which allowances will be withheld from sale by the  
35 department or its agent at an auction, as determined by the  
36 department by rule.

37 (30) "Emissions threshold" means the greenhouse gas emission  
38 level at or above which a person has a compliance obligation.

1 (31) "Environmental benefits" has the same meaning as defined in  
2 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
3 Second Substitute Senate Bill No. 5141)).

4 (32) "Environmental harm" has the same meaning as defined in RCW  
5 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
6 Substitute Senate Bill No. 5141)).

7 (33) "Environmental impacts" has the same meaning as defined in  
8 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
9 Second Substitute Senate Bill No. 5141)).

10 (34) "Environmental justice" has the same meaning as defined in  
11 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
12 Second Substitute Senate Bill No. 5141)).

13 (35) "Environmental justice assessment" has the same meaning as  
14 identified in RCW 70A.---.--- (section 14, chapter . . ., Laws of  
15 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

16 (36) "External greenhouse gas emissions trading program" means a  
17 government program, other than Washington's program created in this  
18 chapter, that restricts greenhouse gas emissions from sources outside  
19 of Washington and that allows emissions trading.

20 (37) "Facility" means any physical property, plant, building,  
21 structure, source, or stationary equipment located on one or more  
22 contiguous or adjacent properties in actual physical contact or  
23 separated solely by a public roadway or other public right-of-way and  
24 under common ownership or common control, that emits or may emit any  
25 greenhouse gas.

26 (38) "First jurisdictional deliverer" means the owner or operator  
27 of an electric generating facility in Washington or an electricity  
28 importer.

29 (39) "General market participant" means a registered entity that  
30 is not identified as a covered entity or an opt-in entity that is  
31 registered in the program registry and intends to purchase, hold,  
32 sell, or voluntarily retire compliance instruments.

33 (40) "Greenhouse gas" has the same meaning as in RCW 70A.45.010.

34 (41) "Holding limit" means the maximum number of allowances that  
35 may be held for use or trade by a registered entity at any one time.

36 (42) "Imported electricity" means electricity generated outside  
37 the state of Washington with a final point of delivery within the  
38 state.

39 (a) "Imported electricity" includes electricity from an organized  
40 market, such as the energy imbalance market.



1 (b) "Imported electricity" includes imports from linked  
2 jurisdictions, but such imports shall be construed as having no  
3 emissions.

4 (c) Electricity from a system that is marketed by a federal power  
5 marketing administration shall be construed as "imported  
6 electricity," not electricity generated in the state of Washington.

7 (d) "Imported electricity" does not include electricity imports  
8 of unspecified electricity that are netted by exports of unspecified  
9 electricity to any jurisdiction not covered by a linked program by  
10 the same entity within the same hour.

11 (e) For a multijurisdictional electric company, "imported  
12 electricity" means electricity, other than from in-state facilities,  
13 that contributes to a common system power pool. Where a  
14 multijurisdictional electric company has a cost allocation  
15 methodology approved by the utilities and transportation commission,  
16 the allocation of specific facilities to Washington's retail load  
17 will be in accordance with that methodology.

18 (f) For a multijurisdictional consumer-owned utility, "imported  
19 electricity" includes electricity from facilities that contribute to  
20 a common system power pool that are allocated to a consumer-owned  
21 utility inside the state of Washington pursuant to a methodology  
22 approved by the governing board of the consumer-owned utility.

23 (43) "Leakage" means a reduction in emissions of greenhouse gases  
24 within the state that is offset by a directly attributable increase  
25 in greenhouse gas emissions outside the state and outside the  
26 geography of another jurisdiction with a linkage agreement with  
27 Washington.

28 (44) "Limits" means the greenhouse gas emissions reductions  
29 required by RCW 70A.45.020.

30 (45) "Linkage" means a bilateral or multilateral decision under a  
31 linkage agreement between greenhouse gas market programs to accept  
32 compliance instruments issued by a participating jurisdiction to meet  
33 the obligations of regulated entities in a partner jurisdiction and  
34 to otherwise coordinate activities to facilitate operation of a joint  
35 market.

36 (46) "Linkage agreement" means a nonbinding agreement that  
37 connects two or more greenhouse gas market programs and articulates a  
38 mutual understanding of how the participating jurisdictions will work  
39 together to facilitate a connected greenhouse gas market.

1 (47) "Linked jurisdiction" means a jurisdiction with which  
2 Washington has entered into a linkage agreement.

3 (48) "Multijurisdictional consumer-owned utility" means a  
4 consumer-owned utility that provides electricity to member owners in  
5 Washington and in one or more other states in a contiguous service  
6 territory or from a common power system.

7 (49) "Multijurisdictional electric company" means an investor-  
8 owned utility that provides electricity to customers in Washington  
9 and in one or more other states in a contiguous service territory or  
10 from a common power system.

11 (50) "NERC e-tag" means North American electric reliability  
12 corporation (NERC) energy tag representing transactions on the North  
13 American bulk electricity market scheduled to flow between or across  
14 balancing authority areas.

15 (51) "Offset credit" means a tradable compliance instrument that  
16 represents an emissions reduction or emissions removal of one metric  
17 ton of carbon dioxide equivalent.

18 (52) "Offset project" means a project that reduces or removes  
19 greenhouse gases that are not covered emissions under this chapter.

20 (53) "Offset protocols" means a set of procedures and standards  
21 to quantify greenhouse gas reductions or greenhouse gas removals  
22 achieved by an offset project.

23 (54) "Overburdened community" means a geographic area where  
24 vulnerable populations face combined, multiple environmental harms  
25 and health impacts or risks due to exposure to environmental  
26 pollutants or contaminants through multiple pathways, which may  
27 result in significant disparate adverse health outcomes or effects.

28 (a) "Overburdened community" includes, but is not limited to:

29 (i) Highly impacted communities as defined in RCW 19.405.020;

30 (ii) Communities located in census tracts that are fully or  
31 partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

32 (iii) Populations, including Native Americans or immigrant  
33 populations, who may be exposed to environmental contaminants and  
34 pollutants outside of the geographic area in which they reside based  
35 on the populations' use of traditional or cultural foods and  
36 practices, such as the use of resources, access to which is protected  
37 under treaty rights in ceded areas, when those exposures in  
38 conjunction with other exposures may result in disproportionately  
39 greater risks, including risks of certain cancers or other adverse  
40 health effects and outcomes.

1 (b) Overburdened communities identified by the department may  
2 include the same communities as those identified by the department  
3 through its process for identifying overburdened communities under  
4 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
5 Second Substitute Senate Bill No. 5141)).

6 (55) "Person" has the same meaning as defined in RCW  
7 70A.15.2200(5)(h)(iii).

8 (56) "Point of delivery" means a point on the electricity  
9 transmission or distribution system where a deliverer makes  
10 electricity available to a receiver, or available to serve load. This  
11 point may be an interconnection with another system or a substation  
12 where the transmission provider's transmission and distribution  
13 systems are connected to another system, or a distribution substation  
14 where electricity is imported into the state over a  
15 multijurisdictional retail provider's distribution system.

16 (57) "Price ceiling unit" means the units issued at a fixed price  
17 by the department for the purpose of limiting price increases and  
18 funding further investments in greenhouse gas reductions.

19 (58) "Program" means the greenhouse gas emissions cap and invest  
20 program created by and implemented pursuant to this chapter.

21 (59) "Program registry" means the data system in which covered  
22 entities, opt-in entities, and general market participants are  
23 registered and in which compliance instruments are recorded and  
24 tracked.

25 (60) "Registered entity" means a covered entity, opt-in entity,  
26 or general market participant that has completed the process for  
27 registration in the program registry.

28 (61) "Resilience" means the ability to prepare, mitigate and plan  
29 for, withstand, recover from, and more successfully adapt to adverse  
30 events and changing conditions, and reorganize in an equitable manner  
31 that results in a new and better condition.

32 (62) "Retire" means to permanently remove a compliance instrument  
33 such that the compliance instrument may never be sold, traded, or  
34 otherwise used again.

35 (63) "Specified source of electricity" or "specified source"  
36 means a facility, unit, or asset controlling supplier that is  
37 permitted to be claimed as the source of electricity delivered. The  
38 reporting entity must have either full or partial ownership in the  
39 facility or a written power contract to procure electricity generated

1 by that facility or unit or from an asset controlling supplier at the  
2 time of entry into the transaction to procure electricity.

3 (64) "Supplier" means a supplier of fuel in Washington state as  
4 defined in RCW 70A.15.2200(5) (h) (ii).

5 (65) "Tribal lands" has the same meaning as defined in RCW  
6 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
7 Substitute Senate Bill No. 5141)).

8 (66) "Unspecified source of electricity" or "unspecified source"  
9 means a source of electricity that is not a specified source at the  
10 time of entry into the transaction to procure electricity.

11 (67) "Voluntary renewable reserve account" means a holding  
12 account maintained by the department from which allowances may be  
13 retired for voluntary renewable electricity generation, which is  
14 directly delivered to the state and has not and will not be sold or  
15 used to meet any other mandatory requirements in the state or any  
16 other jurisdiction, on behalf of voluntary renewable energy  
17 purchasers or end users.

18 (68) "Vulnerable populations" has the same meaning as defined in  
19 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
20 Second Substitute Senate Bill No. 5141)).

21 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE REVIEW. (1) To  
22 ensure that the program created in sections 8 through 24 of this act  
23 achieves reductions in criteria pollutants as well as greenhouse gas  
24 emissions in overburdened communities highly impacted by air  
25 pollution, the department must:

26 (a) Identify overburdened communities, which may be accomplished  
27 through the department's process to identify overburdened communities  
28 under chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate  
29 Bill No. 5141);

30 (b) Deploy an air monitoring network in overburdened communities  
31 to collect sufficient air quality data for the 2023 review and  
32 subsequent reviews of criteria pollutant reductions conducted under  
33 subsection (2) of this section; and

34 (c) (i) Within the identified overburdened communities, analyze  
35 and determine which sources are the greatest contributors of criteria  
36 pollutants and develop a high priority list of significant emitters.

37 (ii) Prior to listing any entity as a high priority emitter, the  
38 department must notify that entity and share the data used to rank  
39 that entity as a high priority emitter, and provide a period of not

1 less than 60 days for the covered entity to submit more recent data  
2 or other information relevant to the designation of that entity as a  
3 high priority emitter.

4 (2)(a) Beginning in 2023, and every two years thereafter, the  
5 department must conduct a review to determine levels of criteria  
6 pollutants, as well as greenhouse gas emissions, in the overburdened  
7 communities identified under subsection (1) of this section. This  
8 review must also include an evaluation of initial and subsequent  
9 health impacts related to criteria pollution in overburdened  
10 communities. The department may conduct this evaluation jointly with  
11 the department of health.

12 (b) Once this review determines the levels of criteria pollutants  
13 in an identified overburdened community, then the department, in  
14 consultation with local air pollution control authorities, must:

15 (i) Establish air quality targets to achieve air quality  
16 consistent with whichever is more protective for human health:

17 (A) National ambient air quality standards established by the  
18 United States environmental protection agency; or

19 (B) The air quality experienced in neighboring communities that  
20 are not identified as overburdened;

21 (ii) Identify the stationary and mobile sources that are the  
22 greatest contributors of those emissions that are either increasing  
23 or not decreasing;

24 (iii) Achieve the reduction targets through adoption of emission  
25 control strategies or other methods;

26 (iv) Adopt, along with local air pollution control authorities,  
27 stricter air quality standards, emission standards, or emissions  
28 limitations on criteria pollutants, consistent with the authority of  
29 the department provided under RCW 70A.15.3000, and may consider  
30 alternative mitigation actions that would reduce criteria pollution  
31 by similar amounts; and

32 (v) After adoption of the stricter air quality standards,  
33 emission standards, or emissions limitations on criteria pollutants  
34 under (b)(iv) of this subsection, issue an enforceable order or the  
35 local air authority must issue an enforceable order, as authorized  
36 under section 35 of this act, as necessary to comply with the  
37 stricter standards or limitations and the requirements of this  
38 section. The department or local air authority must initiate the  
39 process, including provision of notice to all relevant affected  
40 permittees or registered sources and to the public, to adopt and

1 implement an enforceable order required under this subsection within  
2 six months of the adoption of standards or limitations under (b) (iv)  
3 of this subsection.

4 (c) Actions imposed under this section may not impose  
5 requirements on a permitted stationary source that are  
6 disproportionate to the permitted stationary source's contribution to  
7 air pollution compared to other permitted stationary sources and  
8 other sources of criteria pollutants in the overburdened community.

9 (3) An eligible facility sited after the effective date of this  
10 section that receives allowances under section 13 of this act must  
11 mitigate increases in its emissions of particulate matter in  
12 overburdened communities.

13 (4) (a) The department must create and adopt a supplement to the  
14 department's community engagement plan developed pursuant to  
15 chapter . . . , Laws of 2021 (Engrossed Second Substitute Senate Bill  
16 No. 5141). The supplement must describe how the department will  
17 engage with overburdened communities and vulnerable populations in:

18 (i) Identifying emitters in overburdened communities; and

19 (ii) Monitoring and evaluating criteria pollutant emissions in  
20 those areas.

21 (b) The community engagement plan must include methods for  
22 outreach and communication with those who face barriers, language or  
23 otherwise, to participation.

24 NEW SECTION. **Sec. 4.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1) Each  
25 year or biennium, as appropriate, when allocating funds from the  
26 carbon emissions reduction account created in section 27 of this act,  
27 the climate investment account created in section 28 of this act, or  
28 the air quality and health disparities improvement account created in  
29 section 31 of this act, or administering grants or programs funded by  
30 the accounts, agencies shall conduct an environmental justice  
31 assessment consistent with the requirements of RCW 70A.---.---  
32 (section 14, chapter . . . , Laws of 2021 (Engrossed Second Substitute  
33 Senate Bill No. 5141)) and establish a minimum of not less than 35  
34 percent and a goal of 40 percent of total investments that provide  
35 direct and meaningful benefits to vulnerable populations within the  
36 boundaries of overburdened communities through: (a) The direct  
37 reduction of environmental burdens in overburdened communities; (b)  
38 the reduction of disproportionate, cumulative risk from environmental  
39 burdens, including those associated with climate change; (c) the

1 support of community led project development, planning, and  
2 participation costs; or (d) meeting a community need identified by  
3 the community that is consistent with the intent of this chapter or  
4 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
5 Second Substitute Senate Bill No. 5141)).

6 (2) The allocation of funding under subsection (1) of this  
7 section must adhere to the following principles, additional to the  
8 requirements of RCW 70A.---.--- (section 16, chapter . . ., Laws of  
9 2021 (Engrossed Second Substitute Senate Bill No. 5141)): (a)  
10 Benefits and programs should be directed to areas and targeted to  
11 vulnerable populations and overburdened communities to reduce  
12 statewide disparities; (b) investments and benefits should be made  
13 roughly proportional to the health disparities that a specific  
14 community experiences, with a goal of eliminating the disparities;  
15 (c) investments and programs should focus on creating environmental  
16 benefits, including eliminating health burdens, creating community  
17 and population resilience, and raising the quality of life of those  
18 in the community; and (d) efforts should be made to balance  
19 investments and benefits across the state and within counties, local  
20 jurisdictions, and unincorporated areas as appropriate to reduce  
21 disparities by location and to ensure efforts contribute to a  
22 reduction in disparities that exist based on race or ethnicity,  
23 socioeconomic status, or other factors.

24 (3) State agencies allocating funds or administering grants or  
25 programs from the carbon emissions reduction account created in  
26 section 27 of this act, the climate investment account created in  
27 section 28 of this act, or the air quality and health disparities  
28 improvement account created in section 31 of this act, must:

29 (a) Report annually to the environmental justice council created  
30 in RCW 70A.---.--- (section 20, chapter . . ., Laws of 2021  
31 (Engrossed Second Substitute Senate Bill No. 5141)) regarding  
32 progress toward meeting environmental justice and environmental  
33 health goals;

34 (b) Consider recommendations by the environmental justice  
35 council; and

36 (c)(i) If the agency is not a covered agency subject to the  
37 requirements of chapter . . ., Laws of 2021 (Engrossed Second  
38 Substitute Senate Bill No. 5141), create and adopt a community  
39 engagement plan to describe how it will engage with overburdened

1 communities and vulnerable populations in allocating funds or  
2 administering grants or programs from the climate investment account.

3 (ii) The plan must include methods for outreach and communication  
4 with those who face barriers, language or otherwise, to  
5 participation.

6 NEW SECTION. **Sec. 5.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The  
7 environmental justice council created in RCW 70A.---.--- (section 20,  
8 chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill  
9 No. 5141)) must provide recommendations to the legislature, agencies,  
10 and the governor in the development and implementation of the program  
11 established in sections 8 through 24 of this act, and the programs  
12 funded from the carbon emissions reduction account created in section  
13 27 of this act and from the climate investment account created in  
14 section 28 of this act.

15 (2) In addition to the duties and authorities granted in chapter  
16 70A.--- RCW (the new chapter created in section 22, chapter . . .,  
17 Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)) to  
18 the environmental justice council, the environmental justice council  
19 must:

20 (a) Provide recommendations to the legislature, agencies, and the  
21 governor in the development of:

22 (i) The program established in sections 8 through 24 of this act  
23 including, but not limited to, linkage with other jurisdictions,  
24 protocols for establishing offset projects and securing offset  
25 credits, designation of emissions-intensive and trade-exposed  
26 industries under section 13 of this act, and administration of  
27 allowances under the program; and

28 (ii) Investment plans and funding proposals for the programs  
29 funded from the climate investment account created in section 28 of  
30 this act for the purpose of providing environmental benefits and  
31 reducing environmental health disparities within overburdened  
32 communities;

33 (b) Provide a forum to analyze policies adopted under this  
34 chapter to determine if the policies lead to improvements within  
35 overburdened communities;

36 (c) Recommend procedures and criteria for evaluating programs,  
37 activities, or projects;

38 (d) Recommend copollutant emissions reduction goals in  
39 overburdened communities;



1 (e) Evaluate the level of funding provided to assist vulnerable  
2 populations, low-income individuals, and impacted workers and the  
3 funding of projects and activities located within or benefiting  
4 overburdened communities;

5 (f) Recommend environmental justice and environmental health  
6 goals for programs, activities, and projects funded from the climate  
7 investment account, and review agency annual reports on outcomes and  
8 progress toward meeting these goals;

9 (g) Provide recommendations to implementing agencies for  
10 meaningful consultation with vulnerable populations, including  
11 community engagement plans under sections 3 and 4 of this act; and

12 (h) Recommend how to support public participation through  
13 capacity grants for participation.

14 (3) For the purpose of performing the duties under subsection (2)  
15 of this section, two additional tribal members are added to the  
16 council.

17 NEW SECTION. **Sec. 6.** TRIBAL CONSULTATION. (1) Agencies that  
18 allocate funding or administer grant programs appropriated from the  
19 climate investment account created in section 28 of this act must  
20 develop a consultation framework in coordination with tribal  
21 governments that includes best practices, protocols for  
22 communication, and collaboration with federally recognized tribes.  
23 Under this consultation framework, before allocating funding or  
24 administering grant programs appropriated from the climate investment  
25 account, agencies must offer consultation with federally recognized  
26 tribes on all funding decisions and programs that may impact,  
27 infringe upon, or impair the governmental efforts of federally  
28 recognized tribes to adopt or enforce their own standards governing  
29 or protecting the tribe's resources or other rights and interests in  
30 their tribal lands and lands within which a tribe or tribes possess  
31 rights reserved by treaty. The consultation is independent of any  
32 public participation process required by state law, or by a state  
33 agency, and regardless of whether the agency receives a request for  
34 consultation from a federally recognized tribe.

35 (2)(a) If any funding decision, program, project, or activity  
36 that impacts lands within which a tribe or tribes possess rights  
37 reserved by federal treaty, statute, or executive order is undertaken  
38 or funded under this chapter without such consultation with a  
39 federally recognized tribe, an affected tribe may request that all

1 further action on the decision, program, project, or activity cease  
2 until meaningful consultation with any directly impacted federally  
3 recognized tribe is completed.

4 (b) A project or activity funded in whole or in part from the  
5 account created in section 28 of this act must be paused or ceased in  
6 the event that an affected federally recognized Indian tribe or the  
7 department of archaeology and historic preservation provides timely  
8 notice of a determination to the department and any other agency  
9 responsible for the project or activity that the project will  
10 adversely impact cultural resources, archaeological sites, or sacred  
11 sites. A project or activity paused at the direction of the  
12 department under this subsection may not be resumed or completed  
13 unless the potentially impacted tribe provides consent to the  
14 department and the proponent of the project or activity.

15 NEW SECTION. **Sec. 7.** GOVERNANCE STRUCTURE. (1) The governor  
16 shall establish a governance structure to implement the state's  
17 climate commitment under the authority provided under this chapter  
18 and other statutory authority to provide accountability for achieving  
19 the state's greenhouse gas limits in RCW 70A.45.020, to establish a  
20 coordinated and strategic statewide approach to climate resilience,  
21 to build an equitable and inclusive clean energy economy, and to  
22 ensure that the government provides clear policy and requirements,  
23 financial tools, and other mechanisms to support achieving those  
24 limits.

25 (2) The governance structure for implementing the state's climate  
26 commitment must:

27 (a) Be holistic and address the needs, challenges, and  
28 opportunities to meet the climate commitment;

29 (b) Address emission reductions from all relevant sectors and  
30 sources by ensuring that emitters are responsible for meeting  
31 targeted greenhouse gas reductions and that the government provides  
32 clear policy and requirements, financial tools, and other mechanisms  
33 to support achieving those reductions;

34 (c) Support an equitable transition for vulnerable populations  
35 and overburdened communities, including through early and meaningful  
36 engagement of overburdened communities and workers to ensure the  
37 program achieves equitable and just outcomes;

1 (d) Build increasing climate resilience for at-risk communities  
2 and ecosystems through cross-sectoral coordination, strategic  
3 planning, and cohesive policies; and

4 (e) Apply the most current, accurate, and complete scientific and  
5 technical information available to guide the state's climate actions  
6 and strategies.

7 (3) The governance structure for implementing the state's climate  
8 commitment must include, but not be limited to, the following  
9 elements:

10 (a) A strategic plan for aligning existing law, rules, policies,  
11 programs, and plans with the state's greenhouse gas limits, to the  
12 full extent allowed under existing authority;

13 (b) Common state policies, standards, and procedures for  
14 addressing greenhouse gas emissions and climate resilience, including  
15 grant and funding programs, infrastructure investments, and planning  
16 and siting decisions;

17 (c) A process for prioritizing and coordinating funding  
18 consistent with strategic needs for greenhouse gas reductions, equity  
19 and environmental justice, and climate resilience actions;

20 (d) An updated statewide strategy for addressing climate risks  
21 and improving resilience of communities and ecosystems;

22 (e) A comprehensive community engagement plan that addresses and  
23 mitigates barriers to engagement from vulnerable populations,  
24 overburdened communities, and other historically or currently  
25 marginalized groups; and

26 (f) An analysis of gaps and conflicts in state law and programs,  
27 with recommendations for improvements to state law.

28 (4) The governor's office shall develop policy and budget  
29 recommendations to the legislature necessary to implement the state's  
30 climate commitment by December 31, 2021, in accordance with the  
31 purpose, principles, and elements in subsections (1) through (3) of  
32 this section.

33 (5) Nothing in this section establishes or creates legal  
34 authority for the department or any other state agency to enact,  
35 adopt, issue an order, or in any way implement additional regulatory  
36 programs beyond what is provided for under this chapter and other  
37 statutes.

38 NEW SECTION. **Sec. 8.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In  
39 order to ensure that greenhouse gas emissions are reduced by covered

1 entities consistent with the limits established in RCW 70A.45.020,  
2 the department must implement a cap on greenhouse gas emissions from  
3 covered entities and a program to track, verify, and enforce  
4 compliance through the use of compliance instruments.

5 (2) The program must consist of:

6 (a) Annual allowance budgets that limit emissions from covered  
7 entities, as provided in this section and sections 9 and 10 of this  
8 act;

9 (b) Defining those entities covered by the program, and those  
10 entities that may voluntarily opt into coverage under the program, as  
11 provided in this section and sections 9 and 10 of this act;

12 (c) Distribution of emission allowances, as provided in section  
13 12 of this act, and through the allowance price containment  
14 provisions under sections 16 and 17 of this act;

15 (d) Providing for offset credits as a method for meeting a  
16 compliance obligation, pursuant to section 19 of this act;

17 (e) Defining the compliance obligations of covered entities, as  
18 provided in section 22 of this act;

19 (f) Establishing the authority of the department to enforce the  
20 program requirements, as provided in section 23 of this act;

21 (g) Creating a climate investment account for the deposit of  
22 receipts from the distribution of emission allowances, as provided in  
23 section 28 of this act;

24 (h) Providing for the transfer of allowances and recognition of  
25 compliance instruments, including those issued by jurisdictions with  
26 which Washington has linkage agreements;

27 (i) Providing monitoring and oversight of the sale and transfer  
28 of allowances by the department;

29 (j) Creating a price ceiling and associated mechanisms as  
30 provided in section 18 of this act; and

31 (k) Providing for the allocation of allowances to emissions-  
32 intensive, trade-exposed industries pursuant to section 13 of this  
33 act.

34 (3) The department shall consider opportunities to implement the  
35 program in a manner that allows linking the state's program with  
36 those of other jurisdictions. The department must evaluate whether  
37 such linkage will provide for a more cost-effective means for covered  
38 entities to meet their compliance obligations in Washington while  
39 recognizing the special characteristics of the state's economy,  
40 communities, and industries. The department is authorized to enter

1 into a linkage agreement with another jurisdiction after conducting  
2 an environmental justice assessment and after formal notice and  
3 opportunity for a public hearing, and when consistent with the  
4 requirements of section 24 of this act.

5 (4) During the 2022 regular legislative session, the department  
6 must bring forth agency request legislation developed in consultation  
7 with emissions-intensive, trade-exposed businesses, covered entities,  
8 environmental advocates, and overburdened communities that outlines a  
9 compliance pathway specific to emissions-intensive, trade-exposed  
10 businesses for achieving their proportionate share of the state's  
11 emissions reduction limits through 2050.

12 (5) By December 1, 2027, and at least every four years thereafter  
13 and in compliance with RCW 43.01.036, the department must submit a  
14 report to the legislature that includes a comprehensive review of the  
15 implementation of the program to date, including but not limited to  
16 outcomes relative to the state's emissions reduction limits,  
17 overburdened communities, covered entities, and emissions-intensive,  
18 trade-exposed businesses. The department must transmit the report to  
19 the environmental justice council at the same time it is submitted to  
20 the legislature.

21 (6) The department must bring forth agency request legislation if  
22 the department finds that any provision of this chapter prevents  
23 linking Washington's cap and invest program with that of any other  
24 jurisdiction.

25 NEW SECTION. **Sec. 9.** ANNUAL ALLOWANCE BUDGET AND TIMELINES.

26 (1)(a) The department shall commence the program by January 1, 2023,  
27 by determining an emissions baseline establishing the proportionate  
28 share that the total greenhouse gas emissions of covered entities for  
29 the first compliance period bears to the total anthropogenic  
30 greenhouse gas emissions in the state during 2015 through 2019, based  
31 on data reported to the department under RCW 70A.15.2200 or provided  
32 as required by this chapter, as well as other relevant data. By  
33 October 1, 2022, the department shall adopt annual allowance budgets  
34 for the first compliance period of the program, calendar years 2023  
35 through 2026, to be distributed from January 1, 2023, through  
36 December 31, 2026. If the first compliance period is delayed pursuant  
37 to section 22(7) of this act, the department shall adjust the annual  
38 allowance budgets to reflect a shorter first compliance period.

1 (b) By October 1, 2026, the department shall add to its emissions  
2 baseline by incorporating the proportionate share that the total  
3 greenhouse gas emissions of new covered entities in the second  
4 compliance period bear to the total anthropogenic greenhouse gas  
5 emissions in the state during 2023 through 2025. In determining the  
6 addition to the baseline, the department may exclude a year from the  
7 determination if the department identifies that year to have been an  
8 outlier due to a state of emergency. The department shall adopt  
9 annual allowance budgets for the second compliance period of the  
10 program, calendar years 2027 through 2030, that will be distributed  
11 from January 1, 2027, through December 31, 2030.

12 (c) By October 1, 2028, the department shall adopt by rule the  
13 annual allowance budgets for calendar years 2031 through 2040.

14 (2) The annual allowance budgets must be set to achieve the share  
15 of reductions by covered entities necessary to achieve the 2030,  
16 2040, and 2050 statewide emissions limits established in RCW  
17 70A.45.020, based on data reported to the department under chapter  
18 70A.15 RCW or provided as required by this chapter. Annual allowance  
19 budgets must be set such that the use of offsets as compliance  
20 instruments, consistent with section 19 of this act, does not prevent  
21 the achievement of the emissions limits established in RCW  
22 70A.45.020. In so setting annual allowance budgets, the department  
23 must reduce the annual allowance budget relative to the limits in an  
24 amount equivalent to offset use, or in accordance with a similar  
25 methodology adopted by the department. The department must adopt  
26 annual allowance budgets for the program on a calendar year basis  
27 that provide for progressively equivalent reductions year over year.  
28 An allowance distributed under the program, either directly by the  
29 department under sections 13 through 15 of this act or through  
30 auctions under section 12 of this act, does not expire and may be  
31 held or banked consistent with sections 12(6) and 17(1) of this act.

32 (3) The department must complete an evaluation by December 31,  
33 2027, and by December 31, 2035, of the performance of the program,  
34 including its performance in reducing greenhouse gases. If the  
35 evaluation shows that adjustments to the annual allowance budgets are  
36 necessary for covered entities to achieve their proportionate share  
37 of the 2030 and 2040 emission reduction limits identified in RCW  
38 70A.45.020, as applicable, the department shall adjust the annual  
39 allowance budgets accordingly. The department must complete  
40 additional evaluations of the performance of the program by December

1 31, 2040, and by December 31, 2045, and make any necessary  
2 adjustments in the annual allowance budgets to ensure that covered  
3 entities achieve their proportionate share of the 2050 emission  
4 reduction limit identified in RCW 70A.45.020. Nothing in this  
5 subsection precludes the department from making additional  
6 adjustments to annual allowance budgets as necessary to ensure  
7 successful achievement of the proportionate emission reduction limits  
8 by covered entities. The department shall determine and make public  
9 the circumstances, metrics, and processes that would initiate the  
10 public consideration of additional allowance budget adjustments to  
11 ensure successful achievement of the proportionate emission reduction  
12 limits.

13 (4) Data reported to the department under RCW 70A.15.2200 or  
14 provided as required by this chapter for 2015 through 2019 is deemed  
15 sufficient for the purpose of adopting annual allowance budgets and  
16 serving as the baseline by which covered entities demonstrate  
17 compliance under the first compliance period of the program. Data  
18 reported to the department under RCW 70A.15.2200 or provided as  
19 required by this chapter for 2023 through 2025 is deemed sufficient  
20 for adopting annual allowance budgets and serving as the baseline by  
21 which covered entities demonstrate compliance under the second  
22 compliance period of the program.

23 (5) The legislature intends to promote a growing and sustainable  
24 economy and to avoid leakage of emissions from manufacturing to other  
25 jurisdictions. Therefore, the legislature finds that implementation  
26 of this section is contingent upon the enactment of section 13 of  
27 this act.

28 NEW SECTION. **Sec. 10.** PROGRAM COVERAGE. (1) A person is a  
29 covered entity as of the beginning of the first compliance period and  
30 all subsequent compliance periods if the person reported emissions  
31 under RCW 70A.15.2200 for any calendar year from 2015 through 2019,  
32 or if additional data provided as required by this chapter indicates  
33 that emissions for any calendar year from 2015 through 2019 equaled  
34 or exceeded any of the following thresholds, or if the person is a  
35 first jurisdictional deliverer and imports electricity into the state  
36 during the compliance period:

37 (a) Where the person owns or operates a facility and the  
38 facility's emissions equal or exceed 25,000 metric tons of carbon  
39 dioxide equivalent;

1 (b) Where the person is a first jurisdictional deliverer and  
2 generates electricity in the state and emissions associated with this  
3 generation equals or exceeds 25,000 metric tons of carbon dioxide  
4 equivalent;

5 (c) Where the person is a first jurisdictional deliverer  
6 importing electricity into the state and the cumulative annual total  
7 of emissions associated with the imported electricity, whether from  
8 specified or unspecified sources, exceeds 25,000 metric tons of  
9 carbon dioxide equivalent. In consultation with any linked  
10 jurisdiction to the program created by this chapter, by October 1,  
11 2026, the department, in consultation with the department of commerce  
12 and the utilities and transportation commission, shall adopt by rule  
13 a methodology for addressing imported electricity associated with a  
14 centralized electricity market;

15 (d) Where the person is a supplier of fossil fuel other than  
16 natural gas and from that fuel 25,000 metric tons or more of carbon  
17 dioxide equivalent emissions would result from the full combustion or  
18 oxidation, excluding the amounts for fuel products that are produced  
19 or imported with a documented final point of delivery outside of  
20 Washington and combusted outside of Washington; and

21 (e)(i) Where the person supplies natural gas in amounts that  
22 would result in exceeding 25,000 metric tons of carbon dioxide  
23 equivalent emissions if fully combusted or oxidized, excluding the  
24 amounts for fuel products that are produced or imported with a  
25 documented final point of delivery outside of Washington and  
26 combusted outside of Washington, and excluding the amounts: (A)  
27 Supplied to covered entities under (a) through (d) of this  
28 subsection; and (B) delivered to opt-in entities;

29 (ii) Where the person who is not a natural gas company and has a  
30 tariff with a natural gas company to deliver to an end-use customer  
31 in the state in amounts that would result in exceeding 25,000 metric  
32 tons of carbon dioxide equivalent emissions if fully combusted or  
33 oxidized, excluding the amounts: (A) Supplied to covered entities  
34 under (a) through (d) of this subsection; and (B) the amounts  
35 delivered to opt-in entities;

36 (iii) Where the person is an end-use customer in the state who  
37 directly purchases natural gas from a person that is not a natural  
38 gas company and has the natural gas delivered through an interstate  
39 pipeline to a distribution system owned by the purchaser in amounts  
40 that would result in exceeding 25,000 metric tons of carbon dioxide



1 equivalent emissions if fully combusted or oxidized, excluding the  
2 amounts: (A) Supplied to covered entities under (a) through (d) of  
3 this subsection; and (B) delivered to opt-in entities.

4 (2) A person is a covered entity as of the beginning of the  
5 second compliance period and all subsequent compliance periods if the  
6 person reported emissions under RCW 70A.15.2200 or provided emissions  
7 data as required by this chapter for any calendar year from 2023  
8 through 2025, where the person owns or operates a waste to energy  
9 facility utilized by a county and city solid waste management program  
10 and the facility's emissions equal or exceed 25,000 metric tons of  
11 carbon dioxide equivalent.

12 (3)(a) A person is a covered entity beginning January 1, 2031,  
13 and all subsequent compliance periods if the person reported  
14 emissions under RCW 70A.15.2200 or provided emissions data as  
15 required by this chapter for any calendar year from 2027 through  
16 2029, where the person owns or operates a:

17 (i) Landfill utilized by a county and city solid waste management  
18 program and the facility's emissions equal or exceed 25,000 metric  
19 tons of carbon dioxide equivalent; or

20 (ii) Railroad company, as that term is defined in RCW 81.04.010,  
21 and the railroad company's emissions equal or exceed 25,000 metric  
22 tons of carbon dioxide equivalent.

23 (b) Subsection (a) of this subsection does not apply to owners or  
24 operators of landfills that:

25 (i) Capture at least 75 percent of the landfill gas generated by  
26 the decomposition of waste using methods under 40 C.F.R. Part 98,  
27 Subpart HH - Municipal Solid Waste landfills, and subsequent updates;  
28 and

29 (ii) Operate a program, individually or through partnership with  
30 another entity, that results in the production of renewable natural  
31 gas or electricity from landfill gas generated by the facility.

32 (c) It is the intent of the legislature to adopt a greenhouse gas  
33 reduction policy specific to landfills. If such a policy is not  
34 enacted by January 1, 2030, the requirements of this subsection (3)  
35 take full effect.

36 (4) When a covered entity reports, during a compliance period,  
37 emissions from a facility under RCW 70A.15.2200 that are below the  
38 thresholds specified in subsection (1) or (2) of this section, the  
39 covered entity continues to have a compliance obligation through the  
40 current compliance period. When a covered entity reports emissions

1 below the threshold for each year during an entire compliance period,  
2 or has ceased all processes at the facility requiring reporting under  
3 RCW 70A.15.2200, the entity is no longer a covered entity as of the  
4 beginning of the subsequent compliance period unless the department  
5 provides notice at least 12 months before the end of the compliance  
6 period that the facility's emissions were within 10 percent of the  
7 threshold and that the person will continue to be designated as a  
8 covered entity in order to ensure equity among all covered entities.  
9 Whenever a covered entity ceases to be a covered entity, the  
10 department shall notify the appropriate policy and fiscal committees  
11 of the legislature of the name of the entity and the reason the  
12 entity is no longer a covered entity.

13 (5) For types of emission sources described in subsection (1) of  
14 this section that begin or modify operation after January 1, 2023,  
15 and types of emission sources described in subsection (2) of this  
16 section that begin or modify operation after 2027, coverage under the  
17 program starts in the calendar year in which emissions from the  
18 source exceed the applicable thresholds in subsection (1) or (2) of  
19 this section, or upon formal notice from the department that the  
20 source is expected to exceed the applicable emissions threshold,  
21 whichever happens first. Sources meeting these conditions are  
22 required to transfer their first allowances on the first transfer  
23 deadline of the year following the year in which their emissions were  
24 equal to or exceeded the emissions threshold.

25 (6) For emission sources described in subsection (1) of this  
26 section that are in operation or otherwise active between 2015 and  
27 2019 but were not required to report emissions for those years under  
28 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,  
29 coverage under the program starts in the calendar year following the  
30 year in which emissions from the source exceed the applicable  
31 thresholds in subsection (1) of this section as reported pursuant to  
32 RCW 70A.15.2200 or provided as required by this chapter, or upon  
33 formal notice from the department that the source is expected to  
34 exceed the applicable emissions threshold for the first year that  
35 source is required to report emissions, whichever happens first.  
36 Sources meeting these criteria are required to transfer their first  
37 allowances on the first transfer deadline of the year following the  
38 year in which their emissions, as reported under RCW 70A.15.2200 or  
39 provided as required by this chapter, were equal to or exceeded the  
40 emissions threshold.

1 (7) The following emissions are exempt from coverage in the  
2 program, regardless of the emissions reported under RCW 70A.15.2200  
3 or provided as required by this chapter:

4 (a) Emissions from the combustion of aviation fuels;

5 (b) Emissions from watercraft fuels supplied in Washington that  
6 are combusted outside of Washington;

7 (c) Emissions from a coal-fired electric generation facility  
8 exempted from additional greenhouse gas limitations, requirements, or  
9 performance standards under RCW 80.80.110;

10 (d) Carbon dioxide emissions from the combustion of biomass or  
11 biofuels;

12 (e)(i) Motor vehicle fuel or special fuel that is used  
13 exclusively for agricultural purposes by a farm fuel user. This  
14 exemption is available only if a buyer of motor vehicle fuel or  
15 special fuel provides the seller with an exemption certificate in a  
16 form and manner prescribed by the department. For the purposes of  
17 this subsection, "agricultural purposes" and "farm fuel user" have  
18 the same meanings as provided in RCW 82.08.865.

19 (ii) The department must determine a method for expanding the  
20 exemption provided under (e)(i) of this subsection to include fuels  
21 used for the purpose of transporting agricultural products on public  
22 highways. The department must maintain this expanded exemption for a  
23 period of five years, in order to provide the agricultural sector  
24 with a feasible transition period; and

25 (f) Emissions from facilities with North American industry  
26 classification system code 92811 (national security).

27 (8) The department shall not require multiple covered entities to  
28 have a compliance obligation for the same emissions. The department  
29 may by rule authorize refineries, fuel suppliers, facilities using  
30 natural gas, and natural gas utilities to provide by agreement for  
31 the assumption of the compliance obligation for fuel or natural gas  
32 supplied and combusted in the state. The department must be notified  
33 of such an agreement at least 12 months prior to the compliance  
34 obligation period for which the agreement is applicable.

35 (9)(a) The legislature intends to promote a growing and  
36 sustainable economy and to avoid leakage of emissions from  
37 manufacturing to other locations. The legislature further intends to  
38 see innovative new businesses locate and grow in Washington that  
39 contribute to Washington's prosperity and environmental objectives.

1 (b) Consistent with the intent of the legislature to avoid the  
2 leakage of emissions to other jurisdictions, in achieving the state's  
3 greenhouse gas limits in RCW 70A.45.020, the state, including lead  
4 agencies under chapter 43.21C RCW, shall pursue the limits in a  
5 manner that recognizes that the siting and placement of new or  
6 expanded best-in-class facilities with lower carbon emitting  
7 processes is in the economic and environmental interests of the state  
8 of Washington.

9 (c) In conducting a life-cycle analysis, if required, for new or  
10 expanded facilities that require review under chapter 43.21C RCW, a  
11 lead agency must evaluate and attribute any potential net cumulative  
12 greenhouse gas emissions resulting from the project as compared to  
13 other existing facilities or best available technology including  
14 best-in-class facilities and emerging lower carbon processes that  
15 supply the same product or end use. The department may adopt rules to  
16 determine the appropriate threshold for applying this analysis.

17 (d) Covered emissions from an entity that is or will be a covered  
18 entity under this chapter may not be the basis for denial of a permit  
19 for a new or expanded facility. Covered emissions must be included in  
20 the analysis undertaken pursuant to (c) of this subsection. Nothing  
21 in this subsection requires a lead agency or a permitting agency to  
22 approve or issue a permit to a permit applicant, including to a new  
23 or expanded fossil fuel project.

24 (e) A lead agency under chapter 43.21C RCW or a permitting agency  
25 shall allow a new or expanded facility that is a covered entity or  
26 opt-in entity to satisfy a mitigation requirement for its covered  
27 emissions under this act and under any greenhouse gas emission  
28 mitigation requirements for covered emissions under chapter 43.21C  
29 RCW by submitting to the department the number of compliance  
30 instruments equivalent to its covered emissions during a compliance  
31 period.

32 NEW SECTION. **Sec. 11.** REQUIREMENTS. (1) All covered entities  
33 must register to participate in the program, following procedures  
34 adopted by the department by rule.

35 (2) Entities registering to participate in the program must  
36 describe any direct or indirect affiliation with other registered  
37 entities.

38 (3) A person responsible for greenhouse gas emissions that is not  
39 a covered entity may voluntarily participate in the program by

1 registering as an opt-in entity. An opt-in entity must satisfy the  
2 same registration requirements as covered entities. Once registered,  
3 an opt-in entity is allowed to participate as a covered entity in  
4 auctions and must assume the same compliance obligation to transfer  
5 compliance instruments equal to their emissions at the appointed  
6 transfer dates. An opt-in entity may opt out of the program at the  
7 end of any compliance period by providing written notice to the  
8 department at least six months prior to the end of the compliance  
9 period. The opt-in entity continues to have a compliance obligation  
10 through the current compliance period. An opt-in entity is not  
11 eligible to receive allowances directly distributed under section 13,  
12 14, or 15 of this act.

13 (4) A person that is not covered by the program and is not a  
14 covered entity or opt-in entity may voluntarily participate in the  
15 program as a general market participant. General market participants  
16 must meet all applicable registration requirements specified by rule.

17 (5) Federally recognized tribes and federal agencies may elect to  
18 participate in the program as opt-in entities or general market  
19 participants.

20 (6) The department shall use a secure, online electronic tracking  
21 system to: Register entities in the state program; issue compliance  
22 instruments; track ownership of compliance instruments; enable and  
23 record compliance instrument transfers; facilitate program  
24 compliance; and support market oversight.

25 (7) The department must use an electronic tracking system that  
26 allows two accounts to each covered or opt-in entity:

27 (a) A compliance account where the compliance instruments are  
28 transferred to the department for retirement. Compliance instruments  
29 in compliance accounts may not be sold, traded, or otherwise provided  
30 to another account or person.

31 (b) A holding account that is used when a registered entity is  
32 interested in trading allowances. Allowances in holding accounts may  
33 be bought, sold, transferred to another registered entity, or traded.  
34 The amount of allowances a registered entity may have in its holding  
35 account is constrained by the holding limit as determined by the  
36 department by rule. Information about the contents of each holding  
37 account, including but not limited to the number of allowances in the  
38 account, must be displayed on a regularly maintained and searchable  
39 public website established and updated by the department.

1 (8) Registered general market participants are each allowed an  
2 account, to hold, trade, sell, or transfer allowances.

3 (9) The department shall maintain an account for the purpose of  
4 retiring allowances transferred by registered entities and from the  
5 voluntary renewable reserve account.

6 (10) The department shall maintain a public roster of all covered  
7 entities, opt-in entities, and general market participants on the  
8 department's public website.

9 (11) The department shall include a voluntary renewable reserve  
10 account.

11 NEW SECTION. **Sec. 12.** AUCTIONS OF ALLOWANCES. (1) Except as  
12 provided in sections 13, 14, and 15 of this act, the department shall  
13 distribute allowances through auctions as provided in this section  
14 and in rules adopted by the department to implement these sections.  
15 An allowance is not a property right.

16 (2) (a) The department shall hold a maximum of four auctions  
17 annually, plus any necessary reserve auctions. An auction may include  
18 allowances from the annual allowance budget of the current year and  
19 allowances from the annual allowance budgets from prior years that  
20 remain to be distributed. The department must transmit to the  
21 environmental justice council an auction notice at least 60 days  
22 prior to each auction, as well as a summary results report and a  
23 postauction public proceeds report within 60 days after each auction.  
24 The department must communicate the results of the previous calendar  
25 year's auctions to the environmental justice council on an annual  
26 basis beginning in 2024.

27 (b) The department must make future vintage allowances available  
28 through parallel auctions at least twice annually in addition to the  
29 auctions through which current vintage allowances are exclusively  
30 offered under (a) of this subsection.

31 (3) The department shall engage a qualified, independent  
32 contractor to run the auctions. The department shall also engage a  
33 qualified financial services administrator to hold the bid  
34 guarantees, evaluate bid guarantees, and inform the department of the  
35 value of bid guarantees once the bids are accepted.

36 (4) Auctions are open to covered entities, opt-in entities, and  
37 general market participants that are registered entities in good  
38 standing. The department shall adopt by rule the requirements for a  
39 registered entity to register and participate in a given auction.

1 (a) Registered entities intending to participate in an auction  
2 must submit an application to participate at least 30 days prior to  
3 the auction. The application must include the documentation required  
4 for review and approval by the department. A registered entity is  
5 eligible to participate only after receiving a notice of approval by  
6 the department.

7 (b) Each registered entity that elects to participate in the  
8 auction must have a different representative. Only a representative  
9 with an approved auction account is authorized to access the auction  
10 platform to submit an application or confirm the intent to bid for  
11 the registered entity, submit bids on behalf of the registered entity  
12 during the bidding window, or to download reports specific to the  
13 auction.

14 (5) The department may require a bid guarantee, payable to the  
15 financial services administrator, in an amount greater than or equal  
16 to the sum of the maximum value of the bids to be submitted by the  
17 registered entity.

18 (6) To protect the integrity of the auctions, a registered entity  
19 or group of registered entities with a direct corporate association  
20 are subject to auction purchase and holding limits. The department  
21 may impose additional limits if it deems necessary to protect the  
22 integrity and functioning of the auctions:

23 (a) A covered entity or an opt-in entity may not buy more than 10  
24 percent of the allowances offered during a single auction;

25 (b) A general market participant may not buy more than four  
26 percent of the allowances offered during a single auction and may not  
27 in aggregate own more than 10 percent of total allowances to be  
28 issued in a calendar year;

29 (c) No registered entity may buy more than the entity's bid  
30 guarantee; and

31 (d) No registered entity may buy allowances that would exceed the  
32 entity's holding limit at the time of the auction.

33 (7)(a) For fiscal year 2023, upon completion and verification of  
34 the auction results, the financial services administrator shall  
35 notify winning bidders and transfer the auction proceeds to the state  
36 treasurer for deposit as follows: (i) \$127,341,000 must first be  
37 deposited into the carbon emissions reduction account created in  
38 section 27 of this act; and (ii) the remaining auction proceeds to  
39 the climate investment account created in section 28 of this act and

1 the air quality and health disparities improvement account created in  
2 section 31 of this act.

3 (b) For fiscal year 2024, upon completion and verification of the  
4 auction results, the financial services administrator shall notify  
5 winning bidders and transfer the auction proceeds to the state  
6 treasurer for deposit as follows: (i) \$356,697,000 must first be  
7 deposited into the carbon emissions reduction account created in  
8 section 27 of this act; and (ii) the remaining auction proceeds to  
9 the climate investment account created in section 28 of this act and  
10 the air quality and health disparities improvement account created in  
11 section 31 of this act.

12 (c) For fiscal year 2025, upon completion and verification of the  
13 auction results, the financial services administrator shall notify  
14 winning bidders and transfer the auction proceeds to the state  
15 treasurer for deposit as follows: (i) \$366,558,000 must first be  
16 deposited into the carbon emissions reduction account created in  
17 section 27 of this act; and (ii) the remaining auction proceeds to  
18 the climate investment account created in section 28 of this act and  
19 the air quality and health disparities improvement account created in  
20 section 31 of this act.

21 (d) For fiscal years 2026 through 2037, upon completion and  
22 verification of the auction results, the financial services  
23 administrator shall notify winning bidders and transfer the auction  
24 proceeds to the state treasurer for deposit as follows: (i)  
25 \$359,117,000 per year must first be deposited into the carbon  
26 emissions reduction account created in section 27 of this act; and  
27 (ii) the remaining auction proceeds to the climate investment account  
28 created in section 28 of this act and the air quality and health  
29 disparities improvement account created in section 31 of this act.

30 (e) The deposits into the carbon emissions reduction account  
31 pursuant to (a) through (d) of this subsection must not exceed  
32 \$5,200,000,000 over the first 16 years and any remaining auction  
33 proceeds must be deposited into the climate investment account  
34 created in section 28 of this act and the air quality and health  
35 disparities improvement account created in section 31 of this act.

36 (f) For fiscal year 2038 and each year thereafter, upon  
37 completion and verification of the auction results, the financial  
38 services administrator shall notify winning bidders and transfer the  
39 auction proceeds to the state treasurer for deposit as follows: (i)  
40 50 percent of the auction proceeds to the carbon emissions reduction



1 account created in section 27 of this act; and (ii) the remaining  
2 auction proceeds to the climate investment account created in section  
3 28 of this act and the air quality and health disparities improvement  
4 account created in section 31 of this act.

5 (8) The department shall adopt by rule provisions to guard  
6 against bidder collusion and minimize the potential for market  
7 manipulation. A registered entity may not release or disclose any  
8 bidding information including: Intent to participate or refrain from  
9 participation; auction approval status; intent to bid; bidding  
10 strategy; bid price or bid quantity; or information on the bid  
11 guarantee provided to the financial services administrator. The  
12 department may cancel or restrict a previously approved auction  
13 participation application or reject a new application if the  
14 department determines that a registered entity has:

15 (a) Provided false or misleading facts;

16 (b) Withheld material information that could influence a decision  
17 by the department;

18 (c) Violated any part of the auction rules;

19 (d) Violated registration requirements; or

20 (e) Violated any of the rules regarding the conduct of the  
21 auction.

22 (9) Any cancellation or restriction approved by the department  
23 under subsection (8) of this section may be permanent or for a  
24 specified number of auctions and the cancellation or restriction  
25 imposed is not exclusive and is in addition to the remedies that may  
26 be available pursuant to chapter 19.86 RCW or other state or federal  
27 laws, if applicable.

28 (10) The department shall design allowance auctions so as to  
29 allow, to the maximum extent practicable, linking with external  
30 greenhouse gas emissions trading programs in other jurisdictions and  
31 to facilitate the transfer of allowances when the state's program has  
32 entered into a linkage agreement with other external greenhouse gas  
33 emissions trading programs. The department may conduct auctions  
34 jointly with linked jurisdictions.

35 (11) In setting the number of allowances offered at each auction,  
36 the department shall consider the allowances in the marketplace due  
37 to the marketing of allowances issued as required under sections 13,  
38 14, and 15 of this act in the department's determination of the  
39 number of allowances to be offered at auction. The department shall

1 offer only such number of allowances at each auction as will enhance  
2 the likelihood of achieving the goals of RCW 70A.45.020.

3 NEW SECTION. **Sec. 13.** ALLOCATION OF ALLOWANCES TO EMISSIONS-  
4 INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) Facilities owned or operated  
5 by a covered entity must receive an allocation of allowances for the  
6 covered emissions at those facilities under this subsection at no  
7 cost if the operations of the facility are classified as emissions-  
8 intensive and trade-exposed, as determined by being engaged in one or  
9 more of the processes described by the following industry  
10 descriptions and codes in the North American industry classification  
11 system:

12 (a) Metals manufacturing, including iron and steel making,  
13 ferroalloy and primary metals manufacturing, secondary aluminum  
14 smelting and alloying, aluminum sheet, plate, and foil manufacturing,  
15 and smelting, refining, and alloying of other nonferrous metals,  
16 North American industry classification system codes beginning with  
17 331;

18 (b) Paper manufacturing, including pulp mills, paper mills, and  
19 paperboard milling, North American industry classification system  
20 codes beginning with 322;

21 (c) Aerospace product and parts manufacturing, North American  
22 industry classification system codes beginning with 3364;

23 (d) Wood products manufacturing, North American industry  
24 classification system codes beginning with 321;

25 (e) Nonmetallic mineral manufacturing, including glass container  
26 manufacturing, North American industry classification system codes  
27 beginning with 327;

28 (f) Chemical manufacturing, North American industry  
29 classification system codes beginning with 325;

30 (g) Computer and electronic product manufacturing, including  
31 semiconductor and related device manufacturing, North American  
32 industry classification system codes beginning with 334;

33 (h) Food manufacturing, North American industry classification  
34 system codes beginning with 311;

35 (i) Cement manufacturing, North American industry classification  
36 system code 327310;

37 (j) Petroleum refining, North American industry classification  
38 system code 324110;

1 (k) Asphalt paving mixtures and block manufacturing from refined  
2 petroleum, North American industry classification system code 324121;

3 (l) Asphalt shingle and coating manufacturing from refined  
4 petroleum, North American industry classification system code 324122;  
5 and

6 (m) All other petroleum and coal products manufacturing from  
7 refined petroleum, North American industry classification system code  
8 324199.

9 (2) By July 1, 2022, the department must adopt by rule objective  
10 criteria for both emissions' intensity and trade exposure for the  
11 purpose of identifying emissions-intensive, trade-exposed  
12 manufacturing businesses during the second compliance period of the  
13 program and subsequent compliance periods. A facility covered by  
14 subsection (1)(a) through (m) of this section is considered an  
15 emissions-intensive, trade-exposed facility and is eligible for  
16 allocation of no cost allowances as described in this section. In  
17 addition, any covered party that is a manufacturing business that can  
18 demonstrate to the department that it meets the objective criteria  
19 adopted by rule is also eligible for treatment as emissions-  
20 intensive, trade-exposed and is eligible for allocation of no cost  
21 allowances as described in this section. In developing the objective  
22 criteria under this subsection, the department must consider the  
23 locations of facilities potentially identified as emissions-  
24 intensive, trade-exposed manufacturing businesses relative to  
25 overburdened communities.

26 (3)(a) For the first compliance period beginning in January 1,  
27 2023, the annual allocation of no cost allowances for direct  
28 distribution to a facility identified as emissions-intensive and  
29 trade-exposed must be equal to the facility's baseline carbon  
30 intensity established using data from 2015 through 2019, or other  
31 data as allowed under this section, multiplied by the facility's  
32 actual production for each calendar year during the compliance  
33 period. For facilities using the mass-based approach, the allocation  
34 of no cost allowances shall be equal to the facility's mass-based  
35 baseline using data from 2015 through 2019, or other data as allowed  
36 under this section.

37 (b) For the second compliance period, beginning in January, 2027,  
38 and in each subsequent compliance period, the annual allocation of no  
39 cost allowances established in (a) of this subsection shall be  
40 adjusted according to the benchmark reduction schedules established

1 in (b)(ii) and (iii) and (e) of this subsection multiplied by the  
2 facility's actual production during the period. The department shall  
3 adjust the no cost allocation of allowances and credits to an  
4 emissions-intensive and trade-exposed facility to avoid duplication  
5 with any no cost allowances transferred pursuant to sections 14 and  
6 15 of this act, if applicable.

7 (i) For the purpose of this section, "carbon intensity" means the  
8 amount of carbon dioxide equivalent emissions from a facility in  
9 metric tons divided by the facility specific measure of production  
10 including, but not limited to, units of product manufactured or sold,  
11 over the same time interval.

12 (ii) If an emissions-intensive and trade-exposed facility is not  
13 able to feasibly determine a carbon intensity benchmark based on its  
14 unique circumstances, the entity may elect to use a mass-based  
15 baseline that does not vary based on changes in production volumes.  
16 The mass-based baseline must be based upon data from 2015 through  
17 2019, unless the emissions-intensive, trade-exposed facility can  
18 demonstrate that there have been abnormal periods of operation that  
19 materially impacted the facility and the baseline period should be  
20 expanded to include years prior to 2015. For each year during the  
21 first four-year compliance period that begins January 1, 2023, these  
22 facilities must be awarded no cost allowances equal to 100 percent of  
23 the facility's mass-based baseline. For each year during the second  
24 four-year compliance period that begins January 1, 2027, these  
25 facilities must be awarded no cost allowances equal to 97 percent of  
26 the facility's mass-based baseline. For each year during the third  
27 compliance period that begins January 1, 2031, these facilities must  
28 be awarded no cost allowances equal to 94 percent of the facility's  
29 mass-based baseline. Except as provided in (b)(iii) of this  
30 subsection, if a facility elects to use a mass-based baseline, it may  
31 not later convert to a carbon intensity benchmark during the first  
32 three compliance periods.

33 (iii) A facility with a North American industry classification  
34 system code beginning with 3364 that is utilizing a mass-based  
35 baseline in (b)(ii) of this subsection must receive an additional no  
36 cost allowance allocation under this section in order to accommodate  
37 an increase in production that increases its emissions above the  
38 baseline on a basis equivalent in principle to those awarded to  
39 entities utilizing a carbon intensity benchmark pursuant to this  
40 subsection (3)(b). The department shall establish methods to award,

1 for any annual period, additional no cost allowance allocations under  
2 this section and, if appropriate based on projected production, to  
3 achieve a similar ongoing result through the adjustment of the  
4 facility's mass-based baseline. An eligible facility under this  
5 subsection that has elected to use a mass-based baseline may not  
6 convert to a carbon intensity benchmark until the next compliance  
7 period.

8 (c)(i) By September 15, 2022, each emissions-intensive, trade-  
9 exposed facility shall submit its carbon intensity baseline for the  
10 first compliance period to the department. The carbon intensity  
11 baseline for the first compliance period must use data from  
12 2015-2019, unless the emissions-intensive, trade-exposed facility can  
13 demonstrate that there have been abnormal periods of operation that  
14 materially impacted the facility and the baseline period should be  
15 expanded to include years prior to 2015.

16 (ii) By November 15, 2022, the department shall review and  
17 approve each emissions-intensive, trade-exposed facility's baseline  
18 carbon intensity for the first compliance period.

19 (d) During the first four-year compliance period that begins  
20 January 1, 2023, each emissions-intensive, trade-exposed facility  
21 must record its facility-specific carbon intensity baseline based on  
22 its actual production.

23 (e)(i) For the second four-year compliance period that begins  
24 January 1, 2027, the second period benchmark for each emissions-  
25 intensive, trade-exposed facility is three percent below the first  
26 period baseline specified in (a), (b), and (c) of this subsection.

27 (ii) For the third four-year compliance period that begins  
28 January 1, 2031, the third period benchmark for each emissions-  
29 intensive, trade-exposed facility is three percent lower than the  
30 second period benchmark.

31 (f) Prior to the beginning of either the second, third, or  
32 subsequent compliance periods, the department may make an upward  
33 adjustment in the next compliance period's benchmark for an  
34 emissions-intensive, trade-exposed facility based on the facility's  
35 demonstration to the department that additional reductions in carbon  
36 intensity or mass emissions are not technically or economically  
37 feasible. The department may base the upward adjustment applicable to  
38 an emissions-intensive, trade-exposed facility in the next compliance  
39 period on the facility's best available technology analysis. The  
40 department shall by rule provide for emissions-intensive, trade-

1 exposed facilities to apply to the department for an adjustment to  
2 the allocation for direct distribution of no cost allowances based on  
3 its facility-specific carbon intensity benchmark or mass emissions  
4 baseline. The department shall make adjustments based on:

5 (i) A significant change in the emissions use or emissions  
6 attributable to the manufacture of an individual good or goods in  
7 this state by an emissions-intensive, trade-exposed facility based on  
8 a finding by the department that an adjustment is necessary to  
9 accommodate for changes in the manufacturing process that have a  
10 material impact on emissions;

11 (ii) Significant changes to an emissions-intensive, trade-exposed  
12 facility's external competitive environment that result in a  
13 significant increase in leakage risk; or

14 (iii) Abnormal operating periods when an emissions-intensive,  
15 trade-exposed facility's carbon intensity has been materially  
16 affected so that these abnormal operating periods are either excluded  
17 or otherwise considered in the establishment of the compliance period  
18 carbon intensity benchmarks.

19 (4) (a) By December 1, 2026, the department shall provide a report  
20 to the appropriate committees of the senate and house of  
21 representatives that describes alternative methods for determining  
22 the amount and a schedule of allowances to be provided to facilities  
23 owned or operated by each covered entity designated as an emissions-  
24 intensive, trade-exposed facility from January 1, 2035, through  
25 January 1, 2050. The report must include a review of global best  
26 practices in ensuring against emissions leakage and economic harm to  
27 businesses in carbon pricing programs and describe alternative  
28 methods of emissions performance benchmarking and mass-based  
29 allocation of no cost allowances. At a minimum, the department must  
30 evaluate benchmarks based on both carbon intensity and mass, as well  
31 as the use of best available technology as a method for compliance.  
32 In developing the report, the department shall form an advisory group  
33 that includes representatives of the manufacturers listed in  
34 subsection (1) of this section.

35 (b) If the legislature does not adopt a compliance obligation for  
36 emissions-intensive, trade-exposed facilities by December 1, 2027,  
37 those facilities must continue to receive allowances as provided in  
38 the third four-year compliance period that begins January 1, 2031.

39 (5) If the actual emissions of an emissions-intensive, trade-  
40 exposed facility exceed the facility's no cost allowances assigned

1 for that compliance period, it must acquire additional compliance  
2 instruments such that the total compliance instruments transferred to  
3 its compliance account consistent with section 22 of this act equals  
4 emissions during the compliance period. An emissions-intensive,  
5 trade-exposed facility must be allowed to bank unused allowances,  
6 including for future sale and investment in best available technology  
7 when economically feasible. The department shall limit the use of  
8 offset credits for compliance by an emissions-intensive, trade-  
9 exposed facility, such that the quantity of no cost allowances plus  
10 the provision of offset credits does not exceed 100 percent of the  
11 facility's total compliance obligation over a compliance period.

12 (6) The department must withhold or withdraw the relevant share  
13 of allowances allocated to a covered entity under this section in the  
14 event that the covered entity ceases production in the state and  
15 becomes a closed facility. In the event an entity curtails all  
16 production and becomes a curtailed facility, the allowances are  
17 retained but cannot be traded, sold, or transferred and are still  
18 subject to the emission reduction requirements specified in this  
19 section. An owner or operator of a curtailed facility may transfer  
20 the allowances to a new operator of the facility that will be  
21 operated under the same North American industry classification system  
22 codes. If the curtailed facility becomes a closed facility, then all  
23 unused allowances will be transferred to the emissions containment  
24 reserve. A curtailed facility is not eligible to receive free  
25 allowances during a period of curtailment. Any allowances withheld or  
26 withdrawn under this subsection must be transferred to the emissions  
27 containment reserve.

28 (7) An owner or operator of more than one facility receiving no  
29 cost allowances under this section may transfer allowances among the  
30 eligible facilities.

31 (8) Rules adopted by the department under this section must  
32 include protocols for allocating allowances at no cost to an eligible  
33 facility built after the effective date of this section. The  
34 protocols must include consideration of the products and criteria  
35 pollutants being produced by the facility, as well as the local  
36 environmental and health impacts associated with the facility. For a  
37 facility that is built on tribal lands or is determined by the  
38 department to impact tribal lands and resources, the protocols must  
39 be developed in consultation with the affected tribal nations.

1           NEW SECTION.       **Sec. 14.**       ALLOCATION OF ALLOWANCES TO ELECTRIC

2 UTILITIES. (1) The legislature intends by this section to allow all  
3 consumer-owned electric utilities and investor-owned electric  
4 utilities subject to the requirements of chapter 19.405 RCW, the  
5 Washington clean energy transformation act, to be eligible for  
6 allowance allocation as provided in this section in order to mitigate  
7 the cost burden of the program on electricity customers.

8           (2)(a) By October 1, 2022, the department shall adopt rules, in  
9 consultation with the department of commerce and the utilities and  
10 transportation commission, establishing the methods and procedures  
11 for allocating allowances for consumer-owned and investor-owned  
12 electric utilities. The rules must take into account the cost burden  
13 of the program on electricity customers.

14           (b) By October 1, 2022, the department shall adopt an allocation  
15 schedule by rule, in consultation with the department of commerce and  
16 the utilities and transportation commission, for the first compliance  
17 period for the provision of allowances at no cost to consumer-owned  
18 and investor-owned electric utilities. This allocation must be  
19 consistent with a forecast, that is approved by the appropriate  
20 governing board or the utilities and transportation commission, of  
21 each utility's supply and demand, and the cost burden resulting from  
22 the inclusion of the covered entities in the first compliance period.

23           (c) By October 1, 2026, the department shall adopt an allocation  
24 schedule by rule, in consultation with the department of commerce and  
25 the utilities and transportation commission, for the provision of  
26 allowances for the second compliance period at no cost to consumer-  
27 owned and investor-owned electric utilities. This allocation must be  
28 consistent with a forecast, that is approved by the appropriate  
29 governing board or the utilities and transportation commission, of  
30 each utility's supply and demand, and the cost burden resulting from  
31 the inclusion of covered entities in the second compliance period.  
32 The allowances included in this schedule must reflect the increased  
33 scope of coverage in the electricity sector relative to the program  
34 budget of allowances established in 2022.

35           (d) By October 1, 2028, the department shall adopt an allocation  
36 schedule by rule, in consultation with the department of commerce and  
37 the utilities and transportation commission, for the provision of  
38 allowances at no cost to consumer-owned and investor-owned electric  
39 utilities for the compliance periods contained within calendar years  
40 2031 through 2045. This allocation must be consistent with a



1 forecast, that is approved by the appropriate governing board or the  
2 utilities and transportation commission, of each utility's supply and  
3 demand, and the cost burden resulting from the inclusion of the  
4 covered entities in the compliance periods. The rule developed under  
5 this subsection (2)(d) may prescribe an amount of allowances  
6 allocated at no cost that must be consigned to auction by consumer-  
7 owned and investor-owned electric utilities. However, utilities may  
8 use allowances for compliance equal to their covered emissions in any  
9 calendar year they were not subject to potential penalty under RCW  
10 19.405.090. Under no circumstances may utilities receive any free  
11 allowances after 2045.

12 (3)(a) During the first compliance period, allowances allocated  
13 at no cost to consumer-owned and investor-owned electric utilities  
14 may be consigned to auction for the benefit of ratepayers, deposited  
15 for compliance, or a combination of both. The rules adopted by the  
16 department under subsection (2) of this section must include  
17 provisions for directing revenues generated under this subsection to  
18 the applicable utilities.

19 (b) By October 1, 2026, the department, in consultation with the  
20 department of commerce and the utilities and transportation  
21 commission, must adopt rules governing the amount of allowances  
22 allocated at no cost under subsection (2)(c) of this section that  
23 must be consigned to auction. For calendar year 2030, electric  
24 utilities may use allowances for compliance equal to their covered  
25 emissions if not subject to potential penalty under RCW 19.405.090.

26 (4) The benefits of all allowances consigned to auction under  
27 this section must be used by consumer-owned and investor-owned  
28 electric utilities for the benefit of ratepayers, with the first  
29 priority the mitigation of any rate impacts to low-income customers.

30 (5) If an entity is identified by the department as an emissions-  
31 intensive, trade-exposed industry under section 13 of this act,  
32 unless allowances have been otherwise allocated for electricity-  
33 related emissions to the entity under section 13 of this act or to a  
34 consumer-owned utility under this section, the department shall  
35 allocate allowances at no cost to the electric utility or power  
36 marketing administration that is providing electricity to the entity  
37 in an amount equal to the forecasted emissions for electricity  
38 consumption for the entity for the compliance period.

1 (6) The department shall allow for allowances to be transferred  
2 between a power marketing administration and electric utilities and  
3 used for direct compliance.

4 (7) Rules establishing the allocation of allowances to consumer-  
5 owned utilities and investor-owned utilities must consider the impact  
6 of electrification of buildings, transportation, and industry on the  
7 electricity sector.

8 (8) Nothing in this section affects the requirements of chapter  
9 19.405 RCW.

10 (9) A consumer-owned utility that is party to a contract that  
11 meets the following conditions must be issued allowances under this  
12 section for emissions associated with imported electricity, in order  
13 to prevent impairment of the value of the contract to either party:

14 (a) The contract does not address compliance costs imposed upon  
15 the consumer-owned utility by the program created in this chapter;  
16 and

17 (b) The contract was in effect as of the effective date of this  
18 section and expires no later than the end of the first compliance  
19 period.

20 NEW SECTION. **Sec. 15.** ALLOCATION OF ALLOWANCES TO NATURAL GAS  
21 UTILITIES. (1) For the benefit of ratepayers, allowances must be  
22 allocated at no cost to covered entities that are natural gas  
23 utilities.

24 (a) By October 1, 2022, the department shall adopt rules, in  
25 consultation with the utilities and transportation commission,  
26 establishing the methods and procedures for allocating allowances to  
27 natural gas utilities. Rules adopted under this subsection must allow  
28 for a natural gas utility to be provided allowances at no cost to  
29 cover their emissions and decline proportionally with the cap,  
30 consistent with section 9 of this act. Allowances allocated at no  
31 cost to natural gas utilities must be consigned to auction for the  
32 benefit of ratepayers consistent with subsection (2) of this section,  
33 deposited for compliance, or a combination of both. The rules adopted  
34 by the department pursuant to this section must include provisions  
35 directing revenues generated under this subsection to the applicable  
36 utilities.

37 (b) By October 1, 2022, the department shall adopt an allocation  
38 schedule by rule, in consultation with the utilities and  
39 transportation commission, for the first two compliance periods for

1 the provision of allowances for the benefit of ratepayers at no cost  
2 to natural gas utilities.

3 (c) By October 1, 2028, the department shall adopt an allocation  
4 schedule by rule, in consultation with the utilities and  
5 transportation commission, for the provision of allowances for the  
6 benefit of ratepayers at no cost to natural gas utilities for the  
7 compliance periods contained within calendar years 2031 through 2040.

8 (2)(a) Beginning in 2023, 65 percent of the no cost allowances  
9 must be consigned to auction for the benefit of customers, including  
10 at a minimum eliminating any additional cost burden to low-income  
11 customers from the implementation of this chapter. Rules adopted  
12 under this subsection must increase the percentage of allowances  
13 consigned to auction by five percent each year until a total of 100  
14 percent is reached.

15 (b) Revenues from allowances sold at auction must be returned by  
16 providing nonvolumetric credits on ratepayer utility bills,  
17 prioritizing low-income customers, or used to minimize cost impacts  
18 on low-income, residential, and small business customers through  
19 actions that include, but are not limited to, weatherization,  
20 decarbonization, conservation and efficiency services, and bill  
21 assistance. The customer benefits provided from allowances consigned  
22 to auction under this section must be in addition to existing  
23 requirements in statute, rule, or other legal requirements.

24 (c) Except for low-income customers, the customer bill credits  
25 under this subsection are reserved exclusively for customers at  
26 locations connected to a natural gas utility's system on the  
27 effective date of this section. Bill credits may not be provided to  
28 customers of the gas utility at a location connected to the system  
29 after the effective date of this section.

30 (3) In order to qualify for no cost allowances, covered entities  
31 that are natural gas utilities must provide copies of their  
32 greenhouse gas emissions reports filed with the United States  
33 environmental protection agency under 40 C.F.R. Part 98 subpart NN -  
34 suppliers of natural gas and natural gas liquids for calendar years  
35 2015 through 2021 to the department on or before March 31, 2022. The  
36 copies of the reports must be provided in electronic form to the  
37 department, in a manner prescribed by the department. The reports  
38 must be complete and contain all information required by 40 C.F.R.  
39 Sec. 98.406 including, but not limited to, information on large end-  
40 users served by the natural gas utility. For any year where a natural

1 gas utility was not required to file this report with the United  
2 States environmental protection agency, a report may be submitted in  
3 a manner prescribed by the department containing all of the  
4 information required in the subpart NN report.

5 (4) To continue receiving no cost allowances, a natural gas  
6 utility must provide to the department the United States  
7 environmental protection agency subpart NN greenhouse gas emissions  
8 report for each reporting year in the manner and by the dates  
9 provided by RCW 70A.15.2200(5) as part of the greenhouse gas  
10 reporting requirements of this chapter.

11 NEW SECTION. **Sec. 16.** EMISSIONS CONTAINMENT RESERVE  
12 WITHHOLDING. (1) To help ensure that the price of allowances remains  
13 sufficient to incentivize reductions in greenhouse gas emissions, the  
14 department must establish an emissions containment reserve and set an  
15 emissions containment reserve trigger price by rule. The price must  
16 be set at a reasonable amount above the auction floor price and equal  
17 to the level established in jurisdictions with which the department  
18 has entered into a linkage agreement. In the event that a  
19 jurisdiction with which the department has entered into a linkage  
20 agreement has no emissions containment trigger price, the department  
21 shall suspend the trigger price under this subsection. The purpose of  
22 withholding allowances in the emissions containment reserve is to  
23 secure additional emissions reductions.

24 (2) In the event that the emissions containment reserve trigger  
25 price is met during an auction, the department must automatically  
26 withhold allowances as needed. The department must convert and  
27 transfer any allowances that have been withheld from auction into the  
28 emissions containment reserve account.

29 (3) Emissions containment reserve allowances may only be withheld  
30 from an auction if the demand for allowances would result in an  
31 auction clearing price that is less than the emissions containment  
32 reserve trigger price prior to the withholding from the auction of  
33 any emissions containment reserve allowances.

34 (4) The department shall transfer allowances to the emissions  
35 containment reserve in the following situations:

36 (a) No less than two percent of the total number of allowances  
37 available from the allowance budgets for calendar years 2023 through  
38 2026;

1 (b) When allowances are unsold in auctions under section 12 of  
2 this act;

3 (c) When facilities curtail or close consistent with section  
4 13(6) of this act; or

5 (d) When facilities fall below the emissions threshold. The  
6 amount of allowances withdrawn from the program budget must be  
7 proportionate to the amount of emissions such a facility was  
8 previously using.

9 (5)(a) Allowances must be distributed from the emissions  
10 containment reserve by auction when new covered and opt-in entities  
11 enter the program.

12 (b) Allowances equal to the greenhouse gas emissions resulting  
13 from a new or expanded emissions-intensive, trade-exposed facility  
14 with emissions in excess of 25,000 metric tons per year during the  
15 first applicable compliance period will be provided to the facility  
16 from the reserve created in this section and must be retired by the  
17 facility. In subsequent compliance periods, the facility will be  
18 subject to the regulatory cap and related requirements under this  
19 chapter.

20 NEW SECTION. **Sec. 17.** ALLOWANCE PRICE CONTAINMENT. (1) To help  
21 minimize allowance price volatility in the auction, the department  
22 shall adopt by rule an auction floor price and a schedule for the  
23 floor price to increase by a predetermined amount every year. The  
24 department may not sell allowances at bids lower than the auction  
25 floor price. The department's rules must specify holding limits that  
26 determine the maximum number of allowances that may be held for use  
27 or trade by a registered entity at any one time. The department shall  
28 also establish an auction ceiling price to limit extraordinary prices  
29 and to determine when to offer allowances through the allowance price  
30 containment reserve auctions authorized under this section.

31 (2) For calendar years 2023 through 2026, the department must  
32 place no less than two percent of the total number of allowances  
33 available from the allowance budgets for those years in an allowance  
34 price containment reserve. The reserve must be designed as a  
35 mechanism to assist in containing compliance costs for covered and  
36 opt-in entities in the event of unanticipated high costs for  
37 compliance instruments.

38 (3)(a) The department shall adopt rules for holding auctions of  
39 allowances from the price containment reserve when the settlement

1 prices in the preceding auction approach the adopted auction ceiling  
2 price. The auction must be separate from auctions of other  
3 allowances.

4 (b) Allowances must also be distributed from the allowance price  
5 containment reserve by auction when new covered and opt-in entities  
6 enter the program and allowances in the emissions containment reserve  
7 under section 16 of this act are exhausted.

8 (4) Only covered and opt-in entities may participate in the  
9 auction of allowances from the allowance price containment reserve.

10 (5) The process for reserve auctions is the same as the process  
11 provided in section 12 of this act and the proceeds from reserve  
12 auctions must be treated the same.

13 (6) The department shall by rule:

14 (a) Set the reserve auction floor price in advance of the reserve  
15 auction. The department may choose to establish multiple price tiers  
16 for the allowances from the reserve;

17 (b) Establish the requirements and schedule for the allowance  
18 price containment reserve auctions; and

19 (c) Establish the amount of allowances to be placed in the  
20 allowance price containment reserve after the first compliance period  
21 ending in 2026.

22 NEW SECTION. **Sec. 18.** PRICE CEILING. (1) The department shall  
23 establish a price ceiling to provide cost protection for facilities  
24 obligated to comply with this chapter. The ceiling must be set at a  
25 level sufficient to facilitate investments to achieve further  
26 emission reductions beyond those enabled by the price ceiling, with  
27 the intent that investments accelerate the state's achievement of  
28 greenhouse gas limits established under RCW 70A.45.020. The price  
29 ceiling must increase annually in proportion to the price floor.

30 (2) In the event that no allowances remain in the allowance price  
31 containment reserve, the department must issue the number of price  
32 ceiling units for sale sufficient to provide cost protection for  
33 facilities as established under subsection (1) of this section.  
34 Purchases must be limited to entities that do not have sufficient  
35 eligible compliance instruments in their holding and compliance  
36 accounts for the next compliance period and these entities may only  
37 purchase what they need to meet their compliance obligation for the  
38 current compliance period. Price ceiling units may not be sold or

1 transferred and must be retired for compliance in the current  
2 compliance period. A price ceiling unit is not a property right.

3 (3) Funds raised in connection with the sale of price ceiling  
4 units must be expended to achieve emissions reductions on at least a  
5 metric ton for metric ton basis that are real, permanent,  
6 quantifiable, verifiable, enforceable by the state, and in addition  
7 to any greenhouse gas emission reduction otherwise required by law or  
8 regulation and any other greenhouse gas emission reduction that  
9 otherwise would occur.

10 NEW SECTION. **Sec. 19.** OFFSETS. (1) The department shall adopt  
11 by rule the protocols for establishing offset projects and securing  
12 offset credits that may be used to meet a portion of a covered or  
13 opt-in entity's compliance obligation under section 22 of this act.  
14 The protocols adopted by the department under this section must align  
15 with the policies of the state established under RCW 70A.45.090 and  
16 70A.45.100.

17 (2) Offset projects must:

18 (a) Provide direct environmental benefits to the state or be  
19 located in a jurisdiction with which Washington has entered into a  
20 linkage agreement;

21 (b) Result in greenhouse gas reductions or removals that:

22 (i) Are real, permanent, quantifiable, verifiable, and  
23 enforceable; and

24 (ii) Are in addition to greenhouse gas emission reductions or  
25 removals otherwise required by law and other greenhouse gas emission  
26 reductions or removals that would otherwise occur; and

27 (c) Have been certified by a recognized registry after the  
28 effective date of this section or within two years prior to the  
29 effective date of this section.

30 (3) (a) A total of no more than five percent of a covered or opt-  
31 in entity's compliance obligation during the first compliance period  
32 may be met by transferring offset credits. During these years, at  
33 least 50 percent of a covered or opt-in entity's compliance  
34 obligation satisfied by offset credits must be sourced from offset  
35 projects that provide direct environmental benefits in the state.

36 (b) A total of no more than four percent of a covered or opt-in  
37 entity's compliance obligation during the second compliance period  
38 may be met by transferring offset credits. During these years, at  
39 least 75 percent of a covered or opt-in entity's compliance

1 obligation satisfied by offset credits must be sourced from offset  
2 projects that provide direct environmental benefits in the state. The  
3 department may reduce the 75 percent requirement if it determines  
4 there is not sufficient offset supply in the state to meet offset  
5 demand during the second compliance period.

6 (c) The limits in (a) and (b) of this subsection may be modified  
7 by rule as adopted by the department when appropriate to ensure  
8 achievement of the proportionate share of statewide emissions limits  
9 established in RCW 70A.45.020 and to provide for alignment with other  
10 jurisdictions to which the state has linked.

11 (d) The limits in (a) and (b) of this subsection may be reduced  
12 for a specific covered or opt-in entity if the department determines,  
13 in consultation with the environmental justice council, that the  
14 covered or opt-in entity has or is likely to:

15 (i) Contribute substantively to cumulative air pollution burden  
16 in an overburdened community as determined by criteria established by  
17 the department, in consultation with the environmental justice  
18 council; or

19 (ii) Violate any permits required by any federal, state, or local  
20 air pollution control agency where the violation may result in an  
21 increase in emissions.

22 (e) An offset project on federally recognized tribal land does  
23 not count against the offset credit limits described in (a) and (b)  
24 of this subsection. No more than three percent of a covered or opt-in  
25 entity's compliance obligation may be met by transferring offset  
26 credits from projects on federally recognized tribal land during the  
27 first compliance period. No more than two percent of a covered or  
28 opt-in entity's compliance obligation may be met by transferring  
29 offset credits from projects on federally recognized tribal land  
30 during the second compliance period.

31 (4) In adopting protocols governing offset projects and covered  
32 and opt-in entities' use of offset credits, the department shall:

33 (a) Take into consideration standards, rules, or protocols for  
34 offset projects and offset credits established by other states,  
35 provinces, and countries with programs comparable to the program  
36 established in this chapter;

37 (b) Encourage opportunities for the development of offset  
38 projects in this state by adopting offset protocols that may include,  
39 but need not be limited to, protocols that make use of aggregation or  
40 other mechanisms to reduce transaction costs related to the



1 development of offset projects and that support the development of  
2 carbon dioxide removal projects;

3 (c) Adopt a process for monitoring and invalidating offset  
4 credits as necessary to ensure the credit reflects emission  
5 reductions or removals that continue to meet the standards required  
6 by subsection (1) of this section. If an offset credit is  
7 invalidated, the covered or opt-in entity must, within six months of  
8 the invalidation, transfer replacement credits or allowances to meet  
9 its compliance obligation. Failure to transfer the required credits  
10 or allowances is a violation subject to penalties as provided in  
11 section 23 of this act; and

12 (d) Make use of aggregation or other mechanisms, including cost-  
13 effective inventory and monitoring provisions, to increase the  
14 development of offset and carbon removal projects by landowners  
15 across the broadest possible variety of types and sizes of lands,  
16 including lands owned by small forestland owners.

17 (5) Any offset credits used may not be in addition to or allow  
18 for an increase in the emissions limits established under RCW  
19 70A.45.020, as reflected in the annual allowance budgets developed  
20 under section 9 of this act.

21 (6) The offset credit must be registered and tracked as a  
22 compliance instrument.

23 (7) Beginning in 2031, the limits established in subsection (3)  
24 of this section apply unless modified by rule as adopted by the  
25 department after a public consultation process.

26 NEW SECTION. **Sec. 20.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL  
27 LANDS. (1) In order to ensure that a sufficient number of high  
28 quality offset projects are available under the limits set in section  
29 19 of this act, the department must establish an assistance program  
30 for offset projects on federally recognized tribal lands in  
31 Washington. The assistance may include, but is not limited to,  
32 funding or consultation for federally recognized tribal governments  
33 to assess a project's technical feasibility, investment requirements,  
34 development and operational costs, expected returns, administrative  
35 and legal hurdles, and project risks and pitfalls. The department may  
36 provide funding or assistance upon request by a federally recognized  
37 tribe.

1 (2) It is the intent of the legislature that not less than  
2 \$5,000,000 be provided in the biennial omnibus operating  
3 appropriations act for the purposes of this section.

4 NEW SECTION. **Sec. 21.** SMALL FORESTLAND OWNER WORK GROUP. (1)

5 The department of natural resources must contract with an eligible  
6 entity capable of providing public value to the state through the  
7 establishment and implementation of a small forestland owner work  
8 group. The purpose of the work group is to forward the goals and  
9 implementation of this chapter by identifying possible carbon market  
10 opportunities including, but not limited to, the provision of offset  
11 credits that qualify under section 19 of this act, and other  
12 incentive-based greenhouse gas reduction programs that Washington  
13 landowners may be able to access, including compliance markets  
14 operated by other jurisdictions, voluntary markets, and federal,  
15 state, and private programs for forestlands that can be leveraged to  
16 achieve carbon reductions.

17 (2) The work group established by the eligible entity under this  
18 section must:

19 (a) Provide recommendations for the implementation and funding of  
20 a pilot program to develop an aggregator account that will pursue  
21 carbon offset projects for small forestland owners in Washington  
22 state, including recommendations based on programs established in  
23 other jurisdictions;

24 (b) Coordinate with the department on the development of offset  
25 protocols related to landowners under section 19(4)(d) of this act;

26 (c) Develop a framework and funding proposals for establishing a  
27 program to link interested small forestland owners with incentive-  
28 based carbon reducing programs that facilitate adoption of forest  
29 practices that increase carbon storage and sequestration in forests  
30 and wood products. The framework may include:

31 (i) Identifying areas of coordination and layering among state,  
32 federal, and private landowner incentive programs and identifying  
33 roadblocks to better scalability;

34 (ii) Assisting landowners with access to feasibility analyses,  
35 market applications, stand inventories, pilot project support, and  
36 other services to reduce the transaction costs and barriers to entry  
37 to carbon markets or carbon incentive programs; and

1 (iii) Sharing information with private and other landowners about  
2 best practices employed to increase carbon storage and access to  
3 incentive programs; and

4 (d) Recommend policies to support the implementation of  
5 incentives for participation in carbon markets.

6 (3) The work group must transmit a final report to the department  
7 by December 1, 2022, that provides recommendations for incentives,  
8 the implementation of incentives, and payment structures necessary to  
9 support small forest landowners and any recommendations around  
10 extending the work group or making the work group permanent. The  
11 department must submit the final report to the legislature, in  
12 compliance with RCW 43.01.036, by December 31, 2022.

13 (4) For the purposes of this section, "eligible entity" means a  
14 nonprofit entity solely based in Washington that can demonstrate a  
15 membership of at least 1000 small forestland owners and that has, as  
16 part of its mission, the promotion of the sustainable stewardship of  
17 family forestlands.

18 (5) This section expires July 1, 2023.

19 NEW SECTION. **Sec. 22.** COMPLIANCE OBLIGATIONS. (1) A covered or  
20 opt-in entity has a compliance obligation for its emissions during  
21 each four-year compliance period, with the first compliance period  
22 commencing January 1, 2023, except when the first compliance period  
23 commences at a later date as provided in subsection (7) of this  
24 section. A covered or opt-in entity shall transfer a number of  
25 compliance instruments equal to the entity's covered emissions by  
26 November 1st of each calendar year in which a covered or opt-in  
27 entity has a compliance obligation. The department shall set by rule  
28 a percentage of compliance instruments that must be transferred in  
29 each year of the compliance period such that covered or opt-in  
30 entities are allowed to smooth their compliance obligation within the  
31 compliance period but must fully satisfy their compliance obligation  
32 over the course of the compliance period, in a manner similar to  
33 external greenhouse gas emissions trading programs in other  
34 jurisdictions. In meeting a given compliance obligation, a covered or  
35 opt-in entity may use allowances issued in that compliance year, or  
36 allowances issued in any of the seven years immediately preceding  
37 that compliance year.

38 (2) Compliance occurs through the transfer of compliance  
39 instruments or price ceiling units, on or before the transfer date,

1 from the holding account to the compliance account of the covered or  
2 opt-in entity as described in section 10 of this act.

3 (3) (a) A covered entity with a facility eligible for use of price  
4 ceiling units under section 18 of this act may substitute the  
5 submission of compliance instruments with price ceiling units.

6 (b) A covered or opt-in entity submitting insufficient compliance  
7 instruments to meet its compliance obligation is subject to a penalty  
8 as provided in section 23 of this act.

9 (4) Older vintage allowances must be retired before newer vintage  
10 allowances.

11 (5) A covered or opt-in entity may not borrow an allowance from a  
12 future allowance year to meet a current or past compliance  
13 obligation.

14 (6) Upon receipt by the department of all compliance instruments  
15 transferred by a covered entity or opt-in entity to meet its  
16 compliance obligation, the department shall retire the allowances or  
17 offset credits.

18 (7) (a) In order to coordinate and synchronize the cap and invest  
19 program established under this chapter with other transportation-  
20 related investments, this section does not take effect until a  
21 separate additive transportation revenue act becomes law, at which  
22 time the department of licensing must provide written notice to the  
23 chief clerk of the house of representatives, the secretary of the  
24 senate, and the office of the code reviser.

25 (b) For the purposes of this subsection, "additive transportation  
26 revenue act" means an act, enacted after April 1, 2021, in which the  
27 state fuel tax under RCW 82.38.030 is increased by an additional and  
28 cumulative tax rate of at least five cents per gallon of fuel.

29 NEW SECTION. **Sec. 23.** ENFORCEMENT. (1) All covered and opt-in  
30 entities are required to submit compliance instruments in a timely  
31 manner to meet the entities' compliance obligations and shall comply  
32 with all requirements for monitoring, reporting, holding, and  
33 transferring emission allowances and other provisions of this  
34 chapter.

35 (2) If a covered or opt-in entity does not submit sufficient  
36 compliance instruments to meet its compliance obligation by the  
37 specified transfer dates, a penalty of four allowances for every one  
38 compliance instrument that is missing must be submitted to the  
39 department within six months. When a covered entity or opt-in entity

1 reasonably believes that it will be unable to meet a compliance  
2 obligation, the entity shall immediately notify the department. Upon  
3 receiving notification, the department shall issue an order requiring  
4 the entity to submit the penalty allowances.

5 (3) If a covered entity or opt-in entity fails to submit penalty  
6 allowances as required by subsection (2) of this section, the  
7 department must issue an order or issue a penalty of up to \$10,000  
8 per day per violation, or both, for failure to submit penalty  
9 allowances as required by subsection (2) of the section. The order  
10 may include a plan and schedule for coming into compliance.

11 (4) The department may issue a penalty of up to \$50,000 per day  
12 per violation for violations of section 12(8) (a) through (e) of this  
13 act.

14 (5) Except as provided in subsections (3) and (4) of this  
15 section, any person that violates the terms of this chapter or an  
16 order issued under this chapter incurs a penalty of up to \$10,000 per  
17 day per violation for each day that the person does not comply. All  
18 penalties under subsections (3) and (4) of this section and this  
19 subsection must be deposited into the climate investment account  
20 created in section 28 of this act.

21 (6) Orders and penalties issued under this chapter are appealable  
22 to the pollution control hearings board under chapter 43.21B RCW.

23 (7) For the first compliance period, the department may reduce  
24 the amount of the penalty by adjusting the monetary amount or the  
25 number of penalty allowances described in subsections (2) and (3) of  
26 this section.

27 (8) An electric utility or natural gas utility must notify its  
28 retail customers and the environmental justice council in published  
29 form within three months of paying a monetary penalty under this  
30 section.

31 (9)(a) No city, town, county, township, or other subdivision or  
32 municipal corporation of the state may implement a charge or tax  
33 based exclusively upon the quantity of greenhouse gas emissions.

34 (b) No state agency may adopt or enforce a program that regulates  
35 greenhouse gas emissions from a stationary source except as provided  
36 in this chapter.

37 (c) This chapter preempts the provisions of chapter 173-442 WAC.

38 NEW SECTION. **Sec. 24.** LINKAGE WITH OTHER JURISDICTIONS. (1)  
39 Subject to making the findings and conducting the public comment

1 process described in subsection (3) of this section, the department  
2 shall seek to enter into linkage agreements with other jurisdictions  
3 with external greenhouse gas emissions trading programs in order to:

4 (a) Allow for the mutual use and recognition of compliance  
5 instruments issued by Washington and other linked jurisdictions;

6 (b) Broaden the greenhouse gas emission reduction opportunities  
7 to reduce the costs of compliance on covered entities and consumers;

8 (c) Enable allowance auctions to be held jointly and provide for  
9 the use of a unified tracking system for compliance instruments;

10 (d) Enhance market security;

11 (e) Reduce program administration costs; and

12 (f) Provide consistent requirements for covered entities whose  
13 operations span jurisdictional boundaries.

14 (2) The director of the department is authorized to execute  
15 linkage agreements with other jurisdictions with external greenhouse  
16 gas emissions trading programs consistent with the requirements in  
17 this chapter. A linkage agreement must cover the following:

18 (a) Provisions relating to regular, periodic auctions, including  
19 requirements for eligibility for auction participation, the use of a  
20 single auction provider to facilitate joint auctions, publication of  
21 auction-related information, processes for auction participation,  
22 purchase limits by auction participant type, bidding processes, dates  
23 of auctions, and financial requirements;

24 (b) Provisions related to holding limits to ensure no entities in  
25 any of the programs are disadvantaged relative to their counterparts  
26 in the other jurisdictions;

27 (c) Other requirements, such as greenhouse gas reporting and  
28 verification, offset protocols, criteria and process, and supervision  
29 and enforcement, to prevent fraud, abuse, and market manipulation;

30 (d) Common program registry, electronic auction platform,  
31 tracking systems for compliance instruments, and monitoring of  
32 compliance instruments;

33 (e) Provisions to ensure coordinated administrative and technical  
34 support;

35 (f) Provisions for public notice and participation; and

36 (g) Provisions to collectively resolve differences, amend the  
37 agreements, and delink or otherwise withdraw from the agreements.

38 (3) Before entering into a linkage agreement under this section,  
39 the department must evaluate and make a finding regarding whether the  
40 aggregate number of unused allowances in a linked program would

1 reduce the stringency of Washington's program and the state's ability  
2 to achieve its greenhouse gas emissions reduction limits. The  
3 department must include in its evaluation a consideration of pre-2020  
4 unused allowances that may exist in the program with which it is  
5 proposing to link. Before entering into a linkage agreement, the  
6 department must also establish a finding that the linking  
7 jurisdiction and the linkage agreement meet certain criteria  
8 identified under this subsection and conduct a public comment process  
9 to obtain input and a review of the linkage agreement by relevant  
10 stakeholders and other interested parties. The department must  
11 consider input received from the public comment process before  
12 finalizing a linkage agreement. In the event that the department  
13 determines that a full linkage agreement is unlikely to meet the  
14 criteria, it may enter into a linkage agreement with limitations,  
15 including limits on the share of compliance that may be met with  
16 allowances originating from linked jurisdictions and other  
17 limitations deemed necessary by the department. A linkage agreement  
18 approved by the department must:

19 (a) Achieve the purposes identified in subsection (1) of this  
20 section;

21 (b) Ensure that the linking jurisdiction has provisions to ensure  
22 the distribution of benefits from the program to vulnerable  
23 populations and overburdened communities;

24 (c) Be determined by the department to not yield net adverse  
25 impacts to either jurisdictions' highly impacted communities or  
26 analogous communities in the aggregate, relative to the baseline  
27 level of emissions; and

28 (d) Not adversely impact Washington's ability to achieve the  
29 emission reduction limits established in RCW 70A.45.020.

30 (4) The state retains all legal and policymaking authority over  
31 its program design and enforcement.

32 NEW SECTION. **Sec. 25.** RULES. The department shall adopt rules  
33 to implement the provisions of the program established in sections 8  
34 through 24 of this act. The department may adopt emergency rules  
35 pursuant to RCW 34.05.350 for initial implementation of the program,  
36 to implement the state omnibus appropriations act for the 2021-2023  
37 fiscal biennium, and to ensure that reporting and other program  
38 requirements are determined early for the purpose of program design

1 and early notice to registered entities with a compliance obligation  
2 under the program.

3 NEW SECTION. **Sec. 26.** EXPENDITURE TARGETS. (1) It is the intent  
4 of the legislature that each year the total investments made through  
5 the carbon emissions reduction account created in section 27 of this  
6 act, the climate commitment account created in section 29 of this  
7 act, the natural climate solutions account created in section 30 of  
8 this act, and the air quality and health disparities improvement  
9 account created in section 31 of this act, achieve the following:

10 (a) A minimum of not less than 35 percent and a goal of 40  
11 percent of total investments that provide direct and meaningful  
12 benefits to vulnerable populations within the boundaries of  
13 overburdened communities identified under chapter . . . , Laws of 2021  
14 (Engrossed Second Substitute Senate Bill No. 5141); and

15 (b) In addition to the requirements of (a) of this subsection, a  
16 minimum of not less than 10 percent of total investments that are  
17 used for programs, activities, or projects formally supported by a  
18 resolution of an Indian tribe, with priority given to otherwise  
19 qualifying projects directly administered or proposed by an Indian  
20 tribe. An investment that meets the requirements of both this  
21 subsection (1)(b) and (a) of this subsection may count toward the  
22 minimum percentage targets for both subsections.

23 (2) The expenditure of moneys under this chapter must be  
24 consistent with applicable federal, state, and local laws, and treaty  
25 rights including, but not limited to, prohibitions on uses of funds  
26 imposed by the state Constitution.

27 (3) For the purposes of this section, "benefits" means  
28 investments or activities that:

29 (a) Reduce vulnerable population characteristics, environmental  
30 burdens, or associated risks that contribute significantly to the  
31 cumulative impact designation of highly impacted communities;

32 (b) Meaningfully protect an overburdened community from, or  
33 support community response to, the impacts of air pollution or  
34 climate change; or

35 (c) Meet a community need identified by vulnerable members of the  
36 community that is consistent with the intent of this chapter.

37 (4) The state must develop a process by which to evaluate the  
38 impacts of the investments made under this chapter, work across state  
39 agencies to develop and track priorities across the different



1 eligible funding categories, and work with the environmental justice  
2 council pursuant to section 5 of this act.

3 (5) No expenditures may be made from the carbon emissions  
4 reduction account created in section 27 of this act, the climate  
5 investment account created in section 28 of this act, or the air  
6 quality and health disparities improvement account created in section  
7 31 of this act if, by April 1, 2023, the legislature has not  
8 considered and enacted request legislation brought forth by the  
9 department under section 8 of this act that outlines a compliance  
10 pathway specific to emissions-intensive, trade-exposed businesses for  
11 achieving their proportionate share of the state's emissions  
12 reduction limits through 2050.

13 NEW SECTION. **Sec. 27.** CARBON EMISSIONS REDUCTION ACCOUNT. The  
14 carbon emissions reduction account is created in the state treasury.  
15 Moneys in the account may be spent only after appropriation.  
16 Expenditures from the account are intended to affect reductions in  
17 transportation sector carbon emissions through a variety of carbon  
18 reducing investments. These can include, but are not limited to:  
19 Transportation alternatives to single occupancy passenger vehicles;  
20 reductions in single occupancy passenger vehicle miles traveled;  
21 reductions in per mile emissions in vehicles, including through the  
22 funding of alternative fuel infrastructure and incentive programs;  
23 and emission reduction programs for freight transportation, including  
24 motor vehicles and rail, as well as for ferries and other maritime  
25 and port activities. Expenditures from the account may only be made  
26 for transportation carbon emission reducing purposes and may not be  
27 made for highway purposes authorized under the 18th Amendment of the  
28 Washington state Constitution, other than specified in this section.  
29 It is the legislature's intent that expenditures from the account  
30 used to reduce carbon emissions be made with the goal of achieving  
31 equity for communities that historically have been omitted or  
32 adversely impacted by past transportation policies and practices.

33 NEW SECTION. **Sec. 28.** CLIMATE INVESTMENT ACCOUNT. (1) (a) The  
34 climate investment account is created in the state treasury. Except  
35 as otherwise provided in this act, all receipts from the auction of  
36 allowances authorized in this chapter must be deposited into the  
37 account. Moneys in the account may be spent only after appropriation.

1 (b) Projects or activities funded from the account must meet high  
2 labor standards, including family sustaining wages, providing  
3 benefits including health care and employer-contributed retirement  
4 plans, career development opportunities, and maximize access to  
5 economic benefits from such projects for local workers and diverse  
6 businesses. Each contracting entity's proposal must be reviewed for  
7 equity and opportunity improvement efforts, including: (i) Employer  
8 paid sick leave programs; (ii) pay practices in relation to living  
9 wage indicators such as the federal poverty level; (iii) efforts to  
10 evaluate pay equity based on gender identity, race, and other  
11 protected status under Washington law; (iv) facilitating career  
12 development opportunities, such as apprenticeship programs,  
13 internships, job-shadowing, and on-the-job training; and (v)  
14 employment assistance and employment barriers for justice affected  
15 individuals.

16 (2) Moneys in the account may be used only for projects and  
17 programs that achieve the purposes of the greenhouse gas emissions  
18 cap and invest program established under this chapter. Moneys in the  
19 account as described in this subsection must first be appropriated  
20 for the administration of the requirements of this chapter, in an  
21 amount not to exceed five percent of the total receipt of funds from  
22 allowance auction proceeds under this chapter. Beginning July 1,  
23 2024, and annually thereafter, the state treasurer shall distribute  
24 funds in the account as follows:

25 (a) Seventy-five percent of the moneys to the climate commitment  
26 account created in section 29 of this act; and

27 (b) Twenty-five percent of the moneys to the natural climate  
28 solutions account created in section 30 of this act.

29 (3) The allocations specified in subsection (2)(a) and (b) of  
30 this section must be reviewed by the legislature on a biennial basis  
31 based on the changing needs of the state in meeting its clean economy  
32 and greenhouse gas reduction goals in a timely, economically  
33 advantageous, and equitable manner.

34 NEW SECTION. **Sec. 29.** CLIMATE COMMITMENT ACCOUNT. (1) The  
35 climate commitment account is created in the state treasury. The  
36 account must receive moneys distributed to the account from the  
37 climate investment account created in section 28 of this act. Moneys  
38 in the account may be spent only after appropriation. Projects,  
39 activities, and programs eligible for funding from the account must

1 be physically located in Washington state and include, but are not  
2 limited to, the following:

3 (a) Implementing the working families tax rebate in RCW  
4 82.08.0206;

5 (b) Supplementing the growth management planning and  
6 environmental review fund established in RCW 36.70A.490 for the  
7 purpose of making grants or loans to local governments for the  
8 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and  
9 36.70A.600, for costs associated with RCW 36.70A.610, and to cover  
10 costs associated with the adoption of optional elements of  
11 comprehensive plans consistent with RCW 43.21C.420;

12 (c) Programs, activities, or projects that reduce and mitigate  
13 impacts from greenhouse gases and copollutants in overburdened  
14 communities, including strengthening the air quality monitoring  
15 network to measure, track, and better understand air pollution levels  
16 and trends and to inform the analysis, monitoring, and pollution  
17 reduction measures required in section 3 of this act;

18 (d) Programs, activities, or projects that deploy renewable  
19 energy resources, such as solar and wind power, and projects to  
20 deploy distributed generation, energy storage, demand-side  
21 technologies and strategies, and other grid modernization projects;

22 (e) Programs, activities, or projects that increase the energy  
23 efficiency or reduce greenhouse gas emissions of industrial  
24 facilities including, but not limited to, proposals to implement  
25 combined heat and power, district energy, or on-site renewables, such  
26 as solar and wind power, to upgrade the energy efficiency of existing  
27 equipment, to reduce process emissions, and to switch to less  
28 emissions intensive fuel sources;

29 (f) Programs, activities, or projects that achieve energy  
30 efficiency or emissions reductions in the agricultural sector  
31 including:

32 (i) Fertilizer management;

33 (ii) Soil management;

34 (iii) Bioenergy;

35 (iv) Biofuels;

36 (v) Grants, rebates, and other financial incentives for  
37 agricultural harvesting equipment, heavy-duty trucks, agricultural  
38 pump engines, tractors, and other equipment used in agricultural  
39 operations;

1 (vi) Grants, loans, or any financial incentives to food  
2 processors to implement projects that reduce greenhouse gas  
3 emissions;

4 (vii) Renewable energy projects;

5 (viii) Farmworker housing weatherization programs;

6 (ix) Dairy digester research and development;

7 (x) Alternative manure management; and

8 (xi) Eligible fund uses under RCW 89.08.615;

9 (g) Programs, activities, or projects that increase energy  
10 efficiency in new and existing buildings, or that promote low-carbon  
11 architecture, including use of newly emerging alternative building  
12 materials that result in a lower carbon footprint in the built  
13 environment over the life cycle of the building and component  
14 building materials;

15 (h) Programs, activities, or projects that promote the  
16 electrification and decarbonization of new and existing buildings,  
17 including residential, commercial, and industrial buildings;

18 (i) Programs, activities, or projects that improve energy  
19 efficiency, including district energy, and investments in market  
20 transformation of high efficiency electric appliances and equipment  
21 for space and water heating;

22 (j) Clean energy transition and assistance programs, activities,  
23 or projects that assist affected workers or people with lower incomes  
24 during the transition to a clean energy economy, or grow and expand  
25 clean manufacturing capacity in communities across Washington state  
26 including, but not limited to:

27 (i) Programs, activities, or projects that directly improve  
28 energy affordability and reduce the energy burden of people with  
29 lower incomes, as well as the higher transportation fuel burden of  
30 rural residents, such as bill assistance, energy efficiency, and  
31 weatherization programs;

32 (ii) Community renewable energy projects that allow qualifying  
33 participants to own or receive the benefits of those projects at  
34 reduced or no cost;

35 (iii) Programs, activities, or other worker-support projects for  
36 bargaining unit and nonsupervisory fossil fuel workers who are  
37 affected by the transition away from fossil fuels to a clean energy  
38 economy. Worker support may include, but is not limited to: (A) Full  
39 wage replacement, health benefits, and pension contributions for  
40 every worker within five years of retirement; (B) full wage

1 replacement, health benefits, and pension contributions for every  
2 worker with at least one year of service for each year of service up  
3 to five years of service; (C) wage insurance for up to five years for  
4 workers reemployed who have more than five years of service; (D) up  
5 to two years of retraining costs, including tuition and related  
6 costs, based on in-state community and technical college costs; (E)  
7 peer counseling services during transition; (F) employment placement  
8 services, prioritizing employment in the clean energy sector; and (G)  
9 relocation expenses;

10 (iv) Direct investment in workforce development, via technical  
11 education, community college, institutions of higher education,  
12 apprenticeships, and other programs including, but not limited to:

13 (A) Initiatives to develop a forest health workforce established  
14 under RCW 76.04.--- (section 5, chapter . . ., Laws of 2021 (Second  
15 Substitute House Bill No. 1168)); and

16 (B) Initiatives to develop new education programs, emerging  
17 fields, or jobs pertaining to the clean energy economy;

18 (v) Transportation, municipal service delivery, and technology  
19 investments that increase a community's capacity for clean  
20 manufacturing, with an emphasis on communities in greatest need of  
21 job creation and economic development and potential for commute  
22 reduction;

23 (k) Programs, activities, or projects that reduce emissions from  
24 landfills and waste-to-energy facilities through diversion of organic  
25 materials, methane capture or conversion strategies, or other means;

26 (l) Carbon dioxide removal projects, programs, and activities;  
27 and

28 (m) Activities to support efforts to mitigate and adapt to the  
29 effects of climate change affecting Indian tribes, including capital  
30 investments in support of the relocation of Indian tribes located in  
31 areas at heightened risk due to anticipated sea level rise, flooding,  
32 or other disturbances caused by climate change. The legislature  
33 intends to dedicate at least \$50,000,000 per biennium from the  
34 account for purposes of this subsection.

35 (2) Moneys in the account may not be used for projects or  
36 activities that would violate tribal treaty rights or result in  
37 significant long-term damage to critical habitat or ecological  
38 functions. Investments from this account must result in long-term  
39 environmental benefits and increased resilience to the impacts of  
40 climate change.

1        NEW SECTION.    **Sec. 30.**    NATURAL CLIMATE SOLUTIONS ACCOUNT. (1)

2    The natural climate solutions account is created in the state  
3    treasury. All moneys directed to the account from the climate  
4    investment account created in section 28 of this act must be  
5    deposited in the account. Moneys in the account may be spent only  
6    after appropriation. Moneys in the account are intended to increase  
7    the resilience of the state's waters, forests, and other vital  
8    ecosystems to the impacts of climate change, conserve working  
9    forestlands at risk of conversion, and increase their carbon  
10    pollution reduction capacity through sequestration, storage, and  
11    overall system integrity. Moneys in the account must be spent in a  
12    manner that is consistent with existing and future assessments of  
13    climate risks and resilience from the scientific community and  
14    expressed concerns of and impacts to overburdened communities.

15        (2) Moneys in the account may be allocated for the following  
16    purposes:

17        (a) Clean water investments that improve resilience from climate  
18    impacts. Funding under this subsection (2)(a) must be used to:

19        (i) Restore and protect estuaries, fisheries, and marine  
20    shoreline habitats and prepare for sea level rise including, but not  
21    limited to, making fish passage correction investments such as those  
22    identified in the cost-share barrier removal program for small  
23    forestland owners created in RCW 76.13.150 and those that are  
24    considered by the fish passage barrier removal board created in RCW  
25    77.95.160;

26        (ii) Increase carbon storage in the ocean or aquatic and coastal  
27    ecosystems;

28        (iii) Increase the ability to remediate and adapt to the impacts  
29    of ocean acidification;

30        (iv) Reduce flood risk and restore natural floodplain ecological  
31    function;

32        (v) Increase the sustainable supply of water and improve aquatic  
33    habitat, including groundwater mapping and modeling;

34        (vi) Improve infrastructure treating stormwater from previously  
35    developed areas within an urban growth boundary designated under  
36    chapter 36.70A RCW, with a preference given to projects that use  
37    green stormwater infrastructure;

38        (vii) Either preserve or increase, or both, carbon sequestration  
39    and storage benefits in forests, forested wetlands, agricultural

1 soils, tidally influenced agricultural or grazing lands, or  
2 freshwater, saltwater, or brackish aquatic lands; or

3 (viii) Either preserve or establish, or both, carbon  
4 sequestration by protecting or planting trees in marine shorelines  
5 and freshwater riparian areas sufficient to promote climate  
6 resilience, protect cold water fisheries, and achieve water quality  
7 standards;

8 (b) Healthy forest investments to improve resilience from climate  
9 impacts. Funding under this subsection (2)(b) must be used for  
10 projects and activities that will:

11 (i) Increase forest and community resilience to wildfire in the  
12 face of increased seasonal temperatures and drought;

13 (ii) Improve forest health and reduce vulnerability to changes in  
14 hydrology, insect infestation, and other impacts of climate change;  
15 or

16 (iii) Prevent emissions by preserving natural and working lands  
17 from the threat of conversion to development or loss of critical  
18 habitat, through actions that include, but are not limited to, the  
19 creation of new conservation lands, community forests, or increased  
20 support to small forestland owners through assistance programs  
21 including, but not limited to, the forest riparian easement program  
22 and the family forest fish passage program. It is the intent of the  
23 legislature that not less than \$10,000,000 be expended each biennium  
24 for the forestry riparian easement program created in chapter 76.13  
25 RCW or for riparian easement projects funded under the agricultural  
26 conservation easements program established under RCW 89.08.530, or  
27 similar riparian enhancement programs.

28 (3) Moneys in the account may not be used for projects that would  
29 violate tribal treaty rights or result in significant long-term  
30 damage to critical habitat or ecological functions. Investments from  
31 this account must result in long-term environmental benefits and  
32 increased resilience to the impacts of climate change.

33 NEW SECTION. **Sec. 31.** AIR QUALITY AND HEALTH DISPARITIES  
34 IMPROVEMENT ACCOUNT. (1) The air quality and health disparities  
35 improvement account is created in the state treasury. Moneys in the  
36 account may be spent only after appropriation. Expenditures from the  
37 account are intended to:

1 (a) Improve air quality through the reduction of criteria  
2 pollutants, including through effective air quality monitoring and  
3 the establishment of adequate baseline emissions data; and

4 (b) Reduce health disparities in overburdened communities by  
5 improving health outcomes through the reduction or elimination of  
6 environmental harms and the promotion of environmental benefits.

7 (2) Moneys in the account may be used for either capital budget  
8 or transportation budget purposes, or both. Moneys in the account may  
9 not be used for projects that would violate tribal treaty rights or  
10 result in significant long-term damage to critical habitat or  
11 ecological functions. Investments from the account must result in  
12 long-term environmental benefits and increased resilience to the  
13 impacts of climate change.

14 (3) It is the intent of the legislature that not less than  
15 \$20,000,000 per biennium be dedicated to the account for the purposes  
16 of the account.

17 NEW SECTION. **Sec. 32.** (1) By December 1, 2029, the joint

18 legislative audit and review committee must analyze the impacts of  
19 the initial five years of program implementation and must submit a  
20 report summarizing the analysis to the legislature. The analysis must  
21 include, at minimum, the following components:

22 (a) Costs and benefits, including environmental and public health  
23 costs and benefits, associated with this chapter for categories of  
24 persons participating in the program or that are most impacted by air  
25 pollution, as defined in consultation with the departments of ecology  
26 and health and as measured on a census tract scale. This component of  
27 the analysis must, at a minimum, assess the costs and benefits of  
28 changes in the following metrics since the start of the program:

29 (i) Levels of greenhouse gas emissions and criteria air  
30 pollutants for which the United States environmental protection  
31 agency has established national ambient air quality standards;

32 (ii) Fuel prices; and

33 (iii) Total employment in categories of industries that are  
34 covered entities. The categories of industries assessed must include,  
35 but are not limited to, electric utilities, natural gas utilities,  
36 oil refineries, and other industries classified as emissions-  
37 intensive and trade-exposed;

38 (b) An evaluation of the information provided by the department  
39 in its 2027 program evaluation under section 9(3) of this act;



1 (c) A summary of the estimated total statewide costs and benefits  
2 attributable to the program, including state agency administrative  
3 costs and covered entity compliance costs. For purposes of  
4 calculating the benefits of the program, the summary may rely, in  
5 part, on a constant value of the social costs attributable to  
6 greenhouse gas emissions, as identified in contemporary  
7 internationally accepted estimates of such global social cost. This  
8 summary must include an estimate of the total statewide costs of the  
9 program per ton of greenhouse gas emissions reductions achieved by  
10 the program; and

11 (d) An evaluation of the impacts of the program on low-income  
12 households.

13 (2) This section expires June 30, 2030.

14 **Sec. 33.** RCW 70A.15.2200 and 2020 c 20 s 1090 are each amended  
15 to read as follows:

16 (1) The board of any activated authority or the department, may  
17 classify air contaminant sources, by ordinance, resolution, rule or  
18 regulation, which in its judgment may cause or contribute to air  
19 pollution, according to levels and types of emissions and other  
20 characteristics which cause or contribute to air pollution, and may  
21 require registration or reporting or both for any such class or  
22 classes. Classifications made pursuant to this section may be for  
23 application to the area of jurisdiction of such authority, or the  
24 state as a whole or to any designated area within the jurisdiction,  
25 and shall be made with special reference to effects on health,  
26 economic and social factors, and physical effects on property.

27 (2) Except as provided in subsection (3) of this section, any  
28 person operating or responsible for the operation of air contaminant  
29 sources of any class for which the ordinances, resolutions, rules or  
30 regulations of the department or board of the authority, require  
31 registration or reporting shall register therewith and make reports  
32 containing information as may be required by such department or board  
33 concerning location, size and height of contaminant outlets,  
34 processes employed, nature of the contaminant emission and such other  
35 information as is relevant to air pollution and available or  
36 reasonably capable of being assembled. In the case of emissions of  
37 greenhouse gases as defined in RCW 70A.45.010 the department shall  
38 adopt rules requiring reporting of those emissions. The department or  
39 board may require that such registration or reporting be accompanied

1 by a fee, and may determine the amount of such fee for such class or  
2 classes: PROVIDED, That the amount of the fee shall only be to  
3 compensate for the costs of administering such registration or  
4 reporting program which shall be defined as initial registration and  
5 annual or other periodic reports from the source owner providing  
6 information directly related to air pollution registration, on-site  
7 inspections necessary to verify compliance with registration  
8 requirements, data storage and retrieval systems necessary for  
9 support of the registration program, emission inventory reports and  
10 emission reduction credits computed from information provided by  
11 sources pursuant to registration program requirements, staff review,  
12 including engineering or other reliable analysis for accuracy and  
13 currentness, of information provided by sources pursuant to  
14 registration program requirements, clerical and other office support  
15 provided in direct furtherance of the registration program, and  
16 administrative support provided in directly carrying out the  
17 registration program: PROVIDED FURTHER, That any such registration  
18 made with either the board or the department shall preclude a further  
19 registration and reporting with any other board or the department,  
20 except that emissions of greenhouse gases as defined in RCW  
21 70A.45.010 must be reported as required under subsection (5) of this  
22 section.

23 All registration program and reporting fees collected by the  
24 department shall be deposited in the air pollution control account.  
25 All registration program fees collected by the local air authorities  
26 shall be deposited in their respective treasuries.

27 (3) If a registration or report has been filed for a grain  
28 warehouse or grain elevator as required under this section,  
29 registration, reporting, or a registration program fee shall not,  
30 after January 1, 1997, again be required under this section for the  
31 warehouse or elevator unless the capacity of the warehouse or  
32 elevator as listed as part of the license issued for the facility has  
33 been increased since the date the registration or reporting was last  
34 made. If the capacity of the warehouse or elevator listed as part of  
35 the license is increased, any registration or reporting required for  
36 the warehouse or elevator under this section must be made by the date  
37 the warehouse or elevator receives grain from the first harvest  
38 season that occurs after the increase in its capacity is listed in  
39 the license.

1 This subsection does not apply to a grain warehouse or grain  
2 elevator if the warehouse or elevator handles more than ten million  
3 bushels of grain annually.

4 (4) For the purposes of subsection (3) of this section:

5 (a) A "grain warehouse" or "grain elevator" is an establishment  
6 classified in standard industrial classification (SIC) code 5153 for  
7 wholesale trade for which a license is required and includes, but is  
8 not limited to, such a licensed facility that also conducts cleaning  
9 operations for grain;

10 (b) A "license" is a license issued by the department of  
11 agriculture licensing a facility as a grain warehouse or grain  
12 elevator under chapter 22.09 RCW or a license issued by the federal  
13 government licensing a facility as a grain warehouse or grain  
14 elevator for purposes similar to those of licensure for the facility  
15 under chapter 22.09 RCW; and

16 (c) "Grain" means a grain or a pulse.

17 (5)(a) The department shall adopt rules requiring persons to  
18 report emissions of greenhouse gases as defined in RCW 70A.45.010  
19 where those emissions from a single facility, ~~((source, or site,))~~ or  
20 from electricity or fossil fuels sold in Washington by a single  
21 supplier or local distribution company, meet or exceed ten thousand  
22 metric tons of carbon dioxide equivalent annually. ~~The ((department~~  
23 ~~may phase in the requirement to report greenhouse gas emissions until~~  
24 ~~the reporting threshold in this subsection is met, which must occur~~  
25 ~~by January 1, 2012)) rules adopted by the department must support~~  
26 implementation of the program created in section 8 of this act. In  
27 addition, the rules must require that:

28 (i) Emissions of greenhouse gases resulting from the combustion  
29 of fossil fuels be reported separately from emissions of greenhouse  
30 gases resulting from the combustion of biomass; and

31 ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each  
32 annual report must include emissions data for the preceding calendar  
33 year and must be submitted to the department by ~~((October))~~ March  
34 31st of the year in which the report is due. ~~((However, starting in~~  
35 ~~2011, a person who is required to report greenhouse gas emissions to~~  
36 ~~the United States environmental protection agency under 40 C.F.R.~~  
37 ~~Part 98, as adopted on September 22, 2009, must submit the report~~  
38 ~~required under this section to the department concurrent with the~~  
39 ~~submission to the United States environmental protection agency.~~  
40 ~~Except as otherwise provided in this section, the data for emissions~~

1 in Washington and any corrections thereto that are reported to the  
2 United States environmental protection agency must be the emissions  
3 data reported to the department; and

4 ~~(iii) Emissions of carbon dioxide associated with the complete  
5 combustion or oxidation of liquid motor vehicle fuel, special fuel,  
6 or aircraft fuel that is sold in Washington where the annual  
7 emissions associated with that combustion or oxidation equal or  
8 exceed ten thousand metric tons be reported to the department. Each  
9 person who is required to file periodic tax reports of motor vehicle  
10 fuel sales under RCW 82.36.031 or special fuel sales under RCW  
11 82.38.150, or each distributor of aircraft fuel required to file  
12 periodic tax reports under RCW 82.42.040 must report to the  
13 department the annual emissions of carbon dioxide from the complete  
14 combustion or oxidation of the fuels listed in those reports as sold  
15 in the state of Washington. The department shall not require  
16 suppliers to use additional data to calculate greenhouse gas  
17 emissions other than the data the suppliers report to the department  
18 of licensing. The rules may allow this information to be aggregated  
19 when reported to the department. The department and the department of  
20 licensing shall enter into an interagency agreement to ensure  
21 proprietary and confidential information is protected if the  
22 departments share reported information. Any proprietary or  
23 confidential information exempt from disclosure when reported to the  
24 department of licensing is exempt from disclosure when shared by the  
25 department of licensing with the department under this provision.)~~

26 (b) (i) ~~((Except as otherwise provided in this subsection, the  
27 rules adopted by the department under (a) of this subsection must be  
28 consistent with the regulations adopted by the United States  
29 environmental protection agency in 40 C.F.R. Part 98 on September 22,  
30 2009.~~

31 ~~(ii))~~ The department may by rule include additional gases to the  
32 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has  
33 been designated as a greenhouse gas by the United States congress  
34 ~~((or)),~~ by the United States environmental protection agency, or  
35 included in external greenhouse gas emission trading programs with  
36 which Washington has pursuant to section 24 of this act. Prior to  
37 including additional gases to the definition of "greenhouse gas" in  
38 RCW 70A.45.010, the department shall notify the appropriate  
39 committees of the legislature. ~~((Decisions to amend the rule to  
40 include additional gases must be made prior to December 1st of any~~

1 ~~year and the amended rule may not take effect before the end of the~~  
2 ~~regular legislative session in the next year.~~

3 ~~(iii))~~ (ii) The department may by rule exempt persons who are  
4 required to report greenhouse gas emissions to the United States  
5 environmental protection agency and who emit less than ten thousand  
6 metric tons carbon dioxide equivalent annually.

7 ~~((iv))~~ (iii) The department must establish a methodology for  
8 persons who are not required to report under this section to  
9 voluntarily report their greenhouse gas emissions.

10 (c) (i) The department shall review and if necessary update its  
11 rules whenever ~~((the))~~:

12 (A) The United States environmental protection agency adopts  
13 final amendments to 40 C.F.R. Part 98 to ensure consistency with  
14 federal reporting requirements for emissions of greenhouse gases; or

15 (B) Needed to ensure consistency with emissions reporting  
16 requirements for jurisdictions with which Washington has entered a  
17 linkage agreement. ~~((However, the))~~

18 (ii) The department shall not amend its rules in a manner that  
19 conflicts with ~~((a) of)~~ this ~~((subsection))~~ section.

20 (d) The department shall share any reporting information reported  
21 to it with the local air authority in which the person reporting  
22 under the rules adopted by the department operates.

23 (e) The fee provisions in subsection (2) of this section apply to  
24 reporting of emissions of greenhouse gases. Persons required to  
25 report under (a) of this subsection who fail to report or pay the fee  
26 required in subsection (2) of this section are subject to enforcement  
27 penalties under this chapter. The department shall enforce the  
28 reporting rule requirements ~~((unless it approves a local air~~  
29 ~~authority's request to enforce the requirements for persons operating~~  
30 ~~within the authority's jurisdiction. However, neither the department~~  
31 ~~nor a local air authority approved under this section are authorized~~  
32 ~~to assess enforcement penalties on persons required to report under~~  
33 ~~(a) of this subsection until six months after the department adopts~~  
34 ~~its reporting rule in 2010)).~~ When a person that holds a compliance  
35 obligation under section 10 of this act fails to submit an emissions  
36 data report or fails to obtain a positive emissions data verification  
37 statement in accordance with (g)(ii) of this subsection, the  
38 department may assign an emissions level for that person.

39 (f) The energy facility site evaluation council shall,  
40 simultaneously with the department, adopt rules that impose

1 greenhouse gas reporting requirements in site certifications on  
2 owners or operators of a facility permitted by the energy facility  
3 site evaluation council. The greenhouse gas reporting requirements  
4 imposed by the energy facility site evaluation council must be the  
5 same as the greenhouse gas reporting requirements imposed by the  
6 department. The department shall share any information reported to it  
7 from facilities permitted by the energy facility site evaluation  
8 council with the council, including notice of a facility that has  
9 failed to report as required. The energy facility site evaluation  
10 council shall contract with the department to monitor the reporting  
11 requirements adopted under this section.

12 (g) (i) ~~The ((inclusion or failure to include any person, source,~~  
13 ~~classes of persons or sources, or types of emissions of greenhouse~~  
14 ~~gases into the department's rules for reporting under this section~~  
15 ~~does not indicate whether such a person, source, or category is~~  
16 ~~appropriate for inclusion in state, regional, or national greenhouse~~  
17 ~~gas reduction programs or strategies. Furthermore, aircraft fuel~~  
18 ~~purchased in the state may not be considered equivalent to aircraft~~  
19 ~~fuel combusted in the state)) department must establish by rule the~~  
20 ~~methods of verifying the accuracy of emissions reports.~~

21 (ii) Verification requirements apply at a minimum to persons  
22 required to report under (a) of this subsection with emissions that  
23 equal or exceed 25,000 metric tons of carbon dioxide equivalent  
24 emissions, including carbon dioxide from biomass-derived fuels, or to  
25 persons who have a compliance obligation under section 10 of this act  
26 in any year of the current compliance period. The department may  
27 adopt rules to accept verification reports from another jurisdiction  
28 with a linkage agreement pursuant to section 20 of this act in cases  
29 where the department deems that the methods or procedures are  
30 substantively similar.

31 (h) (i) The definitions in RCW 70A.45.010 apply throughout this  
32 subsection (5) unless the context clearly requires otherwise.

33 (ii) For the purpose of this subsection (5), the term "supplier"  
34 includes: (A) ~~((A motor vehicle fuel supplier or a motor vehicle fuel~~  
35 ~~importer, as those terms are defined in RCW 82.36.010; (B) a special~~  
36 ~~fuel supplier or a special fuel importer, as those terms are defined~~  
37 ~~in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those~~  
38 ~~terms are defined in RCW 82.42.010)) Suppliers that produce, import,~~  
39 ~~or deliver, or any combination of producing, importing, or~~  
40 ~~delivering, a quantity of fuel products in Washington that, if~~

1 completely combusted, oxidized, or used in other processes, would  
2 result in the release of greenhouse gases in Washington equivalent to  
3 or higher than the threshold established under (a) of this  
4 subsection; and (B) suppliers of carbon dioxide that produce, import,  
5 or deliver a quantity of carbon dioxide in Washington that, if  
6 released, would result in emissions equivalent to or higher than the  
7 threshold established under (a) of this subsection.

8 (iii) For the purpose of this subsection (5), the term "person"  
9 includes: (A) An owner or operator(~~(, as those terms are defined by~~  
10 ~~the United States environmental protection agency in its mandatory~~  
11 ~~greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted~~  
12 ~~on September 22, 2009; and (B) a supplier)) of a facility; (B) a~~  
13 ~~supplier; or (C) an electric power entity.~~

14 (iv) For the purpose of this subsection (5), the term "facility"  
15 includes facilities that directly emit greenhouse gases in Washington  
16 equivalent to the threshold established under (a) of this subsection  
17 with at least one source category listed in the United States  
18 environmental protection agency's mandatory greenhouse gas reporting  
19 regulation, 40 C.F.R. Part 98 Subparts C through II and RR through  
20 UU, as adopted on April 25, 2011.

21 (v) For the purpose of this subsection (5), the term "electric  
22 power entity" includes any of the following that supply electric  
23 power in Washington with associated emissions of greenhouse gases  
24 equal to or above the threshold established under (a) of this  
25 subsection: (A) Electricity importers and exporters; (B) retail  
26 providers, including multijurisdictional retail providers; and (C)  
27 first jurisdictional deliverers, as defined in section 2 of this act,  
28 not otherwise included here.

29 NEW SECTION. Sec. 34. A new section is added to chapter 43.21C  
30 RCW to read as follows:

31 The review under this chapter of greenhouse gas emissions from a  
32 new or expanded facility subject to the greenhouse gas emission  
33 reduction requirements of chapter 70A.--- RCW (the new chapter  
34 created in section 38 of this act) must occur consistent with section  
35 10(9) of this act.

36 NEW SECTION. Sec. 35. A new section is added to chapter 70A.15  
37 RCW to read as follows:

1 The department or a local air authority must issue an enforceable  
2 order under this chapter, consistent with section 3(2) (b) and (c) of  
3 this act, to all permitted or registered sources operating in  
4 overburdened communities when, consistent with section 3(2)(a) of  
5 this act, the department determines that criteria pollutants are not  
6 being reduced in an overburdened community and the department or  
7 local air authority adopts stricter air quality standards, emissions  
8 standards, or emissions limitations on criteria pollutants.

9 NEW SECTION. **Sec. 36.** A new section is added to chapter 70A.45  
10 RCW to read as follows:

11 The state, state agencies, and political subdivisions of the  
12 state, in implementing their duties and authorities established under  
13 other laws, may only consider the greenhouse gas limits established  
14 in RCW 70A.45.020 in a manner that recognizes, where applicable, that  
15 the siting and placement of new or expanded best-in-class facilities  
16 with lower carbon emitting processes is in the economic and  
17 environmental interests of the state of Washington.

18 NEW SECTION. **Sec. 37.** This act may be known and cited as the  
19 Washington climate commitment act.

20 NEW SECTION. **Sec. 38.** Sections 1 through 32 and 37 of this act  
21 constitute a new chapter in Title 70A RCW.

22 NEW SECTION. **Sec. 39.** (1) Sections 8 through 24 of this act,  
23 and any rules adopted by the department of ecology to implement the  
24 program established under those sections, are suspended on December  
25 31, 2055, in the event that the department of ecology determines by  
26 December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020  
27 have been met for two or more consecutive years.

28 (2) Upon the occurrence of the events identified in subsection  
29 (1) of this section, the department of ecology must provide written  
30 notice of the suspension date of sections 8 through 24 of this act to  
31 affected parties, the chief clerk of the house of representatives,  
32 the secretary of the senate, the office of the code reviser, and  
33 others as deemed appropriate by the department.

34 **Sec. 40.** RCW 43.376.020 and 2012 c 122 s 2 are each amended to  
35 read as follows:



1 In establishing a government-to-government relationship with  
2 Indian tribes, state agencies must:

3 (1) Make reasonable efforts to collaborate with Indian tribes in  
4 the development of policies, agreements, and program implementation  
5 that directly affect Indian tribes and develop a consultation process  
6 that is used by the agency for issues involving specific Indian  
7 tribes. State agencies described in section 6 of this act must offer  
8 consultation with Indian tribes on the actions specified in section 6  
9 of this act;

10 (2) Designate a tribal liaison who reports directly to the head  
11 of the state agency;

12 (3) Ensure that tribal liaisons who interact with Indian tribes  
13 and the executive directors of state agencies receive training as  
14 described in RCW 43.376.040; and

15 (4) Submit an annual report to the governor on activities of the  
16 state agency involving Indian tribes and on implementation of this  
17 chapter.

18 **Sec. 41.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035  
19 are each reenacted and amended to read as follows:

20 (1) The hearings board shall only have jurisdiction to hear and  
21 decide appeals from the following decisions of the department, the  
22 director, local conservation districts, the air pollution control  
23 boards or authorities as established pursuant to chapter 70A.15 RCW,  
24 local health departments, the department of natural resources, the  
25 department of fish and wildlife, the parks and recreation commission,  
26 and authorized public entities described in chapter 79.100 RCW:

27 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
28 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
29 70A.515.060, section 23 of this act, 76.09.170, 77.55.440, 78.44.250,  
30 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
31 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
33 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
34 section 23 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
35 90.48.120, and 90.56.330.

36 (c) Except as provided in RCW 90.03.210(2), the issuance,  
37 modification, or termination of any permit, certificate, or license  
38 by the department or any air authority in the exercise of its  
39 jurisdiction, including the issuance or termination of a waste

1 disposal permit, the denial of an application for a waste disposal  
2 permit, the modification of the conditions or the terms of a waste  
3 disposal permit, or a decision to approve or deny an application for  
4 a solid waste permit exemption under RCW 70A.205.260.

5 (d) Decisions of local health departments regarding the grant or  
6 denial of solid waste permits pursuant to chapter 70A.205 RCW.

7 (e) Decisions of local health departments regarding the issuance  
8 and enforcement of permits to use or dispose of biosolids under RCW  
9 70A.226.090.

10 (f) Decisions of the department regarding waste-derived  
11 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
12 decisions of the department regarding waste-derived soil amendments  
13 under RCW 70A.205.145.

14 (g) Decisions of local conservation districts related to the  
15 denial of approval or denial of certification of a dairy nutrient  
16 management plan; conditions contained in a plan; application of any  
17 dairy nutrient management practices, standards, methods, and  
18 technologies to a particular dairy farm; and failure to adhere to the  
19 plan review and approval timelines in RCW 90.64.026.

20 (h) Any other decision by the department or an air authority  
21 which pursuant to law must be decided as an adjudicative proceeding  
22 under chapter 34.05 RCW.

23 (i) Decisions of the department of natural resources, the  
24 department of fish and wildlife, and the department that are  
25 reviewable under chapter 76.09 RCW, and the department of natural  
26 resources' appeals of county, city, or town objections under RCW  
27 76.09.050(7).

28 (j) Forest health hazard orders issued by the commissioner of  
29 public lands under RCW 76.06.180.

30 (k) Decisions of the department of fish and wildlife to issue,  
31 deny, condition, or modify a hydraulic project approval permit under  
32 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
33 comply, to issue a civil penalty, or to issue a notice of intent to  
34 disapprove applications.

35 (l) Decisions of the department of natural resources that are  
36 reviewable under RCW 78.44.270.

37 (m) Decisions of an authorized public entity under RCW 79.100.010  
38 to take temporary possession or custody of a vessel or to contest the  
39 amount of reimbursement owed that are reviewable by the hearings  
40 board under RCW 79.100.120.

1 (2) The following hearings shall not be conducted by the hearings  
2 board:

3 (a) Hearings required by law to be conducted by the shorelines  
4 hearings board pursuant to chapter 90.58 RCW.

5 (b) Hearings conducted by the department pursuant to RCW  
6 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
7 70A.15.3110, and 90.44.180.

8 (c) Appeals of decisions by the department under RCW 90.03.110  
9 and 90.44.220.

10 (d) Hearings conducted by the department to adopt, modify, or  
11 repeal rules.

12 (3) Review of rules and regulations adopted by the hearings board  
13 shall be subject to review in accordance with the provisions of the  
14 administrative procedure act, chapter 34.05 RCW.

15 **Sec. 42.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to  
16 read as follows:

17 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
18 70A.205.280, 70A.300.090, 70A.20.050, section 23 of this act,  
19 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
20 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in  
21 writing, either by certified mail with return receipt requested or by  
22 personal service, to the person incurring the penalty from the  
23 department or the local air authority, describing the violation with  
24 reasonable particularity. For penalties issued by local air  
25 authorities, within thirty days after the notice is received, the  
26 person incurring the penalty may apply in writing to the authority  
27 for the remission or mitigation of the penalty. Upon receipt of the  
28 application, the authority may remit or mitigate the penalty upon  
29 whatever terms the authority in its discretion deems proper. The  
30 authority may ascertain the facts regarding all such applications in  
31 such reasonable manner and under such rules as it may deem proper and  
32 shall remit or mitigate the penalty only upon a demonstration of  
33 extraordinary circumstances such as the presence of information or  
34 factors not considered in setting the original penalty.

35 (2) Any penalty imposed under this section may be appealed to the  
36 pollution control hearings board in accordance with this chapter if  
37 the appeal is filed with the hearings board and served on the  
38 department or authority thirty days after the date of receipt by the  
39 person penalized of the notice imposing the penalty or thirty days

1 after the date of receipt of the notice of disposition by a local air  
2 authority of the application for relief from penalty.

3 (3) A penalty shall become due and payable on the later of:

4 (a) Thirty days after receipt of the notice imposing the penalty;

5 (b) Thirty days after receipt of the notice of disposition by a  
6 local air authority on application for relief from penalty, if such  
7 an application is made; or

8 (c) Thirty days after receipt of the notice of decision of the  
9 hearings board if the penalty is appealed.

10 (4) If the amount of any penalty is not paid to the department  
11 within thirty days after it becomes due and payable, the attorney  
12 general, upon request of the department, shall bring an action in the  
13 name of the state of Washington in the superior court of Thurston  
14 county, or of any county in which the violator does business, to  
15 recover the penalty. If the amount of the penalty is not paid to the  
16 authority within thirty days after it becomes due and payable, the  
17 authority may bring an action to recover the penalty in the superior  
18 court of the county of the authority's main office or of any county  
19 in which the violator does business. In these actions, the procedures  
20 and rules of evidence shall be the same as in an ordinary civil  
21 action.

22 (5) All penalties recovered shall be paid into the state treasury  
23 and credited to the general fund except those penalties imposed  
24 pursuant to RCW 18.104.155, which shall be credited to the  
25 reclamation account as provided in RCW 18.104.155(7), RCW  
26 70A.15.3160, the disposition of which shall be governed by that  
27 provision, RCW 70A.300.090, which shall be credited to the model  
28 toxics control operating account created in RCW 70A.305.180, section  
29 23 of this act, which shall be credited to the climate investment  
30 account created in section 28 of this act, RCW 90.56.330, which shall  
31 be credited to the coastal protection fund created by RCW 90.48.390,  
32 and RCW 70A.355.070, which shall be credited to the underground  
33 storage tank account created by RCW 70A.355.090.

34 **Sec. 43.** RCW 43.52A.040 and 1984 c 223 s 1 are each amended to  
35 read as follows:

36 (1) Unless removed at the governor's pleasure, councilmembers  
37 shall serve a term ending January 15 of the third year following  
38 appointment except that, with respect to members initially appointed,  
39 the governor shall designate one member to serve a term ending

1 January 15 of the second year following appointment. Initial  
2 appointments to the council shall be made within thirty days of March  
3 9, 1981.

4 (2) Each member shall serve until a successor is appointed, but  
5 if a successor is not appointed within sixty days of the beginning of  
6 a new term, the member shall be considered reappointed, subject to  
7 the consent of the senate.

8 (3) A vacancy on the council shall be filled for the unexpired  
9 term by the governor, with the consent of the senate.

10 (4) For the first available appointment and at all times  
11 thereafter, one member of Washington's delegation to the council  
12 shall reside east of the crest of the Cascade Mountains and one  
13 member shall reside west of the crest of the Cascade Mountains,  
14 except as follows: Both members may reside on the same side of the  
15 Cascade Mountains as long as this deviation does not exceed 12 months  
16 in any 10-year period.

17 **Sec. 44.** RCW 70A.45.005 and 2020 c 120 s 2 and 2020 c 20 s 1397  
18 are each reenacted and amended to read as follows:

19 (1) The legislature finds that Washington has long been a  
20 national and international leader on energy conservation and  
21 environmental stewardship, including air quality protection,  
22 renewable energy development and generation, emission standards for  
23 fossil-fuel based energy generation, energy efficiency programs,  
24 natural resource conservation, sustainable forestry and the  
25 production of forest products, vehicle emission standards, and the  
26 use of biofuels. Washington is also unique among most states in that  
27 in addition to its commitment to reduce emissions of greenhouse  
28 gases, it has established goals to grow the clean energy sector and  
29 reduce the state's expenditures on imported fuels.

30 (2) The legislature further finds that Washington should continue  
31 its leadership on climate change policy by creating accountability  
32 for achieving the emission reductions established in RCW 70A.45.020,  
33 participating in the design of a regional multisector market-based  
34 system to help achieve those emission reductions, assessing other  
35 market strategies to reduce emissions of greenhouse gases,  
36 maintaining and enhancing the state's ability to continue to  
37 sequester carbon through natural and working lands and forest  
38 products, and ensuring the state has a well trained workforce for our  
39 clean energy future.

1 (3) It is the intent of the legislature that the state will: (a)  
2 Limit and reduce emissions of greenhouse gas consistent with the  
3 emission reductions established in RCW 70A.45.020; (b) minimize the  
4 potential to export pollution, jobs, and economic opportunities; (c)  
5 support industry sectors that can act as sequesterers of carbon; and  
6 (d) reduce emissions at the lowest cost to Washington's economy,  
7 consumers, and businesses.

8 (4) In the event the state elects to participate in a regional  
9 multisector market-based system, it is the intent of the legislature  
10 that the system will become effective by January 1, 2012, after  
11 authority is provided to the department for its implementation. By  
12 acting now, Washington businesses and citizens will have adequate  
13 time and opportunities to be well positioned to take advantage of the  
14 low-carbon economy and to make necessary investments in low-carbon  
15 technology.

16 (5) It is also the intent of the legislature that the regional  
17 multisector market-based system recognize Washington's unique  
18 emissions and sequestration portfolio, including the:

19 (a) State's hydroelectric system;

20 (b) Opportunities presented by Washington's abundant forest  
21 resources and the associated forest products industry, along with  
22 aquatic and agriculture land and the associated industries; and

23 (c) State's leadership in energy efficiency and the actions it  
24 has already taken that have reduced its generation of greenhouse gas  
25 emissions and that entities receive appropriate credit for early  
26 actions to reduce greenhouse gases.

27 (6) If any revenues, excluding those from state trust lands, that  
28 accrue to the state are created by a market system, they must be used  
29 for the purposes established in chapter 70A.--- RCW (the new chapter  
30 created in section 38 of this act) and to further the state's efforts  
31 to achieve the goals established in RCW 70A.45.020, address the  
32 impacts of global warming on affected habitats, species, and  
33 communities, promote and invest in industry sectors that act as  
34 sequesterers of carbon, and increase investment in the clean energy  
35 economy particularly for communities and workers that have suffered  
36 from heavy job losses and chronic unemployment and underemployment.

37 NEW SECTION. **Sec. 45.** If any provision of this act or its  
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected."

3 Correct the title.

EFFECT: The striking amendment does the following:

(1) Clarifies the definition of "overburdened communities."  
(2) Amends provisions relating to the review of criteria pollutants and greenhouse gas emissions in overburdened communities.

(3) Clarifies coverage of imported electricity under the Cap and Invest Program.

(4) Clarifies coverage of fuel suppliers under the Cap and Invest Program.

(5) Exempts persons who own or operate railroad companies from coverage under the Cap and Invest Program for the first two compliance periods.

(6) Amends provisions relating to the siting of facilities under the State Environmental Policy Act.

(7) Removes the prohibition against the transfer of auction proceeds to the Carbon Emissions Reduction Account after December 31, 2027, if a clean fuel standard with a carbon intensity reduction of greater than 10 percent is not enacted by that date.

(8) Amends provisions relating to the allocation of no cost allowances to emissions-intensive, trade-exposed (EITE) entities.

(9) Requires protocols for the allocation of no cost allowances to a new EITE facility that is built on tribal lands or is determined by the Department of Ecology to impact tribal lands and resources to be developed in consultation with the affected tribal nations.

(10) Restores language pertaining to the allocation of no cost allowances to electric utilities as it exists in the underlying Senate bill.

(11) Removes provisions establishing an offset assistance program for small forestland owners. Adds provisions requiring the Department of Natural Resources to contract with an eligible entity capable of providing public value to the state through the establishment and implementation of a small forestland owner work group.

(12) Requires the Department of Ecology to, before entering into a linkage agreement, evaluate and make a finding regarding whether the aggregate number of unused allowances in a linked program would reduce the stringency of Washington's program and the state's ability to meet its greenhouse gas emissions reduction limits.

(13) Adds eligible fund uses under the Sustainable Farms and Fields Grant Program to the list of authorized expenditures under the Climate Commitment Account.

(14) Adds initiatives to develop a forest health workforce established under RCW 76.04.--- (section 5, chapter . . ., Laws of 2021 (Second Substitute House Bill No. 1168)) to the list of authorized workforce development expenditures under the Climate Commitment Account.

(15) Adds initiatives to develop new education programs, emerging fields, or jobs pertaining to the clean energy economy to the list of authorized workforce development expenditures under the Climate Commitment Account.

(16) Requires the Joint Legislative Audit and Review Committee to analyze the impacts of the first five years of Cap and Invest Program implementation and submit a report to the Legislature by December 1, 2029.

(17) Amends provisions governing the appointment of Washington's members of the Pacific Northwest Electric Power and Conservation Planning Council to allow both members to reside on the same side of the Cascade Mountains, so long as this deviation does not exceed 12 months in any 10-year period.

(18) Amends the contingent effective date for compliance obligations tying implementation of the Cap and Invest Program with passage of a separate additive transportation revenue act.

(19) Makes technical corrections and changes, including conforming amendments.

--- END ---