

SENATE BILL REPORT

SB 5126

As of January 19, 2021

Title: An act relating to the Washington climate commitment act.

Brief Description: Concerning the Washington climate commitment act.

Sponsors: Senators Carlyle, Saldaña, Conway, Das, Frockt, Hunt, Lias, Nguyen, Pedersen, Salomon, Stanford and Wilson, C.; by request of Office of the Governor.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/19/21.

Brief Summary of Bill

- Requires the Governor to establish a comprehensive program to implement the state's climate commitment and convene a Climate Commitment Task Force.
- Establishes a cap and invest program for greenhouse gas (GHG) emissions to be implemented by the Department of Ecology (Ecology).
- Directs distribution of auction revenues for specified purposes including clean transportation, natural climate resiliency, clean energy transition and assistance, and energy efficiency projects.
- Convenes an Environmental Justice and Equity Advisory Panel to provide recommendations on the development and implementation of the cap and invest program.
- Authorizes Ecology to require persons who produce or distribute fossil fuels or other products that emit GHG in Washington, to comply with air quality standards, emission standards, or GHG emission limitations.
- Provides a definition of emission, emission standard, and emission limitation as applied to GHG emissions that includes indirect emissions from the production or distribution of petroleum products or natural gas.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Kimberly Cushing (786-7421)

Background: Cap and trade is a market-based, economy-wide approach to reduce pollution, which is comprised of two key components—a limit or cap on carbon emissions and tradable allowances. In the United States, nine states participate in the Regional Greenhouse Gas Initiative, a cap and trade program established in 2009. California began operating a cap and trade program in 2013, and it is linked with a program in Quebec, Canada. European countries have operated a cap and trade program since 2005.

Greenhouse Gasses. The United States Environmental Protection Agency (EPA) and state Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gasses (GHGs) as a result of their capacity to trap heat in the earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence, over a 100-year timeframe, to the emission of an identical volume of carbon dioxide (carbon dioxide equivalent).

Current Federal and Washington Regulation of Greenhouse Gasses. Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of carbon dioxide equivalent report their emissions to the EPA.

At the state level, GHGs are regulated by Ecology under the state Clean Air Act (CAA). The Clean Air Rule (CAR), adopted September 2016, required entities emitting more than 100,000 metric tons a year to reduce their GHG emissions. However, in January 2020, the Washington State Supreme Court issued a 5-4 opinion partially invalidating CAR. The court held that the part of the rule which applies emission standards to actual emitters or direct sources of greenhouse gases is valid because Ecology has this authority under the CAA. The court ruled Ecology does not have the authority to apply emissions standards to entities that do not directly emit, or indirect sources, such as natural gas distributors and petroleum product producers and importers.

Facilities, sources, and sites whose emissions exceed 10,000 metric tons of carbon dioxide equivalent each year are required to report their annual emissions to Ecology or to local air authorities that implement the state CAA. Liquid motor vehicle and aircraft fuel suppliers that supply fuel whose combustion would exceed that same 10,000 ton volumetric threshold must also report their annual emissions.

Apart from reporting and other regulations under the state and federal clean air acts, several

other state laws and programs explicitly address GHG emissions.

In 2020, the Legislature updated statewide GHG emissions reduction limits (emissions limits) set in 2008 to: a 95 percent reduction below 1990 levels by 2050, with interim economy-wide emissions limits of 45 percent below 1990 levels by 2030 and 70 percent below 1990 levels by 2040. The state must achieve net zero emissions by 2050.

Ecology is responsible for monitoring and tracking the state's progress toward the emission limits.

Clean Energy Transformation Act. In 2019, the Legislature passed the Clean Energy Transformation Act (CETA), which requires Washington's electric utilities to meet 100 percent of their retail electric load using non-emitting and renewable resources by January 1, 2045. Additionally, CETA requires electric utilities to eliminate coal-fired resources from their allocation of electricity by December 31, 2025, and make all retail sales of electricity GHG neutral by January 1, 2030. CETA also requires electric utilities to develop a clean energy implementation plan every four years, starting January 1, 2022, to establish interim targets for energy efficiency and renewable energy.

Environmental Justice Task Force Report. A proviso in the 2019-2021 biennial operating budget directed the Governor's Interagency Council on Health Disparities to convene and staff an Environmental Justice Task Force. The task force was directed to recommend strategies for incorporating environmental justice principles into future state agency actions across Washington. The task force report, published in fall 2020, includes:

- guidance for using the Washington Environmental Health Disparities Map to identify communities that are highly impacted by environmental justice issues with current demographic data;
- measurable goals for reducing environmental health disparities for each community in Washington State and ways in which state agencies may focus their work towards meeting those goals; and
- model policies that prioritize highly impacted communities and vulnerable populations for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents.

Office of Equity. In 2020, the Legislature established the Office of Equity to promote access to equitable opportunities and resources that reduce disparities and improve outcomes statewide across state government. Duties of the office include facilitating state policy and systems change to promote equitable policies, practices, and outcomes.

Summary of Bill: Climate Commitment. The Governor must establish a comprehensive program to implement the state's climate commitment. The purpose of the comprehensive program is to provide accountability and authority for achieving the statewide emissions limits, to establish a coordinated and strategic statewide approach to climate resilience, and to build an equitable and inclusive clean energy economy.

Implementing the state's climate commitment under the comprehensive program must be based on a set of specified principles, including being holistic; addressing emissions reductions from all relevant sectors and sources; supporting an equitable transition for vulnerable populations and overburdened communities, increasing climate resilience for at-risk communities and ecosystems through cross-sectoral coordination, planning and policies; applying scientific and technical information; implementing with sustained leadership, resources, clear governance, and prioritized investments at the scale necessary to meet emissions limits.

The comprehensive program must also include the following elements:

- a strategic plan for aligning existing law, rules, policies, programs, and plans with the state's emissions limits to the full extent allowed;
- common state policies, standards, and procedures for addressing GHG emissions and climate resilience;
- a process for prioritizing and coordinating funding consistent with strategic needs for GHG reductions, equity and environmental justice, and climate resilience actions;
- an updated statewide strategy for addressing climate risks and improving resilience of communities and ecosystems;
- a comprehensive community engagement plan for vulnerable populations, overburdened communities, and other historically or currently marginalized groups; and
- an analysis of gaps and conflicts in state law and programs.

The Governor must develop a framework for government-to-government consultation with Indian tribes consistent with the Centennial Accord and tribal polices to ensure mutual respect for the rights, interests, and obligations of each sovereign Indian tribe. The consultation must ensure meaningful tribal engagement on the implementation of this act and occur at least once a year.

The Governor's Office must convene a Climate Commitment Task Force (task force) with state agencies, other governments, and stakeholders by July 1, 2021. The Governor or Governor's designee must chair the task force and appoint task force members, that include a diverse representation of stakeholders.

The task force must develop and provide to the Legislature recommendations for establishing a state comprehensive climate, energy and resilience program to implement the state's climate commitment, in accordance with the purpose, principles, and elements of the comprehensive program. Preliminary recommendations must be developed by November 1, 2021, and a report with the findings and recommendations of the task force is due to the Legislature by December 1, 2021. The report must include the following recommendations:

- a governance structure to implement to climate commitment that considers existing state capacity, resources, expertise, and authorities and necessary enhancements;

- reporting requirements and other accountability measures, including mechanisms for Legislative and executive oversight and changes to existing statutory reporting requirements;
- a formal process for coordinating across state government, with other governments, and key stakeholder groups;
- the funding authorities and structures necessary to facilitate investments;
- duties and roles related to resilience based on 2020 disaster and climate resilience reports; and
- necessary changes to statutory requirements and proposed legislation, necessary funding, and a schedule to implement the comprehensive program.

The Legislature intends to review the task force's report and take appropriate action during the 2022 legislative session.

Cap and Invest Program. Ecology must implement a GHG emissions cap and invest program (program) to reduce GHG emissions consistent with the statewide emissions limits. The program must track, verify, and enforce compliance through the use of compliance instruments.

Program Budget and Timeline. By January 1, 2023, Ecology must begin the program. Ecology must determine the proportionate share that the total GHG emissions of covered entities bears to the total anthropogenic GHG emissions in the state during 2017 through 2021, based on reported data. If Ecology determines one year to be an outlier due to a state of emergency, that year may be excluded from the baseline determination.

The first compliance period is January 1, 2023, through December 31, 2026. By October 1, 2022, Ecology must adopt a program budget of allowances for all covered entities for the first compliance period of the program. Data reported from 2017 through 2021 is sufficient for adopting annual program budgets and demonstrating compliance for the first compliance period.

The second compliance period is January 1, 2027, through December 31, 2030. By October 1, 2026, Ecology must adopt a program budget of allowances for the second compliance period. Data reported to Ecology for 2023 through 2025 is sufficient for adopting annual program budgets and demonstrating compliance under the second compliance period of the program.

For calendar years 2031 through 2040, Ecology must adopt by rule the annual program budgets for calendar years. The program budgets must be set to achieve the covered entities' share of reductions necessary to meet the 2030, 2040, and 2050 statewide emissions limits. Ecology must adopt annual allowance budgets that provide substantially equivalent reductions on an absolute basis for each calendar year.

By December 31, 2035, Ecology must evaluate the performance of the program, including

the reduction of GHG and criteria pollutants in overburdened communities, and make adjustments to annual budgets if needed to achieve the 2040 emissions limits and reduce GHG gases and criteria pollutants in overburdened communities.

By December 31, 2045, Ecology must evaluate the program and make adjustments in annual budgets if needed to achieve 2050 emission limits.

Participating Entities. Covered entities are required to register to participate in the program. At the beginning of the first compliance period, and for all subsequent compliance periods, a covered entity is a person who has reported emissions that equal or exceed a threshold of 25,000 metric tons of carbon dioxide equivalent for:

- facilities;
- electricity generated in the state; and
- fuel suppliers other than natural gas, reporting under current law.

At the beginning of the second compliance period, and for all subsequent compliance periods, a covered entity is a person who has reported emissions that equals or exceed a threshold of 25,000 metric tons of carbon dioxide equivalent for:

- first jurisdictional deliverer of electricity into the state from specified or unspecified sources;
- natural gas supplier to non-covered entities;
- facilities that are direct purchasers of electricity from a federal power market agency or a joint operating entity; and
- fuel suppliers other than natural gas, consistent with reporting requirements.

An opt-in entity is a person responsible for GHG emissions that is not a covered entity but may voluntarily participate and register in the program. An opt-in entity must meet the same requirements for registration and compliance obligations as a covered entity. An opt-in entity may opt-out of the program by giving Ecology notice six months prior to the end of the compliance period, but will have compliance obligations through a compliance period. An opt-in entity is not eligible to receive allowances directly distributed to energy intensive, trade-exposed (EITE) industries, electric utilities, or natural gas companies under this program.

A general market participant is not a covered or opt-in entity, but may also voluntarily register in the program to purchase, trade, hold, sell, transfer, or retire compliance instruments. Tribal governments and federal agencies may elect to participate in the program as opt-in entities or general market participants.

Participating entities must describe any direct or indirect affiliation with other registered entities. Ecology must adopt rules for program registration procedures.

Exemptions. Regardless of reporting requirements, the emissions that are exempt from coverage are from:

- the combustion of aviation fuel;
- watercraft fuels;
- coal-fired electric generation, exempt from GHG limitations and requirements; and
- national security facilities.

Auctions. Ecology must distribute allowances through a maximum of four auctions annually. The auction may include allowances from the current year annual allowance budgets and allowances yet to be distributed from prior allowance budget years. Ecology must engage a qualified, independent contractor to run the auctions. Additionally, Ecology must engage a qualified financial services administrator to hold and evaluate bid guarantees and to inform the department of the value of the bid guarantees when the bids are accepted.

Registered entities in good standing may participate in auctions. A registered entity must submit an application to participate and is only eligible to participate in an auction after receiving approval by Ecology. Ecology may require a bid guarantee in an amount greater than or equal to the sum of the maximum value of bids that will be submitted by the registered entity.

Registered entities with a direct corporate association are subject to the following auction purchase limits:

- covered or opt-in entity may not buy more than 10 percent of allowances offered during a single auction;
- general market participants may not buy more than 4 percent of allowances offered during a single auction; and
- no registered entity may buy more than its bid guarantee or allowances that would exceed its holding limit at the time of the auction.

Upon completion and verification of the auction results, the financial services administrator must notify winning bidders and transfer the auction proceeds to the Climate Investment Account.

Ecology must adopt rules to guard against bidder collusion and minimize the potential for market manipulation. A registered entity may not disclose bidding information such as intent to participate in an auction, auction approval status, bidding strategy, bid price or quantity, or bid guarantee. Ecology may cancel or restrict an approved application or reject a new application to participate in an auction if it determines that the registered entity has provided false or misleading facts, withheld material information that could influence a decision by Ecology, or violated auction rules or registration requirements. Ecology may cancel or restrict participation permanently or for a specified number of auctions, which is in addition to any other penalties and fines.

Ecology must design allowance auctions to link with external GHG emissions trading program in other jurisdictions to the maximum extent practicable. Auctions may be conducted jointly with jurisdictions with a linkage agreement.

Energy Intensive, Trade-Exposed. During the first compliance period, a covered entity must receive an allocation of allowances at no cost if it is classified as energy-intensive and trade-exposed (EITE), as determined by being engaged in one or more of the processes described within one of ten specified North American industry classification system codes. The annual allocation of allowances for direct distribution to an EITE entity must be equal to the covered entity's proportional obligation of the program budget for phase one multiplied by a specified declining percentage each year.

By January 1, 2024, Ecology must adopt rules to identify covered entities classified as EITE during the second and subsequent compliance periods. The rules must establish objective criteria for emissions' intensity and trade exposure for the purpose of identifying EITE manufacturing businesses. If a manufacturing business can demonstrate it meets this criteria, it is eligible for free allocation of allowances as an EITE industry under Ecology's rules.

By July 1, 2024, Ecology must adopt rules for allocating allowances to those covered entities that are engaged in EITE process during the second compliance period. Ecology must establish a schedule that provides for a declining portion of the allocation to be provided at no cost. Following the same process, Ecology must adopt rules for allocating allowances to EITE industries for the years 2031 through 2040, by December 31, 2009.

During the second compliance period, the annual allocation of allowances for distribution to an EITE entity must be equal to the sum of its emissions multiplied by an annually adjusted percentage set by a schedule in rule. The schedule must set an amount of annual allowances that decline proportionate to the decline in annual allowance budgets.

Ecology's rules may use a combined output-based and emissions intensity-based assessment benchmark to determine the allocation of allowances to EITE industries. A covered entity with a lower emissions intensity benchmark may receive a larger allocation of allowances than those in the same industry with higher emissions intensities. The rules must provide a means for attributing the entity's emissions to the manufacture of goods and requirements for verifying the output data used to calculate the emissions intensity benchmark.

Ecology may grant an adjustment to the allocation of allowances to EITE entities when there is a significant change in the emissions attributable to the manufacture of goods or to the covered entity's external competitive environment that results in a significant increase in leakage risk. Ecology must withhold or withdraw and permanently retire the relevant share of allowances allocated to an EITE entity in the event the covered entity curtails production in the state.

Electric Utilities. First jurisdictional deliverers of electricity that are also consumer-owned electric utilities (COUs) or investor-owned electric utilities (IOUs) subject to CETA are eligible for free allowance allocation. By October 1, 2022, Ecology must adopt rules in

consultation with the Department of Commerce, for allocating allowances to electricity generators owned by or under contract with a COU or IOU.

By October 1, 2026, Ecology must develop rules for allocating allowances at no cost during the second compliance period. Ecology must allocate free allowances to first jurisdictional deliverers of electricity that are also COUs consistent with an allowance budget based on their approved clean energy implementation plans approved under CETA or an allowance budget determined by Ecology, whichever is less.

Allowances allocated at no cost to COUs or IOUs must be consigned to the benefit of ratepayers.

Natural Gas Companies. Natural gas utilities must be allocated allowances at no cost in an amount equal to the covered emissions attributable to the provision of natural gas service to the natural gas company's low-income residential customers who receive any form of rate or bill assistance from the utility.

By January 1, 2027, and each subsequent compliance period, Ecology must determine by rule, in consultation with the Utilities and Transportation Commission, the quantity of allowances to allocate directly at no cost to a natural gas utility over the course of the compliance period.

The allowances must be consigned to auction for the benefit of low-income customers, and the proceeds used exclusively to minimize cost impacts on low-income residential customers through actions that include, but are not limited to, weatherization, electrification, conservation and efficiency services, and bill assistance.

Emissions Containment Reserve. To help ensure that the price of allowances available for auction in the program remains sufficient to incentivize reductions in GHG emissions, Ecology must establish an Emissions Containment Reserve and set an emissions containment reserve trigger price by rule. The price must be set at a reasonable amount above the auction floor price and sufficient to secure emissions reductions consistent with the statewide emissions limits.

If the price of allowances falls below the emissions containment reserve trigger price, Ecology will automatically withhold allowances from auction. Any allowances that have been withheld from auction must be transferred to the Emissions Containment Reserve Account.

Allowance Price Containment Reserve. To help minimize price volatility and limit the potential for extraordinary prices, Ecology must adopt by rule auction floor and auction ceiling prices. The auction floor price shall increase by a predetermined amount every year. Ecology may not sell allowances at bids lower than the auction floor prices.

An Allowance Price Containment Reserve must be designed as a mechanism to contain compliance costs in the event of unanticipated high costs for compliance instruments. For the first compliance period, Ecology must place no less than 4 percent of the total number of allowances available from the allowance budgets in the reserve. Only covered and opt-in entities may participate in the auction of allowances from the Allowance Price Containment Reserve. A reserve auction must be separate from auctions of other allowances. However, the process for the reserve auctions is the same as the process for described above for general auctions. The auction proceeds must be deposited in the Climate Investment Account.

Ecology must adopt rules to:

- hold auctions of allowances from the Allowance Price Containment Reserve when the settlement prices in the preceding auction approach the auction ceiling price;
- specify holding limits that determine the maximum number of allowances to be held for use or trade by a registered entity at any one time;
- set the reserve auction floor price before the reserve auction and may establish multiple price tiers;
- establish the requirements and schedule for reserve auctions; and
- establish the amount of allowances to be placed in the reserve after the first compliance period ends.

Offset Credits. A portion of a covered or opt-in entity's compliance obligation may be met through offset credits from projects that result in GHG reductions or removals that are real, permanent, quantifiable, verifiable, and enforceable. Off-set projects must be in addition to GHG reductions or removals otherwise required and must be certified by a recognized registry within two years prior to the effective date of the section of the act creating offset credits. The projects must be located in the United States or in a linked jurisdiction.

A covered or opt-in entity may use offset credits to meet no more than 8 percent of compliance obligations during the first compliance period. During this timeframe, at least 75 percent of the offset credits must be from projects that provide direct environmental benefits in Washington State. During the second compliance period, no more than 6 percent of compliance obligations may be met through offset credits. Of these offset credits, at least 50 percent must provide direct environmental benefits in Washington. Offset projects on tribal lands do not count against the off-set credit limits for covered or opt-in entities and may be no more than 5 percent of compliance obligations.

The offset credit limits may be modified by rule to ensure statewide emissions limits are achieved and alignment with linked jurisdictions. The offset credit limits may also be reduced for a specific entity if Ecology determines that the covered entity contributes substantively to cumulative air pollution burden in an overburdened community.

Ecology must develop rules for protocols to establish offset projects and secure offset credits used to meet compliance obligations. Ecology must take into consideration

standards, rules, or protocol for offset projects and credits established by other jurisdictions with comparable programs. Ecology must also encourage opportunities for the development of offset projects in Washington by adopting offset protocols that reduce transaction costs.

Finally, Ecology must adopt a process for monitoring and invalidating offset credits to ensure the credit reflects emissions reductions. If an offset credit is invalidated, the covered or opt-in entity must transfer replacement credits or allowances within six months. A covered or opt-in entity is subject to a penalty if fails to transfer replacement credits or allowances. Offset credits must be registered and tracked as a compliance instrument.

Compliance Obligations. Covered and opt-in entities must meet their compliance obligations over a four-year compliance period. The first compliance period begins January 1, 2023. Covered and opt-in entities must transfer compliance instruments equal to their allocated allowances by November 1st for each calendar year with a compliance obligation.

Allowances are submitted by the transfer of compliance instruments on or before the transfer date from the holding account to the compliance account of the covered or opt-in entity.

When the covered or opt-in entity transfers compliance instruments, on or before the transfer date, from its holding account to its compliance account allowances are considered submitted. A covered or opt-in entity that submits insufficient compliance instruments to meet its compliance obligation is subject to penalties. Allowances must be transferred in the order in which they were purchased. Covered and opt-in entities may not borrow an allowance from a future allowance year to meet a current or past compliance obligation. Ecology must retire all transferred allowances or offset credits used to meet compliance obligations.

A covered entity whose emissions fall below the threshold has a compliance obligation until the end of the compliance period. An entity is no longer a covered entity when its emissions are below the threshold during the entire compliance period or operations have ceased at its facility that is required to report GHG emissions. However, if Ecology notifies a person that its facility's emissions are within 10 percent of the threshold, the person will continue to be designated as a covered entity to ensure equity among all covered entities.

Allowance Trading and Tracking Compliance Instruments. Ecology must use an online electronic tracking system to register entities, issue compliance instruments, track ownership and transfers of compliance instruments, facilitate program compliance and support market oversight.

Covered and opt-in entities must use two accounts: a compliance account to transfer allowances to Ecology to retire; and a holding account for allowances to be bought, sold, or traded. The number of allowances in a holding account may not exceed the holding limit of

the entity. General market participants are allowed an account to hold, trade, sell, or transfer allowances. Ecology must maintain an account for retired allowances transferred by registered entities.

Enforcement. All covered and opt-in entities must comply with all requirements for monitoring, reporting, holding, and transferring emission allowances and other provisions of this act. If a covered entity or opt-in entity fails to submit sufficient compliance instruments to meet its compliance obligations by the specified transfer dates, it must submit a penalty of four allowances for every one allowance that is missing within six months.

If a covered entity or opt-in entity fails to submit penalty allowances, Ecology may issue a civil penalty of up to \$10,000 for each penalty allowance that is not submitted per day. Ecology may also issue a penalty of up to \$10,000 per day per violation for failure to comply with program rules, and \$50,000 per day per violation in cases of market manipulation.

All penalties must be deposited into the Air Pollution Control Account. Appeals of orders and penalties must be to the Pollution Control Hearings Board.

Linkage with Other Jurisdictions. Ecology must seek to link with other jurisdictions with established allowance-based GHG reduction programs under circumstances in order to broaden GHG emissions reduction opportunities to reduce costs of compliance, enable joint allowance markets and unified tracking for compliance instruments, enhance market security, reduce program administrative costs, and provide consistent requirements across jurisdictions.

Linkage agreements must include provisions relating to auctions, holding limits, GHG reporting and verification, offset protocols, enforcement, program registry, compliance instruments, coordinated administrative and technical support, public notice and participation, and processes to withdraw from the agreement.

Before entering into a linkage agreement, Ecology must find that the linkage agreement meets certain criteria, including:

- the linking jurisdiction has provisions to ensure distribution of benefits from the program to vulnerable populations and overburdened communities;
- an agreement to not yield net adverse impacts to either jurisdiction's highly impacted communities, relative to the baseline level of emissions; and
- not adversely impact Washington's ability to achieve statewide emissions limits.

If Ecology determines a full linkage agreement is unlikely to meet the above criteria, it may enter into a linkage agreement with limitations.

The state must retain legal and policymaking authority over program design and

enforcement.

Climate Investment Account. The Climate Investment Account (account) is created in the state treasury, and all receipts from the auction of allowances must be deposited into the account. Projects funded from the account must meet high workforce labor standards, including employer paid sick leave programs, family sustaining wages, pay equity based on gender identity and race, career development opportunities, and maximize access to economic benefits for local workers and diverse businesses.

Moneys in the account may not be used for projects that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from the account must result in long-term environmental benefit and increased resiliency to the impacts of climate change.

Moneys in the account may only be spent after appropriation, and must be used for one of the following six purposes:

1. To cover Ecology's and other agencies' costs to support and administer the program.
2. To deposit into the state general fund to implement the Working Families Tax Rebate.
3. Clean transportation programs, activities, or projects that reduce transportation-related GHG emissions, including projects that
 - accelerate the deployment of zero-emission fleets and vehicles;
 - create zero-emission vehicle refueling infrastructure or deploy grid infrastructure to integrate electric vehicles;
 - reduce vehicle miles traveled or increase public transportation, including investing in public transit and high-speed rural broadband; or
 - increase fuel efficiency in vehicles and vessels where options to convert to zero-emissions, low-carbon fuels or public transportation are cost-prohibitive or unavailable.
4. Natural climate resilience solutions that improve the resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change, and increase their carbon pollution reduction capacity through sequestration, storage, and overall ecosystem integrity, including programs, activities, or projects that:
 - restore and protect estuaries, fisheries, marine shoreline habitats, and prepare for sea level rise;
 - remediate and adapt to impacts of ocean acidification;
 - reduce flood risk and restore natural floodplain;
 - increase sustainable supply of water and improve aquatic habitat;
 - improve stormwater infrastructure;
 - preserve or increase carbon sequestration in forests and agricultural soils;
 - increase forest and community resilience to wildfire; or
 - improve forest health.
5. Clean energy transition and assistance programs, activities, or projects that assist affected workers or people with lower incomes during the transition to a clean energy

economy, or grow and expand clean manufacturing capacity, including:

- programs, activities, or projects that improve energy affordability and reduce energy burden for people with lower incomes and higher transportation fuel burden for rural residents;
 - reductions in dependence of fossil fuels used for transportation;
 - community renewable energy projects that allow participants to own or receive the benefits at reduced or not cost;
 - programs, activities or worker-support projects for bargaining unit and nonsupervisory fossil fuel workers affected by the transition away from fossil fuels to a clean energy economy;
 - direct investment in workforce development; or
 - transportation, municipal service deliver and technology investments that increase a community's capacity for clean manufacturing.
6. Emissions reduction projects and programs that yield real, verifiable reductions in greenhouse gas emissions in excess of baseline estimates. Projects and programs must be physically located in Washington State and include programs, activities or projects that:
- deploy renewable energy resources;
 - increase energy efficiency or increase GHG emissions of industrial facilities;
 - achieve energy efficiency or emission reduction in the agricultural sector;
 - promote low-carbon architecture;
 - promote electrification and decarbonization of new and existing buildings;
 - improve energy efficiency, including high-efficiency electric appliances and equipment for space and water heating.

Environmental Justice Analysis. When allocating funds or administering grants funded by the account, agencies must conduct an environmental justice analysis and ensure that a meaningful percentage of total investments provide direct and meaningful benefits to vulnerable populations within overburdened communities. Benefits may be achieved through reduction of environmental burdens and cumulative risk from environmental burdens, support of community-led projects, or meeting an identified community need.

Agencies must report annually to the Environmental Justice and Equity Advisory Panel (advisory panel) and the Office of Equity regarding progress toward meeting environmental justice and environmental health goals.

Environmental Justice and Equity Advisory Panel. The Office of Equity must convene an advisory panel by January 1, 2023, to provide recommendations to the Legislature and the Governor in the development and implementation of the program, and programs funded from the account. Advisory panel members must be selected for geographic and organization diversity and include:

- individuals representing the interests of vulnerable populations residing in overburdened communities with expertise in environmental justice and equity issues;
- individuals representing union labor with expertise in economic dislocation, clean

- energy economy, or emissions-intensive, trade-exposed facilities; and
- two members representing tribal communities, one from eastern and one from western Washington.

Purposes of the panel include:

- providing recommendations to the Legislature and the Governor in the development of investment plans and funding proposals;
- recommending environmental justice and environmental health goals for programs, activities, and projects funded from the account, and reviewing agency annual reports on outcomes and progress toward meeting goals; and
- providing a forum to analyze policies adopted under the comprehensive climate commitment program to determine if policies lead to improvements within overburdened communities.

Tribal Engagement. Before allocating funding or administer grant programs funded from the account, agencies must consult with Indian tribes on all funding decisions that affect tribes' rights and interests in their tribal lands. The consultation must comply with state government-to-government laws and be independent of any public participation process required by state law, or by a state agency, and occur regardless of whether the agency receives a request for consultation from a tribe.

Greenhouse Gas Regulation, Reporting, and Verification. Ecology may require persons who produce or distribute fossil fuels or other products that emit GHGs in Washington to comply with air quality standards, emission standards, or emission limitations on emissions of GHGs.

Emission, emission standard, and emission limitation as applied to GHGs, include indirect emissions of GHGs resulting from production or distribution of petroleum products, natural gas, or other products, where the release of air contaminants into the ambient air occurs during the consumption, use, combustion, or oxidation of the products.

If cap and invest program review finds that GHGs and criteria pollutants are not being reduced in communities identified as highly impacted by the Department of Health's Environmental Health Disparities map, Ecology must prioritize the adoption of air quality standards, emission standards, or emission limitations on fuel suppliers or covered entities located in those areas, as a means of ensuring the program achieves reductions in those communities.

Ecology must adopt rules requiring persons to report emissions of GHGs where those emissions from a single facility, or from electricity or fossil fuels sold in Washington by a single supplier, meet or exceed 10,000 metric tons of carbon dioxide equivalent annually. Annual reports must include emissions data for the preceding calendar year and be submitted to Ecology by March 31st of the year in which the report is due. The reporting rules must support implementation of the cap and invest program.

Ecology must establish by rule the methods of verifying the accuracy of emissions reports. Verification requirements apply at a minimum to:

- persons that are required to report GHGs, if those emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent emissions, including carbon dioxide from biomass-derived fuels; or
- persons who have a compliance obligation under the cap and invest program in any year of the current compliance period.

When a person that holds a compliance obligation under the cap and invest program fails to submit an emissions data report, or fails to obtain a positive emissions data verification statement, Ecology may assign an emissions level for that person.

Ecology may by rule include additional gases to the definition of GHG if the gas has been included in external GHG emission trading programs where Washington has a linkage agreement in effect. Ecology must update its rules whenever needed to ensure consistency with emissions reporting requirements for jurisdictions with a linkage agreement.

Rules. Ecology must adopt to implement the program and may adopt emergency rules for initial implementation of the program, to implement the state omnibus appropriations act for the 2021-2023 fiscal biennium, and to ensure that reporting and other program requirements are determined early for the purpose of program design and early notice to registered entities with a program compliance obligation.

Expiration. Rules adopted by Ecology to implement the program expire December 31, 2055, if Ecology determines the 2050 statewide emissions limits have been met for two or more consecutive years.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This bill will lead us toward climate level emission reductions in an economically sound way, while placing environmental justice at the forefront. Lessons have been learned from other programs that can be applied in Washington State. State statutory GHG regulations are aligned with science, yet urgent climate action cannot be taken without proper policy authority. The heart of the bill is a cap and invest program, a comprehensive implementation pathway to address GHG and climate resiliency. The legislation must create an economy-wide market for reduction opportunities, a hard cap on emissions, flexibility for EITE companies, ensure vast amounts

of reductions occur in Washington, and ensure reductions and benefits go to vulnerable communities. Climate change is a full-blown emergency and this bill is the best chance to halve emissions by 2030. Every element and design is subject to review by an Environmental Justice and Equity advisory panel. State and regional governments need to establish a comprehensive policy framework that creates policy certainty and sends clear signals. Policymakers should ensure offsets do not compromise the integrity of the cap and ensure that 35 percent of benefits go to frontline communities. All policies need to uphold tribal sovereignty, eliminate systemic racism, and make a positive impact for Washington communities. The program needs to invest in resiliency of our natural resources. The bill improves on shortcomings of other programs—restricting offsets where emissions are increased in frontline communities. The bill needs regular program review to understand if emissions reductions are being met. Aligning with other west coast jurisdictions is an efficient way of reducing carbon and essential. Allocation of allowances from the electricity and natural gas sectors should be awarded for the benefit of customers. Natural working lands can provide more than 30 percent of the mechanism for climate mitigation methods. Health impacts from carbon pollution include cancers, cardiovascular and other respiratory diseases, and these threats are not evenly shared. Family wage jobs and rural broadband are more critical than ever. One improvement would be to increase funding for transportation projects to benefit all of us. Effective carbon policy is necessarily complex. A cap is essential to bringing emissions down.

CON: A 2018 study revealed the California cap and trade program lead to higher emissions in BIPOC communities. A 2019 analysis found carbon emissions from oil and gas have actually increased since cap and trade began. Cap and trade does not guarantee funding for critical environmental programs. Cap and trade is unjust, ineffective, and vulnerable to lobbying efforts. There is only one compliance pathway for EITEs but we need multiple pathways. EITEs need to be protected. The bill should facilitate and incentivize use of alternative fuels. Biomass should be specifically exempted. Currently there are no provisions that allow for growth and increased capacity of EITEs or recognition of the use of best available control technology. Percentages for offsets in the bill are too low. A cap and trade bill is trickle-down environmentalism and does not result in measurable co-pollutant and GHG emissions reductions in frontline communities. Frontline communities do not want to be sacrificed under cap and trade programs. That is environmental racism. Environmental justice is a process and an outcome. This bill has no process to achieve environmental justice. It lacks a strong cap that requires emissions reductions in Washington. The bill benefits corporations that drive climate pollution and economic inequality. Policies need to prioritize investments in communities most impacted by climate change. The bill invests in a lot of good things, but I am opposed to the bill because it is supported by British Petroleum. The bill acknowledges potential cost increases by providing allowances to benefit electricity and natural gas customers, but does not provide similar protections for propane users. The bill creates duplicative compliance obligations with related emissions under CETA. The bill has different standards for IOUs and COUs. It is unclear who is responsible for EITEs who procure their own natural gas. The bill fails to mitigate costs for all low-income customers. We are concerned with Ecology's broad

authority to regulate emissions. Offsets mean Washington may not see emissions reductions in the state. Pollution flows where it is cheapest to pollute—more often than not to frontline communities. We support a more progressive tax structure. Farmers deeply care about the environment, and our livelihood depends on it. We are concerned with carbon policies that will reduce our competitiveness by increasing costs for fuel and natural gas. Farmers have limited ability to recoup costs and operate on thin margins. There should be continuous effort to promote participation of all communities in carbon policy discussions. Revenue should be dedicated to transportation needs. Rural families lack public transportation and would bear more of a burden under this policy.

OTHER: Landfills emit greenhouse gases in the form of methane because of decomposing organic material. The best way to reduce emissions is to divert organic material. There are barriers such as funding for infrastructure and finding uses for compost. This bill would create an unfunded mandate counties cannot afford. Solid waste has increased dramatically with a rise in population and restrictions imposed by China. The bill should include costs for dealing with emissions in landfills as uses for investments under this program. Because utilities operate on a grid that crosses state lines, we need consistency with California. Without minor clarifications, there could end up being double regulation for utilities under CETA. The bill should consider direct and indirect costs for allowances. Clarification that IOUs will receive free allowances is needed. Revenue allowances should include additional considerations to ensure benefits accrue to low- and middle-income customers, and additional authority should be given to the Environmental Justice panel to guide the investment portfolio. Free allowances must be given to electric utilities to reduce customer costs and eliminate the pancaking effect from other regulations. In order to preserve jobs, flexibility must be given to the amount of allowances to EITEs and the rate at which they decline. Offsets are one of the most effective ways to reduce GHG emissions. The bill has no metrics for expenditures tied to reduction of emissions. The program should include off-ramps and legislative oversight. The bill needs leakage protection provisions. We ask for clear delinking of biomass emissions from fossil fuel emissions subject to the bill. There is growing consensus worldwide that shortcomings in cap and trade are inherent and unsolvable. There are serious concerns about costs, timelines, complexity of the system, and Washington dollars going toward California allowances in the event of linkage. Energy storage is the new paradigm for the electric industry and the bill is silent on storage management and it needs to value it. If electrification of vehicles and buildings is the goal, the bill should reflect this change in energy use. There should be an implementation plan for how substations will be located, permitted, and funded. There are concerns with the natural gas provisions. The use of revenues lacks a specific allocation formula. There needs to be specific allocation for transportation uses in order to transform infrastructure in the future.

Persons Testifying: PRO: Senator Reuven Carlyle, Prime Sponsor; Sarah Severn, Low Carbon Prosperity Institute; Mary Streett, British Petroleum-America; Vlad Gutman, Climate Solutions; Clifford Traisman, Washington Conservation Voters, Washington Environmental Council; David Mendoza, The Nature Conservancy; Katelyn Roedner

Sutter, Environmental Defense Fund; Denise Clifford, Washington State Department of Ecology; Janet Kelly, Puget Sound Energy; Cassie Bordelon, Department of Natural Resources; Lindsey Grad, Service Employees International Union 1199NW; Matthew Hepner, International Brotherhood of Electric Workers; Sandra Toussaint, Washington Federation of State Employees; Stu Clark, Washington State Department of Ecology; David Giuliani, Low Carbon Prosperity Institute, Clean and Prosperous Washington; Isaac Kastama, Low Carbon Prosperity Institute, Clean and Prosperous Washington.

CON: Emily Knudsen; Brandon Houskeeper, Alliance of Western Energy Consumers; Michele Murphy; Iris Antman, 37th LD Environmental and Climate Caucus; Jill Mangaliman, Got Green; Yolanda Matthews, Puget Sound Sage; Debolina Banerjee, Puget Sound Sage; Matt Solak, Pacific Propane Gas Association; Jeanne Poirier; Laura McAnany, Ash Grove Cement Company; Chris McCabe, Northwest Pulp and Paper Association; Edgar Scott, Kaiser Aluminum; Craig Smith, Food Northwest; Sarah Cherim, UFCW 21; John Rothlin, Avista; Dan Kirschner, Northwest Gas Association; Peter Godlewski, Association of Washington Business; Guillermo Rogel Jr, Front and Centered; Heath Gimmestad; Giovanni Severino, Progreso: Latino Progress; Gerry O'Keefe, Washington Public Ports Association; Ryan Poe, Washington Association of Wheat Growers.

OTHER: Deb Geiger, Spokane County; Sam Castro, Grant County; Ruby Irving, Klickitat County; Paul Jewell, Washington State Association of Counties; Therese Hampton, Public Generating Pool; Annabel Drayton, NW Energy Coalition; Steve Taylor, Cowlitz PUD; Kathleen Collins, PacifiCorp; Todd Myers, Washington Policy Center; Clark McIsaac, Snohomish County PUD; Logan Bahr, Tacoma Public Utilities; Jessica Spiegel, Western States Petroleum Association; Sean Eagan; Jason Callahan, Washington Forest Protection Association; Jessie Martin, Carbon Washington; Dave Warren, Copenhagen Infrastructure Partners, Renewable H2 Alliance, Western States H2 Alliance; Nicolas Garcia, Washington Public Utility Districts Association; Charlie Brown, Cascade Natural Gas and NW Natural; Neil Strege, Washington Roundtable.

Persons Signed In To Testify But Not Testifying: CON: Crista Niles, Northwest Kidney Centers.