

SENATE BILL REPORT

SB 5981

As of February 20, 2020

Title: An act relating to implementing a greenhouse gas emissions cap and trade program.

Brief Description: Implementing a greenhouse gas emissions cap and trade program.

Sponsors: Senators Carlyle, Palumbo and Lovelett.

Brief History:

Committee Activity: Environment, Energy & Technology: 3/21/19, 2/04/20.

Brief Summary of Bill

- Establishes a cap and trade program for greenhouse gas emissions to be implemented by the Department of Ecology.
- Specifies distribution of auction revenues to specified energy efficiency projects, assistance to low-income households and highly impacted communities, and climate change impacts and natural resource resiliency.
- Makes the act contingent upon funding provided to the motor vehicle fund and multimodal transportation account from increases in revenues from the cap and trade program.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Jan Odano (786-7486)

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)

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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. The Clear Air Rule established regulations to cap and reduce sources of carbon pollution. However, the rule is currently suspended because Thurston County Superior Court ruled that parts of the rule were invalid. Ecology has filed an appeal with the Washington State Supreme Court.

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 Clean Air Act. 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.

State law also establishes the following limits for statewide GHG emission levels:

- by 2020, overall GHG emissions in the state must be reduced to 1990 levels;
- by 2035, overall GHG emissions in the state must be reduced to 25 percent below 1990 levels; and
- by 2050, overall GHG emissions in the state must be reduced to 50 percent below 1990 levels or 70 percent below the state's expected emissions that year.

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

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Cap and Trade Program. Ecology must implement a greenhouse gas emissions cap and trade program (Program) to achieve the state's GHG emission reduction limits. The Program must include allowances that are tradable between covered entities, registered participants and other linked programs. The Program must define Program participants and compliance obligations; include annual allowance budgets that limit emissions from covered entities as well as criteria for auction of allowances, provisions for offset credits and trading with linked jurisdictions, and establish Ecology's authority to enforce Program requirements. Ecology must harmonize and avoid

duplicative regulatory and cost burdens to entities that are transitioning to 100 percent clean electricity.

Allowances. Ecology must start the Program by determining covered entities' proportionate share of the total GHG emissions for the years 2014 through 2018 to the total anthropogenic GHG emissions in the state for the same timeframe. By October 1, 2020, Ecology must adopt the Program budget for all covered entities for years 2021 through 2035 for covered entities to achieve their share of reductions in GHG emissions necessary to meet the 2035 statewide emissions limits. The Program budget must include calendar year allowances that provide equivalent GHG emissions reductions year to year.

Ecology must evaluate the performance of the Program by December 31, 2026, and make adjustments necessary to ensure achievement of the 2035 GHG statewide emissions limits. By October 1, 2034, Ecology must adopt rules for annual Program budgets for years 2036 through 2050. Ecology must evaluate the performance of the Program by December 31, 2042, and make adjustments necessary to ensure achievement of the 2050 GHG statewide emissions limits. Ecology may make additional adjustments to ensure emission reduction limits are met.

Participating Entities. Covered entities are required to participate in the Program. A covered entity is a person who has reported, during any year from 2016 through 2018, GHG emissions that were equal to or exceeded a threshold of 25,000 metric tons of carbon dioxide equivalent for:

- facilities;
- first jurisdictional deliverer of electricity into the state from specified or unspecified sources;
- electricity generated in the state;
- natural gas supplier to non-covered entities;
- fuel suppliers other than natural gas; and
- facilities that are direct purchasers of electricity from a federal power market agency.

Exemptions. The emissions from combustion of biomass, biofuel, aviation and watercraft fuels, coal-fired electric generation facilities that are exempt from GHG limitations and requirements, national security facilities, and those emissions that cannot reasonably pass through a stack or vent are exempt from Program requirements. Multiple covered entities do not have a compliance obligation for the same emissions. Ecology may, by rule, authorize refineries, fuel and natural gas suppliers, and facilities using natural gas to provide an agreement for the assumption of the compliance obligation for fuels or natural gas combusted in Washington.

Other Participation. A person that is responsible for GHG emissions and is not a covered entity may opt-in to voluntarily participate 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. General market participants may also voluntarily trade, buy, sell, hold, and retire compliance instruments in the Program. General market participants are not covered or opt-in entities.

All entities must register to participate in the Program. Participating entities must describe any direct or indirect affiliation with other registered entities. Ecology must adopt rules for Program registration procedures.

Energy Intensive, Trade-Exposed. By January 1, 2020, Ecology must adopt rules for allocating allowances to covered or opt-in entities that are energy intensive, trade-exposed (EITEs). The rules must establish a schedule for the years 2021 through 2035 that allocates a declining portion of allowances provided to EITEs at no cost. EITEs include the following manufacturing processes: primary metal such as iron and steel milling; secondary metal, including smelting, petroleum refining, and alloying nonferrous metals; paper, pulp mills, paper mills, and paperboard milling; aerospace products and parts; wood products; nonmetallic mineral; chemical; computer and electronic products; food; cement; and petroleum refining.

By January 1, 2021, Ecology must adopt rules to establish objective numerical criteria for emissions intensity and trade exposure and for the purpose of identifying additional emissions-intensive trade-exposed manufacturing businesses. A covered entity with a lower emissions intensity benchmark must receive a larger allocation of allowances than those in the same industry with higher emissions intensities. The annual allocation of allowances must be distributed as determined by a specified formula with a declining portion of allowances.

Ecology may grant an adjustment to the allocation of allowances to EITEs when there is a significant change in the emissions attributable to the manufacture of goods or to the EITEs external competitive environment that results in a significant increase in leakage risk.

By 2025, Ecology must review the rules every two years to determine if updates are necessary to mitigate leakage by EITEs, prevent allocation of allowances necessary to mitigate leakage, update emissions intensity benchmarks, and revise the scope of designated EITEs.

Electricity Suppliers. By January 1, 2021, Ecology must adopt rules in consultation with the UTC and Commerce for allocating allowances, at no costs, to covered entities who are electricity suppliers. The rules must set a schedule for the years 2021 through 2035 for an annual distribution of allowances that equals the annual average of the preceding three years of emissions attributable to the covered entities supply of electricity to Washington customers that is consumed in state. By January 1, 2035, Ecology must adopt rules for distributing, at no cost, allowances to covered entities for the years 2036 through 2050.

Covered entities must consign all allowances received at no cost to the state for auction. All proceeds from the auction must be remitted to the covered entity to be used exclusively to benefit customers and to minimize impacts from the Program. Covered entities must develop a plan for use of auction proceeds. The UTC and Commerce must adopt rules for plan development and content, and public participation. The plans must include mechanisms to assist customers such as weatherization, energy efficiency, electrification of heating in buildings, and electric vehicle incentives and infrastructure. At least 50 percent of the auction proceeds must be used for nonvolumetric credit or other rate relief for customers.

Ecology may contract with third party experts that are not financially affiliated with electricity providers to assist with analyses as necessary to implement these provisions.

By December 31, 2021, the agencies must provide a report to the Legislature that analyzes the implications of the emerging energy imbalance market and a fully regionalized grid for allowance allocation to covered entities that are electricity providers.

Natural Gas Suppliers. Ecology must adopt rules for allocating allowances, at no cost, to covered entities that are natural gas utilities. The rules must provide that for 2022, no cost allowance is distributed at a percentage of the weather normalized anthropogenic greenhouse gas emissions forecast for 2022 to be regulated emissions attributable to the natural gas utility. Beginning in 2023 and each year through 2035, the distribution of no-cost allowances must decline annually by a constant amount proportionate to the decline in the number of allowances available in the Program allowance budget.

Natural gas utilities must consign all allowances received at no cost to the state for auction. All proceeds from the auction equal to the covered emissions attributable to emissions from natural gas provide to the utility's low-income customers must be used for rate relief to the low-income customers. Natural gas utilities must develop a plan for use of auction proceeds, which must be filed with the UTC. The UTC must adopt rules for plan development and content, and public participation. The plans must include mechanisms to assist customers such as weatherization and more efficient residential, commercial, and industrial use of natural gas, development of renewable natural gas supplies and infrastructure. The highest priority must be placed on assistance to the utility's low-income customers and provide at least 25 percent of the auction proceeds for rate relief for residential customers.

Covered or opt-in natural gas utilities that deliver natural gas to customers may not include any costs associated with compliance of the Program in the rate or bill charged to the customer.

UTC Oversight of Customer Rates. The UTC must ensure that its processes allow covered electricity and natural gas suppliers timely cost recovery for prudent and reasonable costs associated with compliance of the Program.

Compliance Periods and Compliance Obligations. Covered and opt-in entities must meet their compliance obligations over a three year compliance period. The first compliance period begins January 1, 2021, except for EITEs, which begins January 1, 2024. For every three year compliance period, covered and opt-in entities must surrender 30 percent of compliance instruments equal to their allocated allowances by November 1st for each of the first two years of the compliance period and the remaining amount in the third year.

A covered or opt-in entity must surrender allowances from a current budget or previous compliance years, with the oldest vintage year surrendered first. Allowances from future allowance years may not be used to meet current or past compliance obligations. Covered and opt-in entities may bank allowances to meet future compliance obligations. Ecology must retire all surrendered compliance instruments 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.

Covered entities must obtain third party verification of reported emissions. The verification of the emissions data for the preceding year must be submitted to Ecology by September 1st.

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. Registered entities must submit an application to participate in an auction and is eligible to participate in an auction only after receiving approval by Ecology.

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

Ecology must adopt rules to implement auctions, auction floor prices, holding limits, and registered entity participation in auctions. The rules must include a schedule to increase the floor price by a predetermined amount through 2030 and specify the maximum number of allowances a registered entity may hold for use or trade at any one time. Allowances may not be sold at bids lower than the floor price. Ecology must establish a ceiling price to limit extraordinary prices and determine when to offer allowances through reserve auctions. In addition, 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, price or quantity, or bid guarantee. Ecology may cancel or restrict an approved application or reject a new application to participate in an auction 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 contract with an independent organization to provide a market monitoring and security planning for reviewing, auditing, and monitoring auctions to ensure fair and competitive auctions; adherence to procedures and protocols; and compliance with instrument holding and transfer activity. In addition, the organization must prepare reports on auction results and market activities, and review Program guidance, rules, and policies to mitigate market risk and improve the efficiency of auctions and market activities.

Ecology must coordinate with existing state and federal market regulatory agencies to ensure all regulatory requirements for trading allowances are met.

Ecology must create a carbon markets advisory committee to advise and provide guidance on the design and implementation of allowance auctions and compliance requirements. Committee members may not have a financial conflict with covered or opt-in entities or general market participants. By July 1, 2022, and every two years thereafter, the committee must provide an independent assessment of market monitoring functions and Program performance.

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, specific, 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. An offset project may include programs, activities, or projects that improve energy efficiency, such as district energy, investments in market transformation of energy efficiency products, or that result in direct air carbon capture and storage and carbon sequestration in forests and aquatic areas. 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 years 2021 through 2023. 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 years 2024 through 2034, no more than 8 percent of compliance obligations may be met through offset credits. Of these offset credits, at least 90 percent must be sourced for projects located in Washington State or that provide a direct environmental benefit in Washington State. Offset projects on tribal lands do not count against the off-set credit limits for covered or opt-in entities.

Ecology must develop rules for protocols to establish offset projects and secure offset credits used to meet compliance obligations. The offset credit limits may be modified by rule to ensure statewide emissions limits are achieved and alignment with linked jurisdictions. Ecology may not allow the net quantity of surrendered allowances and in-state offset credits to exceed the total compliance obligation of all covered parties. Through rules, Ecology must adopt additional restrictions on the number of offset credits may be surrendered from a covered or opt-in entity that is located in a nonattainment area and the operations of the covered or opt-in entity substantially contributes to or causes nonattainment of air quality standards. 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 surrender replacement credits or allowances within six months. A

covered or opt-in entity is subject to a penalty if it does not submit replacement credits or allowances within six months of the credit invalidation. Offset credits must be registered and tracked as a compliance instrument.

Ecology must appoint a compliance offsets protocol advisory committee to provide advice when adopting and updating rules for offset projects and use of offset credits. The advisory committee must provide guidance in developing protocols to increase offset projects with direct environmental benefits to the state, while prioritizing projects that benefit highly impacted communities, tribes, and natural and working lands. The advisory committee, along with the departments of Agriculture, Commerce, and Natural Resources must be consulted when adopting offset protocols that reduce transaction costs for offset project development. The advisory committee membership is specified.

Linkage with Other Jurisdictions. Ecology must implement the Program so that it may be linked with other jurisdictions having similar programs, where the linkage will result in a more cost-effective means for covered entities to meet their compliance obligations, and to use and recognize compliance instruments issued by Washington and the linked jurisdiction. The linkage must enable joint allowance markets, enhance market security, reduce Program costs, and provide consistent requirements across jurisdictions.

Ecology may execute agreements to link with other jurisdictions with established market-based carbon emissions reduction programs that are consistent with the Program requirements. Prior to executing a linkage agreement, Ecology must adopt a rule that supports the economic impacts of agreement by an economic analysis. Linkage agreements must include provisions regarding concerns such as, auctions, holding limits, GHG reporting, offset protocols, enforcement, compliance instruments, and processes to withdraw from the agreement. The state must retain legal and policymaking authority over Program design and enforcement.

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. Ecology may establish or use other existing tracking systems as needed and may use a linked jurisdiction's existing market tracking systems.

Covered and opt-in entities must use two accounts: a compliance account to transfer surrendered allowances, which must be retired by Ecology; and a holding account for allowances to be traded, sold, or bought. 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 surrender allowances. Ecology must maintain an account for retired allowances surrendered by registered entities.

Allowance Price Containment Reserve. Ecology must place in an allowance price containment reserve at least 4 percent of the total number of available allowances from the allowance budget for the years 2021 through 2023. The reserve must be designated as a mechanism to assist in containing compliance costs for covered and opt-in entities should there be unanticipated high costs for compliance instruments. Ecology must adopt rules for holding auctions that are separate from the quarterly auctions, for allowances from the

reserve when the settlement prices in the preceding auction approaches the adopted ceiling price. The rules must set the reserve auction floor price, high enough to incentivize emissions reductions, in advance of the reserve auction, as well as establish reserve auction requirements and schedules, and the amount of allowances to be placed in reserve after the end of the 2023 compliance period.

Emissions Containment Reserve. Ecology must establish an emissions containment reserve to withhold allowances that would otherwise be distributed when it is demonstrated through auction prices, that the annual emissions caps and GHG emissions limits may not be met. Ecology must adopt criteria in rule for placing emission allowances in reserve, the auction prices levels and the amount of allowances for placing allowances in reserve, and retiring or distributing allowances for future auctions.

Accounts. The Carbon Pollution Reduction Account receives all receipts from distribution of allowances. The funds in the account are distributed as follows:

- percent to the Energy Transformation Account;
- percent to the Energy Transition Assistance Account;
- percent to the Climate Impacts Resilience Account; and
- percent of the moneys to the Strategic Transportation Investment Account

Monies in the accounts may be spent only after appropriation.

Energy Transformation Account. The Energy Transformation Account also receives penalties and other money as directed by the Legislature. Monies in the account may be used by Commerce for projects and programs with verifiable reductions in carbon pollution that is in addition to current practices. At least 10 percent of the funds in the account must be used for programs and projects located in highly impacted communities. Only projects and programs physically located in Washington are eligible for funds, including projects such as deployment of renewable energy resources, distributed generation, energy storage, energy efficiency or reduction of carbon emissions of industrial facilities; achievement of energy efficiency or emissions reductions in the agricultural sector; increased energy efficiency in new and existing buildings and result in sequestration of carbon in forests, agricultural soils, and other terrestrial and aquatic areas.

To be eligible for funding, projects must demonstrate procurement from and contracts with women, minority, or veteran-owned businesses; entities that have a history of complying with federal and state wage and hour laws; and preferred entry for workers living in the area where the project is being constructed.

Public entities, including state agencies, municipalities, federally recognized tribes, private entities, and both not-for and for-profit organizations, subject to constitutional limits, are eligible to receive funding. To receive funding the projects must meet specified criteria including that the emissions reductions must be real, specific, identifiable, quantifiable, verifiable, and permanent. In addition, funding may be provided to already funded projects providing carbon reductions, but can reduce more with additional resources.

Funded projects must meet high labor standards that include family level wages, health care and pension benefits, and maximize access to local workers and diverse businesses.

Recipients of funding must provide a progress report with a summary of the investments made, changes made, installed, and deployed. In addition, the project must have third party verification of avoided GHG emissions, project implementation according to plans submitted to Commerce and any other information Ecology identifies in rule necessary to sufficiently evaluate the project integrity and verification.

Ecology must design project funding contracts, project implementation, and contract performance to actively assist the project proponent to achieve expected outcomes. Ecology may suspend or terminate funding when a project does not meet projected GHG emissions reductions as specified in the funding agreement, and in cases of gross misuse of funds, the proponent may be required to return funds. Ecology must develop a publicly available electronic database to track projects and incentive programs receiving funding from the Energy Transformation Account. In addition, Ecology must develop an implementation plan for providing funding. The implementation plan and recommendations for appropriations and legislative action must be provided to the Climate Oversight Board (Board), the Governor, and the Legislature by December 31, 2020.

Energy Transition Assistance to Low-Income Households and Fossil Fuel Industry Worker Assistance. Commerce must provide funding to low-income households when increased energy prices have a disproportionate impact on these households, tribal members, and vulnerable communities, and to provide access to clean energy and low-carbon housing, transportation options, and technologies to highly impacted communities. Commerce may also provide funding to displaced fossil fuel-related industry workers. Commerce must prioritize funding to mitigate energy and transportation costs borne by low-income persons as a result of Program policies. Funding must also be prioritized to provide assistance to displaced fossil fuel-related industry workers. The remaining funds must be used to assist highly impacted communities to reduce carbon pollution and environmental burdens.

Commerce may provide transition assistance through direct financial assistance such as grants, subsidies, rebates, or similar financial benefit, including expansion of existing social and health programs and regional community health programs; new programs that enable direct financial assistance; or energy bill pay subsidies, energy efficiency services, affordable transportation options, affordable housing, and improved community services.

Commerce must develop an implementation plan for providing assistance to low-income, highly impacted communities and displaced fossil fuel workers. When developing the implementation plan, Commerce must consult with EEJP and give substantial weight to EEJP's recommendations. The plan, along with recommendations for appropriations and legislative action must be provided to the Board, the Governor, and Legislature by December 31, 2020.

In addition, Commerce must develop a worker support program for bargaining unit and non-supervisory fossil fuel industry workers affected by the transition from fossil fuels. In consultation with EEJP, Commerce may allocate additional funding to meet the needs of unforeseen numbers of eligible workers.

Climate Impacts Resilience Account. On a biennial basis, at least half of the funds in the account must be used to address climate change impacts and preparedness. The funds may

be used for community preparedness for wildfires; fire suppression, prevention and recovery on tribal lands; relocating communities on tribal land affected by flooding and sea level rise; and climate change awareness and preparation education. The remaining funds must be used for natural resources resilience and related purposes. These purposes include:

- improving forest and natural lands health and resilience to climate change impacts;
- planning, designing and construction projects to reduce stormwater impacts from existing infrastructure;
- reducing the risk of floods by restoring natural floodplain ecological functions;
- improving the availability and reliability of in-stream and out-of-stream water uses;
- preparing for sea level rise projects; and
- increasing the ability to adapt and remediate the impacts of ocean acidification.

Ecology and the Department of Natural Resources must develop an implementation plan for investments from the account, in consultation with and substantial accord given to recommendations from the EEJP. The departments must prioritize funding and investments to highly impacted communities. The departments must provide summaries of funding recipients' annual progress reports, along with assessment of achievement of performance-based criteria to the Board.

Strategic Transportation Investment Account. The funds may be used for transportation strategies that provide cost-effective congestion relief, enhance all modes of mobility, assist vulnerable populations and low-income individuals who are located within a highly impacted community, and address carbon pollution impacts from the transportation system to other quality of life, including salmon. Eligible for funding from the account are programs and projects that: efficiently reduce congested roads and highways, including multimodal alternatives; reduce carbon emissions in the transportation sector, such as acceleration of deployment of zero emission fleets and vehicles, grid infrastructure integrating electric vehicles and charging equipment; and construction of fish barrier correction projects on state highways and local roads.

Consultation. The Board is responsible for ongoing review of Program implementation and to ensure funding from auction revenues is used for fair, efficient, and timely achievement of GHG reductions, transition assistance, jobs development and climate resilience. The Board is responsible for reviewing plans to implement programs funded by the Energy Transformation, Transition Assistance and Climate Impacts Resilience accounts, as well as providing recommendations for measurement standards for emissions reductions outcomes from these investments. In addition, the Board provides recommendations on the use of money for transportation projects, including assessing the cumulative emission reductions associated with investments and strategies to increase the cost-effectiveness of investments on a dollar-per-ton basis. The Board must review criteria for funding allocations and project award decisions; project and activity funding decisions, as well as summary reports and information regarding implementing projects; agency implementation progress reports; and compliance with consultation requirements. The Board may contract with an independent evaluative expert to review the Program's performance in meeting emissions reductions, energy transformation, transition assistance and climate resilience. Beginning July 1, 2020, the Board must meet at least quarterly. Board membership is specified.

An EEJP is established to provide recommendations in the development of investment plans and funding proposals and implementation of programs funded by the Energy Transformation, Transition Assistance and Climate Impacts Resilience accounts. It is also the purpose of the EEJP to:

- provide a forum to analyze policies and to determine if the policies lead to improvements within highly impacted communities;
- make recommendations on the environmental disparities analysis, and designation of highly impacted communities;
- recommend procedures and criteria for evaluating programs and activities for review;
- evaluate the level of funding provided to assist low-income, vulnerable and displaced workers; and
- provide recommendations to agencies regarding meaningful consultation with vulnerable populations.

At the request of the Board, the EEJP must conduct an evaluation of the economic impacts on and outcomes for low and middle-income households and vulnerable populations of the emissions reduction policies and financial assistance provided under this act. EEJP members are appointed by the Governor as specified.

Indian Tribe Consultation. Any state agency that receives funding under this act, must consult with Indian tribes on all decisions that may affect tribes' rights and interests on their tribal lands. The consultation must be conducted independent of other public participation processes. A framework for consultation must be developed in coordination with tribal governments that includes best practices, protocols for communication, and collaboration with Indian tribes. A project that impacts tribal lands may not be funded before meaningful consultation with the affected tribe. The goal for tribal consultation is to obtain free, prior, and informed consent for the project. At the conclusion of the consultation, the tribe will provide a written resolution of consent or withholding of consent to the Board. Affected tribes where projects have been funded projects on tribal lands without consultation, may request that all further action on the project cease until consultation is completed.

Identification of Highly Impacted Communities. The Department of Health (DOH) must designate highly impacted communities at the census tract level after conducting a statewide environmental disparities analysis. By March 1, 2024, and every two years thereafter, DOH, under advisement from EEJP, must update designated highly impacted communities. By March 1, 2025, DOH must review and consider revisions to the methodology to analyze environmental disparities for designating highly impacted communities.

Enforcement. A covered or opt-in entity that does not surrender a sufficient number of compliance instruments to meet its compliance obligation is subject to a penalty of \$200 for each missing allowance. Beginning in 2025, the penalty must be annually adjusted based on inflation. Ecology may issue an order or a penalty of up to \$10,000 per day per violation of the provisions of the Program.

Public Records. Ecology must ensure the protection of financial, commercial, and proprietary information the release of which would place the registered entity at a competitive disadvantage.

The bill is contingent upon an additive transportation funding act enacted after January 1, 2020. An additive transportation funding act means an act in which the total of new revenues deposited into the motor vehicle fund and the multimodal transportation account exceed \$2 billion per biennium attributable solely to an increase in revenue from this act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.