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**SECOND SUBSTITUTE SENATE BILL 5126**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Carlyle, Saldaña, Conway, Das, Frockt, Hunt, Liias, Nguyen, Pedersen, Salomon, Stanford, and Wilson, C.; by request of Office of the Governor)

AN ACT Relating to the Washington climate commitment act; amending RCW 70A.15.2200 and 43.88.055; adding a new chapter to Title 70A RCW; creating a new section; prescribing penalties; and providing a contingent effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  FINDINGS AND INTENT. (1) The legislature finds that climate change is one of the greatest challenges facing our state and the world today, an existential crisis with major negative impacts on environmental and human health. Washington is experiencing environmental and community impacts due to climate change through increasingly devastating wildfires, flooding, droughts, rising temperatures and sea levels, and ocean acidification. Greenhouse gas emissions already in the atmosphere will increase impacts for some period of time.

(2) In 2020, the legislature updated the state's greenhouse gas emissions limits that are to be achieved by 2030, 2040, and 2050, based on current science and emissions trends, to support local and global efforts to avoid the most significant impacts from climate change. While these limits beneficially guide the implementation of all other state laws and policies that have an impact on greenhouse gas emissions in the state, meeting these limits will require coordinated, comprehensive, and multisectoral implementation of policies, programs, and laws, as currently enacted systems approaches are insufficient to meet the limits.

(3) The legislature further finds that while climate change is a global problem, there are communities that have historically borne the disproportionate impacts of environmental burdens and that now bear the disproportionate negative impacts of climate change. Although the state has done great work in the past to highlight these environmental health disparities, beginning with senator Rosa Franklin's environmental equity study, and continuing through the work of the governor's interagency council on health disparities, the creation of the Washington environmental health disparities map, and recommendations of the environmental justice task force, the state can do much more to ensure that state programs address environmental equity.

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

(5) The legislature further finds that by exercising a leadership role in addressing climate change, Washington will position its economy, technology centers, financial institutions, and manufacturers to benefit from national and international efforts that must occur to reduce greenhouse gases. The legislature intends to create climate policy that recognizes the special nature of emissions-intensive, trade-exposed industries by minimizing leakage and increased life-cycle emissions associated with product imports. The legislature further finds that if appropriate climate policies are not enacted, leakage can occur that results in net increases in global greenhouse gas emissions and increased negative impacts to those communities most impacted by environmental harms from climate change. The legislature further intends to encourage these industries to continue to innovate, find new ways to be more energy efficient, use lower carbon products, and be positioned to be global leaders in a low carbon economy.

(6) Therefore, in establishing a program to ensure that the state's 2030, 2040, and 2050 greenhouse gas emissions limits are achieved, the legislature intends to ensure that overburdened communities and vulnerable populations are no longer overlooked in the establishment of environmental policies. Under the program, the legislature intends to identify overburdened communities where the highest concentrations of criteria pollutants occur, determine the sources of those emissions and pollutants, and ensure that emissions or concentration reductions are achieved in those communities. The legislature further intends to conduct an environmental justice assessment to ensure that funds and programs created under this chapter provide direct and meaningful benefits to vulnerable populations and overburdened communities. Additionally, the legislature intends to prevent job loss and provide protective measures for workers adversely impacted by the transition to a clean energy economy through transition and assistance programs, worker-support projects, and workforce development and other activities designed to grow and expand the clean manufacturing sector in communities across Washington state. The legislature further intends to establish an environmental justice and equity advisory panel to provide recommendations for the development and implementation of the program, the distribution of funds, and the establishment of programs, activities, and projects to achieve environmental justice and environmental health goals. The legislature further intends to create and adopt community engagement plans and tribal consultation frameworks in the administration of the program to ensure equitable practices for meaningful community and federally recognized tribal involvement. Finally, the legislature intends to establish this program to contribute to a healthy environment for all of Washington's communities.

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

(1) "Allowance" means an authorization to emit up to one metric ton of carbon dioxide equivalent. An allowance is not a property right.

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

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

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

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

(6) "Auction floor price" means a price for allowances below which bids at auction would not be accepted.

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

(8) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial waste, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(9) "Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower greenhouse gas emissions based on a full life-cycle analysis when compared to petroleum fuels.

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

(11) "Carbon dioxide removal" means, consistent with the intergovernmental panel on climate change's 2019 report entitled global warming of 1.5°C, deliberate human activities removing carbon dioxide from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. "Carbon dioxide removal" includes existing and potential anthropogenic enhancement of biological or geochemical sinks and including, but not limited to, direct air capture and storage and carbon mineralization.

(12) "Climate commitment" means the process and institutional mechanism established pursuant to this act for the state to achieve the statewide greenhouse gas limits established in RCW 70A.45.020 by certain dates.

(13) "Climate resilience" is the ongoing process of anticipating, preparing, and adapting to changes in climate and minimizing negative impacts to our natural systems, infrastructure, and communities. For natural systems, increasing resiliency involves restoring and increasing the health, function, and integrity of our ecosystems and improving their ability to absorb and recover from climate-driven disturbances. For communities, increasing resiliency means enhancing their ability to understand, prevent, adapt, and recover from climate impacts to people and infrastructure.

(14) "Closed facility" means a facility that has elected to permanently stop production and will no longer be an emissions source.

(15) "Compliance instrument" means an allowance, price ceiling unit, or offset credit issued by the department or by an external greenhouse gas emissions trading program to which Washington has linked its greenhouse gas emissions cap and invest program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

(16) "Compliance obligation" means the requirement to turn into the department the number of compliance instruments equivalent to a covered or opt-in entity's covered emissions during the compliance period.

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

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

(19) "Covered emissions" means the emissions for which a covered entity has a compliance obligation under section 9 of this act.

(20) "Covered entity" means a person that is designated by the department as subject to sections 7 through 22 of this act.

(21) "Cumulative impact" means the combined, multiple environmental harms and health impacts on a vulnerable population or overburdened community.

(22) "Curtailed facility" means a facility that has temporarily suspended production. The facility maintains its operating permits and retains the option to resume production if conditions become amenable.

(23) "Department" means the department of ecology.

(24) "Electricity importer" means:

(a) For electricity that is scheduled with a NERC e-tag to a final point of delivery inside the state of Washington, the electricity importer is identified on the NERC e-tag as the purchasing-selling entity on the last segment of the tag's physical path with the point of receipt located outside the state of Washington and the point of delivery located inside the state of Washington;

(b) For facilities physically located outside the state of Washington with the first point of interconnection to a Washington balancing authority's transmission and distribution system when the electricity is not scheduled on a NERC e-tag, the electricity importer is the facility operator or owner or scheduling coordinator;

(c) For electricity imported through a centralized market, the electricity importer will be defined by rule consistent with the definition in rules required under section 9(2)(a) of this act;

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

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

(f) If the importer identified under (b) of this subsection is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with the program, then the electricity importer is the electric utility that operates the Washington transmission or distribution system, or the generation balancing authority.

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

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

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

(28) "Environmental benefits" means activities that:

(a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts;

(b) Prevent or mitigate impacts to overburdened communities and vulnerable populations from, or support community response to, the impacts of environmental harm; or

(c) Meet a community need identified by an overburdened community or vulnerable population that is consistent with the intent of this chapter.

(29) "Environmental harm" means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, and projected:

(a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land;

(b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to climate impacts; and

(c) Health and economic impacts from climate change.

(30) "Environmental impacts" means environmental benefits or environmental harms, or the combination of environmental benefits and harms, resulting from a proposed action.

(31) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, equitably distributing resources and benefits, and eliminating harm.

(32) "Environmental justice assessment" means using an intersectional lens to address disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations in overburdened communities, equitably distributing resources and benefits, and eliminating harm.

(33) "External greenhouse gas emissions trading program" means a government program, other than Washington's program created in this chapter, that restricts greenhouse gas emissions from sources outside of Washington through emissions trading.

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

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

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

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

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

(39) "Imported electricity" means electricity generated outside the state of Washington with a final point of delivery within the state, but which did not originate from any jurisdiction with which Washington has a linkage agreement.

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

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

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

(d) For a multijurisdictional electric company, "imported electricity" includes electricity from facilities that contribute to a common system power pool that are allocated to serve retail load in Washington pursuant to a cost allocation methodology approved by the utilities and transportation commission.

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

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

(42) "Linkage" means a bilateral or multilateral decision between greenhouse gas market programs to accept compliance instruments issued by a participating jurisdiction to meet the obligations of regulated entities in a partner jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market.

(43) "Linkage agreement" means a nonbinding agreement that connects two or more greenhouse gas market programs and articulates a mutual understanding of how jurisdictions will work together to facilitate a connected greenhouse gas market.

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

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

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

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

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

(49) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

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

(51) "Point of delivery" means a point on the electricity transmission or distribution system physically located in Washington where a power supplier delivers electricity. This point may be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system, or a distribution substation where electricity is imported into the state over a multijurisdictional retail provider's distribution system.

(52) "Price ceiling unit" means the units issued at a fixed price by the department for the purpose of limiting price increases and funding further investments in greenhouse gas reduction. A price ceiling unit is not a property right.

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

(54) "Program registry" means the data system in which covered parties, opt-in entities, and general market participants are registered and in which compliance instruments are recorded and tracked.

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

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

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

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

(59) "Transfer" means to transfer an allowance or compliance instrument to the department, either to meet a compliance obligation or on a voluntary basis.

(60)(a) "Vulnerable populations" means population groups that may be more likely to have adverse health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

(b) "Vulnerable populations" includes, but is not limited to, racial or ethnic minority, low-income populations, populations disproportionately impacted by environmental harms or pollution, and populations of workers experiencing environmental risks.

NEW SECTION. **Sec.**  ENVIRONMENTAL JUSTICE REVIEW. (1) To ensure that the program created in sections 7 through 22 of this act achieves reductions in criteria pollutants in overburdened communities highly impacted by air pollution, the department must:

(a) Utilize the department of health's environmental health disparities map and complementary data to identify a high priority list of overburdened communities where the highest emissions or concentrations of criteria pollutants are occurring;

(b) Deploy an air monitoring network in high priority overburdened communities to collect sufficient air quality data for the 2025 review and subsequent reviews of criteria pollutant reductions conducted under subsection (2) of this section; and

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

(ii) Prior to listing any entity as a high priority emitter, the department must notify that entity and share the data used to rank that entity as a high priority emitter, and provide a period of not less than 60 days for the covered entity to submit more recent data or other information relevant to the designation of that entity as a high priority emitter.

(2)(a) Beginning in 2025, and every two years thereafter, the department must conduct a review to determine if criteria pollutants are being reduced in the overburdened communities identified under subsection (1) of this section.

(b) If this review finds that criteria pollutants are not being reduced in any identified overburdened community, then the department, in consultation with local air pollution control authorities, must establish air quality targets to achieve air quality consistent with neighboring communities that are not identified as overburdened; identify the sources that are the contributors of those emissions that are either increasing or not decreasing; and achieve the reduction targets through adoption of emission control strategies or other methods. Actions imposed under this section may not impose requirements on covered entities or opt-in entities that are disproportionate to their contribution to air pollution compared to other sources of criteria pollutants in the overburdened community. The department may:

(i) Adopt, along with local air pollution control authorities, stricter air quality standards, emission standards, or emissions limitations on criteria pollutants;

(ii) If a covered entity or opt-in entity is identified as a high priority emitter of criteria pollutants, and the emissions of greenhouse gases and the source of criteria pollutants are correlated, reduce offset limits as established in section 18 of this act for any covered entity identified under this subsection (2)(b); or

(iii) Revise any linkage agreement necessary to ensure reductions of criteria pollutant emissions by any covered entity identified under this subsection (2)(b).

(3)(a) In developing the lists and air monitoring network under subsection (1) of this section, the department must create and adopt a community engagement plan to describe how it will engage with overburdened communities and vulnerable populations in:

(i) Identifying high priority communities and emitters in those communities; and

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

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

NEW SECTION. **Sec.**  ENVIRONMENTAL JUSTICE ASSESSMENT. (1) When allocating funds from the climate investment account created in section 24 of this act or administering grants or programs funded by the account, agencies shall conduct an environmental justice assessment and establish a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified in section 3 of this act through: (a) The direct reduction of environmental burdens in overburdened communities; (b) the reduction of disproportionate, cumulative risk from environmental burdens, including climate change; (c) the support of community led project development, planning, and participation costs; or (d) meeting a community need identified by vulnerable members of the community that is consistent with the intent of this chapter.

(2) The environmental justice assessment must adhere to the following principles: (a) Benefits and programs should be directed to areas and targeted to vulnerable populations and overburdened communities to reduce statewide disparities; (b) investments and benefits should be made proportional to the health disparities that a specific community experiences to eliminate the disparities; (c) investments and programs should focus on creating environmental benefits, including eliminating health burdens, creating community and population resilience, and raising the quality of life of those in the community; and (d) efforts should be made to balance investments and benefits across the state and within counties, local jurisdictions, and unincorporated areas as appropriate to reduce disparities by location and to ensure efforts contribute to a reduction in disparities that exist based on race or ethnicity, socioeconomic status, or other factors.

(3) Agencies allocating funds or administering grants or programs from the climate investment account must:

(a) Report annually to the environmental justice and equity advisory panel in section 5 of this act and the office of equity regarding progress toward meeting environmental justice and environmental health goals; and

(b) Consider recommendations by the environmental justice and equity advisory panel developed under section 5(3) of this act; and

(c)(i) Create and adopt a community engagement plan to describe how it will engage with overburdened communities and vulnerable populations in allocating funds or administering grants or programs from the climate investment account.

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

NEW SECTION. **Sec.**  ENVIRONMENTAL JUSTICE AND EQUITY ADVISORY PANEL. (1) The office of equity shall establish an environmental justice and equity advisory panel to provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in sections 7 through 22 of this act, and the programs funded from the climate investment account created in section 24 of this act.

(2) The office of equity must convene the environmental justice and equity advisory panel by January 1, 2023. The office of equity may seek nominations or recommendations from organizations across the state representing the interests specified in this section. Members of the panel must be selected for geographic and organizational diversity and must include the following:

(a) Individuals representing the interests of vulnerable populations residing in overburdened communities in different geographic areas of the state with expertise in environmental justice and equity issues;

(b) Individuals representing union labor with expertise in economic dislocation, clean energy economy, or emissions-intensive, trade-exposed facilities;

(c) At least two members representing federally recognized tribes, with at least one from eastern Washington and one from western Washington; and

(d) The chair appointed under subsection (4) of this section.

(3) The purpose of the panel is to:

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

(i) The program established in sections 7 through 22 of this act including, but not limited to, linkage agreements with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries, and administration of allowances under the program; and

(ii) Investment plans and funding proposals for the programs funded from the climate investment account for the purpose of providing environmental benefits and reducing environmental health disparities within overburdened communities identified under section 3 of this act;

(b) Provide a forum to analyze policies adopted under this chapter to determine if the policies lead to improvements within overburdened communities identified under section 3 of this act;

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

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

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

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

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

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

(4) The governor shall appoint a chair, subject to confirmation by the senate, who is responsible for overseeing the duties of the environmental justice and equity advisory panel. The chair is paid a salary fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position of the chair while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate at which time the governor shall present to that body the governor's nomination for the position.

(5) The environmental justice and equity advisory panel shall meet on a schedule established by the office of equity, in consultation with the department, to allow for timely and substantive input into processes and decisions consistent with its purpose.

(6) The office of equity shall provide all administrative and staff support for the environmental justice and equity advisory panel.

(7) The environmental justice and equity advisory panel constitutes a class one group under RCW 43.03.220. Expenses for this group must be included in costs to support and administer the program and are an allowable expense under section 24(2)(a) of this act.

(8) In consultation with the office of equity and the environmental justice council, the governor may administratively address how to effectively coordinate the work of the environmental justice and equity advisory panel with the work of the environmental justice council, to ensure efficient operations and policy alignment across state environmental justice work, subject to enactment of chapter . . . (Substitute Senate Bill No. 5141), Laws of 2021.

NEW SECTION. **Sec.**  TRIBAL CONSULTATION. (1) Before allocating funding or administering grant programs appropriated from the climate investment account, agencies must engage in consultation with federally recognized tribes on all funding decisions and programs that may impact, infringe upon, or impair the governmental efforts of federally recognized tribes to adopt or enforce their own standards governing or protecting the tribe's resources or other rights and interests in their tribal lands and lands within which a tribe or tribes possess rights reserved by treaty. The consultation shall occur pursuant to chapter 43.376 RCW and is independent of any public participation process required by state law, or by a state agency, and regardless of whether the agency receives a request for consultation from a federally recognized tribe. Agencies shall develop a consultation framework in coordination with tribal governments that includes best practices, protocols for communication, and collaboration with federally recognized tribes.

(2) If any funding decision or program that impacts lands within which a tribe or tribes possess rights reserved by federal treaty, statute, or executive order is undertaken or funded under this act without such consultation with a federally recognized tribe, an affected tribe may request that all further action on the decision or program cease until meaningful consultation with any directly impacted federally recognized tribe is completed.

NEW SECTION. **Sec.**  CAP ON GREENHOUSE GAS EMISSIONS. (1) In order to ensure that greenhouse gas emissions are reduced consistent with the limits established in RCW 70A.45.020, the department must implement a cap on greenhouse gas emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments.

(2) The program must consist of:

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

(b) Defining those entities covered by the program, and those entities that may voluntarily opt into coverage under the program, as provided in this section and sections 8 and 9 of this act;

(c) Distribution of emission allowances, as provided in section 11 of this act, and through the allowance price containment provisions under sections 15 and 16 of this act;

(d) Providing for offset credits as a method for meeting a compliance obligation, pursuant to section 18 of this act;

(e) Defining the compliance obligation for covered entities, as provided in section 20 of this act;

(f) Establishing the authority of the department to enforce the program requirements, as provided in section 21 of this act;

(g) Creating a climate investment account for the deposit of receipts from the distribution of emission allowances, as provided in section 24 of this act;

(h) Providing for the transfer of allowances and recognition of compliance instruments, including those issued by jurisdictions that enter into linkage agreements with the state;

(i) Providing monitoring and oversight of the sale and transfer of allowances;

(j) Creating, in section 5 of this act, an environmental justice and equity advisory panel to monitor impacts of this policy on overburdened communities, advise on achieving positive workforce and job outcomes, and the equitable distribution of benefits to overburdened communities; and

(k) Creating a price ceiling and associated mechanisms in section 17 of this act.

(3) The department shall consider opportunities to implement the program in a manner that allows linking the state's program with other jurisdictions having similar programs, considering if such linkage will provide for a more cost-effective means for Washington covered entities to meet their compliance obligations while recognizing the special characteristics of the state's economy, communities, and industries. The department is authorized to enter into a linkage agreement with another jurisdiction after formal notice and opportunity for a public hearing, and when consistent with the requirements of section 22 of this act.

NEW SECTION. **Sec.**  PROGRAM BUDGET AND TIMELINES. (1)(a) The department shall commence the program by January 1, 2023, by determining an emissions baseline establishing the proportionate share that the total greenhouse gas emissions of covered entities for the first compliance period bears to the total anthropogenic greenhouse gas emissions in the state during 2015 through 2019, based on data reported to the department under RCW 70A.15.2200 or provided as required by this chapter. By October 1, 2022, the department shall adopt a program budget of allowances for the first compliance period of the program, calendar years 2023 through 2026, to be distributed from January 1, 2023, through December 31, 2026. If the first compliance period is delayed pursuant to section 20(7) of this act, the department shall adjust the program budget to reflect a shorter first compliance period.

(b) By October 1, 2026, the department shall add to its emissions baseline by incorporating the proportionate share that the total greenhouse gas emissions of new covered entities in the second compliance period bear to the total anthropogenic greenhouse gas emissions in the state during 2023 through 2025. In determining the addition to the baseline, the department may exclude a year from the determination if the department identifies that year to have been an outlier due to a state of emergency. The department shall adopt a program budget of allowances for the second compliance period of the program, calendar years 2027 through 2030, that will be incorporated into the program budget of allowances for the first compliance period of the program to be distributed from January 1, 2027, through December 31, 2030.

(c) By October 1, 2028, the department shall adopt by rule the annual program budgets of allowances for the calendar years 2031 through 2040.

(2) The program budgets must be set to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide emissions limits established in RCW 70A.45.020, based on data reported to the department under chapter 70A.15 RCW or provided as required by this chapter. The department must adopt annual allowance budgets for the program on a calendar year basis that provide for substantially equivalent reductions on an absolute basis for each year. An allowance distributed under the program, either directly by the department under sections 12 through 14 of this act or though auctions under section 11 of this act, does not expire and may be held or banked consistent with sections 11(6) and 16(1) of this act.

(3) The department must complete an evaluation by December 31, 2028, and by December 31, 2035, of the performance of the program, including its performance in reducing greenhouse gases. If the evaluation shows that adjustments to the annual budgets are necessary to ensure achievement of 2030 and 2040 emission reduction limits identified in RCW 70A.45.020, the department shall adjust the annual budgets accordingly. The department must complete additional evaluations by December 31, 2040, and by December 31, 2045, of the performance of the program, and make adjustments in the annual budgets to ensure achievement of 2050 emission reduction limits identified in RCW 70A.45.020. Nothing in this subsection precludes the department from making additional adjustments as necessary to ensure successful achievement of emission reduction limits.

(4) Data reported to the department under RCW 70A.15.2200 or provided as required by this chapter for 2015 through 2019 is deemed sufficient for the purpose of adopting annual program budgets and demonstrating compliance under the first compliance period of the program. Data reported to the department under RCW 70A.15.2200 or provided as required by this chapter for 2023 through 2025 is deemed sufficient for adopting annual program budgets and demonstrating compliance under the second compliance period of the program.

NEW SECTION. **Sec.**  PROGRAM COVERAGE. (1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019, or additional data provided as required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds:

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

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

(c) Where the person is a supplier of fossil fuel other than natural gas and from that fuel 25,000 metric tons or more of carbon dioxide equivalent emissions would result from the full combustion or oxidation; and

(d)(i) Where the person supplies natural gas in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (c) of this subsection; and (B) delivered to opt-in entities;

(ii) Where the person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (c) of this subsection or subsection (2)(a) of this section; and (B) the amounts delivered to opt-in entities;

(iii) Where the person is an end-use customer in the state who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (c) of this subsection or subsection (2)(a) of this section; and (B) delivered to opt-in entities.

(2) A person is a covered entity as of the beginning of the second compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for any calendar year from 2023 through 2025 that equals or exceeds any of the following thresholds:

(a) Where the person is a first jurisdictional deliverer importing electricity into the state and the cumulative annual total of emissions associated with imported electricity into the state from specified or unspecified sources equals or exceeds 25,000 metric tons of carbon dioxide equivalent. For a specified source, the person must have either full or partial ownership in the facility, or a written power contract to procure electricity at the facility or from an asset controlling supplier at the time of entry of the transaction to procure electricity. In consultation with any jurisdiction that is linked to the program created by this chapter, by October 1, 2026, the department, in consultation with the department of commerce and the utilities and transportation commission, shall adopt a methodology for addressing imported electricity associated with a centralized electricity market; and

(b) Where the person operates a waste to energy facility utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(3) A person is a covered entity beginning January 1, 2031, and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for any calendar year from 2027 through 2029, where the person operates a landfill utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(4) When a covered entity reports, during a compliance period, emissions from a facility under RCW 70A.15.2200 that are below the thresholds specified in subsection (1) or (2) of this section, the covered entity continues to have a compliance obligation through the current compliance period. When a covered entity reports emissions below the threshold during an entire compliance period, or has ceased all processes at the facility requiring reporting under RCW 70A.15.2200, the entity is no longer a covered entity unless the department provides notice at least 12 months before the end of the compliance period that the facility's emissions were within 10 percent of the threshold and that the person will continue to be designated as a covered entity in order to ensure equity among all covered entities.

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

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

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

(a) Emissions from the combustion of aviation fuels;

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

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

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

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

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

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

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

(3) A person responsible for greenhouse gas emissions that is not a covered entity may voluntarily participate in the program by registering as an opt-in entity. An opt-in entity must satisfy the same registration requirements as covered entities. Once registered, an opt-in entity is allowed to participate as a covered entity in auctions and must assume the same compliance obligation to transfer compliance instruments equal to their emissions at the appointed transfer dates. An opt-in entity may opt out of the program at the end of any compliance period by providing written notice to the department at least six months prior to the end of the compliance period. The opt-in entity continues to have a compliance obligation through the current compliance period. An opt-in entity is not eligible to receive allowances directly distributed under section 12, 13, or 14 of this act.

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

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

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

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

(a) A compliance account where the compliance instruments are transferred to the department for retirement. Compliance instruments in compliance accounts may not be sold, traded, or otherwise provided to another account or person, except as provide for in section 11 of this act.

(b) A holding account that is used when a registered entity is interested in trading allowances. Allowances in holding accounts may be bought, sold, transferred to another registered entity, or traded. The amount of allowances a registered entity may have in its holding account is constrained by the holding limit as determined by the department by rule.

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

(9) The department shall maintain an account for the purpose of retiring allowances transferred by registered entities.

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

(2) The department shall hold a maximum of four auctions annually, plus any necessary reserve auctions. An auction may include allowances from the annual allowance budget of the current year and allowances from the annual allowance budgets from prior years that remain to be distributed. The department must make future vintage allowances available through parallel auctions at least twice annually in addition to the auctions through which current vintage allowances are exclusively offered.

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

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

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

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

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

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

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

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

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

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

(7)(a) For fiscal year 2023, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) $127,341,000 must first be deposited into the forward flexible account created in (g) of this subsection; and (ii) the remaining auction proceeds to the climate investment account created in section 24 of this act.

(b) For fiscal year 2024, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) $356,697,000 must first be deposited into the forward flexible account created in (g) of this subsection; and (ii) the remaining auction proceeds to the climate investment account created in section 24 of this act.

(c) For fiscal year 2025, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) $366,558,000 must first be deposited into the forward flexible account created in (g) of this subsection; and (ii) the remaining auction proceeds to the climate investment account created in section 24 of this act.

(d) For fiscal years 2026 through 2037, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) $359,117,000 per year must first be deposited into the forward flexible account created in (g) of this subsection; and (ii) the remaining auction proceeds to the climate investment account created in section 24 of this act.

(e) The deposits into the forward flexible account pursuant to (a) through (d) of this subsection must not exceed $5,200,000,000 over the first 16 years and any remaining auction proceeds must be deposited into the climate investment account created in section 24 of this act.

(f) For fiscal year 2038 and each year thereafter, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) 50 percent of the auction proceeds to the forward flexible account created in (g) of this subsection; and (ii) the remaining auction proceeds to the climate investment account created in section 24 of this act.

(g) The forward flexible account is created in the state treasury. All receipts from proceeds directed to the account under (a) through (f) of this subsection must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for transportation projects, programs, or activities identified as forward flexible projects, programs, or activities in an omnibus transportation appropriations act.

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

(a) Provided false or misleading facts;

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

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

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

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

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

NEW SECTION. **Sec.**  ALLOCATION OF ALLOWANCES TO EMISSIONS-INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) A covered entity must receive an allocation of allowances under this subsection at no cost if the entity is classified as emissions-intensive and trade-exposed, as determined by being engaged in one or more of the processes described by the following industry descriptions and codes in the North American industry classification system:

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

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

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

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

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

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

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

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

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

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

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

(l) Asphalt single and coating manufacturing from refined petroleum, North American industry classification system code 324122; and

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

(2) By July 1, 2022, the department must adopt by rule objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive, trade-exposed manufacturing businesses during the second compliance period of the program and subsequent compliance periods. An entity covered by subsection (1)(a) through (m) of this section is considered an emissions-intensive, trade-exposed entity and is eligible for allocation of no cost allowances as described in this section. In addition, any covered party that is a manufacturing business that can demonstrate to the department that it meets this criteria, is also eligible for treatment as emissions-intensive, trade-exposed and is eligible for allocation of no cost allowances as described in this section.

(3)(a) For all compliance periods prior to December 31, 2034, the annual allocation of allowances for direct distribution to an entity identified as emissions-intensive and trade-exposed must be equal to the covered entity's proportional obligation of the program budget under section 8 of this act, multiplied by 100 percent.

(b) The department shall by rule provide for emissions-intensive and trade-exposed facilities to apply and receive from the department an adjustment to the allocation for direct distribution of allowances based on a facility-specific carbon intensity benchmark as calculated in this subsection. If the department determines that the net quantity of no cost allowances awarded pursuant to (a) of this subsection is lower than the facility-specific carbon intensity benchmark, the department shall award additional no cost allowances up to the facility-specific carbon intensity benchmark. The department shall adjust the no cost allocation of allowances and credits to an emissions-intensive and trade-exposed facility to avoid duplication with any no cost allowances transferred pursuant to sections 13 and 14 of this act, if applicable.

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

(ii) If an emissions-intensive and trade-exposed facility is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances, the entity may elect to use a mass-based baseline that does not vary based on changes in production volumes. The department shall establish a comparable compliance obligation and no cost allowance allocation under this section between an entity utilizing a carbon intensity benchmark and a mass-based baseline. If a facility elects to use a mass-based baseline, it may not later convert to a carbon intensity benchmark during the first three compliance periods.

(c)(i) By April 1, 2022, the department must convene a work group of the emissions-intensive, trade-exposed facilities defined in this section, and their affiliated trade associations, and independent experts in emissions regulation, industrial practices, or other related fields.

(ii) By July 31, 2022, the work group shall establish procedures for calculating carbon intensity benchmarks. The carbon intensity benchmark must be based upon data from 2015-2019, unless the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015.

(iii) By September 15, 2022, each emissions-intensive, trade-exposed facility shall submit its carbon intensity benchmark for the first compliance period to the department. The calculation must be consistent with the work group established procedures.

(iv) By November 15, 2022, the department shall review and approve each emissions-intensive, trade-exposed facility baseline carbon intensity benchmark.

(d) For each year in the first four-year compliance period that begins January 1, 2023, each emissions-intensive, trade-exposed facility will calculate its facility-specific carbon intensity benchmark by its actual production.

(e)(i) For the second four-year compliance period that begins January 1, 2027, the second period benchmark for each emissions-intensive, trade-exposed facility is three percent below the lower of the first period benchmark or the 2015-2019 benchmark.

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

(f)(i) Prior to the beginning of either the second or third compliance periods, an emissions-intensive, trade-exposed facility may make an upward adjustment in the next compliance period's benchmark based on a demonstration that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. An emissions-intensive, trade-exposed facility may base its upward adjustment in the next compliance period on the facility's best available technology analysis. The department shall by rule provide for emissions-intensive, trade-exposed facilities to apply to the department for an adjustment to the allocation for direct distribution of no cost allowances based on its facility-specific carbon intensity benchmark or mass emissions baseline. The department shall make adjustments based on:

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

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

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

(ii) For the purpose of this section, "best available technology" means a greenhouse gas emissions limitation determined by the department on a case-by-case basis taking into account the fuels, processes, equipment, and technology used by facilities to produce goods of comparable type, quantity, and quality, that will most effectively reduce those greenhouse gas emissions for which the source has a compliance obligation. Best available technology must be technically feasible, commercially available, economically viable, not create excessive environmental impacts, and be compliant with all applicable laws while not changing the characteristics of the good being manufactured.

(4)(a) Beginning January 1, 2035, and each year thereafter, the annual allocation of no cost allowances for direct distribution to an entity identified as emissions-intensive and trade-exposed must reduce by an equal amount each year between 2035 and 2050 such that in 2050 the facility's proportionate share of the allowance budget is equal to the share in 2035. The annual allocation must decline from the average of the facility's annual allocation of no cost allowances from 2031-2034. If the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility, then the baseline period should be expanded to include years prior to 2031.

(b) By December 1, 2030, the department shall provide a report to the appropriate committees of the senate and house of representatives that describes alternative methods for determining the amount and a schedule of allowances to be provided to each covered entity designated as an emissions-intensive, trade-exposed manufacturing business. The report must include a review of global best practices in ensuring against emissions leakage and economic harm to businesses in carbon pricing programs and describe alternative methods of emissions performance benchmarking and mass-based allocation of no cost allowances. In developing the report, the department shall form an advisory group that includes representatives of the manufacturers listed in subsection (1) of this section.

(5) If the actual emissions of an emissions-intensive, trade- exposed facility exceed the facility's no cost allowances assigned for that compliance period, it must acquire additional compliance instruments such that the total compliance instruments transferred to its compliance account consistent with section 20 of this act equals emissions during the compliance period. The department shall limit the use of offset credits for compliance by an emissions-intensive, trade-exposed facility, such that the quantity of no cost allowances plus the provision of offset credits does not exceed 100 percent of the facility's total compliance obligation over a compliance period.

(6) The department must withhold or withdraw the relevant share of allowances allocated to a covered entity under this section in the event that the covered entity ceases production in the state and becomes a closed facility. In the event an entity curtails all production becoming a curtailed facility, the allowances are retained but cannot be traded, sold, or transferred and are still subject to prescribed emission reductions had the facility not curtailed. An operator of a curtailed facility may transfer the allowances to a new operator of the facility that will be operated under the same North American industry classification system codes. If the curtailed facility becomes a closed facility, then all unused allowances will be transferred to the emissions containment reserve. A curtailed facility is not eligible to receive free allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

NEW SECTION. **Sec.**  ALLOCATION OF ALLOWANCES TO ELECTRIC UTILITIES. (1) The legislature intends by this section to allow all consumer-owned electric utilities and investor-owned electric utilities subject to the requirements of chapter 19.405 RCW, the Washington clean energy transformation act, to be eligible for allowance allocation as provided in this section in order to mitigate the cost burden of the program on electricity customers.

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

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

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

(d) By October 1, 2028, the department shall adopt an allocation schedule by rule, in consultation with the department of commerce and the utilities and transportation commission, for the provision of allowances at no cost to consumer-owned and investor-owned electric utilities for the compliance periods contained within calendar years 2031 through 2045. This allocation must be consistent with a forecast, that is approved by the appropriate governing board or the utilities and transportation commission, of each utility's supply and demand, and the cost burden resulting from the inclusion of the covered entities in the compliance periods. The rule developed under this subsection (2)(d) may prescribe an amount of allowances allocated at no cost that must be consigned to auction by consumer-owned and investor-owned electric utilities. However, utilities may use allowances for compliance equal to their covered emissions in any calendar year they were not subject to potential penalty under RCW 19.405.090. Under no circumstances may utilities receive any free allowances after 2045.

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

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

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

(5) If an entity is identified by the department as an emissions-intensive, trade-exposed industry under section 12 of this act, unless allowances have been otherwise allocated for electricity-related emissions to the entity under section 12 of this act or to a consumer-owned utility under this section, the department shall allocate allowances at no cost to the electric utility or power marketing administration that is providing electricity to the entity in an amount equal to the forecasted emissions for electricity consumption for the entity for the compliance period.

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

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

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

NEW SECTION. **Sec.**  ALLOCATION OF ALLOWANCES TO NATURAL GAS COMPANIES. (1) Allowances must be allocated at no cost to covered entities that are natural gas utilities for the benefit of ratepayers.

(a) By October 1, 2022, the department shall adopt rules, in consultation with the utilities and transportation commission, establishing the methods and procedures for allocating allowances to natural gas utilities. Rules adopted under this subsection must allow for a natural gas utility to be provided allowances at no cost to cover their emissions and decline proportionally with the cap, consistent with section 8 of this act. Allowances allocated at no cost to natural gas utilities must be consigned to auction for the benefit of ratepayers consistent with subsection (2) of this section, deposited for compliance, or a combination of both. The rules adopted by the department pursuant to this section must include provisions directing revenues generated under this subsection to the applicable utilities.

(b) By October 1, 2022, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the first two compliance periods for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities.

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

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

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

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

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

(4) To continue receiving no cost allowances, the United States environmental protection agency subpart NN greenhouse gas emissions reports must be provided to the department for each reporting year in the manner and by the dates provided by RCW 70A.15.2200(5) as part of the greenhouse gas reporting requirements of this chapter.

NEW SECTION. **Sec.**  EMISSIONS CONTAINMENT RESERVE WITHHOLDING. (1) To help ensure that the price of allowances remains sufficient to incentivize reductions in greenhouse gas emissions, the department 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 equal to the level established in jurisdictions with which the department has entered into a linkage agreement. In the event that a jurisdiction with which the department has entered into a linkage agreement has no emissions containment trigger price, the department shall suspend the trigger price under this subsection. The purpose of withholding allowances in the emissions containment reserve is to secure additional emissions reductions.

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

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

(4) Allowances shall also be transferred to the emissions containment reserve in the following situations:

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

(b) When allowances are unsold in auctions under section 11 of this act;

(c) When facilities curtail or close consistent with section 12(6) of this act; or

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

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

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

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

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

(3)(a) The department shall adopt rules for holding auctions of allowances from the price containment reserve when the settlement prices in the preceding auction approach the adopted auction ceiling price. The auction must be separate from auctions of other allowances.

(b) Allowances must also be distributed from the allowance price containment reserve by auction when new covered and opt-in entities enter the program and allowances in the emissions containment reserve under section 15 of this act are exhausted.

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

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

(6) The department shall by rule:

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

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

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

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

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

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

NEW SECTION. **Sec.**  OFFSETS. (1) The department shall adopt by rule the protocols for establishing offset projects and securing offset credits that may be used to meet a portion of a covered or opt-in entity's compliance obligation under section 20 of this act. The protocols adopted by the department under this section must align with the policies of the state established under RCW 70A.45.090 and 70A.45.100.

(2) Offset projects must:

(a) Provide direct environmental benefits to the state or be located in a jurisdiction with which the department has entered into a linkage agreement or memorandum of understanding;

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

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

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

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

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

(b) A total of no more than four percent of a covered or opt-in entity's compliance obligation during the second compliance period may be met by transferring offset credits. During these years, at least 75 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state. The department may reduce the 75 percent requirement if it determines there is not sufficient offset supply in the state to meet offset demand during the second compliance period.

(c) The limits in (a) and (b) of this subsection may be modified by rule as adopted by the department when appropriate to ensure achievement of the statewide emissions limits established in RCW 70A.45.020 and to provide for alignment with other jurisdictions to which the state has entered or proposes to enter a linkage agreement.

(d) The limits in (a) and (b) of this subsection may be reduced for a specific covered or opt-in entity if the department determines that the covered or opt-in entity has or is likely to:

(i) Contribute substantively to cumulative air pollution burden in an overburdened community as determined by criteria established by the department; or

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

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

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

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

(b) Encourage opportunities for the development of offset projects in this state by adopting offset protocols that may include, but need not be limited to, protocols that make use of aggregation or other mechanisms to reduce transaction costs related to the development of offset projects and that support the development of carbon dioxide removal projects;

(c) Adopt a process for monitoring and invalidating offset credits as necessary to ensure the credit reflects emission reductions or removals that continue to meet the standards required by subsection (1) of this section. If an offset credit is invalidated, the covered or opt-in entity must, within six months of the invalidation, transfer replacement credits or allowances to meet its compliance obligation. Failure to transfer the required credits or allowances is a violation subject to penalties as provided in section 21 of this act.

(5) Any offset credits used may not be in addition to or allow for an increase in the allowance budgets established under section 8 of this act.

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

NEW SECTION. **Sec.**  ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL LANDS. (1) In order to ensure that a sufficient number of high quality offset projects are available under the limits set in section 18 of this act, the department must establish an assistance program for offset projects on federally recognized tribal lands in Washington. The assistance may include, but is not limited to, funding or consultation for federally recognized tribal governments to assess a project's technical feasibility, investment requirements, development and operational costs, expected returns, administrative and legal hurdles, and project risks and pitfalls. Funding or assistance may be provided upon request by a federally recognized tribe.

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

NEW SECTION. **Sec.**  COMPLIANCE OBLIGATIONS. (1) A covered or opt-in entity has a compliance obligation for its emissions during each four-year compliance period, with the first compliance period commencing January 1, 2023, except when the first compliance period commences at a later date as provided in subsection (7) of this section. A covered or opt-in entity shall transfer a number of compliance instruments equal to their covered emissions by November 1st of each calendar year in which a covered or opt–in entity has a compliance obligation. The department shall set by rule a percentage of compliance instruments that must be transferred in each year of the compliance period such that covered or opt-in entities are allowed to smooth their compliance obligation within the compliance period but must fully satisfy their compliance obligation over the course of the compliance period, in a manner similar to external greenhouse gas emissions trading programs in other jurisdictions.

(2) Submission of allowances occurs through 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 as described in section 9 of this act.

(3) A covered or opt-in entity submitting insufficient compliance instruments to meet its compliance obligation is subject to a penalty as provided in section 21 of this act.

(4) Allowances must be transferred in the order in which they were purchased.

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

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

(7)(a) This section does not take effect until a separate additive transportation funding act becomes law, at which time the department of licensing must provide written notice to the chief clerk of the house of representatives, the secretary of the senate, and the office of the code reviser.

(b) For the purposes of this subsection, "additive transportation funding act" means an act in which the combined total of new state revenues deposited into the motor vehicle fund and multimodal transportation account exceed $500,000,000 per biennium attributable solely to an increase in revenue from the enactment of the act.

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

(2) If a covered or opt-in entity does not submit sufficient allowances to meet its compliance obligation by the specified transfer dates, a penalty of four allowances for every one allowance that is missing must be submitted to the department within six months. When a covered entity or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify the department. Upon receiving notification, the department shall issue an order requiring the entity to submit the penalty allowances.

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

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

(5) Except as provided in subsections (3) and (4) of this section, any person that violates the terms of this chapter or an order issued under this chapter will incur a penalty of up to $10,000 per day per violation for each day that the person does not comply. All penalties under subsections (3) and (4) of this section and this subsection must be deposited into the climate investment account created in section 24 of this act.

(6) Appeals of orders and penalties issued under this chapter must be to the pollution control hearings board under chapter 43.21B RCW.

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

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

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

NEW SECTION. **Sec.**  LINKAGE WITH OTHER JURISDICTIONS. (1) Subject to making the findings and conducting the public comment process described in subsection (3) of this section, the department shall seek to link with other jurisdictions with established external greenhouse gas emissions trading programs in order to:

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

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

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

(d) Enhance market security;

(e) Reduce program administration costs; and

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

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

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

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

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

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

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

(f) Provisions for public notice and participation; and

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

(3) Before entering into a linkage agreement under this section, the department must establish a finding that the linking jurisdiction and the linkage agreement meets certain criteria identified under this subsection and conduct a public comment process to obtain input and a review of the linkage agreement by relevant stakeholders and other interested parties. The input received from the public comment process must be considered before finalizing a linkage agreement. In the event that the department determines that a full linkage agreement is unlikely to meet the criteria, it may enter into a linkage agreement with limitations, including limits on the share of compliance that may be met with allowances originating from linked jurisdictions and other limitations deemed necessary by the department. A linkage agreement approved by the department must:

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

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

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

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

(4) The state must retain legal and policymaking authority over its program design and enforcement.

NEW SECTION. **Sec.**  RULES. The department shall adopt rules to implement the provisions of the program established in sections 7 through 22 of this act. The department may adopt emergency rules pursuant to RCW 34.05.350 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 compliance obligation under the program.

NEW SECTION. **Sec.**  CLIMATE INVESTMENT ACCOUNT. (1) The climate investment account is created in the state treasury. Except as otherwise provided in this act, all receipts from the auction of allowances authorized in this chapter must be deposited into the account. Projects or activities funded from the account must meet high labor standards, including family sustaining wages, providing benefits including health care and pensions, career development opportunities, and maximize access to economic benefits from such projects for local workers and diverse businesses. Each contracting entity's proposal must be reviewed for equity and opportunity improvement efforts, including: (a) Employer paid sick leave programs; (b) pay practices in relation to living wage indicators such as the federal poverty level; (c) efforts to evaluate pay equity based on gender identity, race, and other protected status under Washington law; (d) facilitating career development opportunities, such as apprenticeship programs, internships, job-shadowing, and on-the-job training; and (e) employment assistance and employment barriers for justice affected individuals.

(2) Moneys in the account may only be spent after appropriation and must be used for the following purposes:

(a) To cover the department's and other agencies' costs to support and administer the program, including coordination of allowance auctions, tracking of emissions and allowances, rule making, evaluation, monitoring, and verification, and stakeholder communication and outreach such as capacity grants for participation to engage communities in the decision making and guidance of these funds, as appropriated pursuant to the biennial and supplemental omnibus operating appropriations acts, as enacted;

(b) Deposited into the state general fund to implement the working families tax rebate in RCW 82.08.0206;

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

(d) Clean transportation programs, activities, or projects that reduce transportation-related greenhouse gas emissions;

(e) 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. This includes programs, activities, or projects that: (i) Restore and protect estuaries, fisheries, and marine and freshwater shoreline and riparian habitats, and prepare for sea level rise; (ii) increase the ability to remediate and adapt to the impacts of ocean acidification; (iii) reduce flood risk and restore natural floodplain ecological function; (iv) increase the sustainable supply of water and improve aquatic habitat, including groundwater mapping and modeling; (v) improve infrastructure treating stormwater from previously developed areas within an urban growth boundary designated under chapter 36.70A RCW, with a preference given to projects that use green stormwater infrastructure; (vi) either preserve or increase, or both, carbon sequestration and storage benefits in forests and agricultural soils; (vii) either preserve or establish, or both, carbon sequestration in marine and freshwater riparian areas through forest management sufficient to promote climate resilience, protect cold water fisheries, and achieve water quality standards; (viii) increase forest and community resilience to wildfire in the face of increased seasonal temperatures and drought; (ix) improve forest health and reduce vulnerability to changes in hydrology, insect infestation, and other impacts of climate change; or (x) prevent emissions through preserving natural lands from the threat of conversion to development;

(f) 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 in communities across Washington state including, but not limited to:

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

(ii) Reductions in dependence on fossil fuels used for transportation, including public and shared transportation for access and mobility;

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

(iv) Programs, activities, or other worker-support projects for bargaining unit and nonsupervisory fossil fuel workers who are affected by the transition away from fossil fuels to a clean energy economy. Worker support may include, but is not limited to: (A) Full wage replacement, health benefits, and pension contributions for every worker within five years of retirement; (B) full wage replacement, health benefits, and pension contributions for every worker with at least one year of service for each year of service up to five years of service; (C) wage insurance for up to five years for workers reemployed who have more than five years of service; (D) up to two years of retraining costs, including tuition and related costs, based on in-state community and technical college costs; (E) peer counseling services during transition; (F) employment placement services, prioritizing employment in the clean energy sector; and (G) relocation expenses;

(v) Direct investment in workforce development, via technical education, community college, apprenticeships, and other programs;

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

(g) Emissions reduction projects and programs that yield real, verifiable reductions in greenhouse gas emissions in excess of baseline estimates. Projects and programs eligible for funding from the account must be physically located in Washington state and include, but are not limited to, the following programs, activities, or projects that: (i) Deploy renewable energy resources, such as solar and wind power, and projects to deploy distributed generation, energy storage, demand-side technologies and strategies, and other grid modernization projects; (ii) increase the energy efficiency or reduce greenhouse gas emissions of industrial facilities including, but not limited to, proposals to implement combined heat and power, district energy, or on-site renewables, such as solar and wind power, to upgrade the energy efficiency of existing equipment, to reduce process emissions, and to switch to less emission intensive fuel sources; (iii) achieve energy efficiency or emission reductions in the agricultural sector, including fertilizer management, soil management, bioenergy, and biofuels; (iv) promote low-carbon architecture, including use of newly emerging alternative building materials that result in a lower carbon footprint in the built environment over the life cycle of the building and component building materials; (v) promote the decarbonization of new and existing buildings, including residential, commercial, and industrial buildings; (vi) improve energy efficiency, including district energy, and investments in market transformation of high-efficiency electric appliances and equipment for space and water heating; (vii) reduce emissions from landfills and waste to energy facilities through diversion of organic materials, methane capture or conversion strategies, or other means; (viii) retrofit vehicles and vessels for increased efficiency when electrification options are unavailable; and (ix) develop carbon dioxide removal projects and technologies.

(3) 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 this account must result in long-term environmental benefits and increased resiliency to the impacts of climate change.

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

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

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70A.45.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70A.45.010 must be reported as required under subsection (5) of this section.

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

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

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

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

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

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

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

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW 70A.45.010 where those emissions from a single facility, ((~~source, or site,~~)) or from electricity or fossil fuels sold in Washington by a single supplier or local distribution company, meet or exceed ten thousand metric tons of carbon dioxide equivalent annually. The ((~~department may phase in the requirement to report greenhouse gas emissions until the reporting threshold in this subsection is met, which must occur by January 1, 2012~~)) rules adopted by the department must support implementation of the program created in section 7 of this act. In addition, the rules must require that:

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

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

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

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

~~(ii)~~)) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has been designated as a greenhouse gas by the United States congress ((~~or~~)), by the United States environmental protection agency, or included in external greenhouse gas emission trading programs where Washington has a linkage agreement in effect pursuant to section 22 of this act. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70A.45.010, the department shall notify the appropriate committees of the legislature. ((~~Decisions to amend the rule to include additional gases must be made prior to December 1st of any year and the amended rule may not take effect before the end of the regular legislative session in the next year.~~

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

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

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

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

(B) Needed to ensure consistency with emissions reporting requirements for jurisdictions with a linkage agreement pursuant to section 22 of this act. ((~~However, the~~))

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

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

(e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements ((~~unless it approves a local air authority's request to enforce the requirements for persons operating within the authority's jurisdiction. However, neither the department nor a local air authority approved under this section are authorized to assess enforcement penalties on persons required to report under (a) of this subsection until six months after the department adopts its reporting rule in 2010~~)). When a person that holds a compliance obligation under section 9 of this act fails to submit an emissions data report or fails to obtain a positive emissions data verification statement in accordance with (g)(ii) of this subsection, the department may assign an emissions level for that person.

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

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

(ii) Verification requirements apply at a minimum to persons required to report under (a) of this subsection with emissions that equal or exceed 25,000 metric tons of carbon dioxide equivalent emissions, including carbon dioxide from biomass-derived fuels, or to persons who have a compliance obligation under section 9 of this act in any year of the current compliance period. The department may adopt rules to accept verification reports from another jurisdiction with a linked agreement pursuant to section 19 of this act in cases where the department deems that the methods or procedures are substantively similar.

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

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) ((~~A motor vehicle fuel supplier or a motor vehicle fuel importer, as those terms are defined in RCW 82.36.010; (B) a special fuel supplier or a special fuel importer, as those terms are defined in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms are defined in RCW 82.42.010~~)) Suppliers that produce, import, or deliver, or any combination of producing, importing, or delivering, a quantity of fuel products in Washington that, if completely combusted, oxidized, or used in other processes, would result in the release of greenhouse gases equivalent to or higher than the threshold established under (a) of this subsection; and (B) suppliers of carbon dioxide that produce, import, or deliver a quantity of carbon dioxide in Washington that, if released, would result in emissions equivalent to or higher than the threshold established under (a) of this subsection.

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

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

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

NEW SECTION. **Sec.**  CONSISTENCY WITH REVIEW OF NEW FACILITIES. (1) The legislature intends to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other locations. The legislature further intends to see innovative new businesses locate and grow in Washington that contribute to Washington's prosperity and environmental objectives.

(2) Consistent with the intent of the legislature to avoid the leakage of emissions to other jurisdictions, in achieving the state's greenhouse gas limits in RCW 70A.45.020, the state shall pursue the limits in a manner that recognizes that the siting and placement of new best in class facilities that provide for the displacement of more carbon-intensive processes is in the economic and environmental interests of the state of Washington.

(3) For new or expanded facilities that require review under chapter 43.21C RCW, and which would result in annual greenhouse gas emissions in excess of 25,000 metric tons per year, the department must evaluate the net cumulative greenhouse gas emissions of the facility, including any net displacement of global emissions resulting from the project. The department may adopt rules to determine how to evaluate net cumulative emissions reductions.

(4) The limits in RCW 70A.45.020 or greenhouse gas emissions that are addressed under this section may not be the basis for denial of a permit application or for judicial review of the grant of a permit for a new or expanded emissions-intensive and trade-exposed facility.

(5) Compliance with the requirements of this chapter is the only mitigation for greenhouse gases that can be required from these facilities.

(6) Inclusion as a covered entity under this chapter constitutes mitigation of any significant adverse impacts with respect to greenhouse gases for a facility subject to the requirements of the state environmental policy act.

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

NEW SECTION. **Sec.**  Sections 1 through 24, 26, and 27 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. **Sec.**  (1) Sections 7 through 22 of this act, and any rules adopted by the department of ecology to implement the program established under those sections, are suspended on December 31, 2055, in the event that the department of ecology determines by December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020 have been met for two or more consecutive years.

(2) Upon the occurrence of the events identified in subsection (1) of this section, the department of ecology must provide written notice of the suspension date of sections 7 through 22 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

**Sec.**  RCW 43.88.055 and 2020 c 218 s 2 are each amended to read as follows:

(1) The legislature must adopt a four-year balanced budget as follows:

(a) Beginning in the 2013-2015 fiscal biennium, the legislature shall enact a balanced omnibus operating appropriations bill that leaves, in total, a positive ending fund balance in the general fund and related funds.

(b) Beginning in the 2013-2015 fiscal biennium, the projected maintenance level of the omnibus appropriations bill enacted by the legislature shall not exceed the available fiscal resources for the next ensuing fiscal biennium.

(2) For purposes of this section:

(a) "Available fiscal resources" means the beginning general fund and related fund balances and any fiscal resources estimated for the general fund and related funds, adjusted for enacted legislation, and with forecasted revenues adjusted to the greater of (i) the official general fund and related funds revenue forecast for the ensuing biennium, or (ii) the official general fund and related funds forecast for the second fiscal year of the current fiscal biennium, increased by 4.5 percent for each fiscal year of the ensuing biennium;

(b) "Projected maintenance level" means estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in that appropriations bill or mandated by other state or federal law, and the amount of any general fund moneys projected to be transferred to the budget stabilization account pursuant to Article VII, section 12 of the state Constitution;

(c) "Related funds," as used in this section, means the Washington opportunity pathways account, the workforce education investment account, the climate investment account, and the education legacy trust account.

(3) Subsection (1)(a) and (b) of this section does not apply to an appropriations bill that makes net reductions in general fund and related funds appropriations and is enacted between July 1st and February 15th of any fiscal year.

(4) Subsection (1)(b) of this section does not apply in a fiscal biennium in which money is appropriated from the budget stabilization account pursuant to Article VII, section 12(d)(ii) of the state Constitution.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**