CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126**

Chapter 316, Laws of 2021

(partial veto)

67th Legislature

2021 Regular Session

GREENHOUSE GAS EMISSIONS—CAP AND INVEST PROGRAM

EFFECTIVE DATE: July 25, 2021

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| Passed by the Senate April 24, 2021Yeas 27 Nays 22DENNY HECK**President of the Senate**Passed by the House April 23, 2021Yeas 54 Nays 43LAURIE JINKINS**Speaker of the House of Representatives** | CERTIFICATEI, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126** as passed by the Senate and the House of Representatives on the dates hereon set forth.BRAD HENDRICKSONSecretary |
| Approved May 17, 2021 2:51 PM with the exception of certain items that were vetoed (see veto message). | May 18, 2021 |
| JAY INSLEE**Governor of the State of Washington** | **Secretary of State** **State of Washington** |

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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**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, 43.376.020, 43.21B.300, and 43.52A.040; reenacting and amending RCW 43.21B.110 and 70A.45.005; adding a new section to chapter 43.21C RCW; adding a new section to chapter 70A.15 RCW; adding a new section to chapter 70A.45 RCW; adding a new chapter to Title 70A RCW; creating new sections; prescribing penalties; providing a contingent effective date; and providing expiration dates.

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. Actions to increase resilience of our communities, natural resource lands, and ecosystems can prevent and reduce impacts to communities and our environment and improve their ability to recover.

(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. Meeting these limits will require coordinated, comprehensive, and multisectoral implementation of policies, programs, and laws, as other enacted policies 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 significant 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 wildfires have become one of the largest sources of black carbon in the last five years. From 2014 through 2018, wildfires in Washington state generated 39,200,000 metric tons of carbon, the equivalent of more than 8,500,000 cars on the road a year. In 2015, when 1,130,000 acres burned in Washington, wildfires were the second largest source of greenhouse gas emissions releasing 17,975,112 metric tons of carbon dioxide into the atmosphere. Wildfire pollution affects all Washingtonians, but has disproportionate health effects on low-income communities, communities of color, and the most vulnerable of our population. Restoring the health of our forests and investing in wildfire prevention and preparedness will therefore contribute to improved air quality and improved public health outcomes.

(6) 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 climate policies must be appropriately designed, in order to avoid leakage 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.

(7) 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 pursue significant reductions of emissions and pollutants in those communities. The legislature further intends for the department of ecology to conduct environmental justice assessments 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 if workers are 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 empower the environmental justice council established under RCW 70A.---.--- (section 20, chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)) 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 for the department of ecology 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.

(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 an asset controlling supplier 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 are not eligible to 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) "Balancing authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.

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

(10) "Best available technology" means a technology or technologies that will achieve the greatest reduction in greenhouse gas emissions, taking into account the fuels, processes, and equipment used by facilities to produce goods of comparable type, quantity, and quality. 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.

(11) "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.

(12) "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 for which biofuels are capable as serving as a substitute.

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

(14) "Carbon dioxide removal" means 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, carbon mineralization and direct air capture and storage.

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

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

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

(18) "Compliance instrument" means an allowance 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.

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

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

(21) "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.

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

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

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

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

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

(27) "Electricity importer" means:

(a) For electricity that is scheduled with a NERC e-tag to a final point of delivery into a balancing authority area located entirely within 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 balancing authority area located entirely within the state of Washington when the electricity is not scheduled on a NERC e-tag, the electricity importer is the facility operator or owner;

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

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

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

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

(28) "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.

(29) "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.

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

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

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

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

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

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

(36) "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 and that allows emissions trading.

(37) "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.

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

(39) "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.

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

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

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

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

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

(c) 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.

(d) "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.

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

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

(43) "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 with Washington.

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

(45) "Linkage" means a bilateral or multilateral decision under a linkage agreement 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.

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

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

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

(49) "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.

(50) "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.

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

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

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

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

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

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

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

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

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

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

(56) "Point of delivery" means a point on the electricity transmission or distribution system where a deliverer makes electricity available to a receiver, or available to serve load. 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.

(57) "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 reductions.

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

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

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

(61) "Resilience" means 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.

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

(63) "Specified source of electricity" or "specified source" means a facility, unit, or asset controlling supplier that is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility or a written power contract to procure electricity generated by that facility or unit or from an asset controlling supplier at the time of entry into the transaction to procure electricity.

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

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

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

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

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

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

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

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

(c)(i) Within the identified overburdened 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 2023, and every two years thereafter, the department must conduct a review to determine levels of criteria pollutants, as well as greenhouse gas emissions, in the overburdened communities identified under subsection (1) of this section. This review must also include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities. The department may conduct this evaluation jointly with the department of health.

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

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

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

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

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

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

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

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

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

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

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

(i) Identifying emitters in overburdened 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) Each year or biennium, as appropriate, when allocating funds from the carbon emissions reduction account created in section 27 of this act, the climate investment account created in section 28 of this act, or the air quality and health disparities improvement account created in section 31 of this act, or administering grants or programs funded by the accounts, agencies shall conduct an environmental justice assessment consistent with the requirements of RCW 70A.---.--- (section 14, chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)) 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 through: (a) The direct reduction of environmental burdens in overburdened communities; (b) the reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change; (c) the support of community led project development, planning, and participation costs; or (d) meeting a community need identified by the community that is consistent with the intent of this chapter or RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

(2) The allocation of funding under subsection (1) of this section must adhere to the following principles, additional to the requirements of RCW 70A.---.--- (section 16, chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)): (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 roughly proportional to the health disparities that a specific community experiences, with a goal of eliminating 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) State agencies allocating funds or administering grants or programs from the carbon emissions reduction account created in section 27 of this act, the climate investment account created in section 28 of this act, or the air quality and health disparities improvement account created in section 31 of this act, must:

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

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

(c)(i) If the agency is not a covered agency subject to the requirements of chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141), 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 COUNCIL. (1) The environmental justice council created in RCW 70A.---.--- (section 20, chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)) must provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in sections 8 through 24 of this act, and the programs funded from the carbon emissions reduction account created in section 27 of this act and from the climate investment account created in section 28 of this act.

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

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

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

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

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

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

(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 these 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.

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

NEW SECTION. **Sec.**  TRIBAL CONSULTATION. (1) Agencies that allocate funding or administer grant programs appropriated from the climate investment account created in section 28 of this act must develop a consultation framework in coordination with tribal governments that includes best practices, protocols for communication, and collaboration with federally recognized tribes. Under this consultation framework, before allocating funding or administering grant programs appropriated from the climate investment account, agencies must offer 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 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.

(2)(a) If any funding decision, program, project, or activity 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 chapter without such consultation with a federally recognized tribe, an affected tribe may request that all further action on the decision, program, project, or activity cease until meaningful consultation with any directly impacted federally recognized tribe is completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  CAP ON GREENHOUSE GAS EMISSIONS. (1) In order to ensure that greenhouse gas emissions are reduced by covered entities 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 9 and 10 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 9 and 10 of this act;

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

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

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

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

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

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

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

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

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

(3) The department shall consider opportunities to implement the program in a manner that allows linking the state's program with those of other jurisdictions. The department must evaluate whether such linkage will provide for a more cost-effective means for covered entities to meet their compliance obligations in Washington 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 conducting an environmental justice assessment and after formal notice and opportunity for a public hearing, and when consistent with the requirements of section 24 of this act.

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

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

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

NEW SECTION. **Sec.**  ANNUAL ALLOWANCE 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, as well as other relevant data. By October 1, 2022, the department shall adopt annual allowance budgets 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 22(7) of this act, the department shall adjust the annual allowance budgets 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 annual allowance budgets for the second compliance period of the program, calendar years 2027 through 2030, that will be distributed from January 1, 2027, through December 31, 2030.

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

(2) The annual allowance 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. Annual allowance budgets must be set such that the use of offsets as compliance instruments, consistent with section 19 of this act, does not prevent the achievement of the emissions limits established in RCW 70A.45.020. In so setting annual allowance budgets, the department must reduce the annual allowance budget relative to the limits in an amount equivalent to offset use, or in accordance with a similar methodology adopted by the department. The department must adopt annual allowance budgets for the program on a calendar year basis that provide for progressively equivalent reductions year over year. An allowance distributed under the program, either directly by the department under sections 13 through 15 of this act or though auctions under section 12 of this act, does not expire and may be held or banked consistent with sections 12(6) and 17(1) of this act.

(3) The department must complete an evaluation by December 31, 2027, 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 allowance budgets are necessary for covered entities to achieve their proportionate share of the 2030 and 2040 emission reduction limits identified in RCW 70A.45.020, as applicable, the department shall adjust the annual allowance budgets accordingly. The department must complete additional evaluations of the performance of the program by December 31, 2040, and by December 31, 2045, and make any necessary adjustments in the annual allowance budgets to ensure that covered entities achieve their proportionate share of the 2050 emission reduction limit identified in RCW 70A.45.020. Nothing in this subsection precludes the department from making additional adjustments to annual allowance budgets as necessary to ensure successful achievement of the proportionate emission reduction limits by covered entities. The department shall determine and make public the circumstances, metrics, and processes that would initiate the public consideration of additional allowance budget adjustments to ensure successful achievement of the proportionate 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 allowance budgets and serving as the baseline by which covered entities demonstrate 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 allowance budgets and serving as the baseline by which covered entities demonstrate compliance under the second compliance period of the program.

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

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 if 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, or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:

(a) Where the person owns or 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 first jurisdictional deliverer importing electricity into the state and the cumulative annual total of emissions associated with the imported electricity, whether from specified or unspecified sources, exceeds 25,000 metric tons of carbon dioxide equivalent. In consultation with any linked jurisdiction 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 by rule a methodology for addressing imported electricity associated with a centralized electricity market;

(d) 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, excluding the amounts for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington; and

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

(i) 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; or

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

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

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

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

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

(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 for each year 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 as of the beginning of the subsequent compliance period 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. Whenever a covered entity ceases to be a covered entity, the department shall notify the appropriate policy and fiscal committees of the legislature of the name of the entity and the reason the entity is no longer a covered entity.

(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 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 criteria 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;

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

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

(f) 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 utilities 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.

(9)(a) 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.

(b) 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, including lead agencies under chapter 43.21C RCW, shall pursue the limits in a manner that recognizes that the siting and placement of new or expanded best-in-class facilities with lower carbon emitting processes is in the economic and environmental interests of the state of Washington.

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

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

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

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 13, 14, or 15 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.

(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. Information about the contents of each holding account, including but not limited to the number of allowances in the account, must be displayed on a regularly maintained and searchable public website established and updated by the department.

(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 and from the voluntary renewable reserve account.

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

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

NEW SECTION. **Sec.**  AUCTIONS OF ALLOWANCES. (1) Except as provided in sections 13, 14, and 15 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)(a) 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 transmit to the environmental justice council an auction notice at least 60 days prior to each auction, as well as a summary results report and a postauction public proceeds report within 60 days after each auction. The department must communicate the results of the previous calendar year's auctions to the environmental justice council on an annual basis beginning in 2024.

(b) 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 under (a) of this subsection.

(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 impose additional limits 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 carbon emissions reduction account created in section 27 of this act; and (ii) the remaining auction proceeds to the climate investment account created in section 28 of this act and the air quality and health disparities improvement account created in section 31 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 carbon emissions reduction account created in section 27 of this act; and (ii) the remaining auction proceeds to the climate investment account created in section 28 of this act and the air quality and health disparities improvement account created in section 31 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 carbon emissions reduction account created in section 27 of this act; and (ii) the remaining auction proceeds to the climate investment account created in section 28 of this act and the air quality and health disparities improvement account created in section 31 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 carbon emissions reduction account created in section 27 of this act; and (ii) the remaining auction proceeds to the climate investment account created in section 28 of this act and the air quality and health disparities improvement account created in section 31 of this act.

(e) The deposits into the carbon emissions reduction 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 28 of this act and the air quality and health disparities improvement account created in section 31 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 carbon emissions reduction account created in section 27 of this act; and (ii) the remaining auction proceeds to the climate investment account created in section 28 of this act and the air quality and health disparities improvement account created in section 31 of this 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 has entered into a linkage agreement with other external greenhouse gas emissions trading programs. The department may conduct auctions jointly with linked jurisdictions.

(11) In setting the number of allowances offered at each auction, the department shall consider the allowances in the marketplace due to the marketing of allowances issued as required under sections 13, 14, and 15 of this act in the department's determination of the number of allowances to be offered at auction. The department shall offer only such number of allowances at each auction as will enhance the likelihood of achieving the goals of RCW 70A.45.020.

NEW SECTION. **Sec.**  ALLOCATION OF ALLOWANCES TO EMISSIONS-INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) Facilities owned or operated by a covered entity must receive an allocation of allowances for the covered emissions at those facilities under this subsection at no cost if the operations of the facility are 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 shingle 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. A facility covered by subsection (1)(a) through (m) of this section is considered an emissions-intensive, trade-exposed facility 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 the objective criteria adopted by rule is also eligible for treatment as emissions-intensive, trade-exposed and is eligible for allocation of no cost allowances as described in this section. In developing the objective criteria under this subsection, the department must consider the locations of facilities potentially identified as emissions-intensive, trade-exposed manufacturing businesses relative to overburdened communities.

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

(b) For the second compliance period, beginning in January, 2027, and in each subsequent compliance period, the annual allocation of no cost allowances established in (a) of this subsection shall be adjusted according to the benchmark reduction schedules established in (b)(ii) and (iii) and (e) of this subsection multiplied by the facility's actual production during the period. 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 14 and 15 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 mass-based baseline must be based upon data from 2015 through 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. For each year during the first four-year compliance period that begins January 1, 2023, these facilities must be awarded no cost allowances equal to 100 percent of the facility's mass-based baseline. For each year during the second four-year compliance period that begins January 1, 2027, these facilities must be awarded no cost allowances equal to 97 percent of the facility's mass-based baseline. For each year during the third compliance period that begins January 1, 2031, these facilities must be awarded no cost allowances equal to 94 percent of the facility's mass-based baseline. Except as provided in (b)(iii) of this subsection, 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.

(iii) A facility with a North American industry classification system code beginning with 3364 that is utilizing a mass-based baseline in (b)(ii) of this subsection must receive an additional no cost allowance allocation under this section in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities utilizing a carbon intensity benchmark pursuant to this subsection (3)(b). The department shall establish methods to award, for any annual period, additional no cost allowance allocations under this section and, if appropriate based on projected production, to achieve a similar ongoing result through the adjustment of the facility's mass-based baseline. An eligible facility under this subsection that has elected to use a mass-based baseline may not convert to a carbon intensity benchmark until the next compliance period.

(c)(i) By September 15, 2022, each emissions-intensive, trade-exposed facility shall submit its carbon intensity baseline for the first compliance period to the department. The carbon intensity baseline for the first compliance period must use 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.

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

(d) During the first four-year compliance period that begins January 1, 2023, each emissions-intensive, trade-exposed facility must record its facility-specific carbon intensity baseline based on 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 first period baseline specified in (a), (b), and (c) of this subsection.

(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) Prior to the beginning of either the second, third, or subsequent compliance periods, the department may make an upward adjustment in the next compliance period's benchmark for an emissions-intensive, trade-exposed facility based on the facility's demonstration to the department that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. The department may base the upward adjustment applicable to an emissions-intensive, trade-exposed facility 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:

(i) 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 facility 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;

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

(iii) 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.

(4)(a) By December 1, 2026, 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 facilities owned or operated by each covered entity designated as an emissions-intensive, trade-exposed facility from January 1, 2035, through January 1, 2050. 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. At a minimum, the department must evaluate benchmarks based on both carbon intensity and mass, as well as the use of best available technology as a method for compliance. In developing the report, the department shall form an advisory group that includes representatives of the manufacturers listed in subsection (1) of this section.

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

(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 22 of this act equals emissions during the compliance period. An emissions-intensive, trade-exposed facility must be allowed to bank unused allowances, including for future sale and investment in best available technology when economically feasible. 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 and becomes a curtailed facility, the allowances are retained but cannot be traded, sold, or transferred and are still subject to the emission reduction requirements specified in this section. An owner or 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.

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

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

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 13 of this act, unless allowances have been otherwise allocated for electricity-related emissions to the entity under section 13 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.

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

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

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

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

(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 9 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 customer bill 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. Bill 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, a natural gas utility must provide to the department the United States environmental protection agency subpart NN greenhouse gas emissions report 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) The department shall transfer allowances 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 12 of this act;

(c) When facilities curtail or close consistent with section 13(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 16 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 12 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 CEILING. (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. A price ceiling unit is not a property right.

(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 22 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 Washington has entered into a linkage agreement;

(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 proportionate share of statewide emissions limits established in RCW 70A.45.020 and to provide for alignment with other jurisdictions to which the state has linked.

(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, in consultation with the environmental justice council, 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, in consultation with the environmental justice council; 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 23 of this act; and

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

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

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

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

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 19 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. The department may provide funding or assistance 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.**  SMALL FORESTLAND OWNER WORK GROUP. (1) The department of natural resources must contract with an eligible entity capable of providing public value to the state through the establishment and implementation of a small forestland owner work group. The purpose of the work group is to forward the goals and implementation of this chapter by identifying possible carbon market opportunities including, but not limited to, the provision of offset credits that qualify under section 19 of this act, and other incentive-based greenhouse gas reduction programs that Washington landowners may be able to access, including compliance markets operated by other jurisdictions, voluntary markets, and federal, state, and private programs for forestlands that can be leveraged to achieve carbon reductions.

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

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

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

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

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

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

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

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

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

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

(5) This section expires July 1, 2023.

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 the entity's 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. In meeting a given compliance obligation, a covered or opt-in entity may use allowances issued in that compliance year, or allowances issued in any of the seven years immediately preceding that compliance year.

(2) Compliance occurs through the transfer of compliance instruments or price ceiling units, 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 10 of this act.

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

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

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

(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) In order to coordinate and synchronize the cap and invest program established under this chapter with other transportation-related investments, this section does not take effect until a separate additive transportation revenue 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 revenue act" means an act, enacted after April 1, 2021, in which the state fuel tax under RCW 82.38.030 is increased by an additional and cumulative tax rate of at least five cents per gallon of fuel.

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 compliance instruments to meet its compliance obligation by the specified transfer dates, a penalty of four allowances for every one compliance instrument 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 of up to $50,000 per day per violation for violations of section 12(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 incurs 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 28 of this act.

(6) Orders and penalties issued under this chapter are appealable 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) An electric utility or natural gas utility must notify its retail customers and the environmental justice council in published form within three months of paying a monetary penalty under this section.

(9)(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.

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

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 enter into linkage agreements with other jurisdictions with 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 external greenhouse gas emissions trading programs consistent with the requirements in this chapter. A linkage agreement must cover the following:

(a) Provisions relating to regular, periodic 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 evaluate and make a finding regarding whether the aggregate number of unused allowances in a linked program would reduce the stringency of Washington's program and the state's ability to achieve its greenhouse gas emissions reduction limits. The department must include in its evaluation a consideration of pre-2020 unused allowances that may exist in the program with which it is proposing to link. Before entering into a linkage agreement, the department must also establish a finding that the linking jurisdiction and the linkage agreement meet 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 department must consider input received from the public comment process 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 retains all 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 8 through 24 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.**  EXPENDITURE TARGETS. (1) It is the intent of the legislature that each year the total investments made through the carbon emissions reduction account created in section 27 of this act, the climate commitment account created in section 29 of this act, the natural climate solutions account created in section 30 of this act, and the air quality and health disparities improvement account created in section 31 of this act, achieve the following:

(a) 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 under chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141); and

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

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

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

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

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

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

(4) The state must develop a process by which to evaluate the impacts of the investments made under this chapter, work across state agencies to develop and track priorities across the different eligible funding categories, and work with the environmental justice council pursuant to section 5 of this act.

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

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

NEW SECTION. **Sec.**  CLIMATE INVESTMENT ACCOUNT. (1)(a) 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. Moneys in the account may be spent only after appropriation.

(b) Projects or activities funded from the account must meet high labor standards, including family sustaining wages, providing benefits including health care and employer-contributed retirement plans, 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: (i) Employer paid sick leave programs; (ii) pay practices in relation to living wage indicators such as the federal poverty level; (iii) efforts to evaluate pay equity based on gender identity, race, and other protected status under Washington law; (iv) facilitating career development opportunities, such as apprenticeship programs, internships, job-shadowing, and on-the-job training; and (v) employment assistance and employment barriers for justice affected individuals.

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

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

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

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

NEW SECTION. **Sec.**  CLIMATE COMMITMENT ACCOUNT. (1) The climate commitment account is created in the state treasury. The account must receive moneys distributed to the account from the climate investment account created in section 28 of this act. Moneys in the account may be spent only after appropriation. Projects, activities, and programs eligible for funding from the account must be physically located in Washington state and include, but are not limited to, the following:

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

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

(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) Programs, activities, or projects that 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;

(e) Programs, activities, or projects that 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 emissions intensive fuel sources;

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

(i) Fertilizer management;

(ii) Soil management;

(iii) Bioenergy;

(iv) Biofuels;

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

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

(vii) Renewable energy projects;

(viii) Farmworker housing weatherization programs;

(ix) Dairy digester research and development;

(x) Alternative manure management; and

(xi) Eligible fund uses under RCW 89.08.615;

(g) Programs, activities, or projects that increase energy efficiency in new and existing buildings, or that 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;

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

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

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

(iii) 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;

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

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

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

(v) 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;

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

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

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

(2) Moneys in the account may not be used for projects or activities 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 resilience to the impacts of climate change.

NEW SECTION. **Sec.**  NATURAL CLIMATE SOLUTIONS ACCOUNT. (1) The natural climate solutions account is created in the state treasury. All moneys directed to the account from the climate investment account created in section 28 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Moneys in the account are intended to increase the resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change, conserve working forestlands at risk of conversion, and increase their carbon pollution reduction capacity through sequestration, storage, and overall system integrity. Moneys in the account must be spent in a manner that is consistent with existing and future assessments of climate risks and resilience from the scientific community and expressed concerns of and impacts to overburdened communities.

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

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

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

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

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

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

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

(vi) 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;

(vii) Either preserve or increase, or both, carbon sequestration and storage benefits in forests, forested wetlands, agricultural soils, tidally influenced agricultural or grazing lands, or freshwater, saltwater, or brackish aquatic lands; or

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

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

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

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

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

(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 resilience to the impacts of climate change.

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

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

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

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

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

NEW SECTION. **Sec.**  (1) By December 1, 2029, the joint legislative audit and review committee must analyze the impacts of the initial five years of program implementation and must submit a report summarizing the analysis to the legislature. The analysis must include, at minimum, the following components:

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

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

(ii) Fuel prices; and

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

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

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

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

(2) This section expires June 30, 2030.

**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 8 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 with which Washington has pursuant to section 24 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 which Washington has entered a linkage agreement. ((~~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 10 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 10 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 linkage agreement pursuant to section 20 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 in Washington 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.**  A new section is added to chapter 43.21C RCW to read as follows:

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  (1) Sections 8 through 24 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 8 through 24 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 43.376.020 and 2012 c 122 s 2 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

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

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

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

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

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

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

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

(1) Unless removed at the governor's pleasure, councilmembers shall serve a term ending January 15 of the third year following appointment except that, with respect to members initially appointed, the governor shall designate one member to serve a term ending January 15 of the second year following appointment. Initial appointments to the council shall be made within thirty days of March 9, 1981.

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

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

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

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

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

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

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

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

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

(a) State's hydroelectric system;

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

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

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

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.

NEW SECTION. **Sec.**  (1) The department shall prepare, post on the department website, and submit to the appropriate committees of the legislature an annual report that identifies all distributions of moneys from the accounts created in sections 27 through 31 of this act.

(2) The report must identify, at a minimum, the recipient of the funding, the amount of the funding, the purpose of the funding, the actual end result or use of the funding, whether the project that received the funding produced any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions, and if so, the quantity of reduced greenhouse gas emissions, the cost per carbon dioxide equivalent metric ton of reduced greenhouse gas emissions, and a comparison to other greenhouse gas emissions reduction projects in order to facilitate the development of cost-benefit ratios for greenhouse gas emissions reduction projects.

(3) The department shall require by rule that recipients of funds from the accounts created in sections 27 through 31 of this act report to the department, in a form and manner prescribed by the department, the information required for the department to carry out the department's duties established in this section.

(4) The department shall update its website with the information described in subsection (2) of this section as appropriate but no less frequently than once per calendar year.

(5) The department shall submit its report to the appropriate committees of the legislature with the information described in subsection (2) of this section no later than September 30 of each year.

NEW SECTION. **Sec.**  RESIDENTIAL HEATING ASSISTANCE PROGRAM. (1) The legislature intends by this section to establish policies to mitigate the cost burden of the program established by this act on consumers who use home heating fuels that are not electricity or natural gas.

(2) The department, in collaboration with interested stakeholders, shall develop a proposal for assisting households that, for residential home heating, use fuels that are not electricity or natural gas. The proposal must give priority to assisting low-income households through weatherization, conservation and efficiency services, and bill assistance.

(3) In the event the department, in collaboration with interested stakeholders, determines that the proposal developed pursuant to subsection (2) of this section requires legislative action, the department shall submit its recommendations for proposed legislation to the appropriate committees of the legislature no later than September 15, 2022.

**--- END ---**

Passed by the Senate April 24, 2021.

Passed by the House April 23, 2021.

Approved by the Governor May 17, 2021, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 18, 2021.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 6; 22; and the four internal cross-references to Section 22 [Section 8, on page 20, line 32, after "in" veto "section 22 of"; Section 9, on page 22, beginning on line 14, after "2026.", veto the sentence beginning with "If" and ending with "period." on line 16; Section 13, on page 39, line 21, after "with" veto "section 22 of"; and Section 19, on page 47, line 30, after "under" veto "section 22 of"], Engrossed Second Substitute Senate Bill No. 5126 entitled:

"AN ACT Relating to the Washington climate commitment act."

Section 6 requires the development of an improved consultation framework for state agencies to communicate and collaborate with tribes on climate investments made under the act. I strongly support the need for this work, as there are multiple new programs authorized under this act that require the state and tribes to work together. However, this section also requires tribes to provide their consent for climate projects funded by the Climate Commitment Act that might impact tribal interests, which differs from our current government-to-government approach, and does not properly recognize the mutual, sovereign relationship between tribal governments and the state. Although I am vetoing this Section, I will be requesting formal consultation with Tribal leaders to develop improved consultation procedures that strengthen our ability to work together as both sovereign governments and committed partners to advance our many mutual interests.

Section 22 primarily provides a convenient summary of compliance obligations under the Act that is duplicative of the same key compliance obligations and authorizing provisions that are well established and defined in other sections of the Act, including but not limited to Sections 23, 8 and 2. For example, the rulemaking authority acknowledged in Section 22 is provided for and expanded upon in Section 25, which separately establishes comprehensive rulemaking authority that authorizes the Department of Ecology to adopt rules to implement all of the provisions of the Act. There are no substantive aspects of Section 22 that Ecology cannot adopt and implement through this rulemaking authority. By vetoing Section 22, I am also removing an internal inconsistency with regard to the expiration date of allowances, because the ability of covered entities to rely on the last seven years of allowances in Section 22(1) conflicts with the unlimited time period for use of allowances in Section 9(2). Because I am vetoing Section 22, I am also vetoing the four internal cross-references to Section 22. Finally, I want to express my deep appreciation for the Legislature's remarkable work on this critical piece of legislation; however, the delayed effective date established in subsection (7) unnecessarily hinders our state's ability to combat climate change, one of the greatest challenges facing our state and the world today.

For these reasons I have vetoed Sections 6; 22; and the four internal cross-references to Section 22 [Section 8, on page 20, line 32, after "in" veto "section 22 of"; Section 9, on page 22, beginning on line 14, after "2026.", veto the sentence beginning with "If" and ending with "period." on line 16; Section 13, on page 39, line 21, after "with" veto "section 22 of"; and Section 19, on page 47, line 30, after "under" veto "section 22 of"] of Engrossed Second Substitute Senate Bill No. 5126.

With the exception of Sections 6; 22; and the four internal cross-references to Section 22 [Section 8, on page 20, line 32, after "in" veto "section 22 of"; Section 9, on page 22, beginning on line 14, after "2026.", veto the sentence beginning with "If" and ending with "period." on line 16; Section 13, on page 39, line 21, after "with" veto "section 22 of"; and Section 19, on page 47, line 30, after "under" veto "section 22 of"], Engrossed Second Substitute Senate Bill No. 5126 is approved."