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**HOUSE BILL 2230**

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**State of Washington 65th Legislature 2017 3rd Special Session**

**By** Representatives Fitzgibbon, Jinkins, Macri, McBride, and Santos

AN ACT Relating to enacting a carbon emissions tax to fund stewardship of Washington's natural resources and investments in communities and economic opportunity; amending RCW 70.235.020 and 82.32.050; adding a new section to chapter 70.94 RCW; adding a new chapter to Title 70 RCW; adding a new chapter to Title 82 RCW; and creating new sections.

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

**PART I**

**Disposition of Carbon Tax Revenues**

NEW SECTION. **Sec.**  INTENT. (1)(a) The legislature finds that Washington state is threatened by changes in the global climate caused by emissions of greenhouse gases, particularly carbon dioxide. Risks to Washington's natural resources, people, and economy include the hazards of more frequent droughts and more severe storms, sea level rise, ocean acidification, reduced mountain snowpack, and impacts to hydropower, agriculture, and winter recreation. These impacts are not felt proportionally by all, and often hit rural communities hardest.

(b) To reduce the risks posed by climate change, the health, environment, and economic well-being of Washington will benefit from a carbon policy that invests in clean energy, clean water, forest health, and clean air projects. The investments made by this act in clean energy are intended to attract additional private and public investment to catalyze faster reductions in greenhouse gas emissions.

(c) The legislature finds that assigning a cost to the emissions of greenhouse gases to partially defray the taxpayer cost of these impacts is appropriate in light of the social, environmental, and economic harms from those emissions. This is intended to allow clean energy, which lacks these negative externalities, to fairly compete in the marketplace, and to incentivize and expedite the transition to clean energy sources. In addition, in assigning a cost to the emissions of greenhouse gases, it is the intent of the legislature to help avert worst-case climate change scenarios by enacting state policies and supporting national and international policies that contribute to the reduction of average global concentrations of atmospheric carbon dioxide to under three hundred fifty parts per million.

(2) Therefore, it is the intent of the legislature to enact a carbon pollution mitigation tax on fossil fuel emissions of greenhouse gases that contribute to global climate change. This tax is intended to serve as the primary policy of the state in reducing emissions of greenhouse gases from all sectors and to encourage the development of energy resources that pose fewer environmental and public health costs while benefiting local economies. This act is intended to mitigate energy costs for low-income individuals or households living at or near the federal poverty line. This act is also intended to help Washington reduce its contribution to anthropogenic climate change and to forestall and minimize the worst-case scenarios anticipated to result from atmospheric greenhouse gas pollution and global climate change caused by that pollution. By allowing utilities to direct a share of the carbon tax imposed by this act, it is the intent of the legislature that, for the electricity sector, this policy must avoid the need for investments in new fossil fuel based generation while protecting low rates and reliable service by bridging the cost between emitting and nonemitting generation resources; for the gas sector, it reduces the use of natural gas in the residential, commercial, and industrial sectors in favor of alternatives, including those manufactured in partnership with Washington's dairies, wastewater and waste facilities; and with remaining funds maximizes clean energy investments that reduce greenhouse gas emissions in ways that promote improved functioning and resilience of the grid. Finally, in order to facilitate a just and equitable transition to a clean energy economy, it is the intent of the legislature to use revenue from the tax to:

(a) Assist low-income individuals and disproportionately impacted communities in this transition;

(b) Provide meaningful support to workers and communities if they are impacted by this act; and

(c) Improve community health through contributing to clean air, clean water, and healthy forests.

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

(1) "Board" means the carbon program oversight board established in section 103 of this act.

(2) "Carbon calculation" means a calculation made by the department of ecology for purposes of assessing the carbon pollution mitigation tax for fossil fuels in section 202 of this act.

(3) "Carbon content" means the carbon dioxide equivalent that is released through the combustion or oxidation of a fossil fuel or that is associated with the combustion or oxidation of a fossil fuel used to generate imported electricity.

(4) "Carbon dioxide equivalent" has the same meaning as provided in RCW 70.235.010.

(5) "Clean energy" means technologies, services, or processes that reduce energy consumption or enable the transition to a low-carbon energy economy, or both. Clean energy includes, but is not limited to, technologies, services, or processes that increase the supply of energy from renewable resources, as that term is defined in RCW 19.285.030, improve energy efficiency, improve the processes and systems that use energy, deploy renewable energy infrastructure, or facilitate the marketplace permeation of energy solutions with fewer associated greenhouse gas emissions, including planning and creating structures that reduce energy demand.

(6) "Consumer-owned utility" has the same meaning as provided in RCW 19.280.020.

(7) "Direct service industrial customer" has the same meaning as provided in RCW 82.16.0495.

(8) "Disproportionately impacted communities" means communities identified by the department of health pursuant to section 112 of this act.

(9) "Energy-intensive and trade-exposed facility" or "EITE facility" means a facility identified by the department of commerce under section 210 of this act.

(10) "Forest management purposes" means the performance of activities directly related to the growing, raising, or harvesting of forest products, including but not limited to logs, chips, and forest biomass. "Forest management purposes" does not include transporting on public or private roads individuals, forest products, machinery, or equipment.

(11)(a) "Fossil fuel" means petroleum products that are intended for combustion, natural gas, coal or coke of any kind, or any form of solid, liquid, or gaseous fuel derived from these products including but not limited to motor vehicle fuel, special fuel, aircraft fuel, marine fuel, still gas, propane, and petroleum residuals such as bunker fuel.

(b) For purposes of imposing the tax on the carbon content of fossil fuels by a refinery facility consumed during the process of refining fossil fuels consistent with section 202(3) of this act, "fossil fuel" also means crude oil and petroleum.

(12) "Imported electricity" means electricity generated outside of the state of Washington and delivered for end use within the state.

(13) "Incremental cost" means the difference between the cost of a lowest reasonable cost nonemitting resource bundle, regardless of ownership, compared to the cost of the lowest reasonable cost bundle that may include emitting resources.

(14) "Inflation" is the inflation rate determined by the consumer price index for all urban consumers (CPI-U) available from the United States department of labor, bureau of labor statistics.

(15) "Investor-owned utility" has the same meaning as provided in RCW 19.280.020.

(16) "Light and power business" has the same meaning as provided in RCW 82.16.010.

(17) "Motor vehicle fuel" has the same meaning as provided in RCW 82.38.020.

(18) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate. Natural gas does not include gas produced by the decomposition of wastes in a landfill, as defined in RCW 70.95.030, a biodigester, wastewater facility, or from other nonfossil fuel sources.

(19) "Nonemitting resource bundle" means one or more technologies or projects that, taken together, perform the same function as the least-cost similarly reliable and available alternative project or resource while emitting no greenhouse gases during the generation of electricity. These technologies or projects may include investments eligible under section 204(3) of this act.

(20) "Nonpower attributes" has the same meaning as provided in RCW 19.285.030.

(21) "Person" means the state of Washington, political subdivision of the state of Washington, municipal corporation, the United States, and any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(22) "Petroleum product" means hydrocarbons that are the product of the fractionation, distillation, or other refining or processing of crude oil that are used as, usable as, or may be refined as a fuel or fuel blendstock.

(23) "Special fuel" has the same meaning as provided in RCW 82.38.020 and includes fuel that is sold or used to propel vessels.

(24) "Supplier" means a person that produces, refines, imports, sells, or delivers fossil fuels, or any combination of producing, refining, importing, selling, or delivering fossil fuels in or into the state for use or processing within the state.

(25) "Tax credit investment funds" means the portion of the tax imposed pursuant to section 202 of this act is credited to a light and power business or gas distribution business for greenhouse gas emission reduction and atmospheric carbon sequestration investments under section 113 of this act.

(26) "Trade share" means the sum of the state imports and exports that cross state lines of a good relative to the sum of the total value of state shipments plus imports of the good.

(27) "Year" means the twelve months commencing January 1st and ending December 31st unless otherwise specified.

NEW SECTION. **Sec.**  CARBON PROGRAM OVERSIGHT BOARD. (1)(a) The carbon program oversight board is established within the executive office of the governor. The purpose of the board is to oversee implementation of this act and advise the governor on whether the tax and programs funded by the tax are achieving greenhouse gas emission reductions equitably, sustainably, and efficiently.

(b) Voting members of the board must be appointed by the governor. The board must consist of at least one voting member representing each of the following parties, totaling nineteen members:

(i) An organization whose mission is to advocate for residential consumers;

(ii) An organization whose mission is to advocate for industrial consumers of energy;

(iii) A Washington business or organization representing Washington businesses;

(iv) A worker from an energy-intensive and trade-exposed facility;

(v) A light and power business or a supplier;

(vi) A land conservation organization;

(vii) An environmental organization with a focus on climate policy;

(viii) A federally recognized Indian tribe, whose designated representative must rotate to a representative of a new tribe every three years;

(ix) A statewide labor organization representing a broad cross section of workers;

(x) A public health organization;

(xi) An organization that represents disproportionately impacted communities;

(xii) Two local governments, of which one must be a city and one must be a county, and one must be located east of the crest of the Cascade mountains and one must be located west of the crest of the Cascade mountains;

(xiii) An organization or university that possesses technical expertise in alternative energy, energy efficiency, or other low-carbon energy efficiency project implementation;

(xiv) A business engaged in alternative energy, energy efficiency, or other low-carbon energy project implementation; and

(x) In addition to, and not counting, the board members identified in (b)(iii) and (x) of this subsection, four members representing either:

(A) Those most harmed by cumulative impacts in disproportionately impacted communities, as identified in section 114 of this act; or

(B) Communities of workers in any economic sectors negatively impacted by the tax imposed under section 202 of this act.

(c) The board must also consist of the following nonvoting members:

(i) The director of the department of ecology or the director's designee;

(ii) The director of the department of commerce or the director's designee;

(iii) The director of the department of transportation or the director's designee;

(iv) The chair of the utilities and transportation commission or the chair's designee;

(v) The commissioner of public lands or the commissioner's designee;

(vi) The director of the department of revenue or the director's designee; and

(vii) A representative of each caucus of the house of representatives and the senate, named by the leader of each caucus.

(d)(i) For the voting members of the board, the duration of the first appointment must be:

(A) A two-year term for six members;

(B) A three-year term for six members; and

(C) A four-year term for seven members.

(ii) After the initial appointments, the appointments must be for three-year terms or until a successor is appointed, except in the case of appointments to fill vacancies, which must be for the remainder of the unexpired term. The governor must appoint one of the voting members to serve as chair of the board for the duration of the member's term.

(e) The governor must make the appointments of the members under (b) of this subsection by January 1, 2018. Any member appointed by the governor may be removed by the governor for cause. The governor must appoint board members so as to achieve a council membership with balanced representation by geography, gender, and ethnicity.

(f) The board has the following powers and duties:

(i) Providing advice and recommendations to the governor, the legislature, and the state agencies involved in the implementation of chapters 70.--- and 82.--- RCW (the new chapters created in sections 402 and 403 of this act) and RCW 70.235.020;

(ii) Monitoring the effects of the implementation of this act, to ensure that:

(A) Policy choices create an equitable and competitive economic environment for businesses based on their greenhouse gas emissions footprint; and

(B) Implementation of this act does not lead to unfair or unintended economic distortions, including leakage related to EITE facilities;

(iii) Providing oversight of carbon pollution mitigation tax receipt moneys to ensure consistency with overlay investment criteria required under section 115 of this act, to ensure that implementation of this act does not lead to inequitable environmental or economic impacts and that implementation satisfies the other purposes established by sections 104, 107, 108 through 112, 114, and 210 of this act, and reporting periodically to the legislature consistent with RCW 43.01.036 on such matters;

(iv) Providing recommendations on utility clean energy investment plans required in section 114 of this act;

(v) Hearing appeals of EITE exemption determinations made under section 208(5) of this act;

(vi) Overseeing and making recommendations on the cumulative impacts analysis required in section 114 of this act;

(vii) Overseeing and making recommendations on the investments recommended by disproportionately impacted communities to meet the overlay investment criteria required under section 115 of this act; and

(viii) Overseeing and making recommendations on environmental and economic analyses of the benefits and risks, including investments in areas with displacement risk, of investments of carbon pollution mitigation tax revenues that accrue to disproportionately impacted communities and to workers displaced by the provisions of this act.

(2) The board must form an economic and environmental justice subcommittee to convene periodically. The subcommittee must be comprised of members of the board including but not limited to the representatives identified in (1)(b)(x) of this section. The fundamental purpose of the subcommittee is to provide a forum for analysis of whether the policies adopted in chapters 70.--- and 82.--- RCW (the new chapters created in sections 402 and 403 of this act) lead to improvements within disproportionately impacted communities. This subcommittee must also advise the board in the performance of its responsibilities in (1)(f)(vi) through (viii) of this section.

(3) Upon request, the board must receive staff support, including research and technical expertise, from the department of ecology, the department of commerce, and the Washington State University extension energy program. The department of commerce must also provide staff resources to the board for rule making required of the board by this chapter.

(4) Members of the board employed by the state must serve without additional pay and participation in the work of the board is deemed to be performance of their employment. Members from the public at large must be compensated in accordance with RCW 43.03.240 and are entitled to reimbursement individually for travel expenses incurred in the performance of their duties as members of the board in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec.**  EQUITABLE TRANSITION FUND CREATION. (1) The equitable transition fund is created within the state treasury. Moneys in the account may only be spent after appropriation.

(2) Money in the fund may only be spent to ensure impacted workers are made substantially whole during the period of transition to a clean energy economy, including, but not limited to:

(a) Full wage replacement, health benefits, and pension contributions for every worker with at least five years of service for each year of service up to ten years of service. Workers with less than five years of service are eligible for wage insurance;

(b) Up to two years of retraining costs including tuition and related costs;

(c) Peer counseling services during transition;

(d) Employment placement services;

(e) Relocation expenses; and

(f) Other services deemed necessary by the board.

(3) It is the intent of the legislature to prioritize the allocation of full financial support to this fund in an amount sufficient to meet the needs of workers who may lose their jobs to the transition to the clean energy economy. It is the intent of the legislature to supplement the initial distribution to the account specified in section 203 of this act with additional funds as needed to ensure that the balance of the equitable transition fund does not drop below five hundred thousand dollars at any point during a biennium.

(4) Funding will be made available for workers who are dislocated specifically due to the impacts of this act, including, but not limited to, workers in fossil fuel-dependent industries. The process of determining whether an event has occurred obligating the state to provide financial support may be initiated by the board, or brought to the attention of the board by a worker or a representative of a labor union who believes a situation qualifies for equitable transition support. The board must make final decisions determining qualifying events and levels of support needed.

(5) The department of commerce may adopt rules to ensure proper implementation of the requirements of this section.

NEW SECTION. **Sec.**  LOW-INCOME CARBON POLLUTION MITIGATION TAX GRANT. (1) The mitigation grant account is created in the state treasury. Receipts from the tax imposed in section 202 of this act and distributed consistent with section 203 of this act must be deposited into the account. Money in the account may only be used for purposes described in this section.

(2) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise.

(a) "Adjusted gross income" has the same meaning as provided in Title 26 U.S.C. Sec. 62 of the federal internal revenue code, as amended, as of the effective date of this section.

(b) "Department" means the department of social and health services.

(c) "Eligible person" means:

(i) An individual, or an individual and that individual's spouse if they file a joint return, who:

(A) Has an adjusted gross income as provided for in subsection (4) of this section; and

(B) Properly files a federal income tax return as a Washington resident, or is a nonresident alien who has an individual taxpayer identification number from the United States internal revenue service, and has been a resident of the state of Washington for more than one hundred eighty days of the year in which the grant is sought; or

(ii) Any person eligible for any Washington means-tested benefits including, but not limited to, temporary assistance for needy families under chapter 74.12 RCW and the supplemental nutrition assistance program under chapter 74.04 RCW, and who have resided in the state of Washington for more than one hundred eighty days of the year in which the grant is sought.

(3) The department must establish and administer a low-income carbon pollution mitigation tax grant, as provided in this section, for Washington state residents to assist in the equitable transition to lower carbon emission energy sources.

(4) An eligible person is allowed a low-income carbon pollution mitigation tax grant based on the adjusted gross income reported on the federal personal income tax return for the tax year in which the grant is sought, or based on an equivalent estimation of adjusted gross income developed by the department for use in determining grant eligibility for any person that is not required to file federal personal income tax returns for the tax year in which the grant is sought. It must be calculated in accordance with, and subject to the limits of, the following tables:

Low-income carbon pollution mitigation tax grant, single head of household

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| No children | | 1 child | | 2 children | | 3 or more children | |
| AGI Range | Grant Amount | AGI Range | Grant Amount | AGI Range | Grant Amount | AGI Range | Grant Amount |
| $0-$19,999 | $120 | $0-$19,999 | $180 | $0-$19,999 | $240 | $0-$19,999 | $300 |
| $20,000-$26,999 | $90 | $20,000-$26,999 | $135 | $20,000-$28,499 | $180 | $20,000-$29,499 | $225 |
| $27,000-$33,999 | $60 | $27,000-$33,999 | $90 | $28,500-$36,999 | $120 | $29,500-$38,999 | $150 |
| $34,000-$40,999 | $30 | $34,000-$40,999 | $45 | $37,000-$45,499 | $60 | $39,000-$48,499 | $75 |
| $41,000 or greater | $0 | $41,000 or greater | $0 | $45,500 or greater | $0 | $48,500 or greater | $0 |

Low-income carbon pollution mitigation tax remittance, married/filing jointly

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| No children | | 1 child | | 2 children | | 3 or more children | |
| AGI Range | Grant Amount | AGI Range | Grant Amount | AGI Range | Grant Amount | AGI Range | Grant Amount |
| $0-$23,999 | $120 | $0-$23,999 | $180 | $0-$23,999 | $240 | $0-$23,999 | $300 |
| $24,000-$30,999 | $90 | $24,000-$30,999 | $135 | $24,000-$32,999 | $180 | $24,000-$33,999 | $225 |
| $31,000-$37,999 | $60 | $31,000-$37,999 | $90 | $33,000-$41,999 | $120 | $34,000-$43,999 | $150 |
| $38,000-$44,999 | $30 | $38,000-$44,999 | $45 | $42,000-$50,999 | $60 | $44,000-$53,999 | $75 |
| $45,000 or greater | $0 | $45,000 or greater | $0 | $51,000 or greater | $0 | $54,000 or greater | $0 |

(5) The grant amounts provided for in subsection (4) of this section must be adjusted effective on January 1st of an even-numbered year based on the annual growth of the consumer price index for urban wage earners and clerical workers as published by the United States bureau of labor statistics on January 1st of the immediately previous odd-numbered year.

(6) The grant under this section must be administered according to this subsection (6):

(a) An eligible person must apply to the department for the grant as calculated under this section.

(b) Applications for the low-income carbon pollution mitigation tax grant must be made in the year following the year for which the federal return was filed, but in no case may any remittance be provided for any period before July 1, 2018. The department may use the best available data to process the grant. The department must begin accepting applications October 1, 2019.

(c) The department must review the application and determine eligibility for the low-income carbon pollution mitigation tax grant based on information provided by the applicant and through audit and other administrative records including, when it deems it necessary, verification through the department of revenue and the United States internal revenue service data.

(d) The department must remit the grant amount to the eligible person who submitted the application. Grants may be made through electronic funds transfer or other means.

(e) The department must, in conjunction with other agencies and community-based nonprofit organizations, design and implement a public information campaign that is language and culturally appropriate to inform potentially eligible persons of the existence of, requirements of, and process to apply for this grant.

(f) Funds allocated to this rebate, but unspent due to less than full enrollment of eligible persons, must be used in the following year on outreach to inform difficult to reach eligible participants in accordance with (e) of this subsection. The amount used for program outreach under this subsection (6)(f) may not exceed ten million dollars per year; funds in excess of ten million dollars per year that are unspent must be used in the following year on grants to eligible persons.

(g) The department may adopt any rules necessary to implement this section.

(7) The low-income carbon pollution mitigation tax grant must be excluded from consideration as income for the purpose of determining eligibility and benefit levels of food stamp or benefit program recipients to the maximum exclusion authorized by federal law.

NEW SECTION. **Sec.**  NATURAL RESOURCES SUPER ACCOUNT. (1) The natural resources super account is created in the state treasury. Money distributed consistent with section 203 of this act must be deposited in the account. Money in the account may only be spent after appropriation. Money in the account may only be spent for the purposes described in subsections (2) and (3) of this section.

(2)(a) One hundred sixty million dollars per year, adjusted every year by the fiscal growth factor as defined in RCW 43.135.025, must be used for the eligible activities of the following agencies:

(i) The department of natural resources;

(ii) The department of ecology;

(iii) The department of fish and wildlife;

(iv) The department of agriculture;

(v) The state parks and recreation commission;

(vi) The Washington state conservation commission;

(vii) The Puget Sound partnership;

(viii) The recreation and conservation office;

(ix) The environmental and land use hearings office; and

(x) The Columbia river gorge commission.

(b) The activities of the natural resource agencies listed in (a) of this subsection that are eligible for funding out of the natural resources super account are those activities that were funded out of the state general fund in the 2015-2017 omnibus operating appropriations acts, or for activities of those agencies that might otherwise be funded out of the state general fund due to the preference of the legislature or the lack of available fund balance in other appropriate accounts. It is not the intent of the legislature to limit the sources of program funding for the agencies listed in (a) of this subsection in future biennia to the money appropriated from the natural resources super account. Rather, it is the intent of the legislature to rely on other sources of funding for any new responsibilities assigned to those agencies and for any future cost increases associated with existing agency programs.

(3) No later than June 20, 2019, and every two years thereafter, the state treasurer must transfer to the general fund all money in excess of the appropriations made for purposes of subsection (2) of this section. With this transfer to the general fund, it is the goal of the legislature to offset most of the fiscal impacts to the general fund of the following:

(a) Credits against state taxes owing by retail electric utilities for the renewable energy incentive payments made to customers installing solar or other renewable energy facilities at their premises, pursuant to RCW 82.16.130;

(b) The tax credits provided for biodiesel feedstock pursuant to RCW 82.08.0205 and 82.12.0205; and

(c) The tax credits provided for manufacturing research and development and machinery and equipment pursuant to RCW 82.08.02565 and 82.12.02565.

NEW SECTION. **Sec.**  CLEAN WATER CLIMATE GRANTS—CLEAN WATER CLIMATE PROGRAM ACCOUNT CREATION. (1) The clean water climate program account is created in the state treasury. Receipts from the carbon pollution mitigation tax imposed under section 202 of this act and distributed consistent with section 203 of this act must be deposited into the account. Each biennium, the first seven million, eight hundred seventy thousand dollars of receipts deposited into the account is solely for the mitigation of residential permit-exempt groundwater withdrawals. It is the intent of the legislature to appropriate seven million eight hundred seventy thousand dollars each biennium for this purpose. Subject to appropriation, the department of ecology may use the remaining money in the account solely to provide grants and loans for sustainable water projects and activities that consider climate impacts in their planning, siting, design, or implementation. In selecting sustainable water projects and activities to receive grants and loans, the department of ecology must consider the climate impact of such investments. Selected projects must:

(a) Mitigate or facilitate adaptation to the impacts of climate change; or

(b) Provide long-term climate resilience benefits.

(2) Other than amounts appropriated for the mitigation of permit-exempt groundwater withdrawals consistent with subsection (1) of this section, the department of ecology must use remaining moneys deposited in the account in approximately equal amounts for each of the following projects and activities:

(a) Design, construction, and monitoring activities and projects that restore and protect estuaries and marine shoreline habitats. The department of ecology must select projects that add capacity to or complement project funding from the Puget Sound national estuary program marine and nearshore protection programs, and may not select projects that are required by regulatory obligations or administrative or court orders;

(b) Activities and projects that reduce flood risk and restore natural floodplain ecological function. The department of ecology must give priority under this subsection (2)(b) to projects or activities that achieve multiple benefits. The department of ecology must choose projects using ranking and selection criteria consistent with the procedures for ranking and selecting floodplains by design projects that are funded through the omnibus capital appropriations act;

(c) Activities and projects that increase the sustainable supply of water and improve aquatic habitat. In order for a project to receive funding under this subsection (2)(c), the project proponent must demonstrate that the project:

(i) Is cost-effective; and

(ii) Achieves multiple benefits; and

(d) Designing, constructing, or monitoring projects and activities that improve infrastructure treating stormwater from previously developed areas within an urban growth boundary designated under chapter 36.70A RCW. In order to be eligible for funding under this subsection (2)(d), a project must reduce pollution and improve habitat, with a preference given to projects that use green stormwater infrastructure or the infiltration and treatment of polluted runoff to achieve those goals. The department of ecology must choose projects using ranking and selection criteria consistent with the procedures for ranking and selecting projects funded through the stormwater financial assistance program administered by the department of ecology.

(3) In selecting grant and loan recipients under this section, the department of ecology must consider:

(a) The cost-effectiveness of the project or activity;

(b) The project's or activity's ability to leverage other private, in-kind, or government investments and markets;

(c) Whether the project or activity will provide multiple benefits to communities and the environment;

(d) The degree to which the project or activity is designed to increase long-term human and ecosystem resilience considering best available climate science; and

(e) For projects or activities within the Puget Sound watershed, whether the project or activity is consistent with the action agenda developed by the Puget Sound partnership under chapter 90.71 RCW.

(4) Funding in this section must be disbursed consistent with section 115 of this act.

NEW SECTION. **Sec.**  FOREST HEALTH INVESTMENTS—SUSTAINABLE FOREST HEALTH ACCOUNT CREATION. (1) The sustainable forest health account is created in the state treasury. Receipts from the carbon pollution mitigation tax imposed under section 202 of this act and distributed consistent with section 203 of this act must be deposited into the account. Money in the account must be used consistent with this section.

(2) Each year the department of natural resources must prioritize appropriations from the sustainable forest health account to achieve greenhouse gas emission reductions or increased resilience and at least one of the following goals:

(a) Improved air quality through increased carbon sequestration and reduced greenhouse gas emissions;

(b) Improved water quality;

(c) Improved wildlife habitat;

(d) Enhanced public recreation opportunities; and

(e) Enhanced long-term resilience to wildfires and other effects of a changing climate on forest health.

(3) Other than amounts appropriated pursuant to subsection (5) of this section, it is the intent of the legislature that sixty-seven percent of the money appropriated to this account be made to the department of natural resources. The department of natural resources must develop procedures and criteria for allocation of the amounts appropriated in approximately equal amounts for:

(a) Projects and activities that bolster and increase community preparedness and awareness before, during, and after fire including for communities with limited English proficiency and other underserved populations in communities at risk from wildfire; and

(b) Projects and activities that improve forest health through forest health treatments as that term is defined in chapter 79.10 RCW with priority given to:

(i) Projects prioritized pursuant to RCW 76.06.--- (section 1, chapter 95, Laws of 2017) and 79.10.--- (section 2, chapter 248, Laws of 2017); and

(ii) Other projects proposed pursuant to a forest collaborative planning process establishing ecological and public safety goals across any combination of local, state, federal, tribal, and private ownerships.

(4)(a) Other than amounts appropriated pursuant to subsection (5) of this section, it is the intent of the legislature that thirty-three percent of the money appropriated to this account be made to the recreation and conservation office. The recreation and conservation office must develop procedures and criteria for the establishment and funding of a working forest conservation easement program. The procedures and criteria must include, at a minimum, a mechanism for ranking project applicants that allows for the prioritization of projects that maximize the amount of carbon sequestered by the program.

(b) The rules governing the ranking system must consider scientifically based forest ecosystem carbon sequestration calculations, and unique regional needs to determine the maximum, life-cycle carbon sequestration capacity of the combination of carbon stored in wood from a managed forest and carbon in the forest, including consideration of carbon sequestered in resulting wood building materials.

(c) The working forest conservation easement program must be designed to maximize carbon sequestration in working forests, to ensure sustainable supply of timber, to ensure the ecological longevity of working forests, and to provide long-term, sustainable jobs in rural communities. If it maximizes carbon sequestration potential, the program may prioritize the acquisition of easements for forest properties for which there is a comparatively high probability that contiguous forestland acreage will eventually be subdivided, otherwise sold in smaller acreage parcels, or its timber stock liquidated in the near term.

(5) Consistent with amounts specified in the most recent appropriations act, and separate from the allocations specified in subsections (3) and (4) of this section, up to ten million dollars per biennium may be used from the sustainable forest health account to fund projects in the forest riparian easement program where:

(a) It can be demonstrated that in the absence of a project funded through the forest riparian easement program, there is a comparatively high probability that associated lands would be converted from forestland properties to nonforest uses with associated permanent loss of forest cover; and

(b) The landowner agrees to permanent protections for the forestland property to maximize carbon sequestration benefits.

(6) Funding in this section must be disbursed consistent with section 115 of this act.

NEW SECTION. **Sec.**  CLEAN AIR INVESTMENT PROGRAMS—CLEAN ENERGY ACCOUNT CREATION. (1) The clean energy account is created in the state treasury. Receipts from the carbon pollution mitigation tax imposed under section 202 of this act and distributed consistent with section 203 of this act must be deposited into the account. Upon the distribution of money into the account, the state treasurer must distribute thirty-five percent of the receipts to the carbon reduction investment fund created in section 110 of this act, and sixty-five percent of the receipts to the sustainable investment fund created in section 111 of this act. Moneys in the account may only be spent after appropriation.

(2) For purposes of administering the carbon reduction investment fund and the sustainable infrastructure fund, the department of commerce must adopt procedures that ensure the achievement of quantifiable and verifiable emission reductions or sequestration while minimizing the costs of state administration and other transaction costs associated with project implementation. Expenditures from the funds must be designed to stimulate new projects that sequester carbon or reduce emissions of greenhouse gases and other air pollutants regulated under the federal clean air act or chapter 70.94 RCW that impact human health or the environment.

(a) Except where explicitly exempt from this requirement, project investment levels must, to the extent practicable, not exceed the minimum levels of funding necessary to make the project viable or cost-competitive.

(b) A project may not receive funding from both the carbon reduction investment fund and the sustainable infrastructure fund.

NEW SECTION. **Sec.**  CLEAN AIR INVESTMENT PROGRAMS—CARBON REDUCTION INVESTMENT FUND CREATED. (1)(a) The carbon reduction investment fund is created in the state treasury. Moneys in the account may only be spent after appropriation. Money in the carbon reduction investment fund may only be used for carbon sequestration or greenhouse gas emission reduction projects in Washington or projects that reduce emissions directly connected to energy use and other activity in Washington state.

(b) The department of commerce, in consultation with the board created in section 103 of this act, must administer the carbon reduction investment fund and oversee the projects that receive moneys in the fund.

(c) During the 2017-2019 fiscal biennium, the first fifteen million dollars deposited into the carbon reduction investment fund is solely for a project which, when fully deployed, will reduce emissions of greenhouse gases by a minimum of seven hundred fifty thousand tons per year, increase energy efficiency, and protect or create manufacturing jobs located in a county with a population of less than three hundred thousand.

(2) Private and public sector entities may apply to the department of commerce to receive grant funding from the carbon reduction investment fund.

(a) Applicants must demonstrate that project proposals are consistent with the intent of this act, especially the reduction of state greenhouse gas emissions consistent with state limits under RCW 70.235.020, and the achievement of public benefits described in subsection (6) of this section.

(b) Applicants must provide information to the department of commerce on the lifetime and annual anticipated carbon sequestration or greenhouse gas emission reductions associated with a project, cost of the project, projected cost savings resulting from the project, timeline for completion, total funding request taking into account the investment price established by the department of commerce under section 112 of this act, and other information as required by the department of commerce.

(c) The department of commerce must ensure that projects meet the requirements of this section and section 116 of this act.

(3) Except for the project specified in subsection (1)(c) of this section, expenditures from the fund created in this section must be prioritized based on the anticipated quantifiable and verifiable amount of carbon sequestration or greenhouse gas emission reduction to be achieved by the project per dollar of investment from the fund. The amount of funding provided to each category of project must be based on the investment prices established in section 106 of this act, and must be of an amount sufficient to make viable the implementation of a project that would not otherwise be carried out under current economic conditions, but not to exceed such an amount. In the event that a project benefits a community targeted for funding in section 115 of this act, the investment price may exceed the amount necessary set by the department of commerce in section 112 of this act by an additional ten percent.

(4) The department of commerce must adopt procedures for reviewing and prioritizing grant project applications. Holding other evaluative criteria constant, a preference must be given to project applicants who demonstrate that moneys from the carbon reduction investment fund will be accompanied by a matching investment from another public or private source of funds.

(5) A single person or project may not receive more than five percent of the total value of carbon reduction investment fund investments made under this section each biennium. Subject to appropriation, funds for a project may be disbursed over multiple biennia.

(6) Carbon reduction investment fund investments each biennium must include but are not limited to projects that are designed to:

(a) Lower the cost of energy for Washington residents by investing in clean energy and making it more affordable and competitive, transitioning to zero-emission vehicles, and reducing cost volatility and emissions from fossil fuel energy sources;

(b) Increase access to clean energy by public and private entities through greater deployment of clean transportation and renewable energy, including roof-top and community solar; and

(c) Reduce energy waste and increase energy efficiency, thereby helping to make energy efficiency projects affordable to public and private entities.

NEW SECTION. **Sec.**  CLEAN AIR INVESTMENT PROGRAMS—SUSTAINABLE INFRASTRUCTURE FUND CREATED. (1) The sustainable infrastructure fund is created in the state treasury. Moneys in the fund may only be spent after appropriation. The department of commerce, in consultation with the board established in section 103 of this act, must administer the sustainable infrastructure fund and oversee the greenhouse gas emission reduction projects that receive money from the fund. Money in the sustainable infrastructure fund may only be used for planning or implementation of greenhouse gas emission reduction projects in Washington that achieve indirect carbon reductions or that have long-term or difficult to quantify emission reduction prospects. Public and private project proponents are eligible to apply to the board to obtain funding from the sustainable infrastructure fund, with preference given to projects that do not inherently rely on nonrenewable resources as a power source. Consistent with the allocations and categories specified in subsections (2), (3), and (4) of this section, projects that plan for or implement greenhouse gas emission reductions are eligible for funding from the sustainable infrastructure fund.

(2) Thirty-five percent of amounts appropriated to the sustainable infrastructure fund are provided solely for transportation projects that reduce pollution from transportation sources by:

(a) Aiding full or partial fuel switching to electricity or fuels not derived from fossil fuels;

(b) Converting private and public fleets, including transit fleets, to zero-emission vehicles;

(c) Improving freight mobility systems; or

(d) Strategic planning and development of sustainable infrastructure projects, including charging and fueling projects necessary to support the categories of fleet conversions and vehicles identified in (a) and (b) of this subsection. However, to be eligible for infrastructure funding under this subsection (2)(d), an infrastructure project is not required to be associated with a fleet and vehicle conversion consistent with (a) or (b) of this subsection (2) that receives or has received funding from the sustainable infrastructure fund.

(3) Fifty-five percent of amounts appropriated to the sustainable infrastructure fund are provided solely for land use projects. Of these funds, ten million dollars per biennium are reserved for grants by the department of commerce to cities and counties consistent with RCW 36.70A.190, including but not limited to funding related to the buildable lands review and evaluation program required by RCW 36.70A.215 and chapter . . . (2SSB 5254), Laws of 2017 2nd sp. sess. In counties participating in a regional transportation planning organization, funds must be spent on projects that enable or accelerate the implementation of plans adopted by regional transportation planning organizations, so long as such plans are designed to achieve emission reduction limits consistent with RCW 70.235.020. Projects eligible under this subsection are ones that:

(a) Support equitable transit-oriented development, including transit-oriented development that:

(i) Is predominately affordable housing;

(ii) Reduces vehicle miles traveled; and

(iii) Reduces transportation costs and logistical burdens for low-income individuals and families, and infirm, disabled, or otherwise vulnerable populations;

(b) Expand or improve public transportation infrastructure, including, but not limited to, projects that promote connections between communities that are underserved by public transportation infrastructure, prioritizing improvements and vehicles that rely on electricity or rely on fuels not derived from fossil fuels, and supporting nonmotorized mobility; or

(c) Support programs and infrastructure that reduce vehicle miles traveled through commute trip reduction strategies including, but not limited to, employer-based initiatives.

(4) Ten percent of amounts appropriated to the sustainable infrastructure fund are provided solely for power sector projects eligible for funding from the sustainable infrastructure fund. Projects must exceed the requirements of chapter 19.285 RCW, where applicable, and:

(a) Achieve energy efficiency;

(b) Facilitate renewable energy integration, such as smart-grid technologies and energy storage;

(c) Encourage the deployment of clean distributed energy resources;

(d) Increase system resiliency and encourage the development of electricity microgrids with clean energy; or

(e) Support other demand side resources that reduce generation or capacity needs.

(5) For purposes of ranking the priority of transportation, land use, and power sector project applications for funding from the sustainable infrastructure fund, the board must consider, at minimum, the criteria in (a) through (g) of this subsection (5) for both implementation projects or imputed as the predicted final output of a planning project. In addition, the board may develop additional subject-appropriate criteria for ranking the priority of project applications against other projects within the same categories of projects specified in subsection (2), (3), or (4) of this section. Additionally, the board must prioritize proposals that include the high labor standards described in section 115(3) of this act.

(a) The total volume of emissions of carbon dioxide equivalent avoided as a result of the project, measured over the anticipated lifetime of the project;

(b) The cost per ton of carbon dioxide equivalent avoided as a result of the project, measured over the anticipated lifetime of the project;

(c) The degree to which the project will reduce emissions of other dangerous air pollutants regulated under chapter 70.94 RCW or public exposures to pollutants regulated under chapter 90.48 or 70.105D RCW;

(d) Whether the project will benefit a disproportionately impacted community identified in section 114 of this act and by the board established in section 103 of this act;

(e) The likelihood of project completion in the absence of support from the sustainable infrastructure fund;

(f) The degree to which the project is consistent with projects funded under multiple categories of the sustainable infrastructure fund; and

(g) The degree to which funding from the sustainable infrastructure fund will be matched by project proponents or supplemented by other funding sources, including in-kind contributions from the community or project sponsor.

(6) Should the total requested funding amount submitted to a category of the sustainable infrastructure fund fall short of total funding available in the category, remaining funding must be reallocated to the other categories in proportion to their relative allocation in this section.

(7) The board may adopt rules establishing policies and priorities for projects to be financed from moneys in the sustainable infrastructure fund. To support the investment prioritization decisions for the use of sustainable infrastructure funds under this subsection, the board must rely on the advice of the department of commerce.

(8) Before November 1st of each even-numbered year, the board must recommend to the governor a prioritized list of all projects to be funded from the sustainable infrastructure fund. The governor must submit this list in the capital budget request to the legislature. The legislature may remove projects from the list recommended by the governor. The board may not sign contracts or otherwise financially obligate funds from the sustainable infrastructure fund as provided in this chapter before the legislature has appropriated funds for a specific list of projects. Projects must be funded in order of rank consistent with other requirements in this section. In the event that a project ranked high enough to receive funding becomes ineligible for funding after initial application and rankings, funding must be moved to the next ranked project on the list. The list must include, but not be limited to, a description of each project and any particular match requirement.

(9) Disbursements from the entirety of the sustainable infrastructure fund must collectively be consistent with section 115 of this act. However, specific funding allocations in subsections (2), (3), and (4) of this section are not individually required to be consistent with section 115 of this act.

NEW SECTION. **Sec.**  DEPARTMENT OF COMMERCE—CARBON REDUCTION INVESTMENT PRICE. (1) By March 1, 2018, the Washington State University extension energy program must complete a clean energy investment study to recommend appropriate initial investment prices per ton of carbon dioxide equivalent of greenhouse gas emission reductions for a variety of eligible project types. This study must take into account greenhouse gas emission reduction project prices in regulatory and voluntary carbon reduction programs operated in other jurisdictions and be set at the minimum level necessary to catalyze investment in these project categories.

(2) On the basis of the study completed in subsection (1) of this section and consistent with the timelines in subsection (3) of this section, the department of commerce must set investment prices for different categories of emission reduction projects in the state based on the quantifiable and verifiable amount of carbon reduction to be achieved by the project.

(3) By July 1, 2018, and July 1st of each even-numbered year thereafter, the department of commerce, in consultation with the Washington State University extension energy program and other relevant agencies, must determine the investment prices for a range of emissions reduction projects for the forthcoming two years. The investment prices must be published in the form of a set schedule detailing the investment prices for each particular category of eligible project during the following two years. The investment price may not exceed one hundred dollars in 2017 dollars per ton of carbon dioxide equivalent of reduced emissions of greenhouse gases. In setting biennial carbon investment prices, the department of commerce must consider the recommendation of the Washington State University extension energy program in subsection (1) of this section, as well as the incentive size that it determines to be minimally necessary to overcome barriers to deployment in relevant sectors of the clean energy economy. Upon the request of a project applicant, the department of commerce and the Washington State University extension energy program may consider additional project types beyond those initially identified as eligible for funding under this section.

NEW SECTION. **Sec.**  UTILITY-TAX CREDIT INVESTMENTS. (1)(a) A light and power business may claim a credit of sixty percent of taxes due under this chapter for each reporting period if they meet the criteria in subsection (2) of this section. A gas distribution business may claim a credit of thirty percent of taxes due under this chapter for each reporting period if they meet the criteria in subsection (3) of this section.

(b) In order to claim the credit, a light and power business or a gas distribution business must submit to the department:

(i) Documentation of plan approval under subsection (4) of this section; and

(ii) The certificate received under subsection (5) of this section that is associated with the most recent annual report filed by the light and power business or gas distribution business.

(c) If the amount of tax due reported on a return under this chapter is amended or adjusted to correct the amount of tax properly due, the credit amount must be adjusted accordingly. The credit must be taken in a form and manner as required by the department. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in place of credits.

(d) In the event that a light and power business or a gas distribution business elects not to claim the credit allowed under this section on its return, the portion of the tax due under this chapter that is eligible for the credit must be calculated by the department and the department must submit this information to the state treasurer. The state treasurer must deposit the calculated amount into the carbon reduction investment fund to be spent consistent with section 110 of this act.

(2)(a) To qualify for the credit in subsection (1) of this section, a light and power business must apply the amount of the credit taken in subsection (1) of this section and must use the funds for the purposes described in this subsection (2). The light and power business must prioritize funds for avoiding greenhouse gas and other pollution from power generation associated with the acquisition of generating resources in order to meet new capacity or energy resource needs. A light and power business must use tax credit investment funds to offset the incremental cost, if any, of acquiring the lowest reasonable cost nonemitting resource bundle to meet new capacity or energy resource needs identified within five years of the calendar year in which funds are collected.

(i) New capacity or energy resource needs may arise from, but are not limited to, electricity load growth, changes in capacity needs, changes in needs for ancillary services, changes in reliability needs, changes in flexibility needs, or needs arising due to replacing electricity generation.

(ii) Any entity receiving retained tax revenue under subsection (1) of this section that is also eligible to retain tax funds under subsection (3) of this section must prioritize funds retained under both sections for this purpose.

(iii) The light and power business may decide the manner for using the funds consistent with the intent of this section that is most cost-effective, including up-front payment of capital expenditures, applying future receipts from retained tax funds to offset amortized capital costs, competitive procurement of clean energy projects, or other mechanisms.

(iv) Nothing in this section establishes a preference for specific ownership structures or business models for resources acquired to meet new energy or capacity needs.

(v) To the extent the lowest reasonable cost nonemitting resource bundle includes demand side resources, at least twenty-five percent of these investments must support projects that benefit either:

(A) Customers whose household income is at or below two hundred percent of the federal poverty line; or

(B) Disproportionately impacted communities identified in section 114 of this act.

(b) Upon meeting the requirements established under (a) of this subsection, a light and power business must invest any remaining tax credit investment funds in clean energy projects that reduce greenhouse gas emissions resulting from the consumption of energy in Washington state, including transportation electrification projects and other electrification projects that reduce the direct use of fossil fuels in residential, commercial, and industrial sectors within the area served by the light and power business. At least fifty percent of the investments under this subsection (2)(b) must support projects that benefit disproportionately impacted communities identified in section 114 of this act, including, but not limited to, projects that reduce energy consumption, reduce spending on motor vehicle and special fuel, and deploy technologies that reduce or avoid air pollution from the combustion of fossil fuels.

(3)(a) To qualify for the credit in subsection (1) of this section, a gas distribution business must apply the amount of the credit taken in subsection (1) of this section and must use the funds for the purposes described in this subsection (3). Except as provided for in (a)(ii) of this subsection, a gas distribution business must prioritize tax credit investment funds for investments and projects that decrease the use of fossil fuel gas by its customers and replace these sales with alternatives that are not fossil fuels, including, but not limited to, renewable natural gas and synthetic natural gas not produced from fossil fuels.

(i) Eligible investments include but are not limited to spending to address the incremental cost of nonfossil fuel gas versus fossil fuel gas or investments that expand manufacture of nonfossil fuel gas, whether owned by the gas distribution business or in partnership with other private corporations or public entities.

(ii) A gas distribution business may decide the manner for using the funds consistent with the intent of this section that is most cost-effective. In the case that a gas distribution business invests in increasing manufacturing capacity of nonfossil fuel gas, fund uses may include, but are not limited to, up-front payment of capital expenditures, applying future receipts from retained carbon tax funds to offset amortized capital costs, investing in other entities manufacturing nonfossil fuel gas that are contingent on preferred rates or preferential access to the products, or other mechanisms.

(b)(i) Upon meeting the requirements established under (a) of this subsection, a gas distribution business must spend any remaining tax credit investment funds to invest in clean energy projects that reduce greenhouse gas emissions resulting from the consumption of energy in Washington state, including:

(A) Transportation projects that replace the use of motor vehicle fuel and special fuel with electricity or alternatives not derived from fossil fuels; and

(B) Other projects that reduce the direct use of fossil fuels in residential, commercial, and industrial sectors within the area served by the gas distribution business.

(ii) At least thirty-five percent of the investments in (b)(i) of this subsection (3) must support projects that benefit low-income customers, including, but not limited to, projects that reduce energy consumption, reduce spending on motor vehicle and special fuel, and deploy technologies that reduce or avoid air pollution from the combustion of fossil fuels.

(4) Clean energy investment plans must be developed for the purpose of administering tax credit investment funds retained under this section.

(a) The clean energy investment plans developed by gas distribution businesses and by light and power businesses that are investor-owned utilities are subject to the following requirements:

(i) The utilities and transportation commission has the authority to review and approve a gas distribution business or an investor-owned utility's clean energy investment plan. The commission may determine if the clean energy investments in the plan are prudent based on its policies and practices; and

(ii) Investor-owned utilities and gas distribution businesses must actively seek participation of their consumers and input in the development of the clean energy investment plan from the board created in section 103 of this act. An investor-owned utility or gas distribution business may not make any investments using tax funds retained under this section unless its clean energy investment plan has been approved by the utilities and transportation commission, and the board has been given an opportunity to provide recommendations.

(b) The clean energy investment plans developed by consumer-owned utilities are subject to the following requirements:

(i) The governing body of a consumer-owned utility that develops a clean energy investment plan must actively seek participation of its customers in the development of the plan and must provide an opportunity for public hearing and comment prior to finalizing the plan; and

(ii) The consumer-owned utility must submit its clean energy investment plan to the department of commerce for review and approval. A consumer-owned utility may not make any investments using tax credit investment funds unless its clean energy investment plan has been approved by the department of commerce and the board has been given an opportunity to provide recommendations to the utility.

(5)(a) Light and power businesses and gas distribution businesses that utilize the tax credit under this section must develop an annual report detailing the disposition of funds. These businesses must submit their annual reports to the department of commerce and the board created in section 103 of this act. In the case of investor-owned utilities and gas distribution businesses, the annual reports must also be submitted to the utilities and transportation commission. In each annual report, the light and power business or gas distribution business must include:

(i) A description of all funds spent and a calculation of greenhouse gas emissions reduced or avoided by the light and power business or gas distribution business;

(ii) A calculation of greenhouse gas emissions reduced or avoided through investments outside the light and power business or gas distribution business;

(iii) A description of benefits consistent with the requirements of subsections (2)(a)(v) and (3)(b)(ii) of this section; and

(iv) If applicable, a description of why tax credit investment funds were not spent.

(b) The department of commerce must review the reports of investor-owned utilities, consumer-owned utilities, and gas distribution businesses and must prepare an electronic report summarizing the total amount invested by all light and power businesses and gas distribution businesses, the types of projects receiving investments, the total greenhouse gas emissions reduced or avoided by light and power businesses and gas distribution businesses, the total greenhouse gas emissions avoided through these investments, and other information determined applicable by the department of commerce. This annual report must be made public on the department of commerce's web site.

(c) Each year, the department of commerce, in the case of consumer-owned utilities, and the utilities and transportation commission, in the case of gas distribution businesses and investor-owned utilities, must issue a certificate to a light and power business or a gas distribution business upon determining that the investments described in the annual report are consistent with the plan approved under subsection (4) of this section and the requirements of this section.

(d) The department of commerce may adopt rules to implement this subsection (5).

(6)(a) Tax credit investment funds must be spent within five years of receipt, as determined by the department of commerce in the instance of consumer-owned utilities, or by the utilities and transportation commission in the instance of investor-owned utilities and gas distribution businesses. If the tax credit investment funds are not spent within five years of the application of the credit or if the department of commerce or the public utilities commission determines that the funds were not spent on qualifying investments, the remaining tax is immediately due with any interest and penalties assessed by the department. Any remaining tax due under this section and associated penalties and interest must be forfeited to the state treasurer to be deposited in the carbon reduction investment fund and spent consistent with section 110 of this act.

(b) No more than five percent of the tax credit investment funds may be spent on administration of the clean energy investments made by the light and power business or gas distribution business under this section.

(c) An entity eligible for the tax credit under this section is not authorized to earn a rate of return from the portion of investments paid for with tax credit investment funds.

(7) In addition to the department of revenue, the utilities and transportation commission, in the case of investor-owned utilities and gas distribution businesses, and the department of commerce, in the case of consumer-owned utilities, may adopt rules to implement this section.

NEW SECTION. **Sec.**  CUMULATIVE IMPACTS ANALYSIS AND IDENTIFICATION OF DISPROPORTIONATELY IMPACTED COMMUNITIES. (1) By March 1, 2018, for the purposes of mitigating harm from climate change and dangerous air pollutants that impact human health or the environment and are regulated under the federal clean air act or chapter 70.94 RCW, the department of health must conduct a cumulative impacts analysis to identify the geographic boundaries of disproportionately impacted communities in Washington. The department of health must identify, map, and rank disproportionately impacted communities, based on cumulative impacts measured on a census tract scale based on geographic, socioeconomic, public health, and environmental burden, vulnerability, and hazard criteria, including:

(a) Areas that are disproportionately affected by dangerous air pollutants and other environmental burdens and vulnerabilities, including climate change vulnerabilities, such as vulnerabilities to wildfires, drought or severe flooding, and hazards with negative public health effects;

(b) Areas with high concentrations of people that are of low income and wealth, that have low levels of educational attainment, that feature high rates of unemployment, that feature low levels of homeownership or where the average cost of rent is a high proportion of average income, linguistic isolation, or other vulnerability characteristics; and

(c) Other factors that are identified by the department of health.

(2) The cumulative impacts analysis may integrate with and build upon other population tracking resources used by the department of health.

(3) By March 1, 2022, and every two years thereafter, the department of health, under advisement from the board, must update the identification of disproportionately impacted communities pursuant to this section. By March 1, 2024, and every four years thereafter, the department of health must review and revise the methodology for identifying disproportionately impacted communities to reflect best practices.

NEW SECTION. **Sec.**  OVERLAY INVESTMENT CRITERIA. (1) The following overlay investment criteria applies to the expenditures in sections 107 through 111 of this act:

(a) Each biennium, a minimum of twenty-five percent of expenditures must be used for projects or activities that provide direct, meaningful, and assured benefits to disproportionately impacted communities;

(b) Each biennium, a minimum of ten percent of expenditures, in addition to the twenty-five percent used in (a) of this subsection, must be used for projects or activities that provide direct, meaningful, and assured benefits and which are located within disproportionately impacted communities, including overlap into an adjacent buffer area of one-quarter mile of disproportionately impacted communities identified in section 114 of this act; and

(c) Each biennium, a minimum of five percent of expenditures, in addition to the twenty-five percent used in (a) of this subsection and the ten percent used in (b) of this subsection, must be used for projects or activities that provide direct, meaningful, and assured benefits to communities with low incomes, as measured by census tracts where the median income is sixty percent or less of the state median income.

(2) For purposes of this section, a project or activity is considered to benefit a community if the project or activity:

(a) Reduces one or more socioeconomic or environmental disparities that contribute significantly to the cumulative impact ranking in a particular impacted tract;

(b) Protects a community from the anticipated impacts of climate change, including, but not limited to, reducing the susceptibility of rural communities to wildfires, coastal communities to sea level rise, and riparian communities to flooding; or

(c) Meets a community need identified by members of that community consistent with the intent of this act, as determined by the board created in section 103 of this act based upon evidence that the proponents of the project or activity sought and accepted the feedback of persons and organizations that live or are active in the disproportionately impacted community.

(3) All investment decisions must give preference to projects that meet high labor standards criteria that provide prevailing wage rates determined by local collective bargaining, apprenticeship and preapprenticeship utilization and preferred entry standards, community workforce agreements to prioritize local hiring, and the use of domestic content to lower greenhouse gas emissions in procurement decisions wherever practicable.

(4) Only projects that commence after July 1, 2017, are eligible to receive funding.

(5) Each state agency with control of expenditures of carbon pollution mitigation tax receipts must track whether expenditures of funds from accounts under that agency's administrative control meet the overlay investment criteria of subsection (1) of this section. By September 1, 2021, and September 1st of each odd-numbered year thereafter, each state agency with administrative control over the expenditure of carbon pollution mitigation tax receipts must submit information to the department of commerce and the board pertaining to the expenditures of money from the clean energy account, clean water climate program account, and sustainable forest health account, including the location, number, and description of people affected, and explanation of the benefits to disproportionately impacted communities.

(6) Upon request, the department of commerce must provide technical and procedural assistance to project applicants for projects that will benefit disproportionately impacted communities. Assistance by the department of commerce may take the form of direct technical assistance by department staff in support of the grant applications that benefit disproportionately impacted communities, or by facilitating access to resources and assistance made available through other state agencies or community-based organizations under contracts with the state to provide these services.

(7) By December 1, 2021, and each odd-numbered year thereafter, the department of commerce, with prior approval of the findings and recommendations by the board, must submit a report to the legislature demonstrating whether the expenditures from the clean energy, clean water climate program, and sustainable forest health accounts complied with the overlay investment criteria of this section and associated impacts from those investments. In the event that the overlay investment criteria requirements of this section are not met, the report must include recommendations for how investments of expenditures from receipts of the carbon pollution mitigation tax can come into compliance in future biennia.

NEW SECTION. **Sec.**  GENERAL PROVISIONS. (1) The expenditure of funds under sections 107, 108, 110, 111, and 113 of this act must be consistent with other federal, state, and local laws. Investments pursuant to those sections may not support projects that are otherwise legally required by federal, state, or local laws or that are required as a result of a legal settlement or other action binding on the potential recipient of the funds. All nonpower attributes associated with the investments made with funds under sections 110, 111, and 113 of this act may not be used to meet compliance obligations or to obtain benefits under any other statute, law, or regulation.

(2) Except for investments in efficiency improvements at EITE facilities, the expenditure of funds under sections 110 and 113 of this act may not create new or expand existing fossil fuel infrastructure, including, but not limited to fossil fuel vehicles, electricity generation from fossil fuels, and indoor heating and cooling and other project types that rely on fossil fuel infrastructure. Vehicles that rely on more than one fuel source are eligible to receive funding under those sections even if one of the fuels is derived from fossil fuels so long as the vehicle can travel at least forty miles using a fuel source that does not result in the emission of greenhouse gases directly from the vehicle.

(3) Nothing in this chapter precludes a person subject to the tax imposed in chapter 82.--- RCW (the new chapter created in section 403 of this act) from being eligible to receive funds distributed under this chapter.

NEW SECTION. **Sec.**  LIMITATION ON ADMINISTRATIVE EXPENSES. No more than five percent of the receipts from the tax imposed under chapter 82.--- RCW (the new chapter created in section 403 of this act) may be appropriated to the ongoing administration of the tax, the implementation of the programs directed by this chapter, or other related tax and program implementation and enforcement activities of the department of ecology, the department of revenue, department of social and health services, the department of commerce, the department of health, the Washington State University extension energy program, the recreation and conservation office, the office of the attorney general, or other state activities required under this act.

**PART II**

**Carbon Pollution Mitigation Tax**

NEW SECTION. **Sec.**  DEFINITIONS. For the purposes of this chapter unless the context clearly requires otherwise, the definitions in section 102 of this act apply to this chapter.

NEW SECTION. **Sec.**  CARBON POLLUTION MITIGATION TAX IMPOSED. (1) A carbon pollution mitigation tax is levied and collected on the carbon content of fossil fuels and electricity, including imported electricity, sold or used within this state.

(2) Beginning July 1, 2018, the tax rate is equal to fifteen dollars per metric ton of carbon dioxide equivalent. Beginning July 1, 2019, the rate of the tax increases by seven percent plus inflation each July 1st until July 1, 2047, except as provided otherwise in section 206 of this act.

(3) The tax levied under this section is imposed only once with respect to the same fossil fuel or electricity generated from fossil fuels. The tax on electricity is imposed consistent with section 204 of this act. The tax on fossil fuels is imposed consistent with section 205 of this act. The tax on the carbon content of crude oil or crude oil derivatives consumed by or in a refinery facility is imposed on the refinery facility.

(4)(a) Except as specified in section 205 of this act, for persons subject to any tax imposed under chapter 82.04, 82.08, 82.12, or 82.16 RCW, the frequency of reporting and payment of the carbon pollution mitigation tax must, to the extent practicable, coincide with a person's reporting periods for the taxes imposed under chapter 82.04, 82.08, 82.12, or 82.16 RCW.

(b) Returns must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize.

(5) For purposes of determining the amount of tax owed by a person under this section, the department must use carbon calculations as determined by the department of ecology under section 212 of this act.

(6) For purposes of imposing the tax under this chapter, the department must assume the carbon content of electricity that is not attributed to a generation source under the rules adopted pursuant to section 213 of this act is equal to one metric ton of carbon dioxide per megawatt-hour.

(7)(a) Electricity and fuels subject to a similar tax or price imposed in another jurisdiction before being imported into Washington are exempt from the portion of the tax equal to the amount paid the other jurisdiction.

(b) If the rate of a similar tax or price imposed in another jurisdiction exceeds the rate of the tax imposed under this section, then no additional tax associated with the fuels or electricity is due under this section. The sum of the tax rates paid in Washington and another jurisdiction for electricity and fuels imported into Washington may not exceed the rate of the tax imposed in subsection (2) of this section. However, a person that has paid taxes or a price on fuels or electricity in another jurisdiction is not entitled to any remittance from Washington for the difference between the rate of the tax imposed in Washington and the higher rate or tax paid in the other jurisdiction.

(c) For purposes of this section, "price" means the cost of allowances, or a similar mechanism, for fossil fuels purchased through a greenhouse gas emissions trading program administered by another state of the United States, a political subdivision of any other state of the United States, or a foreign country or political subdivision.

(8) Each sale within Washington of a fossil fuel or electricity must indicate on the invoice or other document of sale:

(a) The amount of the tax paid or to be associated with the sold fossil fuel or electricity;

(b) The rate of the tax paid or to be paid;

(c) The person who paid or will pay the tax; and

(d) Other information required by rules adopted by the department. Rules adopted by the department under this subsection (8)(d) must be, at a minimum, sufficient to facilitate the remittance of tax for uses and facilities that are exempt from the tax under sections 208 and 209 of this act.

(9)(a) Upon request, the department must remit the amount of the tax to a person that is exempt under section 208 or 209 of this act, and for which the tax had been previously paid by a supplier or light and power business, as supported by the documentation specified in subsection (8) of this section.

(b) The department may issue remittance directly or in the form of credit against the payment of taxes otherwise owed by the person under chapters 82.04, 82.08, 82.12, and 82.16 RCW, at the time and frequency with which those taxes are reported and paid.

(c) If a purchaser of fossil fuels or electricity sold within this state fails to obtain an invoice or document of sale that complies with the rules adopted pursuant to subsection (8) of this section, or fails to present a certificate described under section 208(4) of this act, or both, the department may not remit tax to that person.

(10) The department must round the tax rate to the nearest cent. The department must publish on its web site the tax rate for any year by January 1st of that year.

(11) The obligation to collect and remit the tax provided under this section applies to:

(a) Persons who are required to be registered with the department under RCW 82.32.030(1);

(b) The state, its political subdivisions, and municipal corporations; and

(c) Persons who maintain a place of business in this state but who are not required to be registered with the department under RCW 82.32.030(1); and

(d) Any person consuming fossil fuels or electricity in Washington.

NEW SECTION. **Sec.**  CARBON POLLUTION MITIGATION ACCOUNT. (1) The carbon pollution mitigation account is created in the state treasury. All receipts from the carbon pollution tax under section 202 of this act must be deposited into the account.

(2) The state treasurer must distribute money in the account, as follows:

(a) Twenty million dollars in fiscal year 2019 to the mitigation grant account established in section 105 of this act;

(b) One hundred twenty million dollars per year to the mitigation grant account established in section 105(7) of this act;

(c) Four hundred million dollars in fiscal year 2019, and two hundred million dollars per fiscal year thereafter, adjusted by the fiscal growth factor, as defined in RCW 43.135.025, to the natural resources super account to fund activities of the ten natural resource agencies as specified in section 106 of this act and to allow transfers to the general fund with the intent of partially offsetting the impacts of the tax preferences specified in section 106 of this act; and

(d) To the general fund for payments of administrative expenses in an amount specified in the omnibus appropriations act, consistent with section 117 of this act.

(3) Prior to June 30 of each fiscal year, the office of financial management must project an amount expected to remain after the distributions consistent with subsection (2)(a) through (d) of this section. The office of financial management must notify the state treasurer of this amount, and the state treasurer must make distributions of this amount on or around June 30th as follows: Sixty-five percent to the clean energy account, twenty-three percent to the clean water climate program account, and twelve percent to the sustainable forest health account, consistent with sections 107 through 111 of this act.

NEW SECTION. **Sec.**  TAX ON ELECTRICITY. (1)(a) The tax imposed in section 202 of this act on electricity must be paid by the light and power business when it sells electricity for end use. Sales by a light and power business for subsequent resale are not subject to the tax. If a person consumes electricity for which a tax under section 202 of this act has not been paid by a light and power business, including, but not limited to, electricity consumed by a direct service industrial customer, then the person must pay the tax directly to the department.

(b) Except as provided in (c) of this subsection, a supplier of fossil fuels is not responsible for payment of the tax associated with fossil fuels directly or eventually supplied to a light and power business for purposes of generating electricity. A light and power business must pay the tax on fossil fuels used to generate electricity that is sold to Washington customers.

(c) The tax on fossil fuels sold for combined heat and power, as defined in RCW 19.280.020, is imposed on the seller of the fossil fuels, consistent with section 205 of this act. The department may not impose the tax on electricity from combined heat and power, and must instead impose upon and assign payment responsibility for the tax to the seller of the fossil fuels consistent with section 205 of this act.

(2)(a) Light and power businesses that obtain a fully completed exemption certificate, authorized under section 209 of this act, are exempt from the portion of the tax resulting from sales to the person providing the certificate. To qualify, an exemption certificate must be provided by an EITE facility to a light and power business within ninety days, or a longer period as may be provided by rule by the department of commerce, subsequent to the payment period associated with a sale of electricity. A light and power business that has received an exemption certificate from an EITE facility may not pay the tax under this chapter on electricity sold to the EITE facility or sell to an EITE facility electricity for which the tax has already been paid, to the maximum extent that the light and power businesses' electricity acquisition and sales processes make it possible for the light and power business to:

(i) Identify and acquire electricity for which the tax under this chapter has not already been paid; and

(ii) Identify sales of electricity to EITE facilities that are exempt from the tax.

(b) In the event that tax under this chapter has been paid on electricity that is exempt from the tax due to its ultimate sale to an EITE facility, the EITE facility may request a remittance from the department, consistent with the requirements of section 202 (8) and (9) of this act. Upon the request of the department, the light and power business must provide evidence that the tax was not imposed on electricity sold to an EITE facility.

(c) If the light and power business has not obtained an exemption certificate authorized under section 209 of this act within the period allowed subsequent to a payment period, the light and power business may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(d) The EITE facility and the light and power business is jointly and severally liable for taxes owed on electricity for which proper exemption and refund documentation has not been provided to the department.

NEW SECTION. **Sec.**  TAX ON FOSSIL FUELS. (1)(a) Except as provided in (b) and (c) of this subsection (1), the tax imposed in section 202 of this act on fossil fuels must be paid by a supplier consistent with this section.

(b) The tax on fossil fuels supplied to a light and power business for purposes of generating electricity is imposed consistent with section 204 of this act.

(c) If a person consumes fossil fuels for which a tax under section 202 of this act has not been paid, then the person is liable for the tax and must pay the tax directly to the department.

(2) The department must collect the tax on fossil fuels from a supplier:

(a) For motor vehicle fuel or special fuel, consistent with the points of taxation specified in RCW 82.38.030(9);

(b) For gas, consistent with the points of taxation specified in chapter 82.16 RCW, or, if the tax is not paid by a gas distribution business under chapter 82.16 RCW, consistent with the points of taxation provided in RCW 82.12.022 (1) through (3) and (8) through (10);

(c) For other petroleum products, at the first sale or use in Washington; and

(d) For sales to end users of fossil fuel types not listed elsewhere in this subsection, when sold to an end user or consumer.

(3) The department of licensing must coordinate with and provide information to the department regarding the sales of fuel and the collection of the fuel tax under chapter 82.38 RCW.

NEW SECTION. **Sec.**  TAX INCREASE MITIGATED UPON ACHIEVEMENT OF LIMITS. (1) If the department of ecology, based on data collected by the department on total electricity and fuels subject to the tax in the previous year, determines that:

(a) The sources of emissions covered by the tax imposed by this chapter are predicted to achieve or exceed their combined share of the emissions reductions necessary for the state to achieve the emissions limits established in RCW 70.235.020, the tax rate established in section 202 of this act must increase the following July 1st only by the rate of inflation;

(b) The sources of emissions covered by the tax imposed by this chapter are predicted to fall short of their combined share of the emissions reductions necessary for the state to achieve the emissions limits established in RCW 70.235.020 by no more than three percent of the overall statewide limit, the rate of the tax established in section 202 of this act must increase the following July 1st only by two percent plus the rate of inflation;

(c) The sources of emissions covered by the tax imposed by this chapter are predicted to fall short of their combined share of the emissions reductions necessary for the state to achieve the emissions limits established in RCW 70.235.020 by between three percent and five percent of the overall statewide limit, the rate of the tax established in section 202 of this act must increase the following July 1st only by four percent plus the rate of inflation.

(2) For purposes of this section, the combined share of emissions reductions for sources of emissions covered by the tax imposed by this chapter is the proportion of the greenhouse gas emissions in 2017 by entities subject to the tax relative to the state's overall emissions that year.

(3) The department of ecology must make the determinations required under this section by December 1st of each year.

NEW SECTION. **Sec.**  TAX ADMINISTRATION. All of the provisions in chapter 82.32 RCW have full force and application with respect to taxes imposed under the provisions of this chapter and section 113 of this act, except that the provisions of RCW 82.32.050(4) do not apply to tax credit investment funds under section 113 of this act. The department must develop and make available worksheets, tax tables, and guidance documents necessary to calculate the emissions of fossil fuels or inherent in electricity.

NEW SECTION. **Sec.**  EXEMPTIONS AND REDUCED RATES. (1) The tax levied and imposed under section 202 of this act does not apply to:

(a) Fossil fuels brought into this state by means of the fuel supply tank of a motor vehicle, vessel, locomotive, or aircraft;

(b) Fossil fuels or electricity that are prohibited from taxation under the Constitution of Washington or the Constitution of the United States;

(c) Fossil fuels or electricity that are exported or sold for export outside of Washington. Export to a federally recognized Indian tribal reservation located within this state is not considered export outside of Washington;

(d) Fossil fuels sold or used for aviation or maritime purposes;

(e) Biofuels or the biofuel component of blended fuels. For purposes of this subsection, "biofuel" includes, but is not limited to, biodiesel, biomethane, ethanol, and ethanol blend fuels and renewable liquid natural gas or liquid compressed natural gas made from biogas; or

(f) Motor vehicle and special fuel exempt from taxation under RCW 82.38.080.

(2) The tax levied and imposed under section 202 of this act is imposed on electricity and fossil fuels sold to or used by EITE facilities except as provided for in section 209 of this act.

(3) The tax levied and imposed under section 202 of this act does not apply to the following until July 1, 2039:

(a)(i) Diesel fuel or aircraft fuel sold or used solely for agricultural purposes, as those terms are defined in RCW 82.08.865; and

(ii) Diesel fuel or aircraft fuel, as those terms are defined in RCW 82.08.865, sold or used solely for forest management purposes;

(b) Fuel sold or used for the purpose of public transportation and for which the purchaser is entitled to a refund under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b);

(c) Fuel that is sold or used by a private, nonprofit transportation provider certified under chapter 81.66 RCW and for which the purchaser is entitled to a refund under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b);

(d) Fuel sold or used by the Washington state ferry system for use in a state-owned ferry; and

(e) Fuel sold or used for school buses, as defined in and consistent with the requirements of RCW 46.04.521.

(4) The department must make available a certificate for use by purchasers of fuels exempted under subsection (1)(d) or (3) of this section from the tax levied and imposed in section 202 of this act. Where tax was previously paid by a supplier or light and power business, tax amounts must be remitted consistent with section 202 (8) and (9) of this act.

(5)(a) The tax levied and imposed under section 202 of this act is phased in as described in this subsection for:

(i) Carbon content inherent in electricity; and

(ii) Residential uses of natural gas.

(b) The tax rate for these fuels is twenty-five percent of the rate described in section 202 of this act on July 1, 2018, fifty percent on July 1, 2020, seventy-five percent on July 1, 2022, and one hundred percent of the rate on July 1, 2024.

(6)(a) The purchase or use of electricity generated at a facility operating as of the effective date of this section for which a carbon dioxide mitigation plan was created under chapter 80.70 RCW makes a light and power business eligible for credit against taxes owed under this part in an amount equal to the amount annually paid by the facility to execute the plan. The credit under this subsection is limited to only the portion of costs to execute the plan that is equal to the portion of associated electricity produced by the facility that is taxable under this act. The credit under this subsection may not exceed two dollars of credit per ton of mitigated greenhouse gas emissions.

(b) A facility executing a carbon dioxide mitigation plan created under chapter 80.70 RCW may assign credits to light and power businesses purchasing or using power from the facility. The sum value of credits assigned by a facility in a year may not exceed the amount paid that year by the facility to execute the portion of the plan related to electricity generated by the facility that is taxable under this act.

(c)(i) In order for a light and power business to claim the credit allowed under this section, it must submit the following to the energy facility site evaluation council:

(A) Documentation, attested to by the facility, of the facility's costs to execute the carbon dioxide mitigation plan for the year in which the credit is claimed;

(B) If applicable, evidence that the light and power business's power purchase agreement with the facility includes the assignment of carbon mitigation plan tax credit to the light and power business for the year in which the credit is claimed;

(C) Upon request by the energy facility site evaluation council, a facility generating electricity for which credits are claimed under this subsection (6) must submit electricity sales data, power purchase contracts, and other documentation regarding the portion of electricity produced by the facility that is taxable under this act.

(ii) Upon receipt of the materials specified in (c)(i) of this subsection (6), the energy facility site evaluation council must certify the amount of credit for which a light and power business is eligible each year.

(iii) The light and power business must submit the certification received from the energy facility site evaluation council in order to be eligible to claim the credit allowed under this subsection (6). The department must apply a credit equal to the amount certified by the energy facility site evaluation council.

NEW SECTION. **Sec.**  EITE FACILITY TAX EXEMPTION. (1) Beginning July 1, 2019, and each July 1st thereafter, each EITE facility that has obtained a certificate from the department of commerce consistent with section 210 of this act must submit a report to the department of commerce, in a form and at time intervals adopted by rule by the department of commerce, regarding the EITE facility's consumption of fossil fuels and electricity and the associated tax paid on the fossil fuel or electricity for the preceding twelve months. Beginning July 1, 2020, the report must also include the benchmark annual emissions volume established for the facility as determined by the department of ecology under section 211 of this act.

(2) EITE facilities may qualify for an exemption from the tax under section 202 of this act. To qualify for an exemption, an EITE facility must:

(a) Have submitted the report required under subsection (1) of this section by the most recent date on which the report was due;

(b) Obtain an exemption certificate from the department of commerce; and

(c) Provide the certificate to the light and power business, supplier, or other taxable person under this act at the time of purchase of electricity or fossil fuels.

(3) The EITE facility must renew the exemption certificates authorized under this section with the department of commerce upon expiration, as specified in section 210 of this act. The department of commerce may not issue an exemption certificate under this section to any EITE facility that has not filed the report required in subsection (1) of this section.

(4) The exemption is subject to reduction or cancellation in the event that, despite exemption from the tax, a certified EITE facility closes a facility within the state, except when such a closure is a result of normal changes in economics or business cycle, or moves significant numbers of jobs to facilities outside Washington state. The department of commerce, with input from the board, must provide a determination to the department of revenue regarding the amount of the tax exemption to be recovered from the EITE facility, which must be proportional to the percentage of the EITE facility's number of full-time employee positions in the state that moved to facilities outside of Washington state.

(5)(a) The department must recover previously exempted tax in the event that the department of commerce determines that reductions were a result of relocation and not normal changes in economics or business cycle. In recovering previously exempted taxes in such an event, the department must seek recovery of the proportional amount described in subsection (4) of this section of the tax that would have otherwise been due over the previous five calendar years, plus interest assessed consistent with RCW 82.32.050. The board and the department of commerce must also require a commensurate reduction in tax exemption or cancellation of the exemption, effective with the next taxable event occurring after the determination in subsection (4) of this section is made.

(b) An EITE facility may appeal a tax exemption reduction or cancellation determination to the board within twenty days of receiving service of notice of the determination. The hearing and review procedures must be conducted by the board in accordance with chapter 34.05 RCW.

NEW SECTION. **Sec.**  IDENTIFICATION OF ENERGY-INTENSIVE AND TRADE-EXPOSED FACILITIES. (1)(a) By July 1, 2018, the department of commerce must adopt a rule that identifies energy-intensive and trade-exposed facilities. An EITE facility identified by the department of commerce under this section is exempt from the tax imposed in chapter 82.--- RCW (the new chapter created in section 403 of this act), as applied to fossil fuels and electricity consumed by the facility. If the tax was previously paid by a supplier or a light and power business, the provisions of section 202(9) of this act apply.

(b)(i) In adopting the July 1, 2018 rule for EITE facilities under (a) of this subsection, the department of commerce must designate as an EITE facility any facility that has both a greater greenhouse gas emissions intensity of production and a greater trade share of goods than facilities categorized by any single North American industry classification system code listed in (c) of this section. The department of commerce must also designate as EITE facilities all facilities in a single North American industry classification system code category, if that category has, on average, both a greater greenhouse gas emissions intensity of production and a greater trade share of goods than the corresponding averages for any single North American industry classification system code listed in (c) of this section.

(ii) The department of commerce may also designate other EITE facilities with consideration given to their greenhouse gas emissions intensity of production and trade share of goods. The goal of the rules adopted under this section must be to reduce the leakage of emissions and associated economic activity to jurisdictions in which greenhouse gas emissions are not taxed or regulated.

(c) In adopting the rule for EITE facilities under (a) of this subsection, in addition to any EITE facilities identified pursuant to the criteria of (b) of this subsection, the department of commerce must designate as EITE facilities all facilities with the following primary North American industry classification system (NAICS) codes, using the system in effect as of January 1, 2016:

(i) 112310: Chicken egg production;

(ii) 112320: Broilers and other meat type chicken production;

(iii) 112330: Turkey production;

(iv) 112340: Poultry hatcheries;

(v) 112390: Other poultry production;

(vi) 311211: Flour milling;

(vii) 311221: Wet corn milling;

(viii) 311224: Soybean and other oilseed processing;

(ix) 311225: Fats and oils refining and blending;

(x) 311230: Breakfast cereal manufacturing;

(xi) 311411: Frozen fruit, juice, and vegetable manufacturing;

(xii) 311412: Frozen specialty food manufacturing;

(xiii) 311421: Fruit and vegetable canning;

(xiv) 311422: Specialty canning;

(xv) 311423: Dried and dehydrated food manufacturing;

(xvi) 311511: Fluid milk manufacturing;

(xvii) 311512: Creamery butter manufacturing;

(xviii) 311513: Cheese manufacturing;

(xix) 311514: Dry, condensed, evaporated, dairy product manufacturing;

(xx) 311520: Ice cream and frozen dessert manufacturing;

(xxi) 311611: Animal (except poultry) processing;

(xxii) 311612: Meat processed from carcasses;

(xxiii) 311613: Rendering and meat byproduct processing;

(xxiv) 311615: Poultry processing;

(xxv) 311710: Seafood product preparation and packaging;

(xxvi) 311812: Commercial bakeries;

(xxvii) 311821: Cookie, cracker manufacturing;

(xxviii) 311824: Flour mixes and dough manufacturing from purchased flour;

(xxix) 311830: Tortilla manufacturing;

(xxx) 311911: Roasted nuts and peanut butter manufacturing;

(xxxi) 311919: Other snack food manufacturing;

(xxxii) 311930: Flavoring syrup and concentrate manufacturing;

(xxxiii) 311941: Mayonnaise, dressing, and other prepared sauce manufacturing;

(xxxiv) 311942: Spice and extract manufacturing;

(xxxv) 311991: Perishable prepared food manufacturing;

(xxxvi) 311999: All other miscellaneous food manufacturing;

(xxxvii) 322110: Pulp mills;

(xxxviii) 322121: Paper (except newsprint) mills;

(xxxix) 322122: Newsprint mills;

(xl) 322130: Paperboard mills;

(xli) 325188: All other basic inorganic chemical manufacturing;

(xlii) 325199: All other basic organic chemical manufacturing;

(xliii) 315311: Nitrogenous fertilizer manufacturing;

(xliv) 327211: Flat glass manufacturing;

(xlv) 327213: Glass container manufacturing;

(xlvi) 327310: Cement manufacturing;

(xlvii) 327410: Lime manufacturing;

(xlviii) 327420: Gypsum manufacturing;

(xlix) 321111: Iron and steel mills;

(l) 331312: Primary aluminum production;

(li) 331315: Aluminum sheet, plate, and foil manufacturing;

(lii) 334413: Semiconductor and related device manufacturing;

(liii) 336411: Aircraft manufacturing; and

(liv) 336413: Other aircraft parts and auxiliary equipment manufacturing.

(2) Beginning January 1, 2018, upon the request of an EITE facility that meets the qualifying criteria adopted by rule pursuant to subsection (1) of this section or, the department of commerce must issue a certificate denoting EITE facility status. The department of commerce must maintain a record of all EITE facility certificate holders statewide, and must share its records with the department of revenue to facilitate administration of the tax imposed under chapter 82.--- RCW (the new chapter created in section 403 of this act).

(3) The department of commerce must provide an expiration date for certificates issued under this section that is no less than four years and no more than six years from date of issuance. Where possible, the department of commerce must set expiration at the close of a fiscal biennium. The department of commerce must reissue a certificate upon expiration, provided that the facility retains a designation as an EITE facility at the time of the certificate's expiration.

(4) By January 1, 2022, and every four years thereafter, the department of commerce must review, and, as appropriate, amend the rule adopted in (1) of this section. The rule review must include a reevaluation of the trade exposure and energy intensity of EITE facilities designated under subsection (1)(a) or (b) of this section, and may include an amendment to the EITE designation of a facility, as appropriate. The department of commerce may undertake new evaluations of the trade exposure and energy intensity of an EITE facility designated under (1)(c) of this section, but may not revoke the EITE status of a facility designated under (1)(c) of this section.

(5)(a) By December 31, 2026, the joint legislative audit and review committee must conduct a review of the tax preferences available to EITE facilities under this chapter and the tax exemptions in section 208 of this act.

(b) The committee review must include, but is not limited to:

(i) An analysis of any net economic impacts on job creation or economic activity attributable to the treatment of EITE facilities under this act and the fuels exempted under section 208 of this act;

(ii) The impact of the exemptions in section 208 of this act and EITE facility treatment under the tax on total greenhouse gas emissions, including both in-state emissions and out-of-state emissions that may be attributable to the leakage of economic activity;

(iii) Whether technological or economic changes have increased or reduced the necessity of continued exemption of EITE facility status; and

(iv) The cost, in foregone revenue, associated with the treatment of EITE facilities under this act and the exemptions in section 208 of this act.

(c) The committee must report to the governor and the appropriate committees of the legislature and make recommendations as to whether the exemptions and treatment of EITE facilities under the tax should be amended to provide appropriate incentive for reducing global greenhouse gas emissions and meeting other stated objectives in this act without unnecessary and undesirable economic outcomes on Washington workers and consumers.

NEW SECTION. **Sec.**  EITE FACILITY BENCHMARK SETTING. (1) Beginning February 1, 2020, and each February 1st thereafter, each EITE facility must provide the following data to the department of ecology:

(a) Data that allows the department of ecology to calculate the actual or projected emissions of the EITE facility, including indirect emissions associated with the consumption of electricity by the EITE facility;

(b) Actual or projected production data for the energy-intensive and trade-exposed facility;

(c) Actual or projected operating hours and days of operation during a calendar year;

(d) Information regarding an EITE facility's processes that consume fossil fuels, use electricity, or otherwise are associated with the emissions of greenhouse gases; and

(e) Any other information requested by the department of ecology that is germane to calculations of the greenhouse gas intensity of production at the EITE facility.

(2) The EITE facility must also make available personnel who can assist the department of ecology in assigning a baseline greenhouse gas emissions value for the facility. If the EITE facility does not provide the department of ecology with information or access to personnel in a timely manner, the department of ecology may use the best information available to the department to conservatively estimate any missing data and assign a baseline greenhouse gas emissions value.

(3) For each EITE facility, the department of ecology must establish two benchmark volumes of annual greenhouse gas emissions based upon a determination of the greenhouse gas emissions associated with the most efficient fifty percent of similar existing facilities in the United States or Canada, adjusted for production volumes. One benchmark volume must be based solely on the direct emissions of the EITE facility, and one benchmark volume must be based on the sum of the direct emissions of the EITE facility and the indirect emissions associated with the consumption of electricity by the EITE facility. In making the assessment of the greenhouse gas emissions intensity of the fiftieth percentile of similar existing EITE facilities, the department of ecology:

(a) Must attempt to find existing parties, either local or otherwise, that are similar to the energy-intensive and trade-exposed facility because they make or supply similar products using similar processes as the EITE facility;

(b) May prorate emissions or production data to scale data from similar facilities to the energy-intensive and trade-exposed facility subject to the tax imposed under section 202 of this act;

(c) Must use average emissions data from the most recent three to five-year period that such data is available for the energy-intensive and trade-exposed facility and for similar facilities identified; and

(d) Must use best available engineering methods to estimate greenhouse gas emissions from the EITE facilities, if similar facilities do not exist.

(4) By June 1, 2020, and each June 1st thereafter, the department of ecology must determine, based on both the production volume of the EITE facility and the greenhouse gas emissions intensity of the fiftieth percentile of similar existing EITE facilities as determined in subsection (3) of this section, whether each EITE facility that submitted information to the department of ecology under subsection (1) of this section has exceeded the indirect and direct fiftieth percentile benchmark emissions volumes during the preceding year.

(5) An EITE facility is eligible to submit project proposals to the clean energy account detailed in section 109 of this act, in order to work towards greater efficiency and to help those EITE facilities below the fiftieth percentile to exceed that benchmark. This provision does not limit the eligibility of other public or private applicants to these funds.

(6) The department of ecology may adopt rules to implement this section.

(7) Information submitted to the department of ecology pursuant to subsection (1)(b), (c), or (d) of this section is not subject to public disclosure under chapter 42.56 RCW.

(8) The failure to meet a benchmark emissions volume established under this section does not have bearing on whether an EITE facility is subject to the tax imposed under section 202 of this act.

NEW SECTION. **Sec.**  DEPARTMENT OF ECOLOGY CARBON CALCULATIONS AND REPORTING. (1) By December 15, 2017, the department of ecology must adopt rules specifying the basis for a carbon calculation on the emissions of carbon dioxide equivalent inherent in or associated with fossil fuels and of the emissions inherent in or associated with imported electricity. In determining a carbon calculation methodology, the department of ecology may consider, among other resources, the reports filed in section 213 of this act, the carbon dioxide content measurements for fossil fuels from the United States energy information administration, and the United States environmental protection agency.

(2) The department of ecology may periodically update the rules specifying the carbon content of fossil fuels and imported electricity. Department of ecology rule updates under this section must be adopted by May 1st of a given year, and must take effect beginning July 1st of that year.

NEW SECTION. **Sec.**  ELECTRIC SOURCE REPORTING AND UNSPECIFIED POWER TO THE DEPARTMENT OF COMMERCE. (1) Each light and power business must file with the department of commerce an electricity resource report. The report must be filed with the department of commerce during the reporting period for the tax imposed under section 202 of this act, as determined by the department. The department of commerce must share the report with the department of revenue.

(2) The department of commerce must adopt rules regarding the content of the electricity resource report submitted under this section. The electricity resource report rules must require the submission of any information deemed necessary by the department of commerce or by the department of revenue to administer the tax imposed under this chapter.

(3) The department of commerce must adopt rules under which a light and power business may specify the resources used to generate electricity that is not a resource that is declared by the light and power business. To the maximum extent practicable, the electricity source specification requirements and procedures adopted by the department of commerce must be consistent with the electric source specification requirements that apply to electricity in other jurisdictions that have adopted a policy that results in the imposition of a tax, price, or other cost associated with the carbon content of electricity.

**PART III**

**Amending Current Greenhouse Gas Limits in State Law per the Department of Ecology's 2016 Report**

**Sec.**  RCW 70.235.020 and 2008 c 14 s 3 are each amended to read as follows:

(1)(a) The state ((~~shall~~)) must limit emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels;

(ii) By 2035, reduce overall emissions of greenhouse gases in the state to ((~~twenty-five~~)) forty percent below 1990 levels;

(iii) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to ((~~fifty~~)) eighty percent below 1990 levels((~~, or seventy percent below the state's expected emissions that year~~)).

(b) By December 1, 2008, the department ((~~shall~~)) must submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Actions taken using existing statutory authority may proceed prior to approval of the greenhouse gas reduction plan.

(c) Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Consistent with this directive, the department ((~~shall~~)) must take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70.94.151; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress.

(2)(a) By ((~~December~~)) October 31st of each even-numbered year beginning in 2010, the department and the department of ((~~community, trade, and economic development shall~~)) commerce must report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding two years, and totals in each major source sector. The report must address both emissions from sources subject to the tax imposed pursuant to section 202 of this act and emissions from sources not subject to the tax. The report must also address and distinguish, to the extent practicable, any progress towards meeting the emission reductions established in (1) of this section that are attributable to the price signal created by the tax, and any progress towards meeting the emission reductions established in (1) of this section that are attributable to the investments of tax.

(b) The report required in (a) of this subsection (2) must include a declaration of whether entities subject to the tax imposed in chapter 82.--- RCW (the new chapter created in section 403 of this act) have met their combined share of emissions reductions as defined in section 206 of this act. Beginning in 2024, the report must also evaluate the efficacy of the tax rate adjustments occurring under section 206 of this act, taking into account the rate of the tax that was imposed over the preceding three biennia. If the department determines that the entities subject to the tax did not meet their combined share of emissions reductions towards the achievement of the state limits established in subsection (1) of this section during the previous biennium, the report must include a recommendation to the legislature for an adjustment to the tax rate imposed in section 202 of this act that would be sufficient for the state to achieve the limits established in subsection (1) of this section.

(c) By December 2021, the department must submit an additional report to the legislature containing a determination of whether an international consortium representing the aviation or maritime transport industries has adopted a greenhouse gas emissions reduction plan consistent with climate goals in this section. During the 2022 regular legislative session, the department must submit agency request legislation if it determines that an international consortium for the aircraft industry or the maritime transport industry, or both, has not adopted a greenhouse gas emissions reduction plan by December 31, 2021, that is consistent with the climate goals in this section. The request legislation must be designed to reduce emissions from aircraft fuel or maritime transport fuel, or both, to a level consistent with the climate goals in this section. It is the intent of the legislature to enact this request legislation upon its introduction.

(d) The department ((~~shall~~)) must ensure the reporting rules adopted under RCW 70.94.151 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals ((~~shall not be~~)) is not considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.

NEW SECTION. **Sec.**  A new section is added to chapter 70.94 RCW to read as follows:

(1)(a) As of the effective date of this section, the department does not have the authority to implement or enforce chapter 173-442 WAC, or the amendments to chapter 173-441 WAC that took effect October 16, 2016.

(b) Nothing in this subsection (1) affects the greenhouse gas emission reporting requirements of RCW 70.94.151.

(2) The department may adopt rules consistent with RCW 70.94.154 to require reasonably available control technology (RACT) to control emissions of greenhouse gases. The department may adopt RACT rules to apply to sources subject to the tax imposed in chapter 82.--- RCW (the new chapter created in section 403 of this act) or to sources that are not subject to the tax imposed in chapter 82.--- RCW (the new chapter created in section 403 of this act), or both.

**PART IV**

**Miscellaneous Provisions**

**Sec.**  RCW 82.32.050 and 2008 c 181 s 501 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department ((~~shall~~)) must assess against the taxpayer such additional amount found to be due and ((~~shall~~)) must add thereto interest on the tax only. The department ((~~shall~~)) must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount ((~~shall~~)) becomes due and ((~~shall~~)) must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest ((~~shall~~)) must be variable and computed as provided in subsection (2) of this section. The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest ((~~shall~~)) must be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, ((~~shall~~)) must be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest ((~~shall~~)) must be computed until the date of payment. The rate of interest ((~~shall~~)) must be variable and computed as provided in subsection (2) of this section. The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer ((~~shall~~)) must be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year ((~~shall~~)) must be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average ((~~shall~~)) must be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, ((~~or~~)) (c) where a taxpayer has executed a written waiver of such limitation, or (d) with respect to the credit authorized in section 113 of this act. The execution of a written waiver ((~~shall~~)) also extends the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date.

NEW SECTION. **Sec.**  Part I of this act constitutes a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Part II of this act constitutes a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  Part II of this act is exempt from the provisions of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec.**  Except where explicitly stated otherwise, nothing in this act limits the authority of any state agency as it existed prior to the effective date of this section.

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

**--- END ---**