

**E2SSB 5126** - H COMM AMD  
By Committee on Appropriations

**ADOPTED AS AMENDED 04/23/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature  
4 finds that climate change is one of the greatest challenges facing  
5 our state and the world today, an existential crisis with major  
6 negative impacts on environmental and human health. Washington is  
7 experiencing environmental and community impacts due to climate  
8 change through increasingly devastating wildfires, flooding,  
9 droughts, rising temperatures and sea levels, and ocean  
10 acidification. Greenhouse gas emissions already in the atmosphere  
11 will increase impacts for some period of time. Actions to increase  
12 resilience of our communities, natural resource lands, and ecosystems  
13 can prevent and reduce impacts to communities and our environment and  
14 improve their ability to recover.

15 (2) In 2020, the legislature updated the state's greenhouse gas  
16 emissions limits that are to be achieved by 2030, 2040, and 2050,  
17 based on current science and emissions trends, to support local and  
18 global efforts to avoid the most significant impacts from climate  
19 change. Meeting these limits will require coordinated, comprehensive,  
20 and multisectoral implementation of policies, programs, and laws, as  
21 currently enacted systems approaches are insufficient to meet the  
22 limits.

23 (3) The legislature further finds that while climate change is a  
24 global problem, there are communities that have historically borne  
25 the disproportionate impacts of environmental burdens and that now  
26 bear the disproportionate negative impacts of climate change.  
27 Although the state has done significant work in the past to highlight  
28 these environmental health disparities, beginning with senator Rosa  
29 Franklin's environmental equity study, and continuing through the  
30 work of the governor's interagency council on health disparities, the  
31 creation of the Washington environmental health disparities map, and  
32 recommendations of the environmental justice task force, the state

1 can do much more to ensure that state programs address environmental  
2 equity.

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

10 (5) The legislature further finds that wildfires have become one  
11 of the largest sources of black carbon in the last five years. From  
12 2014 through 2018, wildfires in Washington state generated 39,200,000  
13 metric tons of carbon, the equivalent of more than 8,500,000 cars on  
14 the road a year. In 2015, when 1,130,000 acres burned in Washington,  
15 wildfires were the second largest source of greenhouse gas emissions  
16 releasing 17,975,112 metric tons of carbon dioxide into the  
17 atmosphere. Wildfire pollution affects all Washingtonians, but has  
18 disproportionate health effects on low-income communities,  
19 communities of color, and the most vulnerable of our population.  
20 Restoring the health of our forests and investing in wildfire  
21 prevention and preparedness will therefore contribute to improved air  
22 quality and improved public health outcomes.

23 (6) The legislature further finds that by exercising a leadership  
24 role in addressing climate change, Washington will position its  
25 economy, technology centers, financial institutions, and  
26 manufacturers to benefit from national and international efforts that  
27 must occur to reduce greenhouse gases. The legislature intends to  
28 create climate policy that recognizes the special nature of  
29 emissions-intensive, trade-exposed industries by minimizing leakage  
30 and increased life-cycle emissions associated with product imports.  
31 The legislature further finds that climate policies must be  
32 appropriately designed, in order to avoid leakage that results in net  
33 increases in global greenhouse gas emissions and increased negative  
34 impacts to those communities most impacted by environmental harms  
35 from climate change. The legislature further intends to encourage  
36 these industries to continue to innovate, find new ways to be more  
37 energy efficient, use lower carbon products, and be positioned to be  
38 global leaders in a low carbon economy.

39 (7) Under the program, the legislature intends to identify  
40 overburdened communities where the highest concentrations of criteria

1 pollutants occur, determine the sources of those emissions and  
2 pollutants, and pursue significant reductions of emissions and  
3 pollutants in those communities. The legislature further intends for  
4 the department of ecology to conduct an environmental justice  
5 assessment to ensure that funds and programs created under this  
6 chapter provide direct and meaningful benefits to vulnerable  
7 populations and overburdened communities. Additionally, the  
8 legislature intends to prevent job loss and provide protective  
9 measures for workers adversely impacted by the transition to a clean  
10 energy economy through transition and assistance programs, worker-  
11 support projects, and workforce development and other activities  
12 designed to grow and expand the clean manufacturing sector in  
13 communities across Washington state. The legislature further intends  
14 to empower the environmental justice council established under RCW  
15 70A.---.--- (section 20, chapter . . ., Laws of 2021 (Engrossed  
16 Second Substitute Senate Bill No. 5141)) to provide recommendations  
17 for the development and implementation of the program, the  
18 distribution of funds, and the establishment of programs, activities,  
19 and projects to achieve environmental justice and environmental  
20 health goals. The legislature further intends for the department of  
21 ecology to create and adopt community engagement plans and tribal  
22 consultation frameworks in the administration of the program to  
23 ensure equitable practices for meaningful community and federally  
24 recognized tribal involvement. Finally, the legislature intends to  
25 establish this program to contribute to a healthy environment for all  
26 of Washington's communities.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
28 section apply throughout this chapter unless the context clearly  
29 requires otherwise.

30 (1) "Allowance" means an authorization to emit up to one metric  
31 ton of carbon dioxide equivalent.

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

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

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

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

14 (6) "Auction floor price" means a price for allowances below  
15 which bids at auction are not eligible to be accepted.

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

20 (8) "Balancing authority" means the responsible entity that  
21 integrates resource plans ahead of time, maintains load-interchange-  
22 generation balance within a balancing authority area, and supports  
23 interconnection frequency in real time.

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

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

35 (11) "Biomass-derived fuels," "biomass fuels," or "biofuels"  
36 means fuels derived from biomass that have at least 40 percent lower  
37 greenhouse gas emissions based on a full life-cycle analysis when  
38 compared to petroleum fuels for which biofuels are capable as serving  
39 as a substitute.

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

4 (13) "Carbon dioxide removal" means deliberate human activities  
5 removing carbon dioxide from the atmosphere and durably storing it in  
6 geological, terrestrial, or ocean reservoirs, or in products. "Carbon  
7 dioxide removal" includes existing and potential anthropogenic  
8 enhancement of biological or geochemical sinks and including, but not  
9 limited to, carbon mineralization, direct air capture and storage,  
10 and carbon mineralization.

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

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

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

28 (17) "Compliance instrument" means an allowance or offset credit  
29 issued by the department or by an external greenhouse gas emissions  
30 trading program to which Washington has linked its greenhouse gas  
31 emissions cap and invest program. One compliance instrument is equal  
32 to one metric ton of carbon dioxide equivalent.

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

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

39 (20) "Cost burden" means the impact on rates or charges to  
40 customers of electric utilities in Washington state for the

1 incremental cost of electricity service to serve load due to the  
2 compliance cost for greenhouse gas emissions caused by the program.  
3 Cost burden includes administrative costs from the utility's  
4 participation in the program.

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

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

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

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

16 (25) "Department" means the department of ecology.

17 (26) "Electricity importer" means:

18 (a) For electricity that is scheduled with a NERC e-tag to a  
19 final point of delivery into a balancing authority area located  
20 entirely within the state of Washington, the electricity importer is  
21 identified on the NERC e-tag as the purchasing-selling entity on the  
22 last segment of the tag's physical path with the point of receipt  
23 located outside the state of Washington and the point of delivery  
24 located inside the state of Washington;

25 (b) For facilities physically located outside the state of  
26 Washington with the first point of interconnection to a balancing  
27 authority area located entirely within the state of Washington when  
28 the electricity is not scheduled on a NERC e-tag, the electricity  
29 importer is the facility operator or owner;

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

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

36 (e) If the importer identified under (a) of this subsection is a  
37 federal power marketing administration over which the state of  
38 Washington does not have jurisdiction, and the federal power  
39 marketing administration has not voluntarily elected to comply with  
40 the program, then the electricity importer is the next purchasing-

1 selling entity in the physical path on the NERC e-tag, or if no  
2 additional purchasing-selling entity over which the state of  
3 Washington has jurisdiction, then the electricity importer is the  
4 electric utility that operates the Washington transmission or  
5 distribution system, or the generation balancing authority;

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

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

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

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

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

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

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

34 (31) "Environmental harm" has the same meaning as defined in RCW  
35 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
36 Substitute Senate Bill No. 5141)).

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

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

4 (34) "Environmental justice assessment" has the same meaning as  
5 identified in RCW 70A.---.--- (section 14, chapter . . ., Laws of  
6 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

7 (35) "External greenhouse gas emissions trading program" means a  
8 government program, other than Washington's program created in this  
9 chapter, that restricts greenhouse gas emissions from sources outside  
10 of Washington and that allows emissions trading.

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

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

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

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

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

27 (41) "Imported electricity" means electricity generated outside  
28 the state of Washington with a final point of delivery within the  
29 state.

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

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

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

38 (d) "Imported electricity" does not include electricity imports  
39 of unspecified electricity that are netted by exports of unspecified



1 electricity to any jurisdiction not covered by a linked program by  
2 the same entity within the same hour.

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

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

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

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

22 (44) "Linkage" means a bilateral or multilateral decision under a  
23 linkage agreement between greenhouse gas market programs to accept  
24 compliance instruments issued by a participating jurisdiction to meet  
25 the obligations of regulated entities in a partner jurisdiction and  
26 to otherwise coordinate activities to facilitate operation of a joint  
27 market.

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

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

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

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

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

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

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

13 (52) "Overburdened community" means a geographic area where  
14 vulnerable populations face combined, multiple environmental harms  
15 and health impacts or risks due to exposure to environmental  
16 pollutants or contaminants through multiple pathways, which may  
17 result in significant disparate adverse health outcomes or effects.  
18 "Overburdened community" includes, but is not limited to:

19 (a) Highly impacted communities as defined in RCW 19.405.020;

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

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

31 (53) "Person" has the same meaning as defined in RCW  
32 70A.15.2200(5)(h)(iii).

33 (54) "Point of delivery" means a point on the electricity  
34 transmission or distribution system where a deliverer makes  
35 electricity available to a receiver, or available to serve load. This  
36 point may be an interconnection with another system or a substation  
37 where the transmission provider's transmission and distribution  
38 systems are connected to another system, or a distribution substation  
39 where electricity is imported into the state over a  
40 multijurisdictional retail provider's distribution system.

1 (55) "Price ceiling unit" means the units issued at a fixed price  
2 by the department for the purpose of limiting price increases and  
3 funding further investments in greenhouse gas reductions.

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

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

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

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

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

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

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

29 (63) "Tribal lands" has the same meaning as defined in RCW  
30 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
31 Substitute Senate Bill No. 5141)).

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

35 (65) "Voluntary renewable reserve account" means a holding  
36 account maintained by the department from which allowances may be  
37 retired for voluntary renewable electricity generation, which is  
38 directly delivered to the state and has not and will not be sold or  
39 used to meet any other mandatory requirements in the state or any

1 other jurisdiction, on behalf of voluntary renewable energy  
2 purchasers or end users.

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

6 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE REVIEW. (1) To  
7 ensure that the program created in sections 8 through 24 of this act  
8 achieves reductions in criteria pollutants as well as greenhouse gas  
9 emissions in overburdened communities highly impacted by air  
10 pollution, the department must:

11 (a) Identify overburdened communities, consistent with the  
12 requirements of chapter . . ., Laws of 2021 (Engrossed Second  
13 Substitute Senate Bill No. 5141);

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

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

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

27 (2) (a) Beginning in 2023, and every two years thereafter, the  
28 department must conduct a review to determine levels of criteria  
29 pollutants, as well as greenhouse gas emissions, in the overburdened  
30 communities identified under subsection (1) of this section. This  
31 review must also include an evaluation of initial and subsequent  
32 health impacts related to criteria pollution in overburdened  
33 communities. The department may conduct this evaluation jointly with  
34 the department of health.

35 (b) Once this review determines the levels of criteria pollutants  
36 in an identified overburdened community, then the department, in  
37 consultation with local air pollution control authorities, must  
38 establish air quality targets to achieve air quality consistent with  
39 neighboring communities that are not identified as overburdened;

1 identify the sources that are the contributors of those emissions  
2 that are either increasing or not decreasing; and achieve the  
3 reduction targets through adoption of emission control strategies or  
4 other methods, and the department must:

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

11 (ii) After adoption of the stricter air quality standards,  
12 emission standards, or emissions limitations on criteria pollutants,  
13 issue an enforceable order or the local air authority must issue an  
14 enforceable order, as authorized under chapter 70A.15 RCW, as  
15 necessary to comply with the stricter standards or limitations and  
16 the requirements of this section. The department or local air  
17 authority must initiate the process, including provision of notice to  
18 all relevant affected permittees or registered sources and to the  
19 public, to adopt and implement an enforceable order required under  
20 this subsection within six months of the adoption of standards or  
21 limitations under (b) (i) of this subsection;

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

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

32 (i) Identifying emitters in overburdened communities; and

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

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

38 NEW SECTION. **Sec. 4.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1) When  
39 allocating funds from the carbon emissions reduction account created

1 in section 27 of this act, the climate investment account created in  
2 section 28 of this act, or the air quality and health disparities  
3 improvement account created in section 31 of this act, or  
4 administering grants or programs funded by the accounts, agencies  
5 shall conduct an environmental justice assessment consistent with the  
6 requirements of RCW 70A.---.--- (section 14, chapter . . ., Laws of  
7 2021 (Engrossed Second Substitute Senate Bill No. 5141)) and  
8 establish a minimum of not less than 35 percent and a goal of 40  
9 percent of total investments that provide direct and meaningful  
10 benefits to vulnerable populations within the boundaries of  
11 overburdened communities identified under chapter . . ., Laws of 2021  
12 (Engrossed Second Substitute Senate Bill No. 5141) through: (a) The  
13 direct reduction of environmental burdens in overburdened  
14 communities; (b) the reduction of disproportionate, cumulative risk  
15 from environmental burdens, including those associated with climate  
16 change; (c) the support of community led project development,  
17 planning, and participation costs; or (d) meeting a community need  
18 identified by the community that is consistent with the intent of  
19 this chapter.

20 (2) The allocation of funding under subsection (1) of this  
21 section must adhere to the following principles, additional to the  
22 requirements of RCW 70A.---.--- (section 16, chapter . . ., Laws of  
23 2021 (Engrossed Second Substitute Senate Bill No. 5141)): (a)  
24 Benefits and programs should be directed to areas and targeted to  
25 vulnerable populations and overburdened communities to reduce  
26 statewide disparities; (b) investments and benefits should be made  
27 roughly proportional to the health disparities that a specific  
28 community experiences, with a goal of eliminating the disparities;  
29 (c) investments and programs should focus on creating environmental  
30 benefits, including eliminating health burdens, creating community  
31 and population resilience, and raising the quality of life of those  
32 in the community; and (d) efforts should be made to balance  
33 investments and benefits across the state and within counties, local  
34 jurisdictions, and unincorporated areas as appropriate to reduce  
35 disparities by location and to ensure efforts contribute to a  
36 reduction in disparities that exist based on race or ethnicity,  
37 socioeconomic status, or other factors.

38 (3) State agencies allocating funds or administering grants or  
39 programs from the carbon emissions reduction account created in  
40 section 27 of this act, the climate investment account created in

1 section 28 of this act, or the air quality and health disparities  
2 improvement account created in section 31 of this act, must:

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

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

10 (c)(i) If the agency is not a covered agency subject to the  
11 requirements of chapter . . ., Laws of 2021 (Engrossed Second  
12 Substitute Senate Bill No. 5141), create and adopt a community  
13 engagement plan to describe how it will engage with overburdened  
14 communities and vulnerable populations in allocating funds or  
15 administering grants or programs from the climate investment account.

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

19 NEW SECTION. **Sec. 5.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The  
20 environmental justice council created in RCW 70A.---.--- (section 20,  
21 chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill  
22 No. 5141)) must provide recommendations to the legislature, agencies,  
23 and the governor in the development and implementation of the program  
24 established in sections 8 through 24 of this act, and the programs  
25 funded from the carbon emissions reduction account created in section  
26 27 of this act and from the climate investment account created in  
27 section 28 of this act.

28 (2) In addition to the duties and authorities granted in chapter  
29 70A.--- RCW (the new chapter created in section 22, chapter . . .,  
30 Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)) to  
31 the environmental justice council, the environmental justice council  
32 must:

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

35 (i) The program established in sections 8 through 24 of this act  
36 including, but not limited to, linkage with other jurisdictions,  
37 protocols for establishing offset projects and securing offset  
38 credits, designation of emissions-intensive and trade-exposed

1 industries under section 13 of this act, and administration of  
2 allowances under the program; and

3 (ii) Investment plans and funding proposals for the programs  
4 funded from the climate investment account created in section 28 of  
5 this act for the purpose of providing environmental benefits and  
6 reducing environmental health disparities within overburdened  
7 communities identified under chapter 70A.--- RCW (the new chapter  
8 created in section 22, chapter . . ., Laws of 2021 (Engrossed Second  
9 Substitute Senate Bill No. 5141));

10 (b) Provide a forum to analyze policies adopted under this  
11 chapter to determine if the policies lead to improvements within  
12 overburdened communities identified under chapter 70A.--- RCW (the  
13 new chapter created in section 22, chapter . . ., Laws of 2021  
14 (Engrossed Second Substitute Senate Bill No. 5141));

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 6.** TRIBAL CONSULTATION. (1) Agencies that  
36 allocate funding or administer grant programs appropriated from the  
37 climate investment account created in section 28 of this act must  
38 develop a consultation framework in coordination with tribal  
39 governments that includes best practices, protocols for



1 communication, and collaboration with federally recognized tribes.  
2 Under this consultation framework, before allocating funding or  
3 administering grant programs appropriated from the climate investment  
4 account, agencies must offer consultation with federally recognized  
5 tribes on all funding decisions and programs that may impact,  
6 infringe upon, or impair the governmental efforts of federally  
7 recognized tribes to adopt or enforce their own standards governing  
8 or protecting the tribe's resources or other rights and interests in  
9 their tribal lands and lands within which a tribe or tribes possess  
10 rights reserved by treaty. The consultation is independent of any  
11 public participation process required by state law, or by a state  
12 agency, and regardless of whether the agency receives a request for  
13 consultation from a federally recognized tribe.

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

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

32 NEW SECTION. **Sec. 7.** GOVERNANCE STRUCTURE. (1) The governor  
33 shall establish a governance structure to implement the state's  
34 climate commitment under the authority provided under this chapter  
35 and other statutory authority to provide accountability for achieving  
36 the state's greenhouse gas limits in RCW 70A.45.020, to establish a  
37 coordinated and strategic statewide approach to climate resilience,  
38 to build an equitable and inclusive clean energy economy, and to  
39 ensure that the government provides clear policy and requirements,

1 financial tools, and other mechanisms to support achieving those  
2 limits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 NEW SECTION. **Sec. 8.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In  
14 order to ensure that greenhouse gas emissions are reduced by covered  
15 entities consistent with the limits established in RCW 70A.45.020,  
16 the department must implement a cap on greenhouse gas emissions from  
17 covered entities and a program to track, verify, and enforce  
18 compliance through the use of compliance instruments.

19 (2) The program must consist of:

20 (a) Annual allowance budgets that limit emissions from covered  
21 entities, as provided in this section and sections 9 and 10 of this  
22 act;

23 (b) Defining those entities covered by the program, and those  
24 entities that may voluntarily opt into coverage under the program, as  
25 provided in this section and sections 9 and 10 of this act;

26 (c) Distribution of emission allowances, as provided in section  
27 12 of this act, and through the allowance price containment  
28 provisions under sections 16 and 17 of this act;

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

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

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

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

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

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

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

8 (3) The department shall consider opportunities to implement the  
9 program in a manner that allows linking the state's program with  
10 those of other jurisdictions. The department must evaluate whether  
11 such linkage will provide for a more cost-effective means for covered  
12 entities to meet their compliance obligations in Washington while  
13 recognizing the special characteristics of the state's economy,  
14 communities, and industries. The department is authorized to enter  
15 into a linkage agreement with another jurisdiction after conducting  
16 an environmental justice assessment and after formal notice and  
17 opportunity for a public hearing, and when consistent with the  
18 requirements of section 24 of this act.

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

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

35 NEW SECTION. **Sec. 9.** ANNUAL ALLOWANCE BUDGET AND TIMELINES.

36 (1)(a) The department shall commence the program by January 1, 2023,  
37 by determining an emissions baseline establishing the proportionate  
38 share that the total greenhouse gas emissions of covered entities for  
39 the first compliance period bears to the total anthropogenic

1 greenhouse gas emissions in the state during 2015 through 2019, based  
2 on data reported to the department under RCW 70A.15.2200 or provided  
3 as required by this chapter, as well as other relevant data. By  
4 October 1, 2022, the department shall adopt annual allowance budgets  
5 for the first compliance period of the program, calendar years 2023  
6 through 2026, to be distributed from January 1, 2023, through  
7 December 31, 2026. If the first compliance period is delayed pursuant  
8 to section 22(7) of this act, the department shall adjust the annual  
9 allowance budgets to reflect a shorter first compliance period.

10 (b) By October 1, 2026, the department shall add to its emissions  
11 baseline by incorporating the proportionate share that the total  
12 greenhouse gas emissions of new covered entities in the second  
13 compliance period bear to the total anthropogenic greenhouse gas  
14 emissions in the state during 2023 through 2025. In determining the  
15 addition to the baseline, the department may exclude a year from the  
16 determination if the department identifies that year to have been an  
17 outlier due to a state of emergency. The department shall adopt  
18 annual allowance budgets for the second compliance period of the  
19 program, calendar years 2027 through 2030, that will be distributed  
20 from January 1, 2027, through December 31, 2030.

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

23 (2) The annual allowance budgets must be set to achieve the share  
24 of reductions by covered entities necessary to achieve the 2030,  
25 2040, and 2050 statewide emissions limits established in RCW  
26 70A.45.020, based on data reported to the department under chapter  
27 70A.15 RCW or provided as required by this chapter. Annual allowance  
28 budgets must be set such that the use of offsets as compliance  
29 instruments, consistent with section 19 of this act, does not prevent  
30 the achievement of the emissions limits established in RCW  
31 70A.45.020. In so setting annual allowance budgets, the department  
32 must reduce the annual allowance budget relative to the limits in an  
33 amount equivalent to offset use, or in accordance with a similar  
34 methodology adopted by the department. The department must adopt  
35 annual allowance budgets for the program on a calendar year basis  
36 that provide for progressively equivalent reductions year over year.  
37 An allowance distributed under the program, either directly by the  
38 department under sections 13 through 15 of this act or through  
39 auctions under section 12 of this act, does not expire and may be  
40 held or banked consistent with sections 12(6) and 17(1) of this act.

1 (3) The department must complete an evaluation by December 31,  
2 2027, and by December 31, 2035, of the performance of the program,  
3 including its performance in reducing greenhouse gases. If the  
4 evaluation shows that adjustments to the annual allowance budgets are  
5 necessary for covered entities to achieve their proportionate share  
6 of the 2030 and 2040 emission reduction limits identified in RCW  
7 70A.45.020, as applicable, the department shall adjust the annual  
8 allowance budgets accordingly. The department must complete  
9 additional evaluations of the performance of the program by December  
10 31, 2040, and by December 31, 2045, and make any necessary  
11 adjustments in the annual allowance budgets to ensure that covered  
12 entities achieve their proportionate share of the 2050 emission  
13 reduction limit identified in RCW 70A.45.020. Nothing in this  
14 subsection precludes the department from making additional  
15 adjustments to annual allowance budgets as necessary to ensure  
16 successful achievement of the proportionate emission reduction limits  
17 by covered entities. The department shall determine and make public  
18 the circumstances, metrics, and processes that would initiate the  
19 public consideration of additional allowance budget adjustments to  
20 ensure successful achievement of the emission reduction limits.

21 (4) Data reported to the department under RCW 70A.15.2200 or  
22 provided as required by this chapter for 2015 through 2019 is deemed  
23 sufficient for the purpose of adopting annual allowance budgets and  
24 serving as the baseline by which covered entities demonstrate  
25 compliance under the first compliance period of the program. Data  
26 reported to the department under RCW 70A.15.2200 or provided as  
27 required by this chapter for 2023 through 2025 is deemed sufficient  
28 for adopting annual allowance budgets and serving as the baseline by  
29 which covered entities demonstrate compliance under the second  
30 compliance period of the program.

31 NEW SECTION. **Sec. 10.** PROGRAM COVERAGE. (1) A person is a  
32 covered entity as of the beginning of the first compliance period and  
33 all subsequent compliance periods if the person reported emissions  
34 under RCW 70A.15.2200 for any calendar year from 2015 through 2019,  
35 or if additional data provided as required by this chapter indicates  
36 that emissions for any calendar year from 2015 through 2019 equaled  
37 or exceeded any of the following thresholds, or if the person is a  
38 first jurisdictional deliverer and imports electricity into the state  
39 during the compliance period:

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

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

8 (c) Where the person is a first jurisdictional deliverer  
9 importing electricity into the state and the cumulative annual total  
10 of emissions associated with imported electricity from specified or  
11 unspecified sources exceeds 25,000 metric tons of carbon dioxide  
12 equivalent or from an unspecified source. In consultation with any  
13 jurisdiction that is linked to the program created by this chapter,  
14 by October 1, 2026, the department, in consultation with the  
15 department of commerce and the utilities and transportation  
16 commission, shall adopt a methodology for addressing imported  
17 electricity associated with a centralized electricity market;

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

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

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

34 (iii) Where the person is an end-use customer in the state who  
35 directly purchases natural gas from a person that is not a natural  
36 gas company and has the natural gas delivered through an interstate  
37 pipeline to a distribution system owned by the purchaser in amounts  
38 that would result in exceeding 25,000 metric tons of carbon dioxide  
39 equivalent emissions if fully combusted or oxidized, excluding the

1 amounts: (A) Supplied to covered entities under (a) through (d) of  
2 this subsection; and (B) delivered to opt-in entities.

3 (2) A person is a covered entity as of the beginning of the  
4 second compliance period and all subsequent compliance periods if the  
5 person reported emissions under RCW 70A.15.2200 or provided emissions  
6 data as required by this chapter for any calendar year from 2023  
7 through 2025, where the person operates a waste to energy facility  
8 utilized by a county and city solid waste management program and the  
9 facility's emissions equal or exceed 25,000 metric tons of carbon  
10 dioxide equivalent.

11 (3)(a) A person is a covered entity beginning January 1, 2031,  
12 and all subsequent compliance periods if the person reported  
13 emissions under RCW 70A.15.2200 or provided emissions data as  
14 required by this chapter for any calendar year from 2027 through  
15 2029, where the person operates a landfill utilized by a county and  
16 city solid waste management program and the facility's emissions  
17 equal or exceed 25,000 metric tons of carbon dioxide equivalent.

18 (b) Subsection (a) of this subsection does not apply to landfills  
19 that:

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

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

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

31 (4) When a covered entity reports, during a compliance period,  
32 emissions from a facility under RCW 70A.15.2200 that are below the  
33 thresholds specified in subsection (1) or (2) of this section, the  
34 covered entity continues to have a compliance obligation through the  
35 current compliance period. When a covered entity reports emissions  
36 below the threshold for each year during an entire compliance period,  
37 or has ceased all processes at the facility requiring reporting under  
38 RCW 70A.15.2200, the entity is no longer a covered entity as of the  
39 beginning of the subsequent compliance period unless the department  
40 provides notice at least 12 months before the end of the compliance



1 period that the facility's emissions were within 10 percent of the  
2 threshold and that the person will continue to be designated as a  
3 covered entity in order to ensure equity among all covered entities.  
4 Whenever a covered entity ceases to be a covered entity, the  
5 department shall notify the legislature of the name of the entity and  
6 the reason the entity is no longer a covered entity.

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

19 (6) For emission sources described in subsection (1) of this  
20 section that are in operation or otherwise active between 2015 and  
21 2019 but were not required to report emissions for those years under  
22 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,  
23 coverage under the program starts in the calendar year following the  
24 year in which emissions from the source exceed the applicable  
25 thresholds in subsection (1) of this section as reported pursuant to  
26 RCW 70A.15.2200 or provided as required by this chapter, or upon  
27 formal notice from the department that the source is expected to  
28 exceed the applicable emissions threshold for the first year that  
29 source is required to report emissions, whichever happens first.  
30 Sources meeting these criteria are required to transfer their first  
31 allowances on the first transfer deadline of the year following the  
32 year in which their emissions, as reported under RCW 70A.15.2200 or  
33 provided as required by this chapter, were equal to or exceeded the  
34 emissions threshold.

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

38 (a) Emissions from the combustion of aviation fuels;

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

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

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

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

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

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

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

29 (9)(a) The legislature intends to promote a growing and  
30 sustainable economy and to avoid leakage of emissions from  
31 manufacturing to other locations. The legislature further intends to  
32 see innovative new businesses locate and grow in Washington that  
33 contribute to Washington's prosperity and environmental objectives.

34 (b) Consistent with the intent of the legislature to avoid the  
35 leakage of emissions to other jurisdictions, in achieving the state's  
36 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the  
37 limits in a manner that recognizes that the siting and placement of  
38 new best-in-class low carbon facilities is in the economic and  
39 environmental interests of the state of Washington.

1 (c) In conducting a life-cycle analysis for new or expanded  
2 facilities that require review under chapter 43.21C RCW, a lead  
3 agency must evaluate any potential net cumulative greenhouse gas  
4 emissions resulting from the project as compared to other existing  
5 facilities and existing or emerging low carbon processes that supply  
6 the same product or end use. The department may adopt rules to  
7 determine the appropriate threshold for applying this analysis.

8 (d) The covered greenhouse gas emissions that are addressed in  
9 this chapter may not be the basis for denial of a permit for a new or  
10 expanded low carbon emissions-intensive, trade-exposed facility.  
11 Nothing in this subsection guarantees approval of permits for new or  
12 expanded fossil fuel projects.

13 (e) A lead agency may determine that compliance with the  
14 requirements of this chapter for a covered entity or opt-in entity  
15 constitutes mitigation for covered greenhouse gases from facilities  
16 that have a compliance obligation under this chapter.

17 (f) A lead agency may determine that inclusion as a covered  
18 entity or opt-in entity under this chapter constitutes mitigation of  
19 significant adverse impacts pursuant to chapter 43.21C RCW with  
20 respect to covered greenhouse gases from facilities that have a  
21 compliance obligation under this chapter.

22 NEW SECTION. **Sec. 11.** REQUIREMENTS. (1) All covered entities  
23 must register to participate in the program, following procedures  
24 adopted by the department by rule.

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

28 (3) A person responsible for greenhouse gas emissions that is not  
29 a covered entity may voluntarily participate in the program by  
30 registering as an opt-in entity. An opt-in entity must satisfy the  
31 same registration requirements as covered entities. Once registered,  
32 an opt-in entity is allowed to participate as a covered entity in  
33 auctions and must assume the same compliance obligation to transfer  
34 compliance instruments equal to their emissions at the appointed  
35 transfer dates. An opt-in entity may opt out of the program at the  
36 end of any compliance period by providing written notice to the  
37 department at least six months prior to the end of the compliance  
38 period. The opt-in entity continues to have a compliance obligation  
39 through the current compliance period. An opt-in entity is not

1 eligible to receive allowances directly distributed under section 13,  
2 14, or 15 of this act.

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

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

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

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

17 (a) A compliance account where the compliance instruments are  
18 transferred to the department for retirement. Compliance instruments  
19 in compliance accounts may not be sold, traded, or otherwise provided  
20 to another account or person.

21 (b) A holding account that is used when a registered entity is  
22 interested in trading allowances. Allowances in holding accounts may  
23 be bought, sold, transferred to another registered entity, or traded.  
24 The amount of allowances a registered entity may have in its holding  
25 account is constrained by the holding limit as determined by the  
26 department by rule. Information about the contents of each holding  
27 account, including but not limited to the number of allowances in the  
28 account, must be displayed on a regularly maintained and searchable  
29 public website established and updated by the department.

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

32 (9) The department shall maintain an account for the purpose of  
33 retiring allowances transferred by registered entities and from the  
34 voluntary renewable reserve account.

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

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

1        NEW SECTION.    **Sec. 12.**    AUCTIONS OF ALLOWANCES. (1) Except as  
2 provided in sections 13, 14, and 15 of this act, the department shall  
3 distribute allowances through auctions as provided in this section  
4 and in rules adopted by the department to implement these sections.  
5 An allowance is not a property right.

6        (2) (a) The department shall hold a maximum of four auctions  
7 annually, plus any necessary reserve auctions. An auction may include  
8 allowances from the annual allowance budget of the current year and  
9 allowances from the annual allowance budgets from prior years that  
10 remain to be distributed. The department must transmit to the  
11 environmental justice council an auction notice at least 60 days  
12 prior to each auction, as well as a summary results report and a  
13 postauction public proceeds report within 60 days after each auction.  
14 The department must communicate the results of the previous calendar  
15 year's auctions to the environmental justice council on an annual  
16 basis beginning in 2024.

17        (b) The department must make future vintage allowances available  
18 through parallel auctions at least twice annually in addition to the  
19 auctions through which current vintage allowances are exclusively  
20 offered under (a) of this subsection.

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

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

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

36        (b) Each registered entity that elects to participate in the  
37 auction must have a different representative. Only a representative  
38 with an approved auction account is authorized to access the auction  
39 platform to submit an application or confirm the intent to bid for  
40 the registered entity, submit bids on behalf of the registered entity

1 during the bidding window, or to download reports specific to the  
2 auction.

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

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

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

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

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

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

22 (7)(a) For fiscal year 2023, upon completion and verification of  
23 the auction results, the financial services administrator shall  
24 notify winning bidders and transfer the auction proceeds to the state  
25 treasurer for deposit as follows: (i) \$127,341,000 must be deposited  
26 into the carbon emissions reduction account created in section 27 of  
27 this act; and (ii) the remaining auction proceeds to the climate  
28 investment account created in section 28 of this act and the air  
29 quality and health disparities improvement account created in section  
30 31 of this act.

31 (b) For fiscal year 2024, upon completion and verification of the  
32 auction results, the financial services administrator shall notify  
33 winning bidders and transfer the auction proceeds to the state  
34 treasurer for deposit as follows: (i) \$356,697,000 must be deposited  
35 into the carbon emissions reduction account created in section 27 of  
36 this act; and (ii) the remaining auction proceeds to the climate  
37 investment account created in section 28 of this act and the air  
38 quality and health disparities improvement account created in section  
39 31 of this act.

1 (c) For fiscal year 2025, upon completion and verification of the  
2 auction results, the financial services administrator shall notify  
3 winning bidders and transfer the auction proceeds to the state  
4 treasurer for deposit as follows: (i) \$366,558,000 must be deposited  
5 into the carbon emissions reduction account created in section 27 of  
6 this act; and (ii) the remaining auction proceeds to the climate  
7 investment account created in section 28 of this act and the air  
8 quality and health disparities improvement account created in section  
9 31 of this act.

10 (d) For fiscal years 2026 through 2037, upon completion and  
11 verification of the auction results, the financial services  
12 administrator shall notify winning bidders and transfer the auction  
13 proceeds to the state treasurer for deposit as follows: (i)  
14 \$359,117,000 per year must be deposited into the carbon emissions  
15 reduction account created in section 27 of this act; and (ii) the  
16 remaining auction proceeds to the climate investment account created  
17 in section 28 of this act and the air quality and health disparities  
18 improvement account created in section 31 of this act.

19 (e) The deposits into the carbon emissions reduction account  
20 pursuant to (a) through (d) of this subsection must not exceed  
21 \$5,200,000,000 over the first 16 years and any remaining auction  
22 proceeds must be deposited into the climate investment account  
23 created in section 28 of this act and the air quality and health  
24 disparities improvement account created in section 31 of this act.  
25 The deposits into the carbon emissions reduction account pursuant to  
26 (a) through (d) of this subsection must be prorated equally from the  
27 proceeds of each of the auctions occurring during each fiscal year.

28 (f) For fiscal year 2038 and each year thereafter, upon  
29 completion and verification of the auction results, the financial  
30 services administrator shall notify winning bidders and transfer the  
31 auction proceeds to the state treasurer for deposit as follows: (i)  
32 50 percent of the auction proceeds to the carbon emissions reduction  
33 account created in section 27 of this act; and (ii) the remaining  
34 auction proceeds to the climate investment account created in section  
35 28 of this act and the air quality and health disparities improvement  
36 account created in section 31 of this act.

37 (g) No auction proceeds may be transferred to the carbon  
38 emissions reduction account created in section 27 of this act after  
39 December 31, 2027, if a clean fuel standard with a carbon intensity  
40 reduction of greater than 10 percent is not enacted by that date.

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

- 11 (a) Provided false or misleading facts;
- 12 (b) Withheld material information that could influence a decision  
13 by the department;
- 14 (c) Violated any part of the auction rules;
- 15 (d) Violated registration requirements; or
- 16 (e) Violated any of the rules regarding the conduct of the  
17 auction.

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

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

32 (11) In setting the number of allowances offered at each auction,  
33 the department shall consider the allowances in the marketplace due  
34 to the marketing of allowances issued as required under sections 13,  
35 14, and 15 of this act in the department's determination of the  
36 number of allowances to be offered at auction. The department shall  
37 offer only such number of allowances at each auction as will enhance  
38 the likelihood of achieving the goals of RCW 70A.45.020.



1        NEW SECTION.    **Sec. 13.**    ALLOCATION OF ALLOWANCES TO EMISSIONS-  
2 INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) Facilities owned or operated  
3 by a covered entity must receive an allocation of allowances for the  
4 covered emissions at those facilities under this subsection at no  
5 cost if the operations of the facility are classified as emissions-  
6 intensive and trade-exposed, as determined by being engaged in one or  
7 more of the processes described by the following industry  
8 descriptions and codes in the North American industry classification  
9 system:

10        (a) Metals manufacturing, including iron and steel making,  
11 ferroalloy and primary metals manufacturing, secondary aluminum  
12 smelting and alloying, aluminum sheet, plate, and foil manufacturing,  
13 and smelting, refining, and alloying of other nonferrous metals,  
14 North American industry classification system codes beginning with  
15 331;

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

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

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

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

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

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

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

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

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

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

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

4 (m) All other petroleum and coal products manufacturing from  
5 refined petroleum, North American industry classification system code  
6 324199.

7 (2) By July 1, 2022, the department must adopt by rule objective  
8 criteria for both emissions' intensity and trade exposure for the  
9 purpose of identifying emissions-intensive, trade-exposed  
10 manufacturing businesses during the second compliance period of the  
11 program and subsequent compliance periods. A facility covered by  
12 subsection (1)(a) through (m) of this section is considered an  
13 emissions-intensive, trade-exposed facility and is eligible for  
14 allocation of no cost allowances as described in this section. In  
15 addition, any covered party that is a manufacturing business that can  
16 demonstrate to the department that it meets the objective criteria  
17 adopted by rule is also eligible for treatment as emissions-  
18 intensive, trade-exposed and is eligible for allocation of no cost  
19 allowances as described in this section. In developing the objective  
20 criteria under this subsection, the department must consider the  
21 locations of facilities potentially identified as emissions-  
22 intensive, trade-exposed manufacturing businesses relative to  
23 overburdened communities.

24 (3)(a) For the first compliance period beginning in January 1,  
25 2023, the annual allocation of no cost allowances for direct  
26 distribution to a facility identified as emissions-intensive and  
27 trade-exposed must be equal to the facility's baseline carbon  
28 intensity established using data from 2015 through 2019, or other  
29 data as allowed under this section, multiplied by the facility's  
30 actual production for each calendar year during the compliance  
31 period. For facilities using the mass-based approach, the allocation  
32 of no cost allowances shall be equal to the facility's mass-based  
33 baseline using data from 2015 through 2019, or other data as allowed  
34 under this section.

35 (b) For the second compliance period, beginning in January, 2027,  
36 and in each subsequent compliance period, the annual allocation of no  
37 cost allowances established in (a) of this subsection shall be  
38 adjusted according to the benchmark reduction schedules established  
39 in (b)(ii) and (iii) and (e) of this subsection multiplied by the  
40 facility's actual production during the period. The department shall

1 adjust the no cost allocation of allowances and credits to an  
2 emissions-intensive and trade-exposed facility to avoid duplication  
3 with any no cost allowances transferred pursuant to sections 14 and  
4 15 of this act, if applicable.

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

10 (ii) If an emissions-intensive and trade-exposed facility is not  
11 able to feasibly determine a carbon intensity benchmark based on its  
12 unique circumstances, the entity may elect to use a mass-based  
13 baseline that does not vary based on changes in production volumes.  
14 The mass-based baseline must be based upon data from 2015 through  
15 2019, unless the emissions-intensive, trade-exposed facility can  
16 demonstrate that there have been abnormal periods of operation that  
17 materially impacted the facility and the baseline period should be  
18 expanded to include years prior to 2015. For each year during the  
19 first four-year compliance period that begins January 1, 2023, these  
20 facilities must be awarded no cost allowances equal to 100 percent of  
21 the facility's mass-based baseline. For each year during the second  
22 four-year compliance period that begins January 1, 2027, these  
23 facilities must be awarded no cost allowances equal to 97 percent of  
24 the facility's mass-based baseline. For each year during the third  
25 compliance period that begins January 1, 2031, these facilities must  
26 be awarded no cost allowances equal to 94 percent of the facility's  
27 mass-based baseline. Except as provided in (b)(iii) of this  
28 subsection, if a facility elects to use a mass-based baseline, it may  
29 not later convert to a carbon intensity benchmark during the first  
30 three compliance periods.

31 (iii) A facility with a North American industry classification  
32 system code beginning with 3364 that is utilizing a mass-based  
33 baseline in (b)(ii) of this subsection must receive an additional no  
34 cost allowance allocation under this section in order to accommodate  
35 an increase in production that increases its emissions above the  
36 baseline on a basis equivalent in principle to those awarded to  
37 entities utilizing a carbon intensity benchmark pursuant to this  
38 subsection (3)(b). The department shall establish methods to award,  
39 for any annual period, additional no cost allowance allocations under  
40 this section and, if appropriate based on projected production, to

1 achieve a similar ongoing result through the adjustment of the  
2 facility's mass-based baseline. An eligible facility under this  
3 subsection that has elected to use a mass-based baseline may not  
4 convert to a carbon intensity benchmark until the next compliance  
5 period.

6 (c)(i) By September 15, 2022, each emissions-intensive, trade-  
7 exposed facility shall submit its carbon intensity baseline for the  
8 first compliance period to the department. The carbon intensity  
9 baseline for the first compliance period must use data from  
10 2015-2019, unless the emissions-intensive, trade-exposed facility can  
11 demonstrate that there have been abnormal periods of operation that  
12 materially impacted the facility and the baseline period should be  
13 expanded to include years prior to 2015.

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

17 (d) During the first four-year compliance period that begins  
18 January 1, 2023, each emissions-intensive, trade-exposed facility  
19 must record its facility-specific carbon intensity baseline based on  
20 its actual production.

21 (e)(i) For the second four-year compliance period that begins  
22 January 1, 2027, the second period benchmark for each emissions-  
23 intensive, trade-exposed facility is three percent below the first  
24 period baseline specified in (a), (b), and (c) of this subsection.

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

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

1 or mass emissions baseline. The department shall make adjustments  
2 based on:

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

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

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

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

28 (4) (a) By December 1, 2026, the department shall provide a report  
29 to the appropriate committees of the senate and house of  
30 representatives that describes alternative methods for determining  
31 the amount and a schedule of allowances to be provided to facilities  
32 owned or operated by each covered entity designated as an emissions-  
33 intensive, trade-exposed facility from January 1, 2035, through  
34 January 1, 2050. The report must include a review of global best  
35 practices in ensuring against emissions leakage and economic harm to  
36 businesses in carbon pricing programs and describe alternative  
37 methods of emissions performance benchmarking and mass-based  
38 allocation of no cost allowances. At a minimum, the department must  
39 evaluate benchmarks based on both carbon intensity and mass, as well  
40 as the use of best available technology as a method for compliance.

1 In developing the report, the department shall form an advisory group  
2 that includes representatives of the manufacturers listed in  
3 subsection (1) of this section.

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

8 (5) If the actual emissions of an emissions-intensive, trade-  
9 exposed facility exceed the facility's no cost allowances assigned  
10 for that compliance period, it must be allowed to bank all acquired  
11 allowances for future investment in best available technology when  
12 economically feasible. The department shall limit the use of offset  
13 credits for compliance by an emissions-intensive, trade-exposed  
14 facility, such that the quantity of no cost allowances plus the  
15 provision of offset credits does not exceed 100 percent of the  
16 facility's total compliance obligation over a compliance period.

17 (6) The department must withhold or withdraw the relevant share  
18 of allowances allocated to a covered entity under this section in the  
19 event that the covered entity ceases production in the state and  
20 becomes a closed facility. In the event an entity curtails all  
21 production and becomes a curtailed facility, the allowances are  
22 retained but cannot be traded, sold, or transferred and are still  
23 subject to the emission reduction requirements specified in this  
24 section. An owner or operator of a curtailed facility may transfer  
25 the allowances to a new operator of the facility that will be  
26 operated under the same North American industry classification system  
27 codes. If the curtailed facility becomes a closed facility, then all  
28 unused allowances will be transferred to the emissions containment  
29 reserve. A curtailed facility is not eligible to receive free  
30 allowances during a period of curtailment. Any allowances withheld or  
31 withdrawn under this subsection must be transferred to the emissions  
32 containment reserve.

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

36 (8) Rules adopted by the department under this section must  
37 include protocols for allocating allowances at no cost to an eligible  
38 facility built after the effective date of this section. The  
39 protocols must include consideration of the products being produced

1 by the facility, as well as the local environmental and health  
2 impacts associated with the facility.

3 NEW SECTION. **Sec. 14.** ALLOCATION OF ALLOWANCES TO ELECTRIC  
4 UTILITIES. (1) The legislature intends by this section to allow all  
5 consumer-owned electric utilities and investor-owned electric  
6 utilities subject to the requirements of chapter 19.405 RCW, the  
7 Washington clean energy transformation act, to be allocated  
8 allowances at no cost as provided in this section in order to  
9 mitigate the cost burden of the program on electric customers.

10 (2)(a) By October 1, 2022, the department shall adopt rules, in  
11 consultation with the department of commerce and the utilities and  
12 transportation commission, establishing the methods and procedures  
13 for allocating allowances to consumer-owned and investor-owned  
14 electric utilities. Rules adopted under this section must allow for a  
15 consumer-owned or investor-owned electric utility to be provided  
16 allowances at no cost to cover their emissions and decline  
17 proportionally with the cap, consistent with section 9 of this act,  
18 and the considerations of subsection (6) of this section. The rules  
19 must take into account the cost burden of the program on electric  
20 customers. Allowances allocated at no cost to consumer-owned and  
21 investor-owned electric utilities must be consigned to auction for  
22 the benefit of ratepayers consistent with subsection (3) of this  
23 section, deposited for compliance, or a combination of both. The  
24 rules adopted by the department pursuant to this section must include  
25 provisions directing revenues generated under this subsection to the  
26 applicable utilities. Under no circumstances may utilities receive  
27 any free allowances after 2045.

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

38 (c) By October 1, 2026, the department shall adopt by rule an  
39 allocation schedule, in consultation with the department of commerce

1 and the utilities and transportation commission, for the second  
2 compliance period for the provision of allowances for the benefit of  
3 ratepayers at no cost to consumer-owned and investor-owned electric  
4 utilities. This allocation must be consistent with a forecast, that  
5 is approved by the appropriate governing board or the utilities and  
6 transportation commission, of each utility's supply and demand, and  
7 the cost burden resulting from the inclusion of covered entities in  
8 the second compliance period.

9 (d) By October 1, 2028, the department shall adopt by rule an  
10 allocation schedule, in consultation with the department of commerce  
11 and the utilities and transportation commission, for the provision of  
12 allowances at no cost to consumer-owned and investor-owned electric  
13 utilities for the compliance periods contained within calendar years  
14 2031 through 2045. This allocation must be consistent with a  
15 forecast, that is approved by the appropriate governing board or the  
16 utilities and transportation commission, of each utility's supply and  
17 demand, and the cost burden resulting from the inclusion of the  
18 covered entities in the compliance periods.

19 (3)(a) During the first compliance period, 20 percent of the  
20 allowances allocated at no cost to consumer-owned and investor-owned  
21 electric utilities must be consigned to auction for the benefit of  
22 ratepayers, including at a minimum eliminating any additional cost  
23 burden to low-income customers from the implementation of this  
24 chapter. Rules adopted under this subsection must increase the  
25 percentage of allowances consigned to auction by 20 percent each  
26 subsequent compliance period until a total of 100 percent is reached.

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

36 (4) If an entity is identified by the department as an emissions-  
37 intensive, trade-exposed industry under section 13 of this act,  
38 unless allowances have been otherwise allocated for electricity-  
39 related emissions to the entity under section 13 of this act or to a  
40 consumer-owned utility under this section, the department shall



1 allocate allowances at no cost to the electric utility or power  
2 marketing administration that is providing electricity to the entity  
3 in an amount equal to the forecasted emissions for electricity  
4 consumption for the entity for the compliance period.

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

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

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

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

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

22 (8) Nothing in this section affects the requirements of chapter  
23 19.405 RCW.

24 NEW SECTION. **Sec. 15.** ALLOCATION OF ALLOWANCES TO NATURAL GAS  
25 UTILITIES. (1) For the benefit of ratepayers, allowances must be  
26 allocated at no cost to covered entities that are natural gas  
27 utilities.

28 (a) By October 1, 2022, the department shall adopt rules, in  
29 consultation with the utilities and transportation commission,  
30 establishing the methods and procedures for allocating allowances to  
31 natural gas utilities. Rules adopted under this subsection must allow  
32 for a natural gas utility to be provided allowances at no cost to  
33 cover their emissions and decline proportionally with the cap,  
34 consistent with section 9 of this act. Allowances allocated at no  
35 cost to natural gas utilities must be consigned to auction for the  
36 benefit of ratepayers consistent with subsection (2) of this section,  
37 deposited for compliance, or a combination of both. The rules adopted  
38 by the department pursuant to this section must include provisions

1 directing revenues generated under this subsection to the applicable  
2 utilities.

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

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

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

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

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

35 (3) In order to qualify for no cost allowances, covered entities  
36 that are natural gas utilities must provide copies of their  
37 greenhouse gas emissions reports filed with the United States  
38 environmental protection agency under 40 C.F.R. Part 98 subpart NN -  
39 suppliers of natural gas and natural gas liquids for calendar years  
40 2015 through 2021 to the department on or before March 31, 2022. The

1 copies of the reports must be provided in electronic form to the  
2 department, in a manner prescribed by the department. The reports  
3 must be complete and contain all information required by 40 C.F.R.  
4 Sec. 98.406 including, but not limited to, information on large end-  
5 users served by the natural gas utility. For any year where a natural  
6 gas utility was not required to file this report with the United  
7 States environmental protection agency, a report may be submitted in  
8 a manner prescribed by the department containing all of the  
9 information required in the subpart NN report.

10 (4) To continue receiving no cost allowances, a natural gas  
11 utility must provide to the department the United States  
12 environmental protection agency subpart NN greenhouse gas emissions  
13 report for each reporting year in the manner and by the dates  
14 provided by RCW 70A.15.2200(5) as part of the greenhouse gas  
15 reporting requirements of this chapter.

16 NEW SECTION. **Sec. 16.** EMISSIONS CONTAINMENT RESERVE  
17 WITHHOLDING. (1) To help ensure that the price of allowances remains  
18 sufficient to incentivize reductions in greenhouse gas emissions, the  
19 department must establish an emissions containment reserve and set an  
20 emissions containment reserve trigger price by rule. The price must  
21 be set at a reasonable amount above the auction floor price and equal  
22 to the level established in jurisdictions with which the department  
23 has entered into a linkage agreement. In the event that a  
24 jurisdiction with which the department has entered into a linkage  
25 agreement has no emissions containment trigger price, the department  
26 shall suspend the trigger price under this subsection. The purpose of  
27 withholding allowances in the emissions containment reserve is to  
28 secure additional emissions reductions.

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

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

1 (4) The department shall transfer allowances to the emissions  
2 containment reserve in the following situations:

3 (a) No less than two percent of the total number of allowances  
4 available from the allowance budgets for calendar years 2023 through  
5 2026;

6 (b) When allowances are unsold in auctions under section 12 of  
7 this act;

8 (c) When facilities curtail or close consistent with section  
9 13(6) of this act; or

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

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

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

25 NEW SECTION. **Sec. 17.** ALLOWANCE PRICE CONTAINMENT. (1) To help  
26 minimize allowance price volatility in the auction, the department  
27 shall adopt by rule an auction floor price and a schedule for the  
28 floor price to increase by a predetermined amount every year. The  
29 department may not sell allowances at bids lower than the auction  
30 floor price. The department's rules must specify holding limits that  
31 determine the maximum number of allowances that may be held for use  
32 or trade by a registered entity at any one time. The department shall  
33 also establish an auction ceiling price to limit extraordinary prices  
34 and to determine when to offer allowances through the allowance price  
35 containment reserve auctions authorized under this section.

36 (2) For calendar years 2023 through 2026, the department must  
37 place no less than two percent of the total number of allowances  
38 available from the allowance budgets for those years in an allowance  
39 price containment reserve. The reserve must be designed as a

1 mechanism to assist in containing compliance costs for covered and  
2 opt-in entities in the event of unanticipated high costs for  
3 compliance instruments.

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

9 (b) Allowances must also be distributed from the allowance price  
10 containment reserve by auction when new covered and opt-in entities  
11 enter the program and allowances in the emissions containment reserve  
12 under section 16 of this act are exhausted.

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

15 (5) The process for reserve auctions is the same as the process  
16 provided in section 12 of this act and the proceeds from reserve  
17 auctions must be treated the same.

18 (6) The department shall by rule:

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

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

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

27 NEW SECTION. **Sec. 18.** PRICE CEILING. (1) The department shall  
28 establish a price ceiling to provide cost protection for facilities  
29 obligated to comply with this chapter. The ceiling must be set at a  
30 level sufficient to facilitate investments to achieve further  
31 emission reductions beyond those enabled by the price ceiling, with  
32 the intent that investments accelerate the state's achievement of  
33 greenhouse gas limits established under RCW 70A.45.020. The price  
34 ceiling must increase annually in proportion to the price floor.

35 (2) In the event that no allowances remain in the allowance price  
36 containment reserve, the department must issue the number of price  
37 ceiling units for sale sufficient to provide cost protection for  
38 facilities as established under subsection (1) of this section.  
39 Purchases must be limited to entities that do not have sufficient

1 eligible compliance instruments in their holding and compliance  
2 accounts for the next compliance period and these entities may only  
3 purchase what they need to meet their compliance obligation for the  
4 current compliance period. Price ceiling units may not be sold or  
5 transferred and must be retired for compliance in the current  
6 compliance period. A price ceiling unit is not a property right.

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

14 NEW SECTION. **Sec. 19.** OFFSETS. (1) The department shall adopt  
15 by rule the protocols for establishing offset projects and securing  
16 offset credits that may be used to meet a portion of a covered or  
17 opt-in entity's compliance obligation under section 22 of this act.  
18 The protocols adopted by the department under this section must align  
19 with the policies of the state established under RCW 70A.45.090 and  
20 70A.45.100.

21 (2) Offset projects must:

22 (a) Provide direct environmental benefits to the state or be  
23 located in a jurisdiction with which Washington has entered into a  
24 linkage agreement;

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

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

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

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

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

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

10 (c) The limits in (a) and (b) of this subsection may be modified  
11 by rule as adopted by the department when appropriate to ensure  
12 achievement of the proportionate share of statewide emissions limits  
13 established in RCW 70A.45.020 and to provide for alignment with other  
14 jurisdictions to which the state has linked.

15 (d) The limits in (a) and (b) of this subsection may be reduced  
16 for a specific covered or opt-in entity if the department determines,  
17 in consultation with the environmental justice council, that the  
18 covered or opt-in entity has or is likely to:

19 (i) Contribute substantively to cumulative air pollution burden  
20 in an overburdened community as determined by criteria established by  
21 the department, in consultation with the environmental justice  
22 council; or

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

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

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

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

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

7 (c) Adopt a process for monitoring and invalidating offset  
8 credits as necessary to ensure the credit reflects emission  
9 reductions or removals that continue to meet the standards required  
10 by subsection (1) of this section. If an offset credit is  
11 invalidated, the covered or opt-in entity must, within six months of  
12 the invalidation, transfer replacement credits or allowances to meet  
13 its compliance obligation. Failure to transfer the required credits  
14 or allowances is a violation subject to penalties as provided in  
15 section 23 of this act; and

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

21 (5) Any offset credits used may not be in addition to or allow  
22 for an increase in the emissions limits established under RCW  
23 70A.45.020, as reflected in the annual allowance budgets developed  
24 under section 9 of this act.

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

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

30 NEW SECTION. **Sec. 20.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL  
31 LANDS. (1) In order to ensure that a sufficient number of high  
32 quality offset projects are available under the limits set in section  
33 19 of this act, the department must establish an assistance program  
34 for offset projects on federally recognized tribal lands in  
35 Washington. The assistance may include, but is not limited to,  
36 funding or consultation for federally recognized tribal governments  
37 to assess a project's technical feasibility, investment requirements,  
38 development and operational costs, expected returns, administrative  
39 and legal hurdles, and project risks and pitfalls. The department may



1 provide funding or assistance upon request by a federally recognized  
2 tribe.

3 (2) It is the intent of the legislature that not less than  
4 \$5,000,000 be provided in the biennial omnibus operating  
5 appropriations act for the purposes of this section.

6 NEW SECTION. **Sec. 21.** ASSISTANCE PROGRAM FOR SMALL FORESTLAND  
7 OWNERS. (1) The department, in cooperation with the department of  
8 natural resources, must establish an assistance program for small  
9 forestland owners that seeks to benefit from carbon sequestration  
10 markets, including the provision of offset credits that qualify under  
11 section 19 of this act. The assistance may include, but is not  
12 limited to, funding or consultation to assess a project's technical  
13 feasibility, investment requirements, development and operational  
14 costs, expected returns, administrative and legal hurdles, and  
15 project risks and pitfalls. The department may assist multiple  
16 landowners to develop projects that aggregate sufficient acreage to  
17 provide the scale necessary to offer offset credits at a competitive  
18 price in either or both voluntary and regulatory carbon markets.  
19 Funding or assistance may be provided upon request by a small  
20 forestland owner.

21 (2) It is the intent of the legislature that not less than  
22 \$2,000,000 be provided in the biennial omnibus operating  
23 appropriations act each biennium for the purposes of this section.

24 NEW SECTION. **Sec. 22.** COMPLIANCE OBLIGATIONS. (1) A covered or  
25 opt-in entity has a compliance obligation for its emissions during  
26 each four-year compliance period, with the first compliance period  
27 commencing January 1, 2023, except when the first compliance period  
28 commences at a later date as provided in subsection (7) of this  
29 section. A covered or opt-in entity shall transfer a number of  
30 compliance instruments equal to the entity's covered emissions by  
31 November 1st of each calendar year in which a covered or opt-in  
32 entity has a compliance obligation. The department shall set by rule  
33 a percentage of compliance instruments that must be transferred in  
34 each year of the compliance period such that covered or opt-in  
35 entities are allowed to smooth their compliance obligation within the  
36 compliance period but must fully satisfy their compliance obligation  
37 over the course of the compliance period, in a manner similar to  
38 external greenhouse gas emissions trading programs in other

1 jurisdictions. In meeting a given compliance obligation, a covered or  
2 opt-in entity may use allowances issued in that compliance year, or  
3 allowances issued in any of the seven years immediately preceding  
4 that compliance year.

5 (2) Compliance occurs through the transfer of compliance  
6 instruments or price ceiling units, on or before the transfer date,  
7 from the holding account to the compliance account of the covered or  
8 opt-in entity as described in section 10 of this act. Compliance  
9 includes consignment of allowances to auction pursuant to sections 14  
10 and 15 of this act.

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

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

17 (4) Allowances must be transferred in the order in which they  
18 were purchased or acquired.

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

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

26 (7) (a) This section does not take effect until additive  
27 transportation funding is received by the state, at which time the  
28 department of licensing must provide written notice to the chief  
29 clerk of the house of representatives, the secretary of the senate,  
30 and the office of the code reviser.

31 (b) For the purposes of this subsection, "additive transportation  
32 funding" means receipt of funding by the state in which the combined  
33 total of revenues assumed in the omnibus transportation budget exceed  
34 \$500,000,000 in any biennium above the November 2020 state  
35 transportation revenue forecast.

36 NEW SECTION. **Sec. 23.** ENFORCEMENT. (1) All covered and opt-in  
37 entities are required to submit compliance instruments in a timely  
38 manner to meet the entities' compliance obligations and shall comply  
39 with all requirements for monitoring, reporting, holding, and

1 transferring emission allowances and other provisions of this  
2 chapter.

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

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

18 (4) The department may issue a penalty of up to \$50,000 per day  
19 per violation for violations of section 12(8) (a) through (e) of this  
20 act.

21 (5) Except as provided in subsections (3) and (4) of this  
22 section, any person that violates the terms of this chapter or an  
23 order issued under this chapter incurs a penalty of up to \$10,000 per  
24 day per violation for each day that the person does not comply. All  
25 penalties under subsections (3) and (4) of this section and this  
26 subsection must be deposited into the climate investment account  
27 created in section 28 of this act.

28 (6) Orders and penalties issued under this chapter are appealable  
29 to the pollution control hearings board under chapter 43.21B RCW.

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

34 (8) An electric utility or natural gas utility must notify its  
35 retail customers and the environmental justice council in published  
36 form within three months of paying a monetary penalty under this  
37 section.

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

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

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

5 NEW SECTION. **Sec. 24.** LINKAGE WITH OTHER JURISDICTIONS. (1)

6 Subject to making the findings and conducting the public comment  
7 process described in subsection (3) of this section, the department  
8 shall seek to enter into linkage agreements with other jurisdictions  
9 with external greenhouse gas emissions trading programs in order to:

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

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

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

16 (d) Enhance market security;

17 (e) Reduce program administration costs; and

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

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

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

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

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

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

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

3 (f) Provisions for public notice and participation; and

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

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

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

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

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

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

30 (4) The state retains all legal and policymaking authority over  
31 its program design and enforcement.

32 NEW SECTION. **Sec. 25.** RULES. The department shall adopt rules  
33 to implement the provisions of the program established in sections 8  
34 through 24 of this act. The department may adopt emergency rules  
35 pursuant to RCW 34.05.350 for initial implementation of the program,  
36 to implement the state omnibus appropriations act for the 2021-2023  
37 fiscal biennium, and to ensure that reporting and other program  
38 requirements are determined early for the purpose of program design

1 and early notice to registered entities with a compliance obligation  
2 under the program.

3 NEW SECTION. **Sec. 26.** EXPENDITURE TARGETS. (1) It is the intent  
4 of the legislature that each year the total investments made through  
5 the carbon emissions reduction account created in section 27 of this  
6 act, the climate commitment account created in section 29 of this  
7 act, the natural climate solutions account created in section 30 of  
8 this act, and the air quality and health disparities improvement  
9 account created in section 31 of this act, achieve the following:

10 (a) A minimum of not less than 35 percent and a goal of 40  
11 percent of total investments that provide direct and meaningful  
12 benefits to vulnerable populations within the boundaries of  
13 overburdened communities identified under chapter . . ., Laws of 2021  
14 (Engrossed Second Substitute Senate Bill No. 5141); and

15 (b) In addition to the requirements of (a) of this subsection, at  
16 least 10 percent of the total investments authorized under this  
17 chapter must be used for programs, activities, or projects formally  
18 supported by a resolution of an Indian tribe, with priority given to  
19 otherwise qualifying projects directly administered or proposed by an  
20 Indian tribe. An investment that meets the requirements of both this  
21 subsection (1)(b) and (a) of this subsection may count toward the  
22 requisite minimum percentage for both subsections.

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

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

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

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

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

37 (4) The state must develop a process by which to evaluate the  
38 impacts of the investments made under this chapter, work across state  
39 agencies to develop and track priorities across the different

1 eligible funding categories, and work with the environmental justice  
2 council pursuant to section 5 of this act.

3 (5) No expenditures may be made from the carbon emissions  
4 reduction account created in section 27 of this act, the climate  
5 investment account created in section 28 of this act, or the air  
6 quality and health disparities improvement account created in section  
7 31 of this act if, by April 1, 2023, the legislature has not  
8 considered and enacted request legislation brought forth by the  
9 department under section 8 of this act that outlines a compliance  
10 pathway specific to emissions-intensive, trade-exposed businesses for  
11 achieving their proportionate share of the state's emissions  
12 reduction limits through 2050.

13 NEW SECTION. **Sec. 27.** CARBON EMISSIONS REDUCTION ACCOUNT. The  
14 carbon emissions reduction account is created in the state treasury.  
15 Moneys in the account may be spent only after appropriation.  
16 Expenditures from the account are intended to affect reductions in  
17 transportation sector carbon emissions through a variety of carbon  
18 reducing investments. These can include, but are not limited to:  
19 Transportation alternatives to single occupancy passenger vehicles;  
20 reductions in single occupancy passenger vehicle miles traveled;  
21 reductions in per mile emissions in vehicles, including through the  
22 funding of alternative fuel infrastructure and incentive programs;  
23 and emission reduction programs for freight transportation, including  
24 motor vehicles and rail, as well as for ferries and other maritime  
25 and port activities. Expenditures from the account may only be made  
26 for transportation carbon emission reducing purposes and may not be  
27 made for highway purposes authorized under the 18th Amendment of the  
28 Washington state Constitution. It is the legislature's intent that  
29 expenditures from the account used to reduce carbon emissions be made  
30 with the goal of achieving equity for communities that historically  
31 have been omitted or adversely impacted by past transportation  
32 policies and practices.

33 NEW SECTION. **Sec. 28.** CLIMATE INVESTMENT ACCOUNT. (1) (a) The  
34 climate investment account is created in the state treasury. Except  
35 as otherwise provided in this act, all receipts from the auction of  
36 allowances authorized in this chapter must be deposited into the  
37 account. Moneys in the account may be spent only after appropriation.

1 (b) Projects or activities funded from the account must meet high  
2 labor standards, including family sustaining wages, providing  
3 benefits including health care and pensions, career development  
4 opportunities, and maximize access to economic benefits from such  
5 projects for local workers and diverse businesses. Each contracting  
6 entity's proposal must be reviewed for equity and opportunity  
7 improvement efforts, including: (i) Employer paid sick leave  
8 programs; (ii) pay practices in relation to living wage indicators  
9 such as the federal poverty level; (iii) efforts to evaluate pay  
10 equity based on gender identity, race, and other protected status  
11 under Washington law; (iv) facilitating career development  
12 opportunities, such as apprenticeship programs, internships, job-  
13 shadowing, and on-the-job training; and (v) employment assistance and  
14 employment barriers for justice affected individuals.

15 (2) Moneys in the account may be used only for projects and  
16 programs that achieve the purposes of the greenhouse gas emissions  
17 cap and invest program established under this chapter. Moneys in the  
18 account as described in this subsection must first be appropriated  
19 for the administration of the requirements of this chapter, in an  
20 amount not to exceed five percent of the total receipt of funds from  
21 allowance auction proceeds under this chapter. Beginning July 1,  
22 2024, and annually thereafter, the state treasurer shall distribute  
23 funds in the account as follows:

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

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

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

33 NEW SECTION. **Sec. 29.** CLIMATE COMMITMENT ACCOUNT. (1) The  
34 climate commitment account is created in the state treasury. The  
35 account must receive moneys distributed to the account from the  
36 climate investment account created in section 28 of this act. Moneys  
37 in the account may be spent only after appropriation. Projects,  
38 activities, and programs eligible for funding from the account must



1 be physically located in Washington state and include, but are not  
2 limited to, the following:

3 (a) Implementing the working families tax rebate in RCW  
4 82.08.0206;

5 (b) Supplementing the growth management planning and  
6 environmental review fund established in RCW 36.70A.490 for the  
7 purpose of making grants or loans to local governments for the  
8 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and  
9 36.70A.600, for costs associated with RCW 36.70A.610, and to cover  
10 costs associated with the adoption of optional elements of  
11 comprehensive plans consistent with RCW 43.21C.420;

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

18 (d) Programs, activities, or projects that deploy renewable  
19 energy resources, such as solar and wind power, and projects to  
20 deploy distributed generation, energy storage, demand-side  
21 technologies and strategies, and other grid modernization projects;

22 (e) Programs, activities, or projects that increase the energy  
23 efficiency or reduce greenhouse gas emissions of industrial  
24 facilities including, but not limited to, proposals to implement  
25 combined heat and power, district energy, or on-site renewables, such  
26 as solar and wind power, to upgrade the energy efficiency of existing  
27 equipment, to reduce process emissions, and to switch to less  
28 emissions intensive fuel sources;

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

32 (i) Fertilizer management;

33 (ii) Soil management;

34 (iii) Bioenergy;

35 (iv) Biofuels;

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

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

4 (vii) Renewable energy projects;

5 (viii) Farmworker housing weatherization programs;

6 (ix) Dairy digester research and development; and

7 (x) Alternative manure management;

8 (g) Programs, activities, or projects that increase energy  
9 efficiency in new and existing buildings, or that promote low-carbon  
10 architecture, including use of newly emerging alternative building  
11 materials that result in a lower carbon footprint in the built  
12 environment over the life cycle of the building and component  
13 building materials;

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

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

21 (j) Clean energy transition and assistance programs, activities,  
22 or projects that assist affected workers or people with lower incomes  
23 during the transition to a clean energy economy, or grow and expand  
24 clean manufacturing capacity in communities across Washington state  
25 including, but not limited to:

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

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

34 (iii) Programs, activities, or other worker-support projects for  
35 bargaining unit and nonsupervisory fossil fuel workers who are  
36 affected by the transition away from fossil fuels to a clean energy  
37 economy. Worker support may include, but is not limited to: (A) Full  
38 wage replacement, health benefits, and pension contributions for  
39 every worker within five years of retirement; (B) full wage  
40 replacement, health benefits, and pension contributions for every

1 worker with at least one year of service for each year of service up  
2 to five years of service; (C) wage insurance for up to five years for  
3 workers reemployed who have more than five years of service; (D) up  
4 to two years of retraining costs, including tuition and related  
5 costs, based on in-state community and technical college costs; (E)  
6 peer counseling services during transition; (F) employment placement  
7 services, prioritizing employment in the clean energy sector; and (G)  
8 relocation expenses;

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

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

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

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

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

28 (2) Moneys in the account may not be used for projects or  
29 activities that would violate tribal treaty rights or result in  
30 significant long-term damage to critical habitat or ecological  
31 functions. Investments from this account must result in long-term  
32 environmental benefits and increased resilience to the impacts of  
33 climate change.

34 NEW SECTION. **Sec. 30.** NATURAL CLIMATE SOLUTIONS ACCOUNT. (1)

35 The natural climate solutions account is created in the state  
36 treasury. All moneys directed to the account from the climate  
37 investment account created in section 28 of this act must be  
38 deposited in the account. Moneys in the account may be spent only  
39 after appropriation. Moneys in the account are intended to increase

1 the resilience of the state's waters, forests, and other vital  
2 ecosystems to the impacts of climate change, conserve working  
3 forestlands at risk of conversion, and increase their carbon  
4 pollution reduction capacity through sequestration, storage, and  
5 overall system integrity. Moneys in the account must be spent in a  
6 manner that is consistent with existing and future assessments of  
7 climate risks and resilience from the scientific community and  
8 expressed concerns of and impacts to overburdened communities.

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

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

13 (i) Restore and protect estuaries, fisheries, and marine  
14 shoreline habitats and prepare for sea level rise including, but not  
15 limited to, making fish passage correction investments such as those  
16 identified in the cost-share barrier removal program for small  
17 forestland owners created in RCW 76.13.150 and those that are  
18 considered by the fish passage barrier removal board created in RCW  
19 77.95.160;

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

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

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

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

28 (vi) Improve infrastructure treating stormwater from previously  
29 developed areas within an urban growth boundary designated under  
30 chapter 36.70A RCW, with a preference given to projects that use  
31 green stormwater infrastructure;

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

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

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

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

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

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

21 (3) Moneys in the account may not be used for projects that would  
22 violate tribal treaty rights or result in significant long-term  
23 damage to critical habitat or ecological functions. Investments from  
24 this account must result in long-term environmental benefits and  
25 increased resilience to the impacts of climate change.

26 NEW SECTION. **Sec. 31.** AIR QUALITY AND HEALTH DISPARITIES  
27 IMPROVEMENT ACCOUNT. (1) The air quality and health disparities  
28 improvement account is created in the state treasury. Moneys in the  
29 account may be spent only after appropriation. Expenditures from the  
30 account are intended to:

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

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

37 (2) Moneys in the account may be used for either capital budget  
38 or transportation budget purposes, or both. Moneys in the account may  
39 not be used for projects that would violate tribal treaty rights or

1 result in significant long-term damage to critical habitat or  
2 ecological functions. Investments from the account must result in  
3 long-term environmental benefits and increased resilience to the  
4 impacts of climate change.

5 (3) It is the intent of the legislature that not less than  
6 \$20,000,000 per biennium be dedicated to the account for the purposes  
7 of the account.

8 **Sec. 32.** RCW 70A.15.2200 and 2020 c 20 s 1090 are each amended  
9 to read as follows:

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

21 (2) Except as provided in subsection (3) of this section, any  
22 person operating or responsible for the operation of air contaminant  
23 sources of any class for which the ordinances, resolutions, rules or  
24 regulations of the department or board of the authority, require  
25 registration or reporting shall register therewith and make reports  
26 containing information as may be required by such department or board  
27 concerning location, size and height of contaminant outlets,  
28 processes employed, nature of the contaminant emission and such other  
29 information as is relevant to air pollution and available or  
30 reasonably capable of being assembled. In the case of emissions of  
31 greenhouse gases as defined in RCW 70A.45.010 the department shall  
32 adopt rules requiring reporting of those emissions. The department or  
33 board may require that such registration or reporting be accompanied  
34 by a fee, and may determine the amount of such fee for such class or  
35 classes: PROVIDED, That the amount of the fee shall only be to  
36 compensate for the costs of administering such registration or  
37 reporting program which shall be defined as initial registration and  
38 annual or other periodic reports from the source owner providing  
39 information directly related to air pollution registration, on-site

1 inspections necessary to verify compliance with registration  
2 requirements, data storage and retrieval systems necessary for  
3 support of the registration program, emission inventory reports and  
4 emission reduction credits computed from information provided by  
5 sources pursuant to registration program requirements, staff review,  
6 including engineering or other reliable analysis for accuracy and  
7 currentness, of information provided by sources pursuant to  
8 registration program requirements, clerical and other office support  
9 provided in direct furtherance of the registration program, and  
10 administrative support provided in directly carrying out the  
11 registration program: PROVIDED FURTHER, That any such registration  
12 made with either the board or the department shall preclude a further  
13 registration and reporting with any other board or the department,  
14 except that emissions of greenhouse gases as defined in RCW  
15 70A.45.010 must be reported as required under subsection (5) of this  
16 section.

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

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

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

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

38 (a) A "grain warehouse" or "grain elevator" is an establishment  
39 classified in standard industrial classification (SIC) code 5153 for  
40 wholesale trade for which a license is required and includes, but is

1 not limited to, such a licensed facility that also conducts cleaning  
2 operations for grain;

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

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

10 (5)(a) The department shall adopt rules requiring persons to  
11 report emissions of greenhouse gases as defined in RCW 70A.45.010  
12 where those emissions from a single facility, ~~((source, or site,))~~ or  
13 from electricity or fossil fuels sold in Washington by a single  
14 supplier or local distribution company, meet or exceed ten thousand  
15 metric tons of carbon dioxide equivalent annually. The ~~((department~~  
16 ~~may phase in the requirement to report greenhouse gas emissions until~~  
17 ~~the reporting threshold in this subsection is met, which must occur~~  
18 ~~by January 1, 2012))~~ rules adopted by the department must support  
19 implementation of the program created in section 8 of this act. In  
20 addition, the rules must require that:

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

24 (ii) ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each  
25 annual report must include emissions data for the preceding calendar  
26 year and must be submitted to the department by ~~((October))~~ March  
27 31st of the year in which the report is due. ~~((However, starting in~~  
28 ~~2011, a person who is required to report greenhouse gas emissions to~~  
29 ~~the United States environmental protection agency under 40 C.F.R.~~  
30 ~~Part 98, as adopted on September 22, 2009, must submit the report~~  
31 ~~required under this section to the department concurrent with the~~  
32 ~~submission to the United States environmental protection agency.~~  
33 ~~Except as otherwise provided in this section, the data for emissions~~  
34 ~~in Washington and any corrections thereto that are reported to the~~  
35 ~~United States environmental protection agency must be the emissions~~  
36 ~~data reported to the department; and~~

37 ~~((iii) Emissions of carbon dioxide associated with the complete~~  
38 ~~combustion or oxidation of liquid motor vehicle fuel, special fuel,~~  
39 ~~or aircraft fuel that is sold in Washington where the annual~~  
40 ~~emissions associated with that combustion or oxidation equal or~~



1 exceed ten thousand metric tons be reported to the department. Each  
2 person who is required to file periodic tax reports of motor vehicle  
3 fuel sales under RCW 82.36.031 or special fuel sales under RCW  
4 82.38.150, or each distributor of aircraft fuel required to file  
5 periodic tax reports under RCW 82.42.040 must report to the  
6 department the annual emissions of carbon dioxide from the complete  
7 combustion or oxidation of the fuels listed in those reports as sold  
8 in the state of Washington. The department shall not require  
9 suppliers to use additional data to calculate greenhouse gas  
10 emissions other than the data the suppliers report to the department  
11 of licensing. The rules may allow this information to be aggregated  
12 when reported to the department. The department and the department of  
13 licensing shall enter into an interagency agreement to ensure  
14 proprietary and confidential information is protected if the  
15 departments share reported information. Any proprietary or  
16 confidential information exempt from disclosure when reported to the  
17 department of licensing is exempt from disclosure when shared by the  
18 department of licensing with the department under this provision.)

19 (b) (i) (~~Except as otherwise provided in this subsection, the~~  
20 ~~rules adopted by the department under (a) of this subsection must be~~  
21 ~~consistent with the regulations adopted by the United States~~  
22 ~~environmental protection agency in 40 C.F.R. Part 98 on September 22,~~  
23 ~~2009.~~

24 ~~(ii))~~ The department may by rule include additional gases to the  
25 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has  
26 been designated as a greenhouse gas by the United States congress  
27 ~~((~~or~~)),~~ by the United States environmental protection agency, or  
28 included in external greenhouse gas emission trading programs with  
29 which Washington has pursuant to section 24 of this act. Prior to  
30 including additional gases to the definition of "greenhouse gas" in  
31 RCW 70A.45.010, the department shall notify the appropriate  
32 committees of the legislature. (~~Decisions to amend the rule to~~  
33 ~~include additional gases must be made prior to December 1st of any~~  
34 ~~year and the amended rule may not take effect before the end of the~~  
35 ~~regular legislative session in the next year.~~

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

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

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

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

9       (B) Needed to ensure consistency with emissions reporting  
10 requirements for jurisdictions with which Washington has entered a  
11 linkage agreement. (~~However, the~~)

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

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

17       (e) The fee provisions in subsection (2) of this section apply to  
18 reporting of emissions of greenhouse gases. Persons required to  
19 report under (a) of this subsection who fail to report or pay the fee  
20 required in subsection (2) of this section are subject to enforcement  
21 penalties under this chapter. The department shall enforce the  
22 reporting rule requirements (~~(unless it approves a local air~~  
23 ~~authority's request to enforce the requirements for persons operating~~  
24 ~~within the authority's jurisdiction. However, neither the department~~  
25 ~~nor a local air authority approved under this section are authorized~~  
26 ~~to assess enforcement penalties on persons required to report under~~  
27 ~~(a) of this subsection until six months after the department adopts~~  
28 ~~its reporting rule in 2010)). When a person that holds a compliance  
29 obligation under section 10 of this act fails to submit an emissions  
30 data report or fails to obtain a positive emissions data verification  
31 statement in accordance with (g)(ii) of this subsection, the  
32 department may assign an emissions level for that person.~~

33       (f) The energy facility site evaluation council shall,  
34 simultaneously with the department, adopt rules that impose  
35 greenhouse gas reporting requirements in site certifications on  
36 owners or operators of a facility permitted by the energy facility  
37 site evaluation council. The greenhouse gas reporting requirements  
38 imposed by the energy facility site evaluation council must be the  
39 same as the greenhouse gas reporting requirements imposed by the  
40 department. The department shall share any information reported to it

1 from facilities permitted by the energy facility site evaluation  
2 council with the council, including notice of a facility that has  
3 failed to report as required. The energy facility site evaluation  
4 council shall contract with the department to monitor the reporting  
5 requirements adopted under this section.

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

15 (ii) Verification requirements apply at a minimum to persons  
16 required to report under (a) of this subsection with emissions that  
17 equal or exceed 25,000 metric tons of carbon dioxide equivalent  
18 emissions, including carbon dioxide from biomass-derived fuels, or to  
19 persons who have a compliance obligation under section 10 of this act  
20 in any year of the current compliance period. The department may  
21 adopt rules to accept verification reports from another jurisdiction  
22 with a linkage agreement pursuant to section 20 of this act in cases  
23 where the department deems that the methods or procedures are  
24 substantively similar.

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

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

1 released, would result in emissions equivalent to or higher than the  
2 threshold established under (a) of this subsection.

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

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

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

24 NEW SECTION. Sec. 33. A new section is added to chapter 43.21C  
25 RCW to read as follows:

26 The review under this chapter of greenhouse gas emissions from a  
27 new or expanded facility subject to the greenhouse gas emission  
28 reduction requirements of chapter 70A.--- RCW (the new chapter  
29 created in section 37 of this act) must occur consistent with section  
30 10(9) of this act.

31 NEW SECTION. Sec. 34. A new section is added to chapter 70A.15  
32 RCW to read as follows:

33 The department or a local air authority must issue an enforceable  
34 order under this chapter to all permitted or registered sources  
35 operating in overburdened communities when, consistent with section  
36 3(2)(a) of this act, the department determines that criteria  
37 pollutants are not being reduced in an overburdened community and the  
38 department or local air authority adopts stricter air quality

1 standards, emissions standards, or emissions limitations on criteria  
2 pollutants.

3 NEW SECTION. **Sec. 35.** A new section is added to chapter 70A.45  
4 RCW to read as follows:

5 The state, state agencies, and political subdivisions of the  
6 state, in implementing their duties and authorities established under  
7 other laws, may only consider the greenhouse gas limits established  
8 in RCW 70A.45.020 in a manner that recognizes, where applicable, that  
9 the siting and placement of new best-in-class low carbon facilities  
10 is in the economic and environmental interests of the state of  
11 Washington.

12 NEW SECTION. **Sec. 36.** This act may be known and cited as the  
13 Washington climate commitment act.

14 NEW SECTION. **Sec. 37.** Sections 1 through 31 and 36 of this act  
15 constitute a new chapter in Title 70A RCW.

16 NEW SECTION. **Sec. 38.** (1) Sections 8 through 24 of this act,  
17 and any rules adopted by the department of ecology to implement the  
18 program established under those sections, are suspended on December  
19 31, 2055, in the event that the department of ecology determines by  
20 December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020  
21 have been met for two or more consecutive years.

22 (2) Upon the occurrence of the events identified in subsection  
23 (1) of this section, the department of ecology must provide written  
24 notice of the suspension date of sections 8 through 24 of this act to  
25 affected parties, the chief clerk of the house of representatives,  
26 the secretary of the senate, the office of the code reviser, and  
27 others as deemed appropriate by the department.

28 **Sec. 39.** RCW 43.376.020 and 2012 c 122 s 2 are each amended to  
29 read as follows:

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

32 (1) Make reasonable efforts to collaborate with Indian tribes in  
33 the development of policies, agreements, and program implementation  
34 that directly affect Indian tribes and develop a consultation process  
35 that is used by the agency for issues involving specific Indian

1 tribes. State agencies described in section 6 of this act must offer  
2 consultation with Indian tribes on the actions specified in section 6  
3 of this act;

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

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

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

12 **Sec. 40.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035  
13 are each reenacted and amended to read as follows:

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

21 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
22 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
23 70A.515.060, section 23 of this act, 76.09.170, 77.55.440, 78.44.250,  
24 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
25 90.64.102.

26 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
27 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
28 section 23 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
29 90.48.120, and 90.56.330.

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

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

1 (e) Decisions of local health departments regarding the issuance  
2 and enforcement of permits to use or dispose of biosolids under RCW  
3 70A.226.090.

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

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

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

17 (i) Decisions of the department of natural resources, the  
18 department of fish and wildlife, and the department that are  
19 reviewable under chapter 76.09 RCW, and the department of natural  
20 resources' appeals of county, city, or town objections under RCW  
21 76.09.050(7).

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

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

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

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

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

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

1 (b) Hearings conducted by the department pursuant to RCW  
2 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
3 70A.15.3110, and 90.44.180.

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

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

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

11 **Sec. 41.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to  
12 read as follows:

13 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
14 70A.205.280, 70A.300.090, 70A.20.050, section 23 of this act,  
15 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
16 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in  
17 writing, either by certified mail with return receipt requested or by  
18 personal service, to the person incurring the penalty from the  
19 department or the local air authority, describing the violation with  
20 reasonable particularity. For penalties issued by local air  
21 authorities, within thirty days after the notice is received, the  
22 person incurring the penalty may apply in writing to the authority  
23 for the remission or mitigation of the penalty. Upon receipt of the  
24 application, the authority may remit or mitigate the penalty upon  
25 whatever terms the authority in its discretion deems proper. The  
26 authority may ascertain the facts regarding all such applications in  
27 such reasonable manner and under such rules as it may deem proper and  
28 shall remit or mitigate the penalty only upon a demonstration of  
29 extraordinary circumstances such as the presence of information or  
30 factors not considered in setting the original penalty.

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

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

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



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

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

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

18 (5) All penalties recovered shall be paid into the state treasury  
19 and credited to the general fund except those penalties imposed  
20 pursuant to RCW 18.104.155, which shall be credited to the  
21 reclamation account as provided in RCW 18.104.155(7), RCW  
22 70A.15.3160, the disposition of which shall be governed by that  
23 provision, RCW 70A.300.090, which shall be credited to the model  
24 toxics control operating account created in RCW 70A.305.180, section  
25 23 of this act, which shall be credited to the climate investment  
26 account created in section 28 of this act, RCW 90.56.330, which shall  
27 be credited to the coastal protection fund created by RCW 90.48.390,  
28 and RCW 70A.355.070, which shall be credited to the underground  
29 storage tank account created by RCW 70A.355.090.

30 NEW SECTION. **Sec. 42.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected."

34 Correct the title.

EFFECT: The striking amendment, as amended, does the following:  
(1) Makes technical changes, including conforming amendments.

(2) Adds imported electricity to the list of covered emissions sources under the first compliance period of the Cap and Invest Program.

(3) Exempts motor vehicle and special fuel used for agricultural purposes by a farm fuel user from the Cap and Invest Program.

(4) Aligns environmental justice provisions with those of the Washington HEAL Act, except for the definition of "overburdened community," which has a new definition.

(5) Replaces references to the Forward Flexible Account for transportation expenditures with the new Carbon Emissions Reduction Account.

(6) Creates two subaccounts within the Climate Investment Account: The Climate Commitment Account and the Natural Climate Solutions Account.

(7) Directs 75 percent of the funds deposited into the Climate Investment Account into the Climate Commitment Account and 25 percent into the Natural Climate Solutions Account.

(8) Creates a new Air Quality and Health Disparities Improvement Account.

(9) Creates a program for assistance to small forestland owners seeking to develop projects for carbon offset markets.

(10) States the intent of the Legislature to appropriate \$2 million per biennium for the purpose of assistance to small forestland owners.

(11) Specifies that it is the intent of the Legislature that \$10 million from revenues under the program be expended each biennium for the Forestry Riparian Easement Program or for riparian easement projects funded under the Agricultural Conservation Easement Program, or similar riparian enhancement programs.

(12) Prohibits auction proceeds from being transferred to the carbon emissions reduction account after December 31, 2027, if a clean fuel standard with a carbon intensity reduction of greater than 10 percent is not enacted by that date.

(13) Requires that the environmental justice review of the Cap and Invest Program begin in 2023, rather than 2025. Requires the review to include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities.

(14) Requires that the Department of Ecology or local air authority, after adoption of stricter air quality standards, emission standards, or emissions limitations on criteria pollutants issue an enforceable order, as authorized under the Washington Clean Air Act, that applies to all permitted or registered sources operating in an overburdened community as necessary to comply with the stricter standards or limitations.

(15) Removes the requirement that, if a covered entity or opt-in entity is identified as a high priority emitter of criteria pollutants, and the emissions of greenhouse gases and the source of criteria pollutants are correlated, the Department of Ecology reduce the offset limits and the allocation of no cost allowances to that entity.

(16) Removes the requirement that the Department of Ecology revise a linkage agreement to ensure reductions of criteria pollutant emissions by a covered entity.

(17) Requires the Department of Ecology to conduct an environmental justice assessment before entering into a linkage agreement with other jurisdictions.

(18) Specifies that actions imposed by the Department of Ecology under the air quality provisions may not impose requirements on a permitted stationary source that are disproportionate to the permitted stationary source's contribution to air pollution compared

to other permitted stationary sources and other sources of criteria pollutants in the overburdened community.

(19) Requires the Department of Ecology to consider the number of no cost allowances in the marketplace in setting the number of allowances offered at each auction.

(20) Specifies that the Department of Ecology must only offer such number of allowances at each auction as will enhance the likelihood of achieving the statewide emissions limits.

(21) Amends provisions addressing the siting of new or expanded facilities that require review under the State Environmental Policy Act (SEPA).

(22) Amends provisions relating to the compliance obligations of emissions-intensive, trade-exposed (EITE) businesses.

(23) Authorizes an owner or operator of more than one facility receiving no cost allowances for EITE facilities to transfer allowances among the eligible facilities.

(24) Requires that rules adopted by the Department of Ecology for the allocation of allowances at no cost to EITE facilities include protocols for allocating allowances to an eligible facility built after the effective date of the section. Specifies that such protocols must include consideration of the products being produced by the facility, as well as the local environmental and health impacts associated with the facility. Requires the protocols to, for a facility that is built on tribal lands or is determined by the Department of Ecology to impact tribal lands and resources, be developed in consultation with the affected tribal nations. Requires that the Department of Ecology, in adopting by rule objective criteria for both emissions intensity and trade exposure for the purpose of identifying EITE businesses during the second compliance period, consider the locations of facilities potentially identified as EITE businesses relative to overburdened communities.

(25) Requires the Department of Commerce to, in consultation with the Department of Ecology, submit a report to the appropriate committees of the Legislature by January 1, 2028, that includes a review of the Cap and Invest Program as it pertains to emissions-intensive, trade-exposed businesses.

(26) Prohibits any expenditures from being made from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities Improvement Account if, by April 1, 2023, the Legislature has not considered and enacted request legislation brought forth by the Department of Ecology that outlines a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

(27) Excludes landfills with gas capture systems that capture at least 75 percent of landfill gas and produce renewable natural gas or electricity from landfill gas from becoming covered under the Cap and Invest Program beginning January 1, 2031.

(28) Adds Legislative intent language specifying that it is the intent of the Legislature to adopt a greenhouse gas emissions reduction policy specific to landfills, and that if such a policy is not enacted by January 1, 2030, the requirements of the Cap and Invest Program relative to landfills take full effect.

(29) Identifies the individual retail electric cooperatives served by a multijurisdictional consumer-owned utility as the covered entities under the Cap and Invest Program.

(30) Adds a voluntary renewable reserve account maintained by the Department of Ecology from which allowances may be retired for voluntary renewable electricity generation.

(31) Requires that a project or activity funded in whole or in part from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities Improvement Account be paused or ceased in the event that an affected federally recognized Indian tribe or the Department of Archaeology and Historic Preservation provides timely notice of a determination to the Department of Ecology that the project will adversely impact cultural resources, archaeological sites, or sacred sites.

(32) Adds a new section requiring the Governor to establish a governance structure to implement the state's climate commitment to provide accountability for achieving the state's greenhouse gas emissions reduction limits, establish a coordinated and strategic statewide approach to climate resilience, build an equitable and inclusive clean energy economy, and ensure that the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those limits.

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

(34) Requires consumer-owned and investor-owned electric utilities receiving allowances at no cost from the Department of Ecology to consign a portion of those allowances to auction for the benefit of ratepayers each compliance period.

(35) Requires that allowances consigned to auction for the benefit of ratepayers by electric utilities eliminate any additional cost burden to low-income customers from the implementation of the Cap and Invest Program.

(36) Requires that revenues from allowances sold at auction be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions such as weatherization, conservation and efficiency services, and bill assistance.

(37) Requires an electric utility or natural gas utility to notify its retail customers and the Environmental Justice Council in published form within three months of paying a monetary penalty for failure to comply with the requirements of the Cap and Invest Program.

(38) Requires the Department of Ecology to, in adopting offset protocols, make use of aggregation or other mechanisms to increase the development of offset and carbon removal projects by landowners, including small forest landowners.

(39) Adds environmental justice expenditure targets for the total investments made through the Carbon Emissions Reduction Account, the Climate Commitment Account, the Natural Climate Solutions Account, and the Air Quality and Health Disparities Improvement Account.

(40) Removes the section requiring the Climate Investment Account to be included in the legislature's four-year balanced budget requirements.

(41) Specifies that the Cap and Invest Program preempts the Clean Air Rule.

(42) Requires the Department of Ecology to transmit an auction notice to the Environmental Justice Council at least 60 days prior to each auction, and a summary results report and postauction proceeds report within 60 days after each auction. Requires the Department of

Ecology to communicate the results of the previous calendar year's auctions to the Environmental Justice Council on an annual basis beginning in 2024.

(43) Requires the Department of Ecology to, by December 1, 2027, and at least every four years thereafter, submit a report to the Legislature that includes a comprehensive review of the implementation of the Cap and Invest Program to date, including but not limited to outcomes relative to the state's emissions reduction limits, overburdened communities, covered entities, and emissions-intensive, trade-exposed businesses. Requires the Department of Ecology to transmit the report to the Environmental Justice Council at the same time it is submitted to the Legislature.

(44) Amends the contingent effective date for compliance obligations under the Cap and Invest Program.

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