

E2SSB 5126 - H COMM AMD

By Committee on Environment & Energy

NOT ADOPTED 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 great work in the past to highlight these
28 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 ensure that emissions or concentration reductions are
3 achieved in those communities. The legislature further intends to
4 conduct an environmental justice assessment to ensure that funds and
5 programs created under this chapter provide direct and meaningful
6 benefits to vulnerable populations and overburdened communities.
7 Additionally, the legislature intends to prevent job loss and provide
8 protective measures for workers adversely impacted by the transition
9 to a clean energy economy through transition and assistance programs,
10 worker-support projects, and workforce development and other
11 activities designed to grow and expand the clean manufacturing sector
12 in communities across Washington state. The legislature further
13 intends to establish an environmental justice and equity advisory
14 panel to provide recommendations for the development and
15 implementation of the program, the distribution of funds, and the
16 establishment of programs, activities, and projects to achieve
17 environmental justice and environmental health goals. The legislature
18 further intends to create and adopt community engagement plans and
19 tribal consultation frameworks in the administration of the program
20 to ensure equitable practices for meaningful community and federally
21 recognized tribal involvement. Finally, the legislature intends to
22 establish this program to contribute to a healthy environment for all
23 of Washington's communities.

24 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
25 section apply throughout this chapter unless the context clearly
26 requires otherwise.

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

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

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

37 (4) "Asset controlling supplier" means any entity that owns or
38 operates interconnected electricity generating facilities or serves
39 as an exclusive marketer for these facilities even though it does not

1 own them, and has been designated by the department and received a
2 department-published emissions factor for the wholesale electricity
3 procured from its system. The department shall use a methodology
4 consistent with the methodology used by an external greenhouse gas
5 emissions trading program that shares the regional electricity
6 transmission system. Electricity from asset controlling suppliers is
7 considered a specified source of electricity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (20) "Cost burden" means the impact on rates or charges to
38 customers of electric utilities in Washington state for the
39 incremental cost of electricity service to serve load due to the
40 compliance cost for greenhouse gas emissions caused by the program.

1 Cost burden includes administrative costs from the utility's
2 participation in the program.

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

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

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

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

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

16 (26) "Electricity importer" means:

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

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

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

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

35 (e) If the importer identified under (a) of this subsection is a
36 federal power marketing administration over which the state of
37 Washington does not have jurisdiction, and the federal power
38 marketing administration has not voluntarily elected to comply with
39 the program, then the electricity importer is the next purchasing-
40 selling entity in the physical path on the NERC e-tag, or if no

1 additional purchasing-selling entity over which the state of
2 Washington has jurisdiction, then the electricity importer is the
3 electric utility that operates the Washington transmission or
4 distribution system, or the generation balancing authority;

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

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

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

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

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

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

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

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

36 (32) "Environmental impacts" has the same meaning as defined in
37 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (section 2 of
38 Engrossed 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 (section 2 of
3 Engrossed 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 (section 14 of Engrossed Second Substitute Senate Bill No.
7 5141)).

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

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

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

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

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

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

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

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

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

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

39 (d) "Imported electricity" does not include electricity imports
40 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" includes electricity from facilities and wholesale
5 electricity purchases that contribute to a common system power pool.
6 Where a 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 identified
14 by the department through the process established under
15 chapter . . . , Laws of 2021 (Engrossed Second Substitute Senate Bill
16 No. 5141).

17 (53) "Person" has the same meaning as defined in RCW
18 70A.15.2200(5)(h)(iii).

19 (54) "Point of delivery" means a point on the electricity
20 transmission or distribution system where a deliverer makes
21 electricity available to a receiver, or available to serve load. This
22 point may be an interconnection with another system or a substation
23 where the transmission provider's transmission and distribution
24 systems are connected to another system, or a distribution substation
25 where electricity is imported into the state over a
26 multijurisdictional retail provider's distribution system.

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

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

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

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

39 (59) "Resilience" means the ability to prepare, mitigate and plan
40 for, withstand, recover from, and more successfully adapt to adverse

1 events and changing conditions, and reorganize in an equitable manner
2 that results in a new and better condition.

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

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

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

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

18 (64) "Tribal lands" has the same meaning as defined in RCW
19 70A.---.--- (section 2, chapter . . ., Laws of 2021 (section 2 of
20 Engrossed Second Substitute Senate Bill No. 5141)).

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

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

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

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

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

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

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

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

17 (2)(a) Beginning in 2023, and every two years thereafter, the
18 department must conduct a review to determine levels of criteria
19 pollutants, as well as greenhouse gas emissions, in the overburdened
20 communities identified under subsection (1) of this section. This
21 review must also include an evaluation of initial and subsequent
22 health impacts related to criteria pollution in overburdened
23 communities. The department may conduct this evaluation jointly with
24 the department of health.

25 (b) Once this review determines the levels of criteria pollutants
26 in an identified overburdened community, then the department, in
27 consultation with local air pollution control authorities, must
28 establish air quality targets to achieve air quality consistent with
29 neighboring communities that are not identified as overburdened;
30 identify the sources that are the contributors of those emissions
31 that are either increasing or not decreasing; and achieve the
32 reduction targets through adoption of emission control strategies or
33 other methods, and the department must:

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

1 (ii) After adoption of the stricter air quality standards,
2 emission standards, or emissions limitations on criteria pollutants,
3 require that all permitted or registered sources operating in an
4 overburdened community obtain an enforceable order, as authorized
5 under chapter 70A.15 RCW, from the department or the appropriate
6 local air authority as necessary to comply with the stricter
7 standards or limitations and the requirements of this section;

8 (iii) If a covered entity or opt-in entity is identified as a
9 high priority emitter of criteria pollutants, and the emissions of
10 greenhouse gases and the source of criteria pollutants are
11 correlated, reduce offset limits as established in section 19 of this
12 act and the allocation of allowances at no cost under section 13 of
13 this act, if applicable, for any covered entity identified under this
14 subsection (2) (b); or

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

18 (c) Actions imposed under this section may not impose
19 requirements on covered entities or opt-in entities that are
20 disproportionate to their contribution to air pollution compared to
21 other permitted stationary sources of criteria pollutants in the
22 overburdened community.

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

28 (i) Identifying emitters in overburdened communities; and

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

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

34 NEW SECTION. **Sec. 4.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1) When
35 allocating funds from the carbon emissions reduction account created
36 in section 27 of this act or from the climate investment account
37 created in section 28 of this act, or administering grants or
38 programs funded by the accounts, agencies shall conduct an
39 environmental justice assessment consistent with the requirements of

1 RCW 70A.---.--- (section 14, chapter . . ., Laws of 2021 (Engrossed
2 Second Substitute Senate Bill No. 5141)) and establish a minimum of
3 not less than 35 percent and a goal of 40 percent of total
4 investments that provide direct and meaningful benefits to vulnerable
5 populations within the boundaries of overburdened communities
6 identified under chapter . . ., Laws of 2021 (Engrossed Second
7 Substitute Senate Bill No. 5141) through: (a) The direct reduction of
8 environmental burdens in overburdened communities; (b) the reduction
9 of disproportionate, cumulative risk from environmental burdens,
10 including those associated with climate change; (c) the support of
11 community led project development, planning, and participation costs;
12 or (d) meeting a community need identified by the community that is
13 consistent with the intent of this chapter.

14 (2) The allocation of funding under subsection (1) of this
15 section must adhere to the following principles, additional to the
16 requirements of RCW 70A.---.--- (section 16, chapter . . ., Laws of
17 2021 (Engrossed Second Substitute Senate Bill No. 5141)): (a)
18 Benefits and programs should be directed to areas and targeted to
19 vulnerable populations and overburdened communities to reduce
20 statewide disparities; (b) investments and benefits should be made
21 roughly proportional to the health disparities that a specific
22 community experiences, with a goal of eliminating the disparities;
23 (c) investments and programs should focus on creating environmental
24 benefits, including eliminating health burdens, creating community
25 and population resilience, and raising the quality of life of those
26 in the community; and (d) efforts should be made to balance
27 investments and benefits across the state and within counties, local
28 jurisdictions, and unincorporated areas as appropriate to reduce
29 disparities by location and to ensure efforts contribute to a
30 reduction in disparities that exist based on race or ethnicity,
31 socioeconomic status, or other factors.

32 (3) State agencies allocating funds or administering grants or
33 programs from the climate investment account created in section 28 of
34 this act must:

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

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

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

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

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

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

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

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

33 (ii) Investment plans and funding proposals for the programs
34 funded from the climate investment account created in section 28 of
35 this act for the purpose of providing environmental benefits and
36 reducing environmental health disparities within overburdened
37 communities identified under chapter 70A.--- RCW (the new chapter
38 created in section 22, chapter . . . , Laws of 2021 (Engrossed Second
39 Substitute Senate Bill No. 5141));

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 6.** TRIBAL CONSULTATION. (1) Agencies that
27 allocate funding or administer grant programs appropriated from the
28 climate investment account created in section 28 of this act must
29 develop a consultation framework in coordination with tribal
30 governments that includes best practices, protocols for
31 communication, and collaboration with federally recognized tribes.
32 Under this consultation framework, before allocating funding or
33 administering grant programs appropriated from the climate investment
34 account, agencies must offer consultation with federally recognized
35 tribes on all funding decisions and programs that may impact,
36 infringe upon, or impair the governmental efforts of federally
37 recognized tribes to adopt or enforce their own standards governing
38 or protecting the tribe's resources or other rights and interests in
39 their tribal lands and lands within which a tribe or tribes possess

1 rights reserved by treaty. The consultation is independent of any
2 public participation process required by state law, or by a state
3 agency, and regardless of whether the agency receives a request for
4 consultation from a federally recognized tribe.

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

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

23 NEW SECTION. **Sec. 7.** GOVERNANCE STRUCTURE. (1) The governor
24 shall establish a governance structure to implement the state's
25 climate commitment to provide accountability for achieving the
26 state's greenhouse gas limits in RCW 70A.45.020, to establish a
27 coordinated and strategic statewide approach to climate resilience,
28 to build an equitable and inclusive clean energy economy, and to
29 ensure that the government provides clear policy and requirements,
30 financial tools, and other mechanisms to support achieving those
31 limits.

32 (2) The governance structure for implementing the state's climate
33 commitment must be based on the state's following principles:

34 (a) The program must be holistic and address the needs,
35 challenges, and opportunities to meet the climate commitment.

36 (b) The program must address emission reductions from all
37 relevant sectors and sources by ensuring that emitters are
38 responsible for meeting targeted greenhouse gas reductions and that

1 the government provides clear policy and requirements, financial
2 tools, and other mechanisms to support achieving those reductions.

3 (c) The program must support an equitable transition for
4 vulnerable populations and overburdened communities, including
5 through early and meaningful engagement of overburdened communities
6 and workers to ensure the program achieves equitable and just
7 outcomes.

8 (d) The program must build increasing climate resilience for at-
9 risk communities and ecosystems through cross-sectoral coordination,
10 strategic planning, and cohesive policies.

11 (e) The program must apply the most current, accurate, and
12 complete scientific and technical information available to guide the
13 state's climate actions and strategies.

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 8.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In

2 order to ensure that greenhouse gas emissions are reduced by covered
3 entities consistent with the limits established in RCW 70A.45.020,
4 the department must implement a cap on greenhouse gas emissions from
5 covered entities and a program to track, verify, and enforce
6 compliance through the use of compliance instruments.

7 (2) The program must consist of:

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

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

14 (c) Distribution of emission allowances, as provided in section
15 12 of this act, and through the allowance price containment
16 provisions under sections 16 and 17 of this act;

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 9.** PROGRAM BUDGET AND TIMELINES. (1)(a) The
12 department shall commence the program by January 1, 2023, by
13 determining an emissions baseline establishing the proportionate
14 share that the total greenhouse gas emissions of covered entities for
15 the first compliance period bears to the total anthropogenic
16 greenhouse gas emissions in the state during 2015 through 2019, based
17 on data reported to the department under RCW 70A.15.2200 or provided
18 as required by this chapter, as well as other relevant data. By
19 October 1, 2022, the department shall adopt a program budget of
20 allowances for the first compliance period of the program, calendar
21 years 2023 through 2026, to be distributed from January 1, 2023,
22 through December 31, 2026. If the first compliance period is delayed
23 pursuant to section 22(7) of this act, the department shall adjust
24 the program allowance budget to reflect a shorter first compliance
25 period.

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

37 (c) By October 1, 2028, the department shall adopt by rule the
38 annual program budgets of allowances for calendar years 2031 through
39 2040.

1 (2) The program budgets of allowances must be set to achieve the
2 share of reductions by covered entities necessary to achieve the
3 2030, 2040, and 2050 statewide emissions limits established in RCW
4 70A.45.020, based on data reported to the department under chapter
5 70A.15 RCW or provided as required by this chapter. The department
6 must adopt annual allowance budgets for the program on a calendar
7 year basis that provide for progressively equivalent reductions year
8 over year. An allowance distributed under the program, either
9 directly by the department under sections 13 through 15 of this act
10 or through auctions under section 12 of this act, expire eight years
11 after their issuance and may be held or banked consistent with
12 sections 12(6) and 17(1) of this act.

13 (3) The department must complete an evaluation by December 31,
14 2027, and by December 31, 2035, of the performance of the program,
15 including its performance in reducing greenhouse gases. If the
16 evaluation shows that adjustments to the annual budgets are necessary
17 for covered entities to achieve their proportionate share of the 2030
18 and 2040 emission reduction limits identified in RCW 70A.45.020, as
19 applicable, the department shall adjust the annual budgets
20 accordingly. The department must complete additional evaluations of
21 the performance of the program by December 31, 2040, and by December
22 31, 2045, and make any necessary adjustments in the annual program
23 allowance budgets to ensure that covered entities achieve their
24 proportionate share of the 2050 emission reduction limit identified
25 in RCW 70A.45.020. Nothing in this subsection precludes the
26 department from making additional adjustments to annual program
27 allowance budgets as necessary to ensure successful achievement of
28 the proportionate emission reduction limits by covered entities. The
29 department shall determine and make public the circumstances,
30 metrics, and processes that would initiate the public consideration
31 of additional program allowance budget adjustments to ensure
32 successful achievement of the emission reduction limits.

33 (4) Data reported to the department under RCW 70A.15.2200 or
34 provided as required by this chapter for 2015 through 2019 is deemed
35 sufficient for the purpose of adopting annual program budgets and
36 serving as the baseline by which covered entities demonstrate
37 compliance under the first compliance period of the program. Data
38 reported to the department under RCW 70A.15.2200 or provided as
39 required by this chapter for 2023 through 2025 is deemed sufficient
40 for adopting annual program budgets and serving as the baseline by

1 which covered entities demonstrate compliance under the second
2 compliance period of the program.

3 NEW SECTION. **Sec. 10.** PROGRAM COVERAGE. (1) A person is a
4 covered entity as of the beginning of the first compliance period and
5 all subsequent compliance periods if the person reported emissions
6 under RCW 70A.15.2200 for any calendar year from 2015 through 2019,
7 or if additional data provided as required by this chapter indicates
8 that emissions for any calendar year from 2015 through 2019 equaled
9 or exceeded any of the following thresholds, or if the person is a
10 first jurisdictional deliverer and imports electricity into the state
11 during the compliance period:

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

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

19 (c) Where the person is a first jurisdictional deliverer
20 importing electricity into the state from a specified source whose
21 total annual emissions equals or exceeds 25,000 metric tons of carbon
22 dioxide equivalent or from an unspecified source. In consultation
23 with any jurisdiction that is linked to the program created by this
24 chapter, by October 1, 2026, the department, in consultation with the
25 department of commerce and the utilities and transportation
26 commission, shall adopt a methodology for addressing imported
27 electricity associated with a centralized electricity market;

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

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

37 (ii) Where the person who is not a natural gas company and has a
38 tariff with a natural gas company to deliver to an end-use customer
39 in the state in amounts that would result in exceeding 25,000 metric

1 tons of carbon dioxide equivalent emissions if fully combusted or
2 oxidized, excluding the amounts: (A) Supplied to covered entities
3 under (a) through (d) of this subsection or subsection (2)(a) of this
4 section; and (B) the amounts delivered to opt-in entities;

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

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

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

28 (b) Subsection (a) of this subsection does not apply to landfills
29 that:

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

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

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

1 (4) When a covered entity reports, during a compliance period,
2 emissions from a facility under RCW 70A.15.2200 that are below the
3 thresholds specified in subsection (1) or (2) of this section, the
4 covered entity continues to have a compliance obligation through the
5 current compliance period. When a covered entity reports emissions
6 below the threshold for each year during an entire compliance period,
7 or has ceased all processes at the facility requiring reporting under
8 RCW 70A.15.2200, the entity is no longer a covered entity as of the
9 beginning of the subsequent compliance period unless the department
10 provides notice at least 12 months before the end of the compliance
11 period that the facility's emissions were within 10 percent of the
12 threshold and that the person will continue to be designated as a
13 covered entity in order to ensure equity among all covered entities.
14 Whenever a covered entity ceases to be a covered entity, the
15 department shall notify the legislature of the name of the entity and
16 the reason the entity is no longer a covered entity.

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

29 (6) For emission sources described in subsection (1) of this
30 section that are in operation or otherwise active between 2015 and
31 2019 but were not required to report emissions for those years under
32 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
33 coverage under the program starts in the calendar year following the
34 year in which emissions from the source exceed the applicable
35 thresholds in subsection (1) of this section as reported pursuant to
36 RCW 70A.15.2200 or provided as required by this chapter, or upon
37 formal notice from the department that the source is expected to
38 exceed the applicable emissions threshold for the first year that
39 source is required to report emissions, whichever happens first.
40 Sources meeting these criteria are required to transfer their first

1 allowances on the first transfer deadline of the year following the
2 year in which their emissions, as reported under RCW 70A.15.2200 or
3 provided as required by this chapter, were equal to or exceeded the
4 emissions threshold.

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

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

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

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

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

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

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

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

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

39 (9) (a) The legislature intends to promote a growing and
40 sustainable economy and to avoid leakage of emissions from

1 manufacturing to other locations. The legislature further intends to
2 see innovative new businesses locate and grow in Washington that
3 contribute to Washington's prosperity and environmental objectives.

4 (b) Consistent with the intent of the legislature to avoid the
5 leakage of emissions to other jurisdictions, in achieving the state's
6 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the
7 limits in a manner that recognizes that the siting and placement of
8 new best-in-class facilities that facilitate decarbonization is in
9 the economic and environmental interests of the state of Washington.

10 (c) For new or expanded facilities that require review under
11 chapter 43.21C RCW and which would result in annual greenhouse gas
12 emissions in excess of 25,000 metric tons per year, a lead agency
13 must evaluate the life-cycle greenhouse gas emissions of the
14 facility, including any potential net cumulative emissions resulting
15 from the project. The department may adopt rules to determine how to
16 evaluate net cumulative emissions.

17 (d) A lead agency may determine that compliance with the
18 requirements of this chapter constitutes mitigation for covered
19 greenhouse gases from the facilities that have a compliance
20 obligation under this chapter.

21 (e) A lead agency may determine that inclusion as a covered
22 entity under this chapter constitutes mitigation of significant
23 adverse impacts with respect to covered greenhouse gases that have a
24 compliance obligation under this chapter for a low carbon intensive
25 facility subject to the requirements of chapter 43.21C RCW.

26 (f) A facility constructed with a new or revised permit after the
27 effective date of this section must have included in applicable
28 permits a conditional clause, should this chapter cease to apply to
29 the facility, to require adherence to a greenhouse gas emissions
30 performance standard and perform greenhouse gas mitigation consistent
31 with the limits established under RCW 70A.45.020 as those
32 requirements existed when the permit was granted.

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

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

1 (3) A person responsible for greenhouse gas emissions that is not
2 a covered entity may voluntarily participate in the program by
3 registering as an opt-in entity. An opt-in entity must satisfy the
4 same registration requirements as covered entities. Once registered,
5 an opt-in entity is allowed to participate as a covered entity in
6 auctions and must assume the same compliance obligation to transfer
7 compliance instruments equal to their emissions at the appointed
8 transfer dates. An opt-in entity may opt out of the program at the
9 end of any compliance period by providing written notice to the
10 department at least six months prior to the end of the compliance
11 period. The opt-in entity continues to have a compliance obligation
12 through the current compliance period. An opt-in entity is not
13 eligible to receive allowances directly distributed under section 13,
14 14, or 15 of this act.

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

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

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

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

29 (a) A compliance account where the compliance instruments are
30 transferred to the department for retirement. Compliance instruments
31 in compliance accounts may not be sold, traded, or otherwise provided
32 to another account or person.

33 (b) A holding account that is used when a registered entity is
34 interested in trading allowances. Allowances in holding accounts may
35 be bought, sold, transferred to another registered entity, or traded.
36 The amount of allowances a registered entity may have in its holding
37 account is constrained by the holding limit as determined by the
38 department by rule. Information about the contents of each holding
39 account, including but not limited to the number of allowances in the

1 account, must be displayed on a regularly maintained and searchable
2 public website established and updated by the department.

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

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

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

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

16 (2) (a) The department shall hold a maximum of four auctions
17 annually, plus any necessary reserve auctions. An auction may include
18 allowances from the annual allowance budget of the current year and
19 allowances from the annual allowance budgets from prior years that
20 remain to be distributed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (e) The deposits into the forward flexible account pursuant to
17 (a) through (d) of this subsection must not exceed \$5,200,000,000
18 over the first 16 years and any remaining auction proceeds must be
19 deposited into the climate investment account created in section 28
20 of this act. The deposits into the forward flexible account pursuant
21 to (a) through (d) of this subsection must be prorated equally from
22 the proceeds of each of the auctions occurring during each fiscal
23 year.

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

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

36 (8) The department shall adopt by rule provisions to guard
37 against bidder collusion and minimize the potential for market
38 manipulation. A registered entity may not release or disclose any
39 bidding information including: Intent to participate or refrain from
40 participation; auction approval status; intent to bid; bidding

1 strategy; bid price or bid quantity; or information on the bid
2 guarantee provided to the financial services administrator. The
3 department may cancel or restrict a previously approved auction
4 participation application or reject a new application if the
5 department determines that a registered entity has:

6 (a) Provided false or misleading facts;

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

9 (c) Violated any part of the auction rules;

10 (d) Violated registration requirements; or

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

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

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

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

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

38 (a) Metals manufacturing, including iron and steel making,
39 ferroalloy and primary metals manufacturing, secondary aluminum

1 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
2 and smelting, refining, and alloying of other nonferrous metals,
3 North American industry classification system codes beginning with
4 331;

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

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

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

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

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

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

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

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

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

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

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

31 (m) All other petroleum and coal products manufacturing from
32 refined petroleum, North American industry classification system code
33 324199.

34 (2) By July 1, 2022, the department must adopt by rule objective
35 criteria for both emissions' intensity and trade exposure for the
36 purpose of identifying emissions-intensive, trade-exposed
37 manufacturing businesses during the second compliance period of the
38 program and subsequent compliance periods. A facility covered by
39 subsection (1)(a) through (m) of this section is considered an
40 emissions-intensive, trade-exposed facility and is eligible for

1 allocation of no cost allowances as described in this section. In
2 addition, any covered party that is a manufacturing business that can
3 demonstrate to the department that it meets the objective criteria
4 adopted by rule is also eligible for treatment as emissions-
5 intensive, trade-exposed and is eligible for allocation of no cost
6 allowances as described in this section.

7 (3) (a) For all compliance periods prior to December 31, 2034, the
8 annual allocation of allowances for direct distribution to a facility
9 identified as emissions-intensive and trade-exposed must be equal to
10 the facility's proportional obligation of the program budget under
11 section 9 of this act, multiplied by 100 percent.

12 (b) The department shall by rule provide for owners or operators
13 of emissions-intensive and trade-exposed facilities to apply and
14 receive from the department an adjustment to the allocation for
15 direct distribution of allowances based on a facility-specific carbon
16 intensity benchmark as calculated in this subsection. If the
17 department determines that the net quantity of no cost allowances
18 awarded pursuant to (a) of this subsection is lower than when using
19 the facility-specific carbon intensity benchmark, the department
20 shall award additional no cost allowances up to the quantity of
21 allowances resulting from using the facility-specific carbon
22 intensity benchmark. The department shall adjust the no cost
23 allocation of allowances and credits to an emissions-intensive and
24 trade-exposed facility to avoid duplication with any no cost
25 allowances transferred pursuant to sections 14 and 15 of this act, if
26 applicable.

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

32 (ii) If an emissions-intensive and trade-exposed facility is not
33 able to feasibly determine a carbon intensity benchmark based on its
34 unique circumstances, the entity may elect to use a mass-based
35 baseline that does not vary based on changes in production volumes.
36 For each year during the first four-year compliance period that
37 begins January 1, 2023, these facilities must be awarded no cost
38 allowances equal to 100 percent of the facility's mass-based
39 baseline. For each year during the second four-year compliance period
40 that begins January 1, 2027, these facilities must be awarded no cost

1 allowances equal to 97 percent of the facility's mass-based baseline.
2 For each year during the third compliance period that begins January
3 1, 2031, these facilities must be awarded no cost allowances equal to
4 94 percent of the facility's mass-based baseline. Except as provided
5 in (b)(iii) of this subsection, if a facility elects to use a mass-
6 based baseline, it may not later convert to a carbon intensity
7 benchmark during the first three compliance periods.

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

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

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

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

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

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

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

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

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

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

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

38 (C) Abnormal operating periods when an emissions-intensive,
39 trade-exposed facility's carbon intensity has been materially
40 affected so that these abnormal operating periods are either excluded

1 or otherwise considered in the establishment of the compliance period
2 carbon intensity benchmarks.

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

14 (4)(a) Beginning January 1, 2035, and each year thereafter, the
15 annual allocation of no cost allowances for direct distribution to
16 facilities identified as emissions-intensive and trade-exposed must
17 be reduced by an equal amount each year between 2035 and 2050 such
18 that in 2050 the facility's proportionate share of the allowance
19 budget is equal to the proportionate share in 2035. The annual
20 allocation beginning in 2035 must decline from the average of the
21 facility's annual allocation of no cost allowances from 2031 through
22 2034. If the emissions-intensive, trade-exposed facility can
23 demonstrate that there have been abnormal periods of operation that
24 materially impacted the facility, then the baseline period must be
25 expanded to include years prior to 2031. The department shall provide
26 a recommendation to the legislature for the adoption of an annual
27 allocation for a covered facility for its process emissions, separate
28 from emissions associated with energy or heat production, based on a
29 best available technology limitation.

30 (b) By December 1, 2030, the department shall provide a report to
31 the appropriate committees of the senate and house of representatives
32 that describes alternative methods for determining the amount and a
33 schedule of allowances to be provided to facilities owned or operated
34 by each covered entity designated as an emissions-intensive, trade-
35 exposed facility. The report must include a review of global best
36 practices in ensuring against emissions leakage and economic harm to
37 businesses in carbon pricing programs and describe alternative
38 methods of emissions performance benchmarking and mass-based
39 allocation of no cost allowances. In developing the report, the

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

3 (5) If the actual emissions of an emissions-intensive, trade-
4 exposed facility exceed the facility's no cost allowances assigned
5 for that compliance period, it must acquire additional compliance
6 instruments such that the total compliance instruments transferred to
7 its compliance account consistent with section 22 of this act equals
8 emissions during the compliance period. The department shall limit
9 the use of offset credits for compliance by an emissions-intensive,
10 trade-exposed facility, such that the quantity of no cost allowances
11 plus the provision of offset credits does not exceed 100 percent of
12 the facility's total compliance obligation over a compliance period.

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

29 (7) Allowances allocated at no cost to emissions-intensive,
30 trade-exposed facilities under this section may only be used for
31 meeting compliance and may not be sold or traded.

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

35 (9) Rules adopted by the department under this section must
36 include protocols for allocating allowances at no cost to an eligible
37 facility built or expanded after the effective date of this section.
38 The protocols must include consideration of the products being
39 produced by the facility, as well as the local environmental and
40 health impacts associated with the facility.

1 (10) In order to advance the environmental justice objectives set
2 forth in section 3 of this act, the department may not grant any free
3 or discounted allowances under this section to any facility that:

4 (a) Is built or modified after the effective date of this
5 section; and

6 (b) Would increase detectable criteria pollutants, or other
7 pollutants harmful to human health, in overburdened communities.

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

15 (2) (a) By October 1, 2022, the department shall adopt rules, in
16 consultation with the department of commerce and the utilities and
17 transportation commission, establishing the methods and procedures
18 for allocating allowances to consumer-owned and investor-owned
19 electric utilities. Rules adopted under this section must allow for a
20 consumer-owned or investor-owned electric utility to be provided
21 allowances at no cost to cover their emissions and decline
22 proportionally with the cap, consistent with section 9 of this act.
23 The rules must take into account the cost burden of the program on
24 electric customers. Allowances allocated at no cost to consumer-owned
25 and investor-owned electric utilities must be consigned to auction
26 for the benefit of ratepayers consistent with subsection (3) of this
27 section, deposited for compliance, or a combination of both. The
28 rules adopted by the department pursuant to this section must include
29 provisions directing revenues generated under this subsection to the
30 applicable utilities. Utilities may use allowances for compliance
31 equal to their covered emissions in any calendar year they were not
32 subject to potential penalty under RCW 19.405.090. Under no
33 circumstances may utilities receive any free allowances after 2045.

34 (b) By October 1, 2022, the department shall adopt by rule an
35 allocation schedule, in consultation with the department of commerce
36 and the utilities and transportation commission, for the first
37 compliance period for the provision of allowances for the benefit of
38 ratepayers at no cost to consumer-owned and investor-owned electric
39 utilities. This allocation must be consistent with a forecast, that

1 is approved by the appropriate governing board or the utilities and
2 transportation commission, of each utility's supply and demand, and
3 the cost burden resulting from the inclusion of the covered entities
4 in the first compliance period.

5 (c) By October 1, 2026, the department shall adopt by rule an
6 allocation schedule, in consultation with the department of commerce
7 and the utilities and transportation commission, for the second
8 compliance period for the provision of allowances for the benefit of
9 ratepayers at no cost to consumer-owned and investor-owned electric
10 utilities. This allocation must be consistent with a forecast, that
11 is approved by the appropriate governing board or the utilities and
12 transportation commission, of each utility's supply and demand, and
13 the cost burden resulting from the inclusion of covered entities in
14 the second compliance period.

15 (d) By October 1, 2028, the department shall adopt by rule an
16 allocation schedule, in consultation with the department of commerce
17 and the utilities and transportation commission, for the provision of
18 allowances at no cost to consumer-owned and investor-owned electric
19 utilities for the compliance periods contained within calendar years
20 2031 through 2045. This allocation must be consistent with a
21 forecast, that is approved by the appropriate governing board or the
22 utilities and transportation commission, of each utility's supply and
23 demand, and the cost burden resulting from the inclusion of the
24 covered entities in the compliance periods.

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

33 (b) Revenues from allowances sold at auction must be returned by
34 providing nonvolumetric credits on ratepayer utility bills,
35 prioritizing low-income customers, or used to minimize cost impacts
36 on low-income, residential, and small business customers through
37 actions that include, but are not limited to, weatherization,
38 conservation and efficiency services, and bill assistance. The
39 customer benefits provided from allowances consigned to auction under

1 this section must be in addition to existing requirements in statute,
2 rule, or other legal requirements.

3 (4) If an entity is identified by the department as an emissions-
4 intensive, trade-exposed industry under section 13 of this act,
5 unless allowances have been otherwise allocated for electricity-
6 related emissions to the entity under section 13 of this act or to a
7 consumer-owned utility under this section, the department shall
8 allocate allowances at no cost to the electric utility or power
9 marketing administration that is providing electricity to the entity
10 in an amount equal to the forecasted emissions for electricity
11 consumption for the entity for the compliance period.

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

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

19 (7) Nothing in this section affects the requirements of chapter
20 19.405 RCW.

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

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

38 (b) By October 1, 2022, the department shall adopt an allocation
39 schedule by rule, in consultation with the utilities and

1 transportation commission, for the first two compliance periods for
2 the provision of allowances for the benefit of ratepayers at no cost
3 to natural gas utilities.

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

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

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

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

31 (3) In order to qualify for no cost allowances, covered entities
32 that are natural gas utilities must provide copies of their
33 greenhouse gas emissions reports filed with the United States
34 environmental protection agency under 40 C.F.R. Part 98 subpart NN -
35 suppliers of natural gas and natural gas liquids for calendar years
36 2015 through 2021 to the department on or before March 31, 2022. The
37 copies of the reports must be provided in electronic form to the
38 department, in a manner prescribed by the department. The reports
39 must be complete and contain all information required by 40 C.F.R.
40 Sec. 98.406 including, but not limited to, information on large end-

1 users served by the natural gas utility. For any year where a natural
2 gas utility was not required to file this report with the United
3 States environmental protection agency, a report may be submitted in
4 a manner prescribed by the department containing all of the
5 information required in the subpart NN report.

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

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

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

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

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

37 (a) No less than two percent of the total number of allowances
38 available from the allowance budgets for calendar years 2023 through
39 2026;

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

3 (c) When facilities curtail or close consistent with section
4 13(6) of this act; or

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

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

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

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

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

38 (3)(a) The department shall adopt rules for holding auctions of
39 allowances from the price containment reserve when the settlement

1 prices in the preceding auction approach the adopted auction ceiling
2 price. The auction must be separate from auctions of other
3 allowances.

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

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

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

13 (6) The department shall by rule:

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

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

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

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

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

1 transferred and must be retired for compliance in the current
2 compliance period. A price ceiling unit is not a property right.

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

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

17 (2) Offset projects must:

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

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

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

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

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

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

36 (b) A total of no more than four percent of a covered or opt-in
37 entity's compliance obligation during the second compliance period
38 may be met by transferring offset credits. During these years, at
39 least 75 percent of a covered or opt-in entity's compliance

1 obligation satisfied by offset credits must be sourced from offset
2 projects that provide direct environmental benefits in the state. The
3 department may reduce the 75 percent requirement if it determines
4 there is not sufficient offset supply in the state to meet offset
5 demand during the second compliance period.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 20.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL
24 LANDS. (1) In order to ensure that a sufficient number of high
25 quality offset projects are available under the limits set in section
26 19 of this act, the department must establish an assistance program
27 for offset projects on federally recognized tribal lands in
28 Washington. The assistance may include, but is not limited to,
29 funding or consultation for federally recognized tribal governments
30 to assess a project's technical feasibility, investment requirements,
31 development and operational costs, expected returns, administrative
32 and legal hurdles, and project risks and pitfalls. The department may
33 provide funding or assistance upon request by a federally recognized
34 tribe.

35 (2) It is the intent of the legislature that not less than
36 \$5,000,000 be provided in the biennial omnibus operating
37 appropriations act for the purposes of this section.

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

16 (2) It is the intent of the legislature that not less than
17 \$2,000,000 be provided in the biennial omnibus operating
18 appropriations act each biennium for the purposes of this section.

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

35 (2) Submission of allowances occurs through the transfer of
36 compliance instruments, on or before the transfer date, from the
37 holding account to the compliance account of the covered or opt-in
38 entity as described in section 10 of this act.

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

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

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

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

13 (7)(a) This section does not take effect until a separate
14 additive transportation funding is received by the state, at which
15 time the department of licensing must provide written notice to the
16 chief clerk of the house of representatives, the secretary of the
17 senate, and the office of the code reviser.

18 (b) For the purposes of this subsection, "additive transportation
19 funding" means receipt of funding by the state in which the combined
20 total of new revenues deposited into the motor vehicle fund and
21 multimodal transportation account exceed \$500,000,000 in any biennium
22 attributable solely to separate additive transportation funding.

23 NEW SECTION. **Sec. 23.** ENFORCEMENT. (1) All covered and opt-in
24 entities are required to submit compliance instruments in a timely
25 manner to meet the entities' compliance obligations and shall comply
26 with all requirements for monitoring, reporting, holding, and
27 transferring emission allowances and other provisions of this
28 chapter.

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

38 (3) If a covered entity or opt-in entity fails to submit penalty
39 allowances as required by subsection (2) of this section, the

1 department must issue an order or issue a penalty of up to \$10,000
2 per day per violation, or both, for failure to submit penalty
3 allowances as required by subsection (2) of the section. The order
4 may include a plan and schedule for coming into compliance.

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

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

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

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

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

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

27 NEW SECTION. **Sec. 24.** LINKAGE WITH OTHER JURISDICTIONS. (1)
28 Subject to making the findings and conducting the public comment
29 process described in subsection (3) of this section, the department
30 shall seek to enter into linkage agreements with other jurisdictions
31 with external greenhouse gas emissions trading programs in order to:

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

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

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

38 (d) Enhance market security;

39 (e) Reduce program administration costs; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 25.** RULES. The department shall adopt rules
15 to implement the provisions of the program established in sections 8
16 through 24 of this act. The department may adopt emergency rules
17 pursuant to RCW 34.05.350 for initial implementation of the program,
18 to implement the state omnibus appropriations act for the 2021-2023
19 fiscal biennium, and to ensure that reporting and other program
20 requirements are determined early for the purpose of program design
21 and early notice to registered entities with a compliance obligation
22 under the program.

23 NEW SECTION. **Sec. 26.** EXPENDITURE TARGETS. (1) It is the intent
24 of the legislature that each year the total investments made through
25 the carbon emissions reduction account created in section 27 of this
26 act, the climate commitment account created in section 29 of this
27 act, and the natural climate solutions account created in section 30
28 of this act achieve the following:

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

34 (b) At least 10 percent of the total investments authorized under
35 this chapter must be used for programs, activities, or projects
36 formally supported by a resolution of an Indian tribe, with priority
37 given to otherwise qualifying projects directly administered or
38 proposed by an Indian tribe. An investment that meets the

1 requirements of both this subsection (1)(b) and (a) of this
2 subsection may count toward the requisite minimum percentage for both
3 subsections.

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

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

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

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

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

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

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

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

20 (2) Moneys in the account may be used only for projects and
21 programs that achieve the purposes of the greenhouse gas emissions
22 cap and invest program established under this chapter. Moneys in the
23 account as described in this subsection must first be appropriated
24 for the administration of the requirements of this chapter, in an
25 amount not to exceed five percent of the total receipt of funds
26 deposited in the account per biennium. Beginning July 1, 2024, and
27 annually thereafter, the state treasurer shall distribute funds in
28 the account as follows:

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

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

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

38 NEW SECTION. **Sec. 29.** CLIMATE COMMITMENT ACCOUNT. (1) The
39 climate commitment account is created in the state treasury. The

1 account must receive moneys distributed to the account from the
2 climate investment account created in section 28 of this act. Moneys
3 in the account may be spent only after appropriation. Projects,
4 activities, and programs eligible for funding from the account must
5 be physically located in Washington state and include, but are not
6 limited to, the following:

7 (a) Implementing the working families tax rebate in RCW
8 82.08.0206;

9 (b) Supplementing the growth management planning and
10 environmental review fund established in RCW 36.70A.490 for the
11 purpose of making grants or loans to local governments for the
12 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and
13 36.70A.600, for costs associated with RCW 36.70A.610, and to cover
14 costs associated with the adoption of optional elements of
15 comprehensive plans consistent with RCW 43.21C.420;

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

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

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

33 (f) Programs, activities, or projects that achieve energy
34 efficiency or emissions reductions in the agricultural sector
35 including fertilizer management, soil management, bioenergy, and
36 biofuels;

37 (g) Programs, activities, or projects that increase energy
38 efficiency in new and existing buildings, or that promote low-carbon
39 architecture, including use of newly emerging alternative building
40 materials that result in a lower carbon footprint in the built

1 environment over the life cycle of the building and component
2 building materials;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The natural climate solutions account is created in the state
26 treasury. All moneys directed to the account from the climate
27 investment account created in section 28 of this act must be
28 deposited in the account. Moneys in the account may be spent only
29 after appropriation. Moneys in the account are intended to increase
30 the resilience of the state's waters, forests, and other vital
31 ecosystems to the impacts of climate change, conserve working
32 forestlands at risk of conversion, and increase their carbon
33 pollution reduction capacity through sequestration, storage, and
34 overall system integrity. Moneys in the account must be spent in a
35 manner that is consistent with existing and future assessments of
36 climate risks and resilience from the scientific community and
37 expressed concerns of and impacts to overburdened communities.

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

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

3 (i) Restore and protect estuaries, fisheries, and marine
4 shoreline habitats and prepare for sea level rise including, but not
5 limited to, making fish passage correction investments such as those
6 identified in the cost-share barrier removal program for small
7 forestland owners created in RCW 76.13.150 and those that are
8 considered by the fish passage barrier removal board created in RCW
9 77.95.160;

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

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

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

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

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

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

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

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

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

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

39 (iii) Prevent emissions by preserving natural and working lands
40 from the threat of conversion to development or loss of critical

1 habitat, through actions that include, but are not limited to, the
2 creation of new conservation lands, community forests, or increased
3 support to small forestland owners through assistance programs
4 including, but not limited to, the forest riparian easement program
5 and the family forest fish passage program. Not less than \$10,000,000
6 must be expended each biennium for the forestry riparian easement
7 program created in chapter 76.13 RCW.

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

13 **Sec. 31.** RCW 70A.15.2200 and 2020 c 20 s 1090 are each amended
14 to read as follows:

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

26 (2) Except as provided in subsection (3) of this section, any
27 person operating or responsible for the operation of air contaminant
28 sources of any class for which the ordinances, resolutions, rules or
29 regulations of the department or board of the authority, require
30 registration or reporting shall register therewith and make reports
31 containing information as may be required by such department or board
32 concerning location, size and height of contaminant outlets,
33 processes employed, nature of the contaminant emission and such other
34 information as is relevant to air pollution and available or
35 reasonably capable of being assembled. In the case of emissions of
36 greenhouse gases as defined in RCW 70A.45.010 the department shall
37 adopt rules requiring reporting of those emissions. The department or
38 board may require that such registration or reporting be accompanied
39 by a fee, and may determine the amount of such fee for such class or

1 classes: PROVIDED, That the amount of the fee shall only be to
2 compensate for the costs of administering such registration or
3 reporting program which shall be defined as initial registration and
4 annual or other periodic reports from the source owner providing
5 information directly related to air pollution registration, on-site
6 inspections necessary to verify compliance with registration
7 requirements, data storage and retrieval systems necessary for
8 support of the registration program, emission inventory reports and
9 emission reduction credits computed from information provided by
10 sources pursuant to registration program requirements, staff review,
11 including engineering or other reliable analysis for accuracy and
12 currentness, of information provided by sources pursuant to
13 registration program requirements, clerical and other office support
14 provided in direct furtherance of the registration program, and
15 administrative support provided in directly carrying out the
16 registration program: PROVIDED FURTHER, That any such registration
17 made with either the board or the department shall preclude a further
18 registration and reporting with any other board or the department,
19 except that emissions of greenhouse gases as defined in RCW
20 70A.45.010 must be reported as required under subsection (5) of this
21 section.

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

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

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

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

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

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

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

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

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

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

1 in Washington and any corrections thereto that are reported to the
2 United States environmental protection agency must be the emissions
3 data reported to the department; and

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

26 (b) (i) ~~((Except as otherwise provided in this subsection, the
27 rules adopted by the department under (a) of this subsection must be
28 consistent with the regulations adopted by the United States
29 environmental protection agency in 40 C.F.R. Part 98 on September 22,
30 2009.~~

31 ~~(ii))~~ The department may by rule include additional gases to the
32 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
33 been designated as a greenhouse gas by the United States congress
34 ~~((or)),~~ by the United States environmental protection agency, or
35 included in external greenhouse gas emission trading programs with
36 which Washington has pursuant to section 24 of this act. Prior to
37 including additional gases to the definition of "greenhouse gas" in
38 RCW 70A.45.010, the department shall notify the appropriate
39 committees of the legislature. ~~((Decisions to amend the rule to
40 include additional gases must be made prior to December 1st of any~~

1 ~~year and the amended rule may not take effect before the end of the~~
2 ~~regular legislative session in the next year.~~

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

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

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

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

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

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

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

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

39 (f) The energy facility site evaluation council shall,
40 simultaneously with the department, adopt rules that impose

1 greenhouse gas reporting requirements in site certifications on
2 owners or operators of a facility permitted by the energy facility
3 site evaluation council. The greenhouse gas reporting requirements
4 imposed by the energy facility site evaluation council must be the
5 same as the greenhouse gas reporting requirements imposed by the
6 department. The department shall share any information reported to it
7 from facilities permitted by the energy facility site evaluation
8 council with the council, including notice of a facility that has
9 failed to report as required. The energy facility site evaluation
10 council shall contract with the department to monitor the reporting
11 requirements adopted under this section.

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

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

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

33 (ii) For the purpose of this subsection (5), the term "supplier"
34 includes: (A) ~~((A motor vehicle fuel supplier or a motor vehicle fuel~~
35 ~~importer, as those terms are defined in RCW 82.36.010; (B) a special~~
36 ~~fuel supplier or a special fuel importer, as those terms are defined~~
37 ~~in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those~~
38 ~~terms are defined in RCW 82.42.010)) Suppliers that produce, import,~~
39 ~~or deliver, or any combination of producing, importing, or~~
40 ~~delivering, a quantity of fuel products in Washington that, if~~

1 completely combusted, oxidized, or used in other processes, would
2 result in the release of greenhouse gases equivalent to or higher
3 than the threshold established under (a) of this subsection; and (B)
4 suppliers of carbon dioxide that produce, import, or deliver a
5 quantity of carbon dioxide in Washington that, if released, would
6 result in emissions equivalent to or higher than the threshold
7 established under (a) of this subsection.

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

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

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

29 NEW SECTION. Sec. 32. A new section is added to chapter 43.21C
30 RCW to read as follows:

31 The review under this chapter of greenhouse gas emissions from a
32 new or expanded facility subject to the greenhouse gas emission
33 reduction requirements of chapter 70A.--- RCW (the new chapter
34 created in section 35 of this act) must occur consistent with section
35 10(9) of this act.

36 NEW SECTION. Sec. 33. A new section is added to chapter 70A.45
37 RCW to read as follows:

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

8 NEW SECTION. **Sec. 34.** This act may be known and cited as the
9 Washington climate commitment act.

10 NEW SECTION. **Sec. 35.** Sections 1 through 30 and 34 of this act
11 constitute a new chapter in Title 70A RCW.

12 NEW SECTION. **Sec. 36.** (1) Sections 8 through 24 of this act,
13 and any rules adopted by the department of ecology to implement the
14 program established under those sections, are suspended on December
15 31, 2055, in the event that the department of ecology determines by
16 December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020
17 have been met for two or more consecutive years.

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

24 **Sec. 37.** RCW 43.376.020 and 2012 c 122 s 2 are each amended to
25 read as follows:

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

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

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

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

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

7 **Sec. 38.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035
8 are each reenacted and amended to read as follows:

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

16 (a) Civil penalties imposed pursuant to RCW 18.104.155,
17 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
18 70A.515.060, section 23 of this act, 76.09.170, 77.55.440, 78.44.250,
19 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
20 90.64.102.

21 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
22 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
23 section 23 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
24 90.48.120, and 90.56.330.

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

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

35 (e) Decisions of local health departments regarding the issuance
36 and enforcement of permits to use or dispose of biosolids under RCW
37 70A.226.090.

38 (f) Decisions of the department regarding waste-derived
39 fertilizer or micronutrient fertilizer under RCW 15.54.820, and

1 decisions of the department regarding waste-derived soil amendments
2 under RCW 70A.205.145.

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

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

12 (i) Decisions of the department of natural resources, the
13 department of fish and wildlife, and the department that are
14 reviewable under chapter 76.09 RCW, and the department of natural
15 resources' appeals of county, city, or town objections under RCW
16 76.09.050(7).

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

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

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

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

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

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

34 (b) Hearings conducted by the department pursuant to RCW
35 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
36 70A.15.3110, and 90.44.180.

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

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

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

4 **Sec. 39.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to
5 read as follows:

6 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,
7 70A.205.280, 70A.300.090, 70A.20.050, section 23 of this act,
8 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and
9 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in
10 writing, either by certified mail with return receipt requested or by
11 personal service, to the person incurring the penalty from the
12 department or the local air authority, describing the violation with
13 reasonable particularity. For penalties issued by local air
14 authorities, within thirty days after the notice is received, the
15 person incurring the penalty may apply in writing to the authority
16 for the remission or mitigation of the penalty. Upon receipt of the
17 application, the authority may remit or mitigate the penalty upon
18 whatever terms the authority in its discretion deems proper. The
19 authority may ascertain the facts regarding all such applications in
20 such reasonable manner and under such rules as it may deem proper and
21 shall remit or mitigate the penalty only upon a demonstration of
22 extraordinary circumstances such as the presence of information or
23 factors not considered in setting the original penalty.

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

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

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

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

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

38 (4) If the amount of any penalty is not paid to the department
39 within thirty days after it becomes due and payable, the attorney

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

11 (5) All penalties recovered shall be paid into the state treasury
12 and credited to the general fund except those penalties imposed
13 pursuant to RCW 18.104.155, which shall be credited to the
14 reclamation account as provided in RCW 18.104.155(7), RCW
15 70A.15.3160, the disposition of which shall be governed by that
16 provision, RCW 70A.300.090, which shall be credited to the model
17 toxics control operating account created in RCW 70A.305.180, section
18 23 of this act, which shall be credited to the climate investment
19 account created in section 28 of this act, RCW 90.56.330, which shall
20 be credited to the coastal protection fund created by RCW 90.48.390,
21 and RCW 70A.355.070, which shall be credited to the underground
22 storage tank account created by RCW 70A.355.090.

23 NEW SECTION. **Sec. 40.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected."

27 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.
- (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 program for assistance to small forestland owners seeking to develop projects for carbon offset markets.

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

(10) Directs that \$10 million from revenues under the program be expended each biennium for the Forestry Riparian Easement program.

(11) 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.

(12) 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.

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

(14) 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.

(15) 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.

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

(17) Requires a facility constructed with new or revised permits to have included a conditional clause in the applicable permits that requires the facility adhere to a performance standard and perform mitigation consistent with statutory greenhouse gas emission limits, in the event that the requirements of the Cap and Invest Program should cease to apply to the facility.

(18) Prohibits allowances allocated at no cost to emissions-intensive, trade-exposed facilities from being sold or traded.

(19) Authorizes an owner or operator of more than one facility receiving no cost allowances for emissions-intensive, trade-exposed (EITE) facilities to transfer allowances among the eligible facilities.

(20) 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 or expanded after the effective date of 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.

(21) Prohibits the Department of Ecology from granting any free or discounted allowances to emissions-intensive, trade-exposed facilities that: (a) Are built or modified after the effective date; and (b) would increase detectable criteria pollutants, or other pollutants harmful to human health, in overburdened communities.

(22) 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.

(23) 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.

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

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

(26) Requires that a project or activity funded in whole or in part from the Climate Investment 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.

(27) 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.

(28) 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.

(29) 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.

(30) 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.

(31) 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.

(32) Adds environmental justice expenditure targets for the total investments made through the Carbon Emissions Reduction Account, the Climate Commitment Account, and the Natural Climate Solutions Account.

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

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