

# SENATE BILL REPORT

## E2SSB 5126

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As Amended by House, April 23, 2021

**Title:** An act relating to the Washington climate commitment act.

**Brief Description:** Concerning the Washington climate commitment act.

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

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/19/21, 2/25/21 [DPS-WM, DNP, w/oRec].

Ways & Means: 3/15/21, 3/22/21 [DP2S, DNP, w/oRec].

**Floor Activity:** Passed Senate: 4/8/21, 25-24.

Passed House: 4/23/21, 54-43.

### Brief Summary of Engrossed Second Substitute Bill

- Establishes a cap and invest program for greenhouse gas emissions to be implemented by the Department of Ecology.
- Directs distribution of auction revenues for the Forward Flexible Account and for specified purposes including clean transportation, natural climate resiliency, clean energy transition and assistance, and energy efficiency projects.
- Requires an environmental justice review to ensure that the cap and invest program achieves reduction sin criteria pollutants in overburdened communities highly impacted by air pollution.
- Convenes an Environmental Justice and Equity Advisory Panel to provide recommendations on the development and implementation of the cap and invest program.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

- Directs that compliance obligations for covered and opt-in entities will not take effect until a separate additive transportation funding act is enacted.

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** That Substitute Senate Bill No. 5126 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Das, Hobbs, Liias, Nguyen, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Brown, Fortunato and Short.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Lovelett, Vice Chair; Sheldon.

**Staff:** Kimberly Cushing (786-7421)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5126 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hunt, Keiser, Liias, Mullet, Pedersen and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Gildon, Muzzall, Rivers, Wagoner and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Hasegawa and Van De Wege.

**Staff:** Jeffrey Mitchell (786-7438)

**Background:** Cap and trade is a market-based, economy-wide approach to reduce pollution, which is comprised of two key components—a limit or cap on carbon emissions and tradable allowances. In the United States, nine states participate in the Regional Greenhouse Gas Initiative, a cap and trade program established in 2009. California began operating a cap and trade program in 2013, and it is linked with a program in Quebec, Canada. European countries have operated a cap and trade program since 2005.

Greenhouse Gasses. The United States Environmental Protection Agency (EPA) and state Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gasses (GHGs) as a result of their capacity to trap heat in the earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence, over a 100-year timeframe, to the emission of an identical volume of carbon dioxide (carbon dioxide equivalent).

Current Federal and Washington Regulation of Greenhouse Gasses. Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of carbon dioxide equivalent report their emissions to the EPA.

At the state level, GHGs are regulated by Ecology under the state Clean Air Act (CAA). Facilities, sources, and sites whose emissions exceed 10,000 metric tons of carbon dioxide equivalent each year are required to report their annual emissions to Ecology or to local air authorities that implement the state CAA. Liquid motor vehicle and aircraft fuel suppliers that supply fuel whose combustion would exceed that same 10,000 ton volumetric threshold must also report their annual emissions.

Apart from reporting and other regulations under the state and federal clean air acts, several other state laws and programs explicitly address GHG emissions.

In 2020, the Legislature updated statewide GHG emissions reduction limits (emissions limits) set in 2008 to: a 95 percent reduction below 1990 levels by 2050, with interim economy-wide emissions limits of 45 percent below 1990 levels by 2030 and 70 percent below 1990 levels by 2040. The state must achieve net zero emissions by 2050.

Ecology is responsible for monitoring and tracking the state's progress toward the emission limits.

Clean Energy Transformation Act. In 2019, the Legislature passed the Clean Energy Transformation Act (CETA), which requires Washington's electric utilities to meet 100 percent of their retail electric load using non-emitting and renewable resources by January 1, 2045. CETA requires electric utilities to eliminate coal-fired resources from their allocation of electricity by December 31, 2025, and make all retail sales of electricity GHG neutral by January 1, 2030. CETA also requires electric utilities to develop a clean energy implementation plan every four years, starting January 1, 2022, to establish interim targets for energy efficiency and renewable energy.

Environmental Justice Task Force Report. A proviso in the 2019-2021 biennial operating budget directed the Governor's Interagency Council on Health Disparities to convene and staff an Environmental Justice Task Force. The task force was directed to recommend strategies for incorporating environmental justice principles into future state agency actions across Washington. The task force report, published in fall 2020, includes:

- guidance for using the Washington Environmental Health Disparities Map to identify communities that are highly impacted by environmental justice issues with current demographic data;
- measurable goals for reducing environmental health disparities for each community in Washington State and ways in which state agencies may focus their work towards meeting those goals; and
- model policies that prioritize highly impacted communities and vulnerable populations for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents.

Office of Equity. In 2020, the Legislature established the Office of Equity to promote access to equitable opportunities and resources that reduce disparities and improve outcomes statewide across state government. Duties of the office include facilitating state policy and systems change to promote equitable policies, practices, and outcomes.

**Summary of Engrossed Second Substitute Bill: Environmental Justice Review.** Ecology must conduct an environmental justice review every two years, beginning in 2025, to ensure the cap and invest program achieves reductions in criteria pollutants in overburdened communities highly impacted by air pollution. Ecology must deploy an air monitoring network in high priority overburdened communities to collect sufficient air quality data for the 2025 review and subsequent reviews.

If the review finds that pollutants are not decreasing in an identified overburdened community, Ecology must:

- in consultation with local air pollution control authorities, establish air quality targets to achieve air quality consistent with neighboring communities that are not identified as overburdened, identify the sources that are the contributors of those emissions that are either increasing or not decreasing, and achieve the reduction targets through adoption of emission control strategies or other methods; and
- adopt stricter air quality standards, emission standards, or emissions limitations on criteria pollutants; reduce offset credit limits or allocation of no cost allowances to emissions-intensive trade-exposed facilities, if a covered entity or opt-in entity is identified as a high priority emitter of criteria pollutants, and the emissions of GHGs and the source of criteria pollutants are correlated; or revise any linkage necessary to ensure reductions of criteria pollutant emissions.

Ecology may not impose requirements on covered entities or opt-in entities that are disproportionate to their contribution to air pollution compared to other sources of criteria pollutants in the overburdened community.

Environmental Justice Assessment. When allocating funds or administering grants funded by the account, agencies must conduct an environmental justice assessment and establish a minimum of not less than 35 percent, and a goal of 40 percent, of total investments to provide direct and meaningful benefits to vulnerable populations within overburdened communities. Benefits may be achieved through reducing environmental burdens and cumulative risk from environmental burdens, supporting community-led projects, or meeting an identified community need.

Agencies must report annually to the Environmental Justice and Equity Advisory Panel (advisory panel) and the Office of Equity regarding progress toward meeting environmental justice and environmental health goals.

Environmental Justice and Equity Advisory Panel. The Office of Equity must convene an advisory panel by January 1, 2023, to provide recommendations to the Legislature, agencies, and the Governor on the development and implementation of the program, and programs funded from the account. Advisory panel members must be selected for geographic and organizational diversity and include:

- individuals representing the interests of vulnerable populations residing in overburdened communities with expertise in environmental justice and equity issues;
- individuals representing union labor with expertise in economic dislocation, clean energy economy, or emissions-intensive, trade-exposed facilities;
- at least two members representing federally recognized tribes, one from eastern and one from western Washington; and
- a chair appointed by the Governor and subject to confirmation by the Senate, who is responsible for overseeing the duties of the panel.

Purposes of the panel include:

- providing recommendations to the Legislature, agencies, and the Governor in the development of the cap and invest program and investment plans and funding proposals from the Climate Investment Account;
- recommending environmental justice and environmental health goals for programs, activities, and projects funded from the account, and reviewing agency annual reports on outcomes and progress toward meeting goals; and
- providing a forum to analyze policies adopted under the comprehensive climate commitment program to determine if policies lead to improvements within overburdened communities.

Tribal Consultation. Before allocating funding or administer grant programs funded from the account, agencies must offer consultation with federally recognized tribes on all funding decisions that may impact, infringe upon or impair the governmental efforts of federally recognized tribes to adopt or enforce their own standards governing, or protect the tribe's resources or other rights and interests in their tribal lands and lands within which a tribe or tribes possess rights reserved by treaty. The consultation must comply with state

government-to-government laws and be independent of any public participation process required by state law, or by a state agency, and occur regardless of whether the agency receives a request for consultation from a tribe.

Cap and Invest Program. Ecology must implement a GHG emissions cap and invest program (program) to reduce GHG emissions consistent with the statewide emissions limits. The program must track, verify, and enforce compliance through the use of compliance instruments.

Program Budget and Timeline. By January 1, 2023, Ecology must begin the program. Ecology must determine an emissions baseline establishing the proportionate share that the total GHG emissions of covered entities bears to the total anthropogenic GHG emissions in the state during 2015 through 2019, based on reported data.

The first compliance period is January 1, 2023, through December 31, 2026. By October 1, 2022, Ecology must adopt a program budget of allowances for the first compliance period of the program. Data reported from 2015 through 2019 is sufficient for adopting annual program budgets and demonstrating compliance for the first compliance period.

The second compliance period is January 1, 2027, through December 31, 2030. By October 1, 2026, Ecology must add to its emissions baseline by incorporating the proportionate share the total GHG emissions of new covered entities in the second compliance period bear to the total anthropogenic GHG emissions in the state during 2023 through 2025. In determining the addition to the baseline, Ecology may exclude a year from the determination if it has been an outlier due to a state of emergency. Ecology must adopt a program budget of allowances for the second compliance period that will be incorporated into the program budget of allowances for the first compliance period. Data reported to Ecology for 2023 through 2025 is sufficient for adopting annual program budgets and demonstrating compliance under the second compliance period of the program.

For calendar years 2031 through 2040, Ecology must adopt by rule the annual program budgets. The program budgets must be set to achieve the covered entities' share of reductions necessary to meet the 2030, 2040, and 2050 statewide emissions limits. Ecology must adopt annual allowance budgets that provide substantially equivalent reductions on an absolute basis for each calendar year. An allowance distributed under the program does not expire and may be held or banked.

By December 31, 2027, and December 31, 2035, Ecology must evaluate the performance of the program, including the reduction of GHG, and make adjustments to annual budgets if needed to achieve the 2030 and 2040 emissions limits.

By December 31, 2040, and December 31, 2045, Ecology must evaluate the program and make adjustments in annual budgets if needed to achieve 2050 emission limits.

Participating Entities. Covered entities are required to register to participate in the program. At the beginning of the first compliance period, and for all subsequent compliance periods, a covered entity is a person who has reported emissions or provided data that indicates emissions equal or exceed a threshold of 25,000 metric tons of carbon dioxide equivalent for:

- facilities;
- electricity generated in the state;
- fuel suppliers other than natural gas; and
- natural gas suppliers to non-covered entities.

Industrial gas customers who purchase gas from someone other than a natural gas company are responsible for their own emissions.

At the beginning of the second compliance period, and for all subsequent compliance periods, a covered entity is a person who has reported emissions or provided data that indicate emissions equal or exceed a threshold of 25,000 metric tons of carbon dioxide equivalent for:

- first jurisdictional deliverer importing electricity into the state from specified or unspecified sources; and
- waste to energy facilities utilized by county and city solid waste management programs.

Beginning January 1, 2031, and for all subsequent compliance periods, a covered entity is a person who has reported emissions or provided data that indicate emissions equal or exceed a threshold of 25,000 metric tons of carbon dioxide equivalent for a landfill utilized by county and city solid waste management programs.

Ecology must notify the Legislature whenever a covered entity is no longer covered by the cap and invest program.

Ecology, in consultation with the Department of Commerce (Commerce) and the UTC, must adopt a methodology for addressing imported electricity associated with a centralized electricity market.

An opt-in entity is a person responsible for GHG emissions that is not a covered entity but may voluntarily participate and register in the program. An opt-in entity must meet the same requirements for registration and compliance obligations as a covered entity. An opt-in entity may opt out of the program by giving Ecology notice six months prior to the end of the compliance period, but will have compliance obligations through a compliance period. An opt-in entity is not eligible to receive allowances directly distributed to emissions-intensive, trade-exposed (EITE) industries, electric utilities, or natural gas companies under this program.

A general market participant is not a covered or opt-in entity, but may also voluntarily

register in the program to purchase, trade, hold, sell, transfer, or retire compliance instruments. Federally recognized tribes and federal agencies may elect to participate in the program as opt-in entities or general market participants. Ecology must maintain a public roster of all covered entities, opt-in entities, and general market participants on its website. Participating entities must describe any direct or indirect affiliation with other registered entities.

Ecology must adopt rules for program registration procedures.

Exemptions. Regardless of reporting requirements, the emissions exempt from coverage are from:

- the combustion of aviation fuel;
- watercraft fuels;
- coal-fired electric generation, exempt from GHG limitations and requirements;
- carbon dioxide emissions from the combustion of biomass or biofuels that have a 40 percent lower GHG emissions based on a full-life cycle analysis compared to petroleum fuels; and
- national security facilities.

Auctions. Ecology must distribute allowances through a maximum of four auctions annually. The auction may include allowances from the current year annual allowance budgets and allowances yet to be distributed from prior allowance budget years. Ecology must engage a qualified, independent contractor to run the auctions. Additionally, Ecology must engage a qualified financial services administrator to hold and evaluate bid guarantees and to inform Ecology of the value of the bid guarantees when the bids are accepted.

Registered entities in good standing may participate in auctions. A registered entity must submit an application to participate and is only eligible to participate in an auction after receiving approval by Ecology. Ecology may require a bid guarantee in an amount greater than or equal to the sum of the maximum value of bids that will be submitted by the registered entity.

Registered entities with a direct corporate association are subject to the following auction purchase limits:

- covered or opt-in entity may not buy more than 10 percent of allowances offered during a single auction;
- general market participants may not buy more than 4 percent of allowances offered during a single auction and may not in aggregate own more than 10 percent of total allowances to be issued in a calendar year; and
- no registered entity may buy more than its bid guarantee or allowances that would exceed its holding limit at the time of the auction.

Upon completion and verification of the auction results, the financial services administrator must notify winning bidders and transfer the auction proceeds to the Climate Investment

Account.

Ecology must adopt rules to guard against bidder collusion and minimize the potential for market manipulation. A registered entity may not disclose bidding information such as intent to participate in an auction, auction approval status, bidding strategy, bid price or quantity, or bid guarantee. Ecology may cancel or restrict an approved application or reject a new application to participate in an auction if it determines that the registered entity has provided false or misleading facts, withheld material information that could influence a decision by Ecology, or violated auction rules or registration requirements. Ecology may cancel or restrict participation permanently or for a specified number of auctions, which is in addition to any other penalties and fines.

Ecology must design allowance auctions to link with external GHG emissions trading programs in other jurisdictions to the maximum extent practicable. Auctions may be conducted jointly with linked jurisdictions.

Emissions Intensive, Trade-Exposed. Facilities owned or operated by a covered entity must receive an allocation of allowances at no cost if it is classified as an EITE, as determined by being engaged in one or more of the processes described within specified North American industry classification system codes. Ecology must adopt by rule objective criteria to identify EITE manufacturing businesses during the second compliance period. If a manufacturing business can demonstrate it meets this criteria, it is eligible for free allocation of allowances as an EITE industry under Ecology's rules.

For all compliance periods prior to December 31, 2034, the annual allocation of allowances for direct distribution to an EITE entity must be equal to the facility's proportional obligation of the program budget for phase one, multiplied by 100 percent.

Ecology must allow EITE facilities to apply and receive an adjustment to their allocation of allowances based on a facility-specific carbon intensity (CI) benchmark. Ecology must convene a work group to establish procedures for calculating CI benchmarks, and each EITE facility must submit its CI benchmark for review by September 2022. If an EITE facility is not able to feasibly determine a CI benchmark, it may elect to use a mass-based baseline that does not vary based on changes in production volumes.

For the first compliance period, EITE facilities may apply to receive additional free allowances up to the CI benchmark or mass-based baseline for unique circumstances, as specified for the first three compliance periods. An EITE facility's obligation can also be reduced in the second or third compliance periods if an EITE facility demonstrates that additional reductions in CI are not technically or economically feasible based on a facility's best available technology analysis.

An aerospace products and parts manufacturing facility using a mass-based baseline must receive an additional no cost allocation to accommodate an increase in production which

increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities using a carbon intensity benchmark. Ecology must establish methods to award additional no cost allowance allocations for EITE facilities, if appropriate based on projected production, to achieve a similar on-going result through the adjustment of the facility's mass-based baseline.

Beginning January 1, 2035, the annual no cost allowance allocation must decline annually between 2035 and 2050 based on the facility's proportionate share of the program budget in 2035. Ecology must provide a recommendation to the Legislature for whether to provide an annual allocation to EITE facilities beyond 2034 for process emissions based on a best available technology limitation.

By December 1, 2030, Ecology must provide a report to the Legislature describing alternative methods and best practices in ensuring against emissions leakage.

If the actual emissions of an EITE facility exceeds the facility's no cost allowances assigned in a compliance period, the EITE facility must purchase additional compliance instruments to equal these emissions. Ecology may limit offset credit use if the no cost allowances plus offset credits exceed one hundred percent of total compliance.

A curtailed facility can retain, but not trade, sell, or transfer, allowances except to transfer to a new operator of the facility operating under the same industrial classification. All unused allowances must be transferred to the emissions containment reserve if the curtailed facility becomes a closed facility. A curtailed facility is not eligible to receive free allowances during a period of curtailment.

Electric Utilities. The Legislature intends to allocate allowances to all consumer-owned utilities (COUs) and investor-owned electric utilities (IOUs) subject to CETA to mitigate the cost burden of the program on electricity customers.

In consultation with Commerce and the UTC, Ecology must adopt rules for establishing the methods and procedures for allocating allowances and set allocation schedules for the provision of allowances at no cost to COUs or IOUs. These allocations must be consistent with a forecast of each utility's supply and demand and the cost burden resulting from the inclusion of the covered entities in each compliance period.

Allowances allocated at no cost to COUs and IOUs must be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. Utilities may use allowances for compliance equal to their covered emissions in any calendar year they were not subject to potential penalty under CETA. Under no circumstances may utilities receive any free allowances after 2045.

Ecology must allocate allowances at no cost to the electric utility or power marketing administration providing electricity to an EITE entity, unless allowances have already been

allocated, in an amount equal to the forecasted emissions for the entity's electricity consumption for the compliance period. Ecology may allow for allowances to be transferred between a power marketing administration and electric utility and used for direct compliance.

Rules establishing the allocation of allowances to COUs and IOUs to consider the impact of electrification of building, transportation, and industry on the electricity sector. Nothing in this section affects the requirements of CETA.

Natural Gas Companies. Natural gas utilities must be allocated allowances at no cost for the benefit of ratepayers. Ecology must set allocation schedules by rule, in consultation with the UTC, to provide allowances at no cost equal to emissions for the sector and declining consistent with the cap. Allowances must be provided at no cost for the benefit of ratepayers, deposited for compliance, or a combination of both.

Sixty-five percent of the no cost allowances, increasing at 5 percent annually, must be consigned to auction for the benefit of customers, prioritizing low-income customers. Revenues from allowances sold at auction must be returned by providing nonvolumetric credits on ratepayer bills, prioritizing low-income customers, or may be used to minimize cost impact on low-income, residential, and small business customers for actions such as weatherization, decarbonization, conservation and efficiency services, and bill assistance. The customer benefits provided from allowances consigned to auction must be in addition to existing requirements in law.

Except for low-income customers, the nonvolumetric credits are reserved exclusively for customers at locations connected to a natural gas utility's system on the effective date of the act. These credits may not be provided to customers of the gas utility at a location connected to the system after the effective date of the act.

Natural gas utilities must provide copies of GHG reports filed with the U.S. Environmental Protection Agency, and continue reporting to receive no cost allowances.

Emissions Containment Reserve. To help ensure that the price of allowances available for auction in the program remains sufficient to incentivize reductions in GHG emissions, Ecology must establish an Emissions Containment Reserve and set an emissions containment reserve trigger price by rule. The price must be set at a reasonable amount above the auction floor price and equal to the level established in linked jurisdictions .

If the price of allowances falls below the emissions containment reserve trigger price, Ecology will automatically withhold allowances from auction. Any allowances that have been withheld from auction must be transferred to the Emissions Containment Reserve Account.

Allowances must be transferred to the emissions containment reserve when allowances are unsold in auctions, facilities are curtailed or closed, or when facilities fall below 25,000

metric tons.

Allowances must be distributed from the Emissions Containment Reserve by auction for new covered and opt-in entities, provided the distribution will not jeopardize the state's emissions reduction limits. If the reserve is exhausted, allowances must be distributed from the allowance price containment reserve by auction for new entities.

Allowance Price Containment Reserve. To help minimize price volatility and limit the potential for extraordinary prices, Ecology must adopt by rule auction floor and auction ceiling prices. The auction floor price shall increase by a predetermined amount every year. Ecology may not sell allowances at bids lower than the auction floor prices.

An Allowance Price Containment Reserve must be designed as a mechanism to contain compliance costs in the event of unanticipated high costs for compliance instruments. For the first compliance period, Ecology must place no less than 2 percent of the total number of allowances available from the allowance budgets in the reserve. Only covered and opt-in entities may participate in the auction of allowances from the Allowance Price Containment Reserve. A reserve auction must be separate from auctions of other allowances. However, the process for the reserve auctions is the same as the process for described above for general auctions. The auction proceeds must be deposited in the Climate Investment Account.

Ecology must adopt rules to:

- hold auctions of allowances from the Allowance Price Containment Reserve when the settlement prices in the preceding auction approach the auction ceiling price;
- specify holding limits that determine the maximum number of allowances to be held for use or trade by a registered entity at any one time;
- set the reserve auction floor price before the reserve auction and may establish multiple price tiers;
- establish the requirements and schedule for reserve auctions; and
- establish the amount of allowances to be placed in the reserve after the first compliance period ends.

Price Containment. A price ceiling and price containment reserve are established to provide cost protection for facilities obligated to comply with the program. The price ceiling shall be set at a level sufficient to facilitate investments to achieve emission reductions beyond those enabled by the price ceiling.

Ecology must issue price ceiling units for sale at a fixed price if no allowances remain in the allowance price containment reserve. Funds raised in connection with sales of price ceiling units must be expended to achieve emissions reductions.

Offset Credits. A portion of a covered or opt-in entity's compliance obligation may be met through offset credits from projects that result in GHG reductions or removals that are real,

permanent, quantifiable, verifiable, and enforceable. Off-set projects must be in addition to GHG reductions or removals otherwise required and must be certified by a recognized registry within two years prior to the effective date of the section of the act creating offset credits. At least 50 percent of the offset credits must be from projects that provide direct environmental benefits in Washington State during the first compliance period and the remaining offset projects must be in a linked jurisdiction with Washington. For the second compliance period, at least 75 percent of offset credits must be from projects that provide direct environmental benefits in Washington. However, Ecology may reduce the requirement if it determines there is not sufficient offset supply in the state to meet offset demand.

A covered or opt-in entity may use offset credits to meet no more than 5 percent of compliance obligations during the first compliance period. During the second compliance period, no more than 4 percent of compliance obligations may be met through offset credits. Offset projects on federally recognized tribal land do not count against the off-set credit limits for covered or opt-in entities and may be no more than 3 percent of compliance obligation for the first compliance period and 2 percent for the second compliance period. Beginning January 1, 2031, these limits continue to apply unless modified by rule after a public consultation process.

The offset credit limits may be modified by rule to ensure statewide emissions limits are achieved and alignment with linked jurisdictions. The offset credit limits may also be reduced for a specific entity if Ecology determines the covered entity has or is likely to contribute substantively to cumulative air pollution burden in an overburdened community or violate any permits where the violation may result in increased emissions.

Ecology must develop rules for protocols to establish offset projects and secure offset credits used to meet compliance obligations. Ecology must take into consideration standards, rules, or protocol for offset projects and credits established by other jurisdictions with comparable programs. Ecology must also encourage opportunities for the development of offset projects in Washington by adopting offset protocols that reduce transaction costs.

Ecology must adopt a process for monitoring and invalidating offset credits to ensure the credit reflects emissions reductions. If an offset credit is invalidated, the covered or opt-in entity must transfer replacement credits or allowances within six months. A covered or opt-in entity is subject to a penalty if fails to transfer replacement credits or allowances. Offset credits used may not be in addition to, or allow for an increase in established allowance budgets. Offset credits must be registered and tracked as a compliance instrument.

Assistance Program for Offsets on Federally Recognized Tribal Lands. To ensure a sufficient number of high quality offset projects are available, Ecology must establish an assistance program for offset projects on federally recognized tribal lands. The assistance may include funding or consultation to assess a project's technical feasibility, investment

requirements, development, and operation costs, expected returns, administrative and legal hurdles, and project risks and pitfalls. Funding or assistance may be provided upon request by a federally recognized tribe. The Legislature intends to provide not less than \$5 million in the operating budget for this purpose.

Compliance Obligations. Covered and opt-in entities must meet their compliance obligations over a four-year compliance period. The first compliance period begins January 1, 2023. Covered and opt-in entities must transfer compliance instruments equal to their covered emissions by November 1st for each calendar year with a compliance obligation. Ecology must set by rule that covered and opt-in entities must transfer a minimum of 25 percent of their compliance instruments each year, to smooth out their compliance obligation within the compliance period. Allowances are submitted by the transfer of compliance instruments on or before the transfer date from the holding account to the compliance account of the covered or opt-in entity.

When the covered or opt-in entity transfers compliance instruments, on or before the transfer date, from its holding account to its compliance account allowances are considered submitted. A covered or opt-in entity that submits insufficient compliance instruments to meet its compliance obligation is subject to penalties. Allowances must be transferred in the order in which they were purchased. Covered and opt-in entities may not borrow an allowance from a future allowance year to meet a current or past compliance obligation. Ecology must retire all transferred allowances or offset credits used to meet compliance obligations.

A covered entity whose emissions fall below the threshold has a compliance obligation until the end of the compliance period. An entity is no longer a covered entity when its emissions are below the threshold during the entire compliance period or operations have ceased at its facility that is required to report GHG emissions. However, if Ecology notifies a person that its facility's emissions are within 10 percent of the threshold, the person will continue to be designated as a covered entity to ensure equity among all covered entities.

Compliance obligations for covered and opt-in entities will not take effect until a separate additive transportation funding act is enacted. An additive transportation funding act means an act where the combined total of new state revenues deposited into the motor vehicle fund and multimodal transportation account exceed \$500 million per biennium.

Allowance Trading and Tracking Compliance Instruments. Ecology must use an online electronic tracking system to register entities, issue compliance instruments, track ownership and transfers of compliance instruments, facilitate program compliance and support market oversight.

Covered and opt-in entities must use the following two accounts: a compliance account to transfer allowances to Ecology to retire; and a holding account for allowances to be bought, sold, or traded. The number of allowances in a holding account may not exceed the holding

limit of the entity. General market participants are allowed an account to hold, trade, sell, or transfer allowances. Ecology must maintain an account for retired allowances transferred by registered entities. Ecology must maintain a regularly updated searchable website that shows the contents of each holding account, including but not limited to the number of allowances.

Enforcement. All covered and opt-in entities must comply with all requirements for monitoring, reporting, holding, and transferring emission allowances and other provisions of this act. If a covered entity or opt-in entity fails to submit sufficient compliance instruments to meet its compliance obligations by the specified transfer dates, it must submit a penalty of four allowances for every one allowance that is missing within six months.

If a covered entity or opt-in entity fails to submit penalty allowances, Ecology must issue a civil penalty of up to \$10,000 for each penalty allowance that is not submitted per day. Ecology will also issue a penalty of up to \$10,000 per day per violation for failure to comply with program rules, and may issue a penalty up to \$50,000 per day per violation in cases of market manipulation.

All penalties must be deposited into the Climate Investment Account (CI Account). Appeals of orders and penalties must be to the Pollution Control Hearings Board.

Linkage with Other Jurisdictions. Ecology must seek to link with other jurisdictions with established allowance-based GHG reduction programs under circumstances in order to broaden GHG emissions reduction opportunities to reduce costs of compliance, enable joint allowance markets and unified tracking for compliance instruments, enhance market security, reduce program administrative costs, and provide consistent requirements across jurisdictions.

Linkage agreements must include provisions relating to auctions, holding limits, GHG reporting and verification, offset protocols, enforcement, program registry, compliance instruments, coordinated administrative and technical support, public notice and participation, and processes to withdraw from the agreement.

Before entering into a linkage agreement, Ecology must find the linkage agreement meets certain criteria and conduct a public comment process to obtain input and review of the linkage agreement, and consider the input prior to finalizing a linkage agreement. The criteria must include:

- the linking jurisdiction has provisions to ensure distribution of benefits from the program to vulnerable populations and overburdened communities;
- a determination by Ecology that the agreement will not yield net adverse impacts to either jurisdiction's highly impacted communities, relative to the baseline level of emissions; and
- not adversely impact Washington's ability to achieve statewide emissions limits.

If Ecology determines a full linkage agreement is unlikely to meet the above criteria, it may enter into a linkage agreement with limitations.

The state must retain legal and policymaking authority over program design and enforcement.

Forward Flexible Account. The auction proceeds must be transferred to the state treasurer for specific deposits to the Forward Flexible Account and the remaining auction proceeds to the CI Account. The deposits to the Forward Flexible Account are as follows:

- \$127,341,000 for FY 2023;
- \$356,697,000 for FY 2024;
- \$366,558,000 for FY 2025; and
- \$359,117,000 each year for fiscal years 2026 through 2037.

The deposits into the Forward Flexible Account must be prorated equally from the proceeds of each auction.

For FY 2038 and each year thereafter, 50 percent of the proceeds must be deposited to the Forward Flexible Account and 50 percent to the CI Account.

The Forward Flexible Account is created in the state treasury, and expenditures may be used only for transportation projects, programs, or activities identified as forward flexible projects.

Climate Investment Account. The CI Account is created in the state treasury, and all receipts from the auction of allowances must be deposited there, except for those deposited into the Forward Flexible Account. Projects funded from the CI Account must meet high workforce labor standards, including employer paid sick leave programs, family sustaining wages, pay equity based on gender identity and race, career development opportunities, and maximize access to economic benefits for local workers and diverse businesses.

Moneys in the CI Account may not be used for projects that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from the CI Account must result in long-term environmental benefit and increased resiliency to the impacts of climate change.

Moneys in the CI Account may only be spent after appropriation, and must be used for one of the following purposes:

- to cover Ecology's and other agencies' costs to support and administer the program;
- to deposit into the state general fund to implement the Working Families Tax Rebate;
- programs, activities, or projects that reduce and mitigate GHG and co-pollutants in overburdened communities, including strengthening the air quality monitoring network to measure, track, and better understand air pollution levels and trends to

- inform the analysis, monitoring, and pollution reduction measures required under the environmental justice review;
- clean transportation programs, activities, or projects that reduce transportation-related GHG emissions;
  - natural climate resilience solutions that improve the resilience of the state’s waters, forests, and other vital ecosystems to the impacts of climate change, and increase their carbon pollution reduction capacity through sequestration, storage, and overall ecosystem integrity, including programs, activities, or projects that:
    1. restore and protect estuaries, fisheries, marine and freshwater shoreline and riparian habitats, and prepare for sea level rise;
    2. remediate and adapt to impacts of ocean acidification;
    3. reduce flood risk and restore natural floodplain;
    4. increase sustainable supply of water and improve aquatic habitat;
    5. improve stormwater infrastructure;
    6. preserve or increase carbon sequestration in forests and agricultural soils;
    7. preserve or establish, or both, carbon sequestration by protecting or planting trees in marine shorelines and freshwater riparian areas sufficient to promote climate resilience, protect cold water fisheries, and achieve water quality standards;
    8. increase forest and community resilience to wildfire;
    9. improve forest health; or
    10. prevent emissions through preserving natural lands from the threat of conversion to development;
  - clean energy transition and assistance programs, activities, or projects that assist affected workers or people with lower incomes during the transition to a clean energy economy, or grow and expand clean manufacturing capacity;
  - programs, activities, or projects that improve energy affordability and reduce energy burden for people with lower incomes and higher transportation fuel burden for rural residents, including:
 

reductions in dependence of fossil fuels used for transportation; community renewable energy projects that allow participants to own or receive the benefits at reduced or not cost; programs, activities or worker-support projects for bargaining unit and nonsupervisory fossil fuel workers affected by the transition away from fossil fuels to a clean energy economy; direct investment in workforce development; or transportation, municipal service deliver and technology investments that increase a community's capacity for clean manufacturing;
  - emissions reduction projects and programs that yield real, verifiable reductions in GHG emissions in excess of baseline estimates; projects and programs must be physically located in Washington State and include programs, activities or projects that:
    1. deploy renewable energy resources;
    2. increase energy efficiency or increase GHG emissions of industrial facilities;
    3. achieve energy efficiency or emission reduction in the agricultural sector;
    4. promote low-carbon architecture;

5. promote electrification and decarbonization of new and existing buildings;
6. improve energy efficiency, including high-efficiency electric appliances and equipment for space and water heating;
7. projects to allow the diversion of organic materials from landfills and waste to energy facilities or methane capture;
8. retrofit vehicles and vessels for increased efficiency when electrification options are unavailable; or
9. develop carbon dioxide removal projects and technologies.

Greenhouse Gas Reporting and Verification. Ecology must adopt rules requiring persons to report emissions of GHGs where those emissions from a single facility, or from electricity or fossil fuels sold in Washington by a single supplier or local distribution company, meet or exceed 10,000 metric tons of carbon dioxide equivalent annually. Annual reports must include emissions data for the preceding calendar year and be submitted to Ecology by March 31st of the year in which the report is due. The reporting rules must support implementation of the cap and invest program.

Ecology must establish by rule the methods of verifying the accuracy of emissions reports. Verification requirements apply at a minimum to:

- persons that are required to report GHGs, if those emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent emissions, including carbon dioxide from biomass-derived fuels; or
- persons who have a compliance obligation under the cap and invest program in any year of the current compliance period.

Ecology may adopt rules to accept verification reports from another linked jurisdiction where Ecology deems the methods or procedures are substantively similar.

When a person that holds a compliance obligation under the cap and invest program fails to submit an emissions data report, or fails to obtain a positive emissions data verification statement, Ecology may assign an emissions level for that person.

Ecology may by rule include additional gases to the definition of GHG if the gas has been included in external GHG emission trading programs where Washington has a linkage agreement in effect. Ecology must update its rules whenever needed to ensure consistency with emissions reporting requirements for linked jurisdictions .

Review of Facilities. Ecology must evaluate the net cumulative GHG emissions for a new or expanded facility that require review under the State Environmental Policy Act and would result in annual GHG emissions in excess of 25,000 metric tons per year. The statewide GHG emissions limits or GHG emissions from a new or expanded facility must not be the basis for denial of a permit application or for judicial review of a grant of permit and compliance with the cap and invest program is the only mitigation for GHGs that can be required by any state agency, city, town, county, township, other subdivision, or municipal

corporation of the state from these facilities.

Rules. Ecology must adopt to implement the program and may adopt emergency rules for initial implementation of the program, to implement the state omnibus appropriations act for the 2021-2023 fiscal biennium, and to ensure that reporting and other program requirements are determined early for the purpose of program design and early notice to registered entities with a program compliance obligation.

Expiration. Rules adopted by Ecology to implement the program are suspended December 31, 2055, if Ecology determines the 2050 statewide emissions limits have been met for two or more consecutive years.

Preemption. A city, town, county, township, or other subdivision or municipal corporation of the state is prohibited from implementing a charge or tax based exclusively on the quantity of GHG emissions. No state agency may adopt or enforce a program that regulates GHG emissions for a stationary source except as provided under this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill will lead us toward climate level emission reductions in an economically sound way, while placing environmental justice at the forefront. Lessons have been learned from other programs that can be applied in Washington State. State statutory GHG regulations are aligned with science, yet urgent climate action cannot be taken without proper policy authority. The heart of the bill is a cap and invest program, a comprehensive implementation pathway to address GHG and climate resiliency. The legislation must create an economy-wide market for reduction opportunities, a hard cap on emissions, flexibility for EITE companies, ensure vast amounts of reductions occur in Washington, and ensure reductions and benefits go to vulnerable communities. Climate change is a full-blown emergency and this bill is the best chance to halve emissions by 2030. Every element and design is subject to review by an Environmental Justice and Equity advisory panel. State and regional governments need to establish a comprehensive policy framework that creates policy certainty and sends clear signals. Policymakers should ensure offsets do not compromise the integrity of the cap and ensure that 35 percent of benefits go to frontline communities. All policies need to uphold tribal sovereignty, eliminate systemic racism, and make a positive impact for Washington communities. The program needs to invest in resiliency of our natural resources. The bill improves on

shortcomings of other programs—restricting offsets where emissions are increased in frontline communities. The bill needs regular program review to understand if emissions reductions are being met. Aligning with other west coast jurisdictions is an efficient way of reducing carbon and essential. Allocation of allowances from the electricity and natural gas sectors should be awarded for the benefit of customers. Natural working lands can provide more than 30 percent of the mechanism for climate mitigation methods. Health impacts from carbon pollution include cancers, cardiovascular and other respiratory diseases, and these threats are not evenly shared. Family wage jobs and rural broadband are more critical than ever. One improvement would be to increase funding for transportation projects to benefit all of us. Effective carbon policy is necessarily complex. A cap is essential to bringing emissions down.

CON: A 2018 study revealed the California cap and trade program lead to higher emissions in BIPOC communities. A 2019 analysis found carbon emissions from oil and gas have actually increased since cap and trade began. Cap and trade does not guarantee funding for critical environmental programs. Cap and trade is unjust, ineffective, and vulnerable to lobbying efforts. There is only one compliance pathway for EITEs but we need multiple pathways. EITEs need to be protected. The bill should facilitate and incentivize use of alternative fuels. Biomass should be specifically exempted. Currently there are no provisions that allow for growth and increased capacity of EITEs or recognition of the use of best available control technology. Percentages for offsets in the bill are too low. A cap and trade bill is trickle-down environmentalism and does not result in measurable co-pollutant and GHG emissions reductions in frontline communities. Frontline communities do not want to be sacrificed under cap and trade programs. That is environmental racism. Environmental justice is a process and an outcome. This bill has no process to achieve environmental justice. It lacks a strong cap that requires emissions reductions in Washington. The bill benefits corporations that drive climate pollution and economic inequality. Policies need to prioritize investments in communities most impacted by climate change. The bill invests in a lot of good things, but I am opposed to the bill because it is supported by British Petroleum. The bill acknowledges potential cost increases by providing allowances to benefit electricity and natural gas customers, but does not provide similar protections for propane users. The bill creates duplicative compliance obligations with related emissions under CETA. The bill has different standards for IOUs and COUs. It is unclear who is responsible for EITEs who procure their own natural gas. The bill fails to mitigate costs for all low-income customers. We are concerned with Ecology's broad authority to regulate emissions. Offsets mean Washington may not see emissions reductions in the state. Pollution flows where it is cheapest to pollute—more often than not to frontline communities. We support a more progressive tax structure. Farmers deeply care about the environment, and our livelihood depends on it. We are concerned with carbon policies that will reduce our competitiveness by increasing costs for fuel and natural gas. Farmers have limited ability to recoup costs and operate on thin margins. There should be continuous effort to promote participation of all communities in carbon policy discussions. Revenue should be dedicated to transportation needs. Rural families lack public transportation and would bear more of a burden under this policy.

OTHER: Landfills emit greenhouse gases in the form of methane because of decomposing organic material. The best way to reduce emissions is to divert organic material. There are barriers such as funding for infrastructure and finding uses for compost. This bill would create an unfunded mandate counties cannot afford. Solid waste has increased dramatically with a rise in population and restrictions imposed by China. The bill should include costs for dealing with emissions in landfills as uses for investments under this program. Because utilities operate on a grid that crosses state lines, we need consistency with California. Without minor clarifications, there could end up being double regulation for utilities under CETA. The bill should consider direct and indirect costs for allowances. Clarification that IOUs will receive free allowances is needed. Revenue allowances should include additional considerations to ensure benefits accrue to low- and middle-income customers, and additional authority should be given to the Environmental Justice panel to guide the investment portfolio. Free allowances must be given to electric utilities to reduce customer costs and eliminate the pancaking effect from other regulations. In order to preserve jobs, flexibility must be given to the amount of allowances to EITEs and the rate at which they decline. Offsets are one of the most effective ways to reduce GHG emissions. The bill has no metrics for expenditures tied to reduction of emissions. The program should include offramps and legislative oversight. The bill needs leakage protection provisions. We ask for clear delinking of biomass emissions from fossil fuel emissions subject to the bill. There is growing consensus worldwide that shortcomings in cap and trade are inherent and unsolvable. There are serious concerns about costs, timelines, complexity of the system, and Washington dollars going toward California allowances in the event of linkage. Energy storage is the new paradigm for the electric industry and the bill is silent on storage management and it needs to value it. If electrification of vehicles and buildings is the goal, the bill should reflect this change in energy use. There should be an implementation plan for how substations will be located, permitted, and funded. There are concerns with the natural gas provisions. The use of revenues lacks a specific allocation formula. There needs to be specific allocation for transportation uses in order to transform infrastructure in the future.

**Persons Testifying (Environment, Energy & Technology):** PRO: Senator Reuven Carlyle, Prime Sponsor; Sarah Severn, Low Carbon Prosperity Institute; Mary Streett, British Petroleum-America; Vlad Gutman, Climate Solutions; Clifford Traisman, Washington Conservation Voters, Washington Environmental Council; David Mendoza, The Nature Conservancy; Katelyn Roedner Sutter, Environmental Defense Fund; Denise Clifford, Washington State Department of Ecology; Janet Kelly, Puget Sound Energy; Cassie Bordelon, Department of Natural Resources; Lindsey Grad, Service Employees International Union 1199NW; Matthew Hepner, International Brotherhood of Electric Workers; Sandra Toussaint, Washington Federation of State Employees; Stu Clark, Washington State Department of Ecology; David Giuliani, Low Carbon Prosperity Institute, Clean and Prosperous Washington; Isaac Kastama, Low Carbon Prosperity Institute, Clean and Prosperous Washington.

CON: Emily Knudsen; Brandon Houskeeper, Alliance of Western Energy Consumers; Michele Murphy; Iris Antman, 37th LD Environmental and Climate Caucus; Jill Mangaliman, Got Green; Yolanda Matthews, Puget Sound Sage; Debolina Banerjee, Puget Sound Sage; Matt Solak, Pacific Propane Gas Association; Jeanne Poirier; Laura McAnany, Ash Grove Cement Company; Chris McCabe, Northwest Pulp and Paper Association; Edgar Scott, Kaiser Aluminum; Craig Smith, Food Northwest; Sarah Cherim, UFCW 21; John Rothlin, Avista; Dan Kirschner, Northwest Gas Association; Peter Godlewski, Association of Washington Business; Guillermo Rogel Jr, Front and Centered; Heath Gimmestad; Giovanni Severino, Progreso: Latino Progress; Gerry O'Keefe, Washington Public Ports Association; Ryan Poe, Washington Association of Wheat Growers.

OTHER: Deb Geiger, Spokane County; Sam Castro, Grant County; Ruby Irving, Klickitat County; Paul Jewell, Washington State Association of Counties; Therese Hampton, Public Generating Pool; Annabel Drayton, NW Energy Coalition; Steve Taylor, Cowlitz PUD; Kathleen Collins, PacifiCorp; Todd Myers, Washington Policy Center; Clark McIsaac, Snohomish County PUD; Logan Bahr, Tacoma Public Utilities; Jessica Spiegel, Western States Petroleum Association; Sean Eagan; Jason Callahan, Washington Forest Protection Association; Jessie Martin, Carbon Washington; Dave Warren, Copenhagen Infrastructure Partners, Renewable H2 Alliance, Western States H2 Alliance; Nicolas Garcia, Washington Public Utility Districts Association; Charlie Brown, Cascade Natural Gas and NW Natural; Neil Strege, Washington Roundtable.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** CON: Crista Niles, Northwest Kidney Centers.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: I am pleased to submit the Climate Commitment Act to this body. It is time for action about climate change, for the benefit of the environment and the economy. The targets of the Paris accords are only achievable by creating a cap on carbon. Carbon reduction is at its best when considered broadly. Focusing on front line communities is crucial. The climate act is a progressive means for dedicating funding for low income communities. We need to take urgent action to address health disease in our communities and those who live near transportation corridors and sources of pollution. It is time for reducing carbon and helping offset impacts to communities. Let us forge a new future. Strike a new deal for transportation, jobs, and the environment. My analysis supports the argument for placing a cap on carbon as it will bring about a cleaner, healthier, and more prosperous future. DNR supports the investment in forest resilience. We support the creation of jobs and investment in our communities. We support the policy to decarbonize. We support improvements to transportation. The pollution cap is what is needed to reduce carbon. We believe this bill will help improve air quality and address pollution impacts on communities. We need a swift and deep cut in natural gas use. We are committed to net-zero emissions by 2050, we will do all we can. We urgently need climate change and need this bill in order to address impacts to overburdened communities.

CON: The public voted this topic down, why do you keep bringing it back? You are subverting the will of the people. We share in the commitment of correcting climate change, however, we are against using cap and trade as a way to get there, as it shifts pollution to lower economic communities. The bill recognizes exemptions for natural gas, but not propane, which directly impact many home owners and agricultural businesses. We are concerned about a number of the exemptions that would allow polluters to get around the standards. There are thorny issues that must be resolved. Cap and trade will not reduce carbon. Washington Strong is the way to go. We need a better bill to address the cost of cap and trade. Big oil is pushing this bill, cap and trade creates markets that benefit the largest polluters. The fiscal impact of this bill is enormous on my cement company. Concerned about the lack of predictability and certainty of this bill. The bill layers on additional costs that do not spread to our competitors. This bill increases our costs and puts us at a competitive disadvantage. The bill lacks specific language for pathways for covered facilities. Another effort by big oil to get around ending fossil fuel use. Cap and trade is good at reducing acid rain, but concerned about the volatility of market prices. Against, because of impact on gas prices, there is nothing in this bill that helps farmers. We all need a world with clean water and air but cap and trade leads to more pollution on vulnerable communities. Wheat farmers will be disproportionately impacted. We do not have time to get climate policy wrong. You would not let someone smoke inside a hospital just because they paid money to the American Lung Association. Do not do this bill, do a better job of fighting forest fires. We do not have time for a complex bill, you should move SB 5373. I am worried that the bill gives Ecology powers beyond just cap and trade. Concerned about impacts to the propane industry and about the worker employment standards impact on small businesses. I support climate action but not a bill that will not survive a referendum, this bill will be used as a baseball bat by local republicans against local democrats. There is no reference in the bill for protection of rural communities. The bill does not do enough for front line communities. Pollution is from legal activities, how are you going to stop these. We have the lowest profit margins in the state and are concerned about electricity and gas prices going up. The bill is tone deaf, we know Washington Strong knows how to sell climate change.

OTHER: We have questions about the overlapping policies of this bill and what that means for costs. We would like to see some minor language changes to ensure there is not duplication with regulations on the electrical industry. There has been good progress on this bill, but still have concerns about duplicative regulations on electrical utilities between this bill and the Clean Energy Act. We support more allowances and offsets, but more flexibility is needed. Concerned about how landfills are treated in this bill. Diversion facilities are too expensive. There will be a cost to reduce emissions. We are concerned that new language in section 23 has no tie to carbon.

**Persons Testifying (Ways & Means):** PRO: Senator Reuven Carlyle, Prime Sponsor; Jane Hopkins, SEIU 1199NW; Clifford Traisman, Washington Conservation Voters/Washington Environmental Council; Vlad Gutman, Climate Solutions; Perry England, MacDonald-

Miller Facility Solutions; David Giuliani, Low Carbon Prosperity Institute; Kevin Tempest, Low Carbon Prosperity Institute; Julie Gilling, Department of Natural Resources; Paula Sardinias, Washington Build Back Black Alliance; Jeff Gombosky, Renewable Northwest; Katelyn Roedner, Environmental Defense Fund; Becky Kelley, Office of Governor Jay Inslee; Janet Kelly; Tom Wolf, BP America; David Mendoza, The Nature Conservancy.

CON: Jeff Pack, Washington Citizens Against Unfair Taxes; Guillermo Rogel, Front and Centered; Mel Sorensen, Pacific Propane Gas Association; Rachael Ludwick, 37th Democrats Environmental Caucus; Jeanne Poirier; Peter Godlewski, Association of Washington Business; Jared Howe; Laura McAnany, Ash Grove Cement Company; Edgar Scott, Kaiser Aluminum; Patrick Jablonski, Nucor Steel Seattle, Inc; Chris McCabe, Northwest Pulp and Paper Association; Brandon Houskeeper, Alliance of Western Energy Consumers; Iris Antman; Tom Davis, Washington Farm Bureau; Hannah Lindell-Smith, Sunrise Seattle; James Moyer, Washington Association of Wheat Growers; Sasha Zhang, Sunrise Tacoma; Annemarie Dooley; Larry Jensen; Heidi Cody; Jerry VanderWood, Associated General Contractors; Carolyn Logue, NW Hearth, Patio and Barbecue Association and Washington Air Conditioning Contractors Association; Ron Wright, Wahkiakum County Democrats; Catherine Holm, Washington Food Industry Association; Don Schwerin, Agriculture and Rural Caucus.

OTHER: Jessica Spiegel, Western States Petroleum Association; Therese Hampton, Public Generating Pool; Todd Myers, Washington Policy Center; Mark Riker, Washington State Building and Construction Trades Council; John Rothlin, Avista; Dan Kirschner, Northwest Gas Association; Afton Servas, Kalispel Tribe of Indians; Teresa Purcell, LongView Impact Inc.; Paul Jewell, Washington State Association of Counties; Kathleen Collins, PacifiCorp; Jason Callahan, Washington Forest Protection Association; Mark Riker, Washington State Building and Construction Trades Council.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

## **EFFECT OF HOUSE AMENDMENT(S):**

### Environmental Justice

- Applies the minimum 35 percent and goal of 40 percent expenditure target for the benefit of overburdened communities and environmental justice assessments to all program account expenditures.
- Moves the air quality review up to 2023 and requires Ecology to issue an enforceable order on permitted or registered sources, after adopting any stricter emission standards or limitations.
- Provides that an eligible facility sited after the effective date of the section that receives no cost allowances as an EITE must mitigate increases in its emissions of particulate matter in overburdened communities.
- Adds health impacts to the review and removes the reduction of offset limits and EITE no cost allowances, and revision of linkage as mitigation options.
- Removes provisions creating an Environmental Justice and Equity Advisory Panel to make

recommendations on design and implementation of the program and program auction revenue expenditures, and assigns the panel's work to the Environmental Justice Council created in E2SSB 5141.

- Aligns environmental justice provisions with those of E2SSB 5141, except for the definition of "overburdened communities," which is amended to include communities in "Indian country" and Native American and immigrant populations exposed to pollution based on use of traditional or cultural foods.

#### Tribal Consultation

- Requires a project or activity funded from the Climate Investment Account be paused or ceased if an affected tribe or the Department of Archaeology and Historic Preservation provides a notice of determination that the project will adversely impact cultural resources, archaeological sites, or sacred sites.

#### Program Coverage and Compliance

- Adds imported electricity to the list of covered entities under the first compliance period of the program.
- Exempts motor vehicle and special fuel used for agricultural purposes by a farm fuel user from the program and specifies that Ecology must determine a method for expanding the exemption to include fuels used for transporting agricultural products on public highways.
- Exempts persons who own or operate railroad companies from program coverage for the first two compliance periods.
- 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 program beginning January 1, 2031.
- Specifies it is the intent of the Legislature to adopt a GHG reduction policy specific to landfills, and if such a policy is not enacted by January 1, 2030, the requirements of the program relative to landfills take full effect.
- Identifies the individual retail electric cooperatives served by a multijurisdictional consumer-owned utility as the covered entities.
- Revises the definition of "additive transportation funding act", upon which the compliance obligations of the program is contingent, to "an act, enacted after April 1, 2021, in which the state's gas tax is increased by an additional cumulative tax rate of at least five cents per gallon of fuel."
- Excludes the amounts for fuel products produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington for fossil fuel suppliers, for purposes of program coverage.

#### Allowance Budget and Auctions

- Requires Ecology to consider the number of no cost allowances in the marketplace in setting the number of allowances offered at each auction.
- Specifies that Ecology must only offer such number of allowances at each auction as will enhance the likelihood of achieving the statewide emission limits.
- Adds a voluntary renewable reserve account from which allowances may be retired for

voluntary renewable electricity generation.

### Facility Siting

- Amends facility siting provisions to state that a lead agency, for purposes of GHG life-cycle analysis under State Environmental Policy Act (SEPA) review for new or expanded facilities, must evaluate and attribute any potential net GHG emissions resulting from the project as compared to other existing facilities or best available technology including best-in-class facilities and emerging lower carbon processes that supply the same product or end use.
- Specifies that a lead agency or permitting agency must allow a new or expanded facility that is a covered or opt-in entity to satisfy any mitigation requirements for GHG emissions under SEPA by submitting the number of compliance instruments equivalent to its covered emissions during a compliance period.

### Emissions-Intensive and Trade Exposed Industries

- Authorizes an owner or operator of more than one facility receiving no cost allowances for EITE facilities to transfer allowances among the eligible facilities.
- Requires that rules adopted by Ecology for allocation of allowances at no cost to EITE facilities include protocols for allocating allowances to an eligible facility built after the effective date of section.
- Specifies that the protocols must include consideration of products and criteria pollutants produced by the facility, as well as local environmental and health impacts associated with the facility.
- Requires the protocols to, for a facility that is built on tribal lands or determined to impact tribal lands or resources, be developed in consultation with affected tribal nations.
- Requires Ecology to, when adopting objective criteria for the purpose of identifying EITEs during the second and subsequent compliance periods, consider the locations of facilities potentially identified as EITEs relative to overburdened communities.
- Removes provisions creating a workgroup to establish procedures for calculating carbon intensity benchmarks.
- Requires Ecology to, during the 2022 regular legislative session, bring forth agency request legislation developed in consultation with EITEs, covered entities, environmental advocates, and overburdened communities that outlines a compliance pathway specific to EITEs for achieving their proportionate share of the state's emission reduction limits through 2050.
- Prohibits expenditures from being made from any of the program accounts, if, by April 1, 2023, the Legislature has not enacted the request legislation.

### Electric and Natural Gas Utilities

- Provides that a consumer-owned electric utility that is party to a contract that meets certain conditions be issued no cost allowances for emissions associated with imported electricity, in order to prevent impairment of the value of the contract to either party.
- Requires an electric utility or natural gas utility to notify its retail customers and the Environmental Justice Council within three months of paying a monetary penalty for

failure to comply with the requirements of the program.

### Offsets

- Requires Ecology, when adopting offset protocols, to make use of aggregation or other mechanisms to increase the development of offset and carbon removal projects by landowners, including small forest landowners.

### Linkage

- Requires Ecology to conduct an environmental justice assessment before entering into a linkage agreement with other jurisdictions.
- Requires Ecology to, before entering into a linkage agreement, evaluate and make a finding regarding whether the aggregate number of unused allowances in a linked program would reduce the stringency of Washington's program and the state's ability to meet its GHG emission reduction limits.

### Accounts and Revenue Distribution

- Replaces the Forward Flexible Account for transportation expenditures with the new Carbon Emissions Reduction Account.
- Provides that eligible expenditures under the Carbon Emissions Reduction Account may only be used for carbon emissions reductions in the transportation sector and may not be used for 18th amendment purposes, other than as specified for the account, including investments in alternatives and reductions to single occupancy passenger vehicle use through alternative fuel infrastructure and incentives, and emission reduction programs for freight, ferries, and port activities.
- Creates two subaccounts within the Climate Investment Account—the Climate Commitment Account and the Natural Climate Solutions Account, and divides existing provisions for clean energy investment and climate resiliency investment spending among the two accounts.
- Directs 75 percent of funds deposited into the Climate Investment Account into the Climate Commitment Account and 25 percent into the Natural Climate Solutions Account.
- Establishes an Air Quality and Health Disparities Improvement (AQHD) Account to fund the air monitoring network and reduce health disparities in overburdened communities.
- Establishes a 10 percent minimum target on all account funds for projects supported by tribal resolution, with priority to projects directly administered or proposed by a tribe.
- Adds fish passage correction investments as eligible uses under the Natural Climate Solutions Account.
- Adds funding for growth management planning and environmental review as eligible uses under the Climate Commitment Account.
- Adds initiatives to develop a forest health workforce established under 2SHB 1168, and new education programs, emerging fields, or jobs pertaining to the clean energy economy to the list of authorized workforce development expenditures under the Climate Commitment Account.
- States it is the intent of the Legislature that no less than \$20 million per biennium be dedicated to the AQHD account.

- States it is the intent of the Legislature that no less than \$10 million per biennium from Natural Climate Solutions Account be expended for the Forestry Riparian Easement Program or for riparian easement projects funded under the Agricultural Conservation Easements Program, or similar riparian enhancement programs.
- Removes the section requiring the Climate Investment Account be included in the Legislature's four-year balanced budget requirements.
- Adds eligible fund uses under the Sustainable Farms and Fields Grant Program as authorized expenditures under the Climate Commitment Account.
- Requires Ecology to prepare a report that identifies all distributions from all accounts, including recipients of funding, amounts, purpose, end use, whether projects produce reductions in GHGs, the cost per metric ton reduced, and a comparison to other projects to facilitate cost-benefit ratios for projects.

#### Other

- 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 GHG emission reduction limits, establish a coordinated and strategic statewide approach to climate resilience, build an equitable and inclusive clean energy economy, and ensure the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those limits.
- Provides that the program preempts the Clean Air Rule.
- Requires Ecology to, by December 1, 2027, and at least every four years thereafter, submit a report to the Legislature that includes a comprehensive review of the implementation of the program to date, including but not limited to outcomes relative to the state's emissions reduction limits, overburdened communities, covered entities, and EITEs.
- Establishes a small forestland owner work group for the purpose of identifying possible carbon market opportunities, including the provision of qualifiable offset credits, and other incentive-based GHG reduction programs that Washington landowners may be able to access.
- Requires the Joint Legislative Audit and Review Committee to analyze the impacts of the first five years of program implementation and submit a report to the Legislature by December 1, 2029.
- Amends provisions governing the appointment of Washington's members of the Pacific Northwest Electric Power and Conservation Planning Council to allow both members to reside on the same side of the Cascade Mountains, so long as this deviation does not exceed 12 months in any 10-year period.
- Requires Ecology, in collaboration with interested stakeholders, to develop a proposal for assisting households that, for residential home heating, use fuels that are not electricity or natural gas.