

FINAL BILL REPORT

E2SSB 5842

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Synopsis as Enacted

Brief Description: Concerning state laws that address climate change.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Carlyle, Lias, Das, Nguyen and Nobles).

Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means
House Committee on Environment & Energy

Background: Greenhouse Gas Emissions. In 2020, the Legislature updated statewide greenhouse gas (GHG) emissions reduction limits to 45 percent below 1990 levels by 2030, 70 percent below 1990 levels by 2040, and 95 percent below 1990 levels, as well as net zero emissions, by 2050.

Cap and Invest Program. In 2021, the Legislature directed the Department of Ecology (Ecology) to implement a cap and invest program (Program), also known as the Climate Commitment Act, to reduce greenhouse gas (GHG) emissions consistent with the statewide statutory emissions limits. Starting on January 1, 2023, the Program will cover industrial facilities, certain fuel suppliers, in-state electricity generators, electricity importers, and natural gas distributors with annual greenhouse gas emissions above 25,000 metric tons of carbon dioxide equivalent (CO₂e).

Covered entities must either reduce their emissions, or obtain allowances to cover any remaining emissions. The total number of allowances will decrease over time to meet statutory limits. Some utilities and industries will be issued free allowances; other allowances will be auctioned. The Program must track, verify, and enforce compliance through the use of compliance instruments. A compliance instrument is an allowance or offset credit issued by Ecology or a trading program that has linked with Washington's Program. One compliance instrument is equal to one metric ton of CO₂e.

Several accounts are created under the Program, including the Climate Investment Account

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(Account) that provides funding for projects that support the transition to clean energy, build ecosystem resilience, and support carbon sequestration. After administrative costs to implement the Program are covered, 75 percent of the Account will be distributed to the Climate Commitment Account and 25 percent to the Natural Climate Solutions Account.

Compliance Periods. A compliance period is four years, and the first compliance period is January 2023 through December 2026. By October 1, 2022, Ecology must adopt annual allowance budgets for the first compliance period of the Program. Data reported from 2015 through 2019 is sufficient for adopting annual allowance budgets and demonstrating compliance for the first compliance period. The second compliance period is January 2027 through December 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.

Compliance Obligations. 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. Ecology must maintain an account for retired allowances transferred by registered entities and from the voluntary renewable reserve account. If a covered 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. Civil penalties are levied if a covered or opt-in entity fails to submit penalty allowances.

Auctions. Ecology must distribute allowances through a maximum of four auctions annually, plus any necessary reserve auctions. Ecology must engage a qualified, independent contractor to run the auctions. 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. Ecology must adopt rules to guard against bidder collusion and minimize the potential for market manipulation. Proceeds from the auction of allowances must be used for clean energy transition and assistance, clean transportation, and climate resiliency projects that promote climate justice.

Containment Reserves. The emissions containment reserve must be established by Ecology to help ensure that the price of allowances remains sufficient to incentivize reductions in greenhouse gas emissions. The allowance price containment reserve is an account maintained by Ecology with allowances available for sale through separate reserve auctions at predefined prices to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

Preemption. Under current law, 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 authorized under

the Program. The Program preempts the the Clean Air Rule.

Summary: Compliance Obligations. Under the Program, Ecology must require by rule that covered or opt-in entities annually transfer a percentage of compliance instruments in order to smooth their compliance obligation, but must fully satisfy their compliance obligation for each four-year compliance period.

Compliance with the Program occurs through the transfer of compliance instruments or price ceiling units from the holding account to the compliance account of the covered or opt-in entity on or before the transfer date. A covered or opt-in entity that submits insufficient compliance instruments is subject to a penalty. Older vintage allowances must be retired before newer vintage allowances. Once a covered or opt-in entity transfers compliance instruments to meet its compliance obligation, Ecology must retire the allowances or offset credits.

Offset projects must be certified by a recognized registry. Offset credits used to comply with the Program must have been issued for reporting periods either within two years prior to or wholly after July 25, 2021. Offset credits must be consistent with offset protocols adopted by Ecology.

Baseline Data. In the second compliance period of the Program, Ecology must add to its emissions baseline by incorporating the proportionate share that the total GHG emissions of new covered entities bear to the total anthropogenic GHG emissions in the state during 2015 through 2019, rather than 2023 through 2025.

Public Disclosure. Records containing the following information are confidential and exempt from public disclosure:

- bidding information identified by rule;
- information contained in the secure, online electronic tracking system that Ecology must establish for the Program;
- financial, proprietary, and other market sensitive information determined by Ecology that is submitted to Ecology or the independent contractor or financial services administrator engaged by Ecology to run auctions for the Program; and
- financial, proprietary, and other market sensitive information determined by Ecology submitted to a jurisdiction with a linkage agreement with the Program.

Preemption. No state agency may adopt or enforce a GHG pricing or market-based emissions cap and reduce program for stationary sources or emissions limitations on GHG emissions from stationary sources except as provided under the Program, by state statute in effect as of July 1, 2022, or required to implement a federal statute, rule, or program. Ecology is directed to repeal the Clean Air Rule.

The Office of Financial Management (OFM) must submit a report to the Legislature by December 1, 2023, that summarizes state laws that regulate GHG emissions from stationary

sources and their corresponding reductions and state laws whose implementation may effectuate GHG emissions reductions. OFM may contract for this report.

Auction Floor Price. The term "auction ceiling price" is replaced with "reserve auction floor price" to clarify it is the reserve auction floor price that triggers the release and auctioning of allowances in the allowance price containment reserve.

Price Ceiling Units. The price ceiling must provide cost protection for covered entities under the Program rather than facilities. Price ceiling units are available for purchase by entities without sufficient compliance instruments for the current compliance period. The Price Ceiling Unity Emission Reduction Investment Account is created to receive the receipts from the sales of price ceiling units to be used for expenditures specified under the Program.

Emissions Containment Reserve. Ecology may suspend the emissions containment reserve trigger price if Ecology might enter into a linkage agreement with a jurisdiction that does not have one.

Reporting Emissions of Greenhouse Gases. The annual GHG emissions reporting deadline for electric power entities is moved from March 31st to June 1st.

Environmental Justice Council and Assessment. The Environmental Justice (EJ) Council must provide oversight of the Natural Climate Solutions Account and the Climate Commitment Account created under the Program. The expenditure of funds from these two accounts are also subject to the EJ provisions that apply to the other accounts under the Program, including requiring that an EJ assessment be conducted annually or biennially on fund uses.

Technical Corrections. Technical corrections are made to the Program statutes, including updating references to 2021 session laws.

Votes on Final Passage:

Senate	29	20	
House	81	15	(House amended)
Senate	36	13	(Senate concurred)

Effective: June 9, 2022