
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Carlyle, Saldaña, Conway, Das, Frockt, Hunt, Llias, Nguyen, Pedersen, Salomon, Stanford, and Wilson, C.; by request of Office of the Governor)

READ FIRST TIME 03/24/21.

1 AN ACT Relating to the Washington climate commitment act;
2 amending RCW 70A.15.2200 and 43.88.055; adding a new chapter to Title
3 70A RCW; creating a new section; prescribing penalties; and providing
4 a contingent effective date.

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

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

18 (2) In 2020, the legislature updated the state's greenhouse gas
19 emissions limits that are to be achieved by 2030, 2040, and 2050,
20 based on current science and emissions trends, to support local and
21 global efforts to avoid the most significant impacts from climate

1 change. While these limits beneficially guide the implementation of
2 all other state laws and policies that have an impact on greenhouse
3 gas emissions in the state, meeting these limits will require
4 coordinated, comprehensive, and multisectoral implementation of
5 policies, programs, and laws, as currently enacted systems approaches
6 are insufficient to meet the limits.

7 (3) The legislature further finds that while climate change is a
8 global problem, there are communities that have historically borne
9 the disproportionate impacts of environmental burdens and that now
10 bear the disproportionate negative impacts of climate change.
11 Although the state has done great work in the past to highlight these
12 environmental health disparities, beginning with senator Rosa
13 Franklin's environmental equity study, and continuing through the
14 work of the governor's interagency council on health disparities, the
15 creation of the Washington environmental health disparities map, and
16 recommendations of the environmental justice task force, the state
17 can do much more to ensure that state programs address environmental
18 equity.

19 (4) The legislature further finds that while enacted carbon
20 policies can be well-intended to reduce greenhouse gas emissions and
21 provide environmental benefits to communities, the policies may not
22 do enough to ensure environmental health disparities are reduced and
23 environmental benefits are provided to those communities most
24 impacted by environmental harms from greenhouse gas and air pollutant
25 emissions.

26 (5) The legislature further finds that wildfires have become one
27 of the largest sources of black carbon in the last five years. From
28 2014 through 2018, wildfires in Washington state generated 39,200,000
29 metric tons of carbon, the equivalent of more than 8,500,000 cars on
30 the road a year. In 2015, when 1,130,000 acres burned in Washington,
31 wildfires were the second largest source of greenhouse gas emissions
32 releasing 17,975,112 metric tons of carbon dioxide into the
33 atmosphere. This pollution affects all Washingtonians, but falls
34 disproportionately on low-income communities, communities of color,
35 and the most vulnerable of our population. Restoring the health of
36 our forests and investing in wildfire prevention and preparedness
37 will therefore contribute to improved air quality and improved public
38 health outcomes.

39 (6) The legislature further finds that by exercising a leadership
40 role in addressing climate change, Washington will position its

1 economy, technology centers, financial institutions, and
2 manufacturers to benefit from national and international efforts that
3 must occur to reduce greenhouse gases. The legislature intends to
4 create climate policy that recognizes the special nature of
5 emissions-intensive, trade-exposed industries by minimizing leakage
6 and increased life-cycle emissions associated with product imports.
7 The legislature further finds that if appropriate climate policies
8 are not enacted, leakage can occur that results in net increases in
9 global greenhouse gas emissions and increased negative impacts to
10 those communities most impacted by environmental harms from climate
11 change. The legislature further intends to encourage these industries
12 to continue to innovate, find new ways to be more energy efficient,
13 use lower carbon products, and be positioned to be global leaders in
14 a low carbon economy.

15 (7) Therefore, in establishing a program to ensure that the
16 state's 2030, 2040, and 2050 greenhouse gas emissions limits are
17 achieved, the legislature intends to ensure that overburdened
18 communities and vulnerable populations are no longer overlooked in
19 the establishment of environmental policies. Under the program, the
20 legislature intends to identify overburdened communities where the
21 highest concentrations of criteria pollutants occur, determine the
22 sources of those emissions and pollutants, and ensure that emissions
23 or concentration reductions are achieved in those communities. The
24 legislature further intends to conduct an environmental justice
25 assessment to ensure that funds and programs created under this
26 chapter provide direct and meaningful benefits to vulnerable
27 populations and overburdened communities. Additionally, the
28 legislature intends to prevent job loss and provide protective
29 measures for workers adversely impacted by the transition to a clean
30 energy economy through transition and assistance programs, worker-
31 support projects, and workforce development and other activities
32 designed to grow and expand the clean manufacturing sector in
33 communities across Washington state. The legislature further intends
34 to establish an environmental justice and equity advisory panel to
35 provide recommendations for the development and implementation of the
36 program, the distribution of funds, and the establishment of
37 programs, activities, and projects to achieve environmental justice
38 and environmental health goals. The legislature further intends to
39 create and adopt community engagement plans and tribal consultation
40 frameworks in the administration of the program to ensure equitable

1 practices for meaningful community and federally recognized tribal
2 involvement. Finally, the legislature intends to establish this
3 program to contribute to a healthy environment for all of
4 Washington's communities.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter unless the context clearly
7 requires otherwise.

8 (1) "Allowance" means an authorization to emit up to one metric
9 ton of carbon dioxide equivalent. An allowance is not a property
10 right.

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

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

19 (4) "Asset controlling supplier" means any entity that owns or
20 operates interconnected electricity generating facilities or serves
21 as an exclusive marketer for these facilities even though it does not
22 own them, and has been designated by the department and received a
23 department-published emissions factor for the wholesale electricity
24 procured from its system. The department shall use a methodology
25 consistent with the methodology used by an external greenhouse gas
26 emissions trading program that shares the regional electricity
27 transmission system. Electricity from asset controlling suppliers is
28 considered a specified source of electricity.

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

32 (6) "Auction floor price" means a price for allowances below
33 which bids at auction would not be accepted.

34 (7) "Auction purchase limit" means the limit on the number of
35 allowances one registered entity or a group of affiliated registered
36 entities may purchase from the share of allowances sold at an
37 auction.

38 (8) "Biomass" means nonfossilized and biodegradable organic
39 material originating from plants, animals, and microorganisms,

1 including products, by-products, residues, and waste from
2 agriculture, forestry, and related industries as well as the
3 nonfossilized and biodegradable organic fractions of industrial
4 waste, including gases and liquids recovered from the decomposition
5 of nonfossilized and biodegradable organic material.

6 (9) "Biomass-derived fuels," "biomass fuels," or "biofuels" means
7 fuels derived from biomass that have at least 40 percent lower
8 greenhouse gas emissions based on a full life-cycle analysis when
9 compared to petroleum fuels.

10 (10) "Carbon dioxide equivalent" means a measure used to compare
11 the emissions from various greenhouse gases based on their global
12 warming potential.

13 (11) "Carbon dioxide removal" means, consistent with the
14 intergovernmental panel on climate change's 2019 report entitled
15 global warming of 1.5°C, deliberate human activities removing carbon
16 dioxide from the atmosphere and durably storing it in geological,
17 terrestrial, or ocean reservoirs, or in products. "Carbon dioxide
18 removal" includes existing and potential anthropogenic enhancement of
19 biological or geochemical sinks and including, but not limited to,
20 direct air capture and storage and carbon mineralization.

21 (12) "Climate commitment" means the process and institutional
22 mechanism established pursuant to this act for the state to achieve
23 the statewide greenhouse gas limits established in RCW 70A.45.020 by
24 certain dates.

25 (13) "Climate resilience" is the ongoing process of anticipating,
26 preparing, and adapting to changes in climate and minimizing negative
27 impacts to our natural systems, infrastructure, and communities. For
28 natural systems, increasing resiliency involves restoring and
29 increasing the health, function, and integrity of our ecosystems and
30 improving their ability to absorb and recover from climate-driven
31 disturbances. For communities, increasing resiliency means enhancing
32 their ability to understand, prevent, adapt, and recover from climate
33 impacts to people and infrastructure.

34 (14) "Closed facility" means a facility that has elected to
35 permanently stop production and will no longer be an emissions
36 source.

37 (15) "Compliance instrument" means an allowance, price ceiling
38 unit, or offset credit issued by the department or by an external
39 greenhouse gas emissions trading program to which Washington has
40 linked its greenhouse gas emissions cap and invest program. One

1 compliance instrument is equal to one metric ton of carbon dioxide
2 equivalent.

3 (16) "Compliance obligation" means the requirement to turn into
4 the department the number of compliance instruments equivalent to a
5 covered or opt-in entity's covered emissions during the compliance
6 period.

7 (17) "Compliance period" means the four-year period for which the
8 compliance obligation is calculated for covered entities.

9 (18) "Cost burden" means the impact on rates or charges to
10 customers of electric utilities in Washington state for the
11 incremental cost of electricity service to serve load due to the
12 compliance cost for greenhouse gas emissions caused by the program.
13 Cost burden includes administrative costs from the utility's
14 participation in the program.

15 (19) "Covered emissions" means the emissions for which a covered
16 entity has a compliance obligation under section 9 of this act.

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

19 (21) "Cumulative impact" means the combined, multiple
20 environmental harms and health impacts on a vulnerable population or
21 overburdened community.

22 (22) "Curtailed facility" means a facility that has temporarily
23 suspended production. The facility maintains its operating permits
24 and retains the option to resume production if conditions become
25 amenable.

26 (23) "Department" means the department of ecology.

27 (24) "Electricity importer" means:

28 (a) For electricity that is scheduled with a NERC e-tag to a
29 final point of delivery inside the state of Washington, the
30 electricity importer is identified on the NERC e-tag as the
31 purchasing-selling entity on the last segment of the tag's physical
32 path with the point of receipt located outside the state of
33 Washington and the point of delivery located inside the state of
34 Washington;

35 (b) For facilities physically located outside the state of
36 Washington with the first point of interconnection to a Washington
37 balancing authority's transmission and distribution system when the
38 electricity is not scheduled on a NERC e-tag, the electricity
39 importer is the facility operator or owner or scheduling coordinator;

1 (c) For electricity imported through a centralized market, the
2 electricity importer will be defined by rule consistent with the
3 definition in rules required under section 9(2)(a) of this act;

4 (d) For electricity from facilities allocated to serve retail
5 electricity customers of a multijurisdictional electric company, the
6 electricity importer is the multijurisdictional electric company;

7 (e) If the importer identified under (a) of this subsection is a
8 federal power marketing administration over which the state of
9 Washington does not have jurisdiction, and the federal power
10 marketing administration has not voluntarily elected to comply with
11 the program, then the electricity importer is the next purchasing-
12 selling entity in the physical path on the NERC e-tag, or if no
13 additional purchasing-selling entity over which the state of
14 Washington has jurisdiction, then the electricity importer is the
15 electric utility that operates the Washington transmission or
16 distribution system, or the generation balancing authority; or

17 (f) If the importer identified under (b) of this subsection is a
18 federal power marketing administration over which the state of
19 Washington does not have jurisdiction, and the federal power
20 marketing administration has not voluntarily elected to comply with
21 the program, then the electricity importer is the electric utility
22 that operates the Washington transmission or distribution system, or
23 the generation balancing authority.

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

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

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

35 (28) "Environmental benefits" means activities that:

36 (a) Prevent or reduce existing environmental harms or associated
37 risks that contribute significantly to cumulative environmental
38 health impacts;

1 (b) Prevent or mitigate impacts to overburdened communities and
2 vulnerable populations from, or support community response to, the
3 impacts of environmental harm; or

4 (c) Meet a community need identified by an overburdened community
5 or vulnerable population that is consistent with the intent of this
6 chapter.

7 (29) "Environmental harm" means the individual or cumulative
8 environmental health impacts and risks to communities caused by
9 historic, current, and projected:

10 (a) Exposure to pollution, conventional or toxic pollutants,
11 environmental hazards, or other contamination in the air, water, and
12 land;

13 (b) Adverse environmental effects, including exposure to
14 contamination, hazardous substances, or pollution that increase the
15 risk of adverse environmental health outcomes or create
16 vulnerabilities to climate impacts; and

17 (c) Health and economic impacts from climate change.

18 (30) "Environmental impacts" means environmental benefits or
19 environmental harms, or the combination of environmental benefits and
20 harms, resulting from a proposed action.

21 (31) "Environmental justice" means the fair treatment and
22 meaningful involvement of all people regardless of race, color,
23 national origin, or income with respect to the development,
24 implementation, and enforcement of environmental laws, regulations,
25 and policies. This includes addressing disproportionate environmental
26 and health impacts in all laws, rules, and policies with
27 environmental impacts by prioritizing vulnerable populations and
28 overburdened communities, equitably distributing resources and
29 benefits, and eliminating harm.

30 (32) "Environmental justice assessment" means using an
31 intersectional lens to address disproportionate environmental and
32 health impacts in all laws, rules, and policies with environmental
33 impacts by prioritizing vulnerable populations in overburdened
34 communities, equitably distributing resources and benefits, and
35 eliminating harm.

36 (33) "External greenhouse gas emissions trading program" means a
37 government program, other than Washington's program created in this
38 chapter, that restricts greenhouse gas emissions from sources outside
39 of Washington through emissions trading.

1 (34) "Facility" means any physical property, plant, building,
2 structure, source, or stationary equipment located on one or more
3 contiguous or adjacent properties in actual physical contact or
4 separated solely by a public roadway or other public right-of-way and
5 under common ownership or common control, that emits or may emit any
6 greenhouse gas.

7 (35) "First jurisdictional deliverer" means the owner or operator
8 of an electric generating facility in Washington or an electricity
9 importer.

10 (36) "General market participant" means a registered entity that
11 is not identified as a covered entity or an opt-in entity that is
12 registered in the program registry and intends to purchase, hold,
13 sell, or voluntarily retire compliance instruments.

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

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

17 (39) "Imported electricity" means electricity generated outside
18 the state of Washington with a final point of delivery within the
19 state, but which did not originate from any jurisdiction with which
20 Washington is linked.

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

23 (b) Electricity from a system that is marketed by a federal power
24 marketing administration shall be construed as "imported
25 electricity," not electricity generated in the state of Washington.

26 (c) "Imported electricity" does not include electricity imports
27 of unspecified electricity that are netted by exports of unspecified
28 electricity to any jurisdiction not covered by a linked program by
29 the same entity within the same hour.

30 (d) For a multijurisdictional electric company, "imported
31 electricity" means electricity, other than that from in-state
32 facilities, that contributes to a common system power pool that is
33 allocated to serve retail load in Washington pursuant to a cost
34 allocation methodology approved by the utilities and transportation
35 commission.

36 (40) "Leakage" means a reduction in emissions of greenhouse gases
37 within the state that is offset by a directly attributable increase
38 in greenhouse gas emissions outside the state and outside the
39 geography of another jurisdiction with a linkage agreement.

1 (41) "Limits" means the greenhouse gas emissions reductions
2 required by RCW 70A.45.020.

3 (42) "Linkage" means a bilateral or multilateral decision under a
4 linkage agreement between greenhouse gas market programs to accept
5 compliance instruments issued by a participating jurisdiction to meet
6 the obligations of regulated entities in a partner jurisdiction and
7 to otherwise coordinate activities to facilitate operation of a joint
8 market.

9 (43) "Linkage agreement" means a nonbinding agreement that
10 connects two or more greenhouse gas market programs and articulates a
11 mutual understanding of how jurisdictions will work together to
12 facilitate a connected greenhouse gas market.

13 (44) "Multijurisdictional electric company" means an investor-
14 owned utility that provides electricity to customers in Washington
15 and in one or more other states in a contiguous service territory or
16 from a common power system.

17 (45) "NERC e-tag" means North American electric reliability
18 corporation (NERC) energy tag representing transactions on the North
19 American bulk electricity market scheduled to flow between or across
20 balancing authority areas.

21 (46) "Offset credit" means a tradable compliance instrument that
22 represents an emissions reduction or emissions removal of one metric
23 ton of carbon dioxide equivalent.

24 (47) "Offset project" means a project that reduces or removes
25 greenhouse gases that are not covered emissions under this chapter.

26 (48) "Offset protocols" means a set of procedures and standards
27 to quantify greenhouse gas reductions or greenhouse gas removals
28 achieved by an offset project.

29 (49) "Overburdened community" means a geographic area where
30 vulnerable populations face combined, multiple environmental harms
31 and health impacts and includes, but is not limited to, highly
32 impacted communities as defined in RCW 19.405.020.

33 (50) "Person" has the same meaning as defined in RCW
34 70A.15.2200(5)(h)(iii).

35 (51) "Point of delivery" means a point on the electricity
36 transmission or distribution system physically located in Washington
37 where a power supplier delivers electricity. This point may be an
38 interconnection with another system or a substation where the
39 transmission provider's transmission and distribution systems are
40 connected to another system, or a distribution substation where

1 electricity is imported into the state over a multijurisdictional
2 retail provider's distribution system.

3 (52) "Price ceiling unit" means the units issued at a fixed price
4 by the department for the purpose of limiting price increases and
5 funding further investments in greenhouse gas reduction. A price
6 ceiling unit is not a property right.

7 (53) "Program" means the greenhouse gas emissions cap and invest
8 program created by and implemented pursuant to this chapter.

9 (54) "Program registry" means the data system in which covered
10 parties, opt-in entities, and general market participants are
11 registered and in which compliance instruments are recorded and
12 tracked.

13 (55) "Registered entity" means a covered entity, opt-in entity,
14 or general market participant that has completed the process for
15 registration in the program registry.

16 (56) "Resilience" is the ability to prepare, mitigate and plan
17 for, withstand, recover from, and more successfully adapt to adverse
18 events and changing conditions, and reorganize in an equitable manner
19 that results in a new and better condition.

20 (57) "Retire" means to permanently remove a compliance instrument
21 such that the compliance instrument may never be sold, traded, or
22 otherwise used again.

23 (58) "Supplier" means a supplier of fuel in Washington state as
24 defined in RCW 70A.15.2200(5)(h)(ii).

25 (59) "Transfer" means to transfer an allowance or compliance
26 instrument to the department, either to meet a compliance obligation
27 or on a voluntary basis.

28 (60)(a) "Vulnerable populations" means population groups that may
29 be more likely to have adverse health outcomes in response to
30 environmental harms, due to: (i) Adverse socioeconomic factors, such
31 as unemployment, high housing and transportation costs relative to
32 income, limited access to nutritious food and adequate health care,
33 linguistic isolation, and other factors that negatively affect health
34 outcomes and increase vulnerability to the effects of environmental
35 harms; and (ii) sensitivity factors, such as low birth weight and
36 higher rates of hospitalization.

37 (b) "Vulnerable populations" includes, but is not limited to,
38 racial or ethnic minority, low-income populations, populations
39 disproportionately impacted by environmental harms or pollution, and
40 populations of workers experiencing environmental risks.

1 NEW SECTION.

2 **Sec. 3.**

3 ENVIRONMENTAL JUSTICE REVIEW. (1) To

4 ensure that the program created in sections 7 through 22 of this act
5 achieves reductions in criteria pollutants in overburdened
6 communities highly impacted by air pollution, the department must:

7 (a) Utilize the department of health's environmental health
8 disparities map and complementary data to identify a high priority
9 list of overburdened communities where the highest emissions or
10 concentrations of criteria pollutants are occurring;

11 (b) Deploy an air monitoring network in high priority
12 overburdened communities to collect sufficient air quality data for
13 the 2025 review and subsequent reviews of criteria pollutant
14 reductions conducted under subsection (2) of this section; and

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

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

24 (2) (a) Beginning in 2025, and every two years thereafter, the
25 department must conduct a review to determine if criteria pollutants
26 are being reduced in the overburdened communities identified under
27 subsection (1) of this section.

28 (b) If this review finds that criteria pollutants are not being
29 reduced in any identified overburdened community, then the
30 department, in consultation with local air pollution control
31 authorities, must establish air quality targets to achieve air
32 quality consistent with neighboring communities that are not
33 identified as overburdened; identify the sources that are the
34 contributors of those emissions that are either increasing or not
35 decreasing; and achieve the reduction targets through adoption of
36 emission control strategies or other methods; and the department
37 must:

38 (i) Adopt, along with local air pollution control authorities,
39 stricter air quality standards, emission standards, or emissions
40 limitations on criteria pollutants;

 (ii) If a covered entity or opt-in entity is identified as a high
priority emitter of criteria pollutants, and the emissions of

1 greenhouse gases and the source of criteria pollutants are
2 correlated, reduce offset limits as established in section 18 of this
3 act and the allocation of allowances at no cost under section 12 of
4 this act for any covered entity identified under this subsection
5 (2)(b); or

6 (iii) Revise any linkage necessary to ensure reductions of
7 criteria pollutant emissions by any covered entity identified under
8 this subsection (2)(b).

9 (c) Actions imposed under this section may not impose
10 requirements on covered entities or opt-in entities that are
11 disproportionate to their contribution to air pollution compared to
12 other sources of criteria pollutants in the overburdened community.

13 (3)(a) In developing the lists and air monitoring network under
14 subsection (1) of this section, the department must create and adopt
15 a community engagement plan to describe how it will engage with
16 overburdened communities and vulnerable populations in:

17 (i) Identifying high priority communities and emitters in those
18 communities; and

19 (ii) Monitoring and evaluating criteria pollutant emissions in
20 those areas.

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

24 NEW SECTION. **Sec. 4.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1) When
25 allocating funds from the climate investment account created in
26 section 24 of this act or administering grants or programs funded by
27 the account, agencies shall conduct an environmental justice
28 assessment and establish a minimum of not less than 35 percent and a
29 goal of 40 percent of total investments that provide direct and
30 meaningful benefits to vulnerable populations within the boundaries
31 of overburdened communities identified in section 3 of this act
32 through: (a) The direct reduction of environmental burdens in
33 overburdened communities; (b) the reduction of disproportionate,
34 cumulative risk from environmental burdens, including climate change;
35 (c) the support of community led project development, planning, and
36 participation costs; or (d) meeting a community need identified by
37 vulnerable members of the community that is consistent with the
38 intent of this chapter.

1 (2) The environmental justice assessment must adhere to the
2 following principles: (a) Benefits and programs should be directed to
3 areas and targeted to vulnerable populations and overburdened
4 communities to reduce statewide disparities; (b) investments and
5 benefits should be made proportional to the health disparities that a
6 specific community experiences to eliminate the disparities; (c)
7 investments and programs should focus on creating environmental
8 benefits, including eliminating health burdens, creating community
9 and population resilience, and raising the quality of life of those
10 in the community; and (d) efforts should be made to balance
11 investments and benefits across the state and within counties, local
12 jurisdictions, and unincorporated areas as appropriate to reduce
13 disparities by location and to ensure efforts contribute to a
14 reduction in disparities that exist based on race or ethnicity,
15 socioeconomic status, or other factors.

16 (3) Agencies allocating funds or administering grants or programs
17 from the climate investment account must:

18 (a) Report annually to the environmental justice and equity
19 advisory panel in section 5 of this act and the office of equity
20 regarding progress toward meeting environmental justice and
21 environmental health goals; and

22 (b) Consider recommendations by the environmental justice and
23 equity advisory panel developed under section 5(3) of this act; and

24 (c)(i) Create and adopt a community engagement plan to describe
25 how it will engage with overburdened communities and vulnerable
26 populations in allocating funds or administering grants or programs
27 from the climate investment account.

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

31 NEW SECTION. **Sec. 5.** ENVIRONMENTAL JUSTICE AND EQUITY ADVISORY
32 PANEL. (1) The office of equity shall establish an environmental
33 justice and equity advisory panel to provide recommendations to the
34 legislature, agencies, and the governor in the development and
35 implementation of the program established in sections 7 through 22 of
36 this act, and the programs funded from the climate investment account
37 created in section 24 of this act.

38 (2) The office of equity must convene the environmental justice
39 and equity advisory panel by January 1, 2023. The office of equity

1 may seek nominations or recommendations from organizations across the
2 state representing the interests specified in this section. Members
3 of the panel must be selected for geographic and organizational
4 diversity and must include the following:

5 (a) Individuals representing the interests of vulnerable
6 populations residing in overburdened communities in different
7 geographic areas of the state with expertise in environmental justice
8 and equity issues;

9 (b) Individuals representing union labor with expertise in
10 economic dislocation, clean energy economy, or emissions-intensive,
11 trade-exposed facilities;

12 (c) At least two members representing federally recognized
13 tribes, with at least one from eastern Washington and one from
14 western Washington; and

15 (d) The chair appointed under subsection (4) of this section.

16 (3) The purpose of the panel is to:

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

19 (i) The program established in sections 7 through 22 of this act
20 including, but not limited to, linkage with other jurisdictions,
21 protocols for establishing offset projects and securing offset
22 credits, designation of emissions-intensive and trade-exposed
23 industries, and administration of allowances under the program; and

24 (ii) Investment plans and funding proposals for the programs
25 funded from the climate investment account for the purpose of
26 providing environmental benefits and reducing environmental health
27 disparities within overburdened communities identified under section
28 3 of this act;

29 (b) Provide a forum to analyze policies adopted under this
30 chapter to determine if the policies lead to improvements within
31 overburdened communities identified under section 3 of this act;

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

34 (d) Recommend copollutant emissions reduction goals in
35 overburdened communities;

36 (e) Evaluate the level of funding provided to assist vulnerable
37 populations, low-income individuals, and impacted workers and the
38 funding of projects and activities located within or benefiting
39 overburdened communities;

1 (f) Recommend environmental justice and environmental health
2 goals for programs, activities, and projects funded from the climate
3 investment account, and review agency annual reports on outcomes and
4 progress toward meeting goals;

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

8 (h) Recommend how to support public participation through
9 capacity grants for participation.

10 (4) The governor shall appoint a chair, subject to confirmation
11 by the senate, who is responsible for overseeing the duties of the
12 environmental justice and equity advisory panel. The chair is paid a
13 salary fixed by the governor in accordance with RCW 43.03.040. If a
14 vacancy occurs in the position of the chair while the senate is not
15 in session, the governor shall make a temporary appointment until the
16 next meeting of the senate at which time the governor shall present
17 to that body the governor's nomination for the position.

18 (5) The environmental justice and equity advisory panel shall
19 meet on a schedule established by the office of equity, in
20 consultation with the department, to allow for timely and substantive
21 input into processes and decisions consistent with its purpose.

22 (6) The office of equity shall provide all administrative and
23 staff support for the environmental justice and equity advisory
24 panel.

25 (7) The environmental justice and equity advisory panel
26 constitutes a class one group under RCW 43.03.220. Expenses for this
27 group must be included in costs to support and administer the program
28 and are an allowable expense under section 24(2)(a) of this act.

29 (8) In consultation with the office of equity and the
30 environmental justice council, the governor may administratively
31 address how to effectively coordinate the work of the environmental
32 justice and equity advisory panel with the work of the environmental
33 justice council, to ensure efficient operations and policy alignment
34 across state environmental justice work, subject to enactment of
35 chapter . . . (Substitute Senate Bill No. 5141), Laws of 2021.

36 NEW SECTION. **Sec. 6.** TRIBAL CONSULTATION. (1) Before allocating
37 funding or administering grant programs appropriated from the climate
38 investment account, agencies must engage in consultation with
39 federally recognized tribes on all funding decisions and programs

1 that may impact, infringe upon, or impair the governmental efforts of
2 federally recognized tribes to adopt or enforce their own standards
3 governing or protecting the tribe's resources or other rights and
4 interests in their tribal lands and lands within which a tribe or
5 tribes possess rights reserved by treaty. The consultation shall
6 occur pursuant to chapter 43.376 RCW and is independent of any public
7 participation process required by state law, or by a state agency,
8 and regardless of whether the agency receives a request for
9 consultation from a federally recognized tribe. Agencies shall
10 develop a consultation framework in coordination with tribal
11 governments that includes best practices, protocols for
12 communication, and collaboration with federally recognized tribes.

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

20 NEW SECTION. **Sec. 7.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In
21 order to ensure that greenhouse gas emissions are reduced consistent
22 with the limits established in RCW 70A.45.020, the department must
23 implement a cap on greenhouse gas emissions from covered entities and
24 a program to track, verify, and enforce compliance through the use of
25 compliance instruments.

26 (2) The program must consist of:

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

30 (b) Defining those entities covered by the program, and those
31 entities that may voluntarily opt into coverage under the program, as
32 provided in this section and sections 8 and 9 of this act;

33 (c) Distribution of emission allowances, as provided in section
34 11 of this act, and through the allowance price containment
35 provisions under sections 15 and 16 of this act;

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

38 (e) Defining the compliance obligation for covered entities, as
39 provided in section 20 of this act;

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

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

6 (h) Providing for the transfer of allowances and recognition of
7 compliance instruments, including those issued by jurisdictions that
8 are linked with the state;

9 (i) Providing monitoring and oversight of the sale and transfer
10 of allowances;

11 (j) Creating, in section 5 of this act, an environmental justice
12 and equity advisory panel to monitor impacts of this policy on
13 overburdened communities, advise on achieving positive workforce and
14 job outcomes, and the equitable distribution of benefits to
15 overburdened communities; and

16 (k) Creating a price ceiling and associated mechanisms in section
17 of this act.

18 (3) The department shall consider opportunities to implement the
19 program in a manner that allows linking the state's program with
20 other jurisdictions having similar programs, considering if such
21 linkage will provide for a more cost-effective means for Washington
22 covered entities to meet their compliance obligations while
23 recognizing the special characteristics of the state's economy,
24 communities, and industries. The department is authorized to enter
25 into a linkage agreement with another jurisdiction after formal
26 notice and opportunity for a public hearing, and when consistent with
27 the requirements of section 22 of this act.

28 NEW SECTION. **Sec. 8.** PROGRAM BUDGET AND TIMELINES. (1)(a) The
29 department shall commence the program by January 1, 2023, by
30 determining an emissions baseline establishing the proportionate
31 share that the total greenhouse gas emissions of covered entities for
32 the first compliance period bears to the total anthropogenic
33 greenhouse gas emissions in the state during 2015 through 2019, based
34 on data reported to the department under RCW 70A.15.2200 or provided
35 as required by this chapter. By October 1, 2022, the department shall
36 adopt a program budget of allowances for the first compliance period
37 of the program, calendar years 2023 through 2026, to be distributed
38 from January 1, 2023, through December 31, 2026. If the first
39 compliance period is delayed pursuant to section 20(7) of this act,

1 the department shall adjust the program budget to reflect a shorter
2 first compliance period.

3 (b) By October 1, 2026, the department shall add to its emissions
4 baseline by incorporating the proportionate share that the total
5 greenhouse gas emissions of new covered entities in the second
6 compliance period bear to the total anthropogenic greenhouse gas
7 emissions in the state during 2023 through 2025. In determining the
8 addition to the baseline, the department may exclude a year from the
9 determination if the department identifies that year to have been an
10 outlier due to a state of emergency. The department shall adopt a
11 program budget of allowances for the second compliance period of the
12 program, calendar years 2027 through 2030, that will be incorporated
13 into the program budget of allowances for the first compliance period
14 of the program to be distributed from January 1, 2027, through
15 December 31, 2030.

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

19 (2) The program budgets must be set to achieve the share of
20 reductions by covered entities necessary to achieve the 2030, 2040,
21 and 2050 statewide emissions limits established in RCW 70A.45.020,
22 based on data reported to the department under chapter 70A.15 RCW or
23 provided as required by this chapter. The department must adopt
24 annual allowance budgets for the program on a calendar year basis
25 that provide for substantially equivalent reductions on an absolute
26 basis for each year. An allowance distributed under the program,
27 either directly by the department under sections 12 through 14 of
28 this act or through auctions under section 11 of this act, does not
29 expire and may be held or banked consistent with sections 11(6) and
30 16(1) of this act.

31 (3) The department must complete an evaluation by December 31,
32 2027, and by December 31, 2035, of the performance of the program,
33 including its performance in reducing greenhouse gases. If the
34 evaluation shows that adjustments to the annual budgets are necessary
35 to ensure achievement of 2030 and 2040 emission reduction limits
36 identified in RCW 70A.45.020, the department shall adjust the annual
37 budgets accordingly. The department must complete additional
38 evaluations by December 31, 2040, and by December 31, 2045, of the
39 performance of the program, and make adjustments in the annual
40 budgets to ensure achievement of 2050 emission reduction limits

1 identified in RCW 70A.45.020. Nothing in this subsection precludes
2 the department from making additional adjustments as necessary to
3 ensure successful achievement of emission reduction limits. The
4 department shall determine and make public the circumstances,
5 metrics, and processes that would initiate the public consideration
6 of additional program adjustments to ensure successful achievement of
7 the emission reduction limits.

8 (4) Data reported to the department under RCW 70A.15.2200 or
9 provided as required by this chapter for 2015 through 2019 is deemed
10 sufficient for the purpose of adopting annual program budgets and
11 demonstrating compliance under the first compliance period of the
12 program. Data reported to the department under RCW 70A.15.2200 or
13 provided as required by this chapter for 2023 through 2025 is deemed
14 sufficient for adopting annual program budgets and demonstrating
15 compliance under the second compliance period of the program.

16 NEW SECTION. **Sec. 9.** PROGRAM COVERAGE. (1) A person is a
17 covered entity as of the beginning of the first compliance period and
18 all subsequent compliance periods if the person reported emissions
19 under RCW 70A.15.2200 for any calendar year from 2015 through 2019,
20 or additional data provided as required by this chapter indicates
21 that emissions for any calendar year from 2015 through 2019 equaled
22 or exceeded any of the following thresholds:

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

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

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

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

1 (ii) Where the person who is not a natural gas company and has a
2 tariff with a natural gas company to deliver to an end-use customer
3 in the state in amounts that would result in exceeding 25,000 metric
4 tons of carbon dioxide equivalent if fully combusted or oxidized,
5 excluding the amounts: (A) Supplied to covered entities under (a)
6 through (c) of this subsection or subsection (2)(a) of this section;
7 and (B) the amounts delivered to opt-in entities;

8 (iii) Where the person is an end-use customer in the state who
9 directly purchases natural gas from a person that is not a natural
10 gas company and has the natural gas delivered through an interstate
11 pipeline to a distribution system owned by the purchaser in amounts
12 that would result in exceeding 25,000 metric tons of carbon dioxide
13 equivalent if fully combusted or oxidized, excluding the amounts: (A)
14 Supplied to covered entities under (a) through (c) of this subsection
15 or subsection (2)(a) of this section; and (B) delivered to opt-in
16 entities.

17 (2) A person is a covered entity as of the beginning of the
18 second compliance period and all subsequent compliance periods if the
19 person reported emissions under RCW 70A.15.2200 or provided emissions
20 data as required by this chapter for any calendar year from 2023
21 through 2025 that equals or exceeds any of the following thresholds:

22 (a) Where the person is a first jurisdictional deliverer
23 importing electricity into the state and the cumulative annual total
24 of emissions associated with imported electricity into the state from
25 specified or unspecified sources equals or exceeds 25,000 metric tons
26 of carbon dioxide equivalent. For a specified source, the person must
27 have either full or partial ownership in the facility, or a written
28 power contract to procure electricity at the facility or from an
29 asset controlling supplier at the time of entry of the transaction to
30 procure electricity. In consultation with any jurisdiction that is
31 linked to the program created by this chapter, by October 1, 2026,
32 the department, in consultation with the department of commerce and
33 the utilities and transportation commission, shall adopt a
34 methodology for addressing imported electricity associated with a
35 centralized electricity market; and

36 (b) Where the person operates a waste to energy facility utilized
37 by a county and city solid waste management program and the
38 facility's emissions equal or exceed 25,000 metric tons of carbon
39 dioxide equivalent.

1 (3) A person is a covered entity beginning January 1, 2031, and
2 all subsequent compliance periods if the person reported emissions
3 under RCW 70A.15.2200 or provided emissions data as required by this
4 chapter for any calendar year from 2027 through 2029, where the
5 person operates a landfill utilized by a county and city solid waste
6 management program and the facility's emissions equal or exceed
7 25,000 metric tons of carbon dioxide equivalent.

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

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

35 (6) For emission sources described in subsection (1) of this
36 section that are in operation or otherwise active between 2015 and
37 2019 but were not required to report emissions for those years under
38 RCW 70A.15.2200 as written for the reporting periods between 2015 and
39 2019, coverage under the program starts in the calendar year
40 following the year in which emissions from the source exceed the

1 applicable thresholds in subsection (1) of this section as reported
2 pursuant to RCW 70A.15.2200 or provided as required by this chapter,
3 or upon formal notice from the department that the source is expected
4 to exceed the applicable emissions threshold for the first year that
5 source is required to report emissions, whichever happens first.
6 Sources meeting these conditions are required to transfer their first
7 allowances on the first transfer deadline of the year following the
8 year in which their emissions, as reported under RCW 70A.15.2200 or
9 provided as required by this chapter, were equal to or exceeded the
10 emissions threshold.

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

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

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

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

20 (d) Carbon dioxide emissions from the combustion of biomass or
21 biofuels; and

22 (e) Emissions from facilities with North American industry
23 classification system code 92811 (national security).

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

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

37 (b) Consistent with the intent of the legislature to avoid the
38 leakage of emissions to other jurisdictions, in achieving the state's
39 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the
40 limits in a manner that recognizes that the siting and placement of

1 new best-in-class facilities that provide for the displacement of
2 more carbon intensive processes is in the economic and environmental
3 interests of the state of Washington.

4 (c) For new or expanded facilities that require review under
5 chapter 43.21C RCW and which would result in annual greenhouse gas
6 emissions in excess of 25,000 metric tons per year, the department
7 must evaluate the net cumulative greenhouse gas emissions of the
8 facility, attributing any net displacement of global emissions
9 resulting from the project in the department's decision making. The
10 department may adopt rules to determine how to evaluate net
11 cumulative emissions reductions.

12 (d) The limits in RCW 70A.45.020 or greenhouse gas emissions that
13 are addressed in this chapter may not be the basis for denial of a
14 permit application or for judicial review of the grant of a permit
15 for a new or expanded emissions-intensive and trade-exposed facility.

16 (e) Compliance with the requirements of this chapter is the only
17 mitigation for greenhouse gases that can be required by any state
18 agency, city, town, county, township, other subdivision, or municipal
19 corporation of the state from these facilities.

20 (f) Inclusion as a covered or an opt-in entity under this chapter
21 constitutes adequate mitigation of any significant adverse impacts
22 with respect to greenhouse gases for a facility subject to the
23 requirements of chapter 43.21C RCW.

24 NEW SECTION. **Sec. 10.** REQUIREMENTS. (1) All covered entities
25 must register to participate in the program, following procedures
26 adopted by the department by rule.

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

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

1 period. The opt-in entity continues to have a compliance obligation
2 through the current compliance period. An opt-in entity is not
3 eligible to receive allowances directly distributed under section 12,
4 13, or 14 of this act.

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

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

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

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

19 (a) A compliance account where the compliance instruments are
20 transferred to the department for retirement. Compliance instruments
21 in compliance accounts may not be sold, traded, or otherwise provided
22 to another account or person, except as provide for in section 11 of
23 this act.

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

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

35 (9) The department shall maintain an account for the purpose of
36 retiring allowances transferred by registered entities.

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

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

6 (2) The department shall hold a maximum of four auctions
7 annually, plus any necessary reserve auctions. An auction may include
8 allowances from the annual allowance budget of the current year and
9 allowances from the annual allowance budgets from prior years that
10 remain to be distributed. The department must make future vintage
11 allowances available through parallel auctions at least twice
12 annually in addition to the auctions through which current vintage
13 allowances are exclusively offered.

14 (3) The department shall engage a qualified, independent
15 contractor to run the auctions. The department shall also engage a
16 qualified financial services administrator to hold the bid
17 guarantees, evaluate bid guarantees, and inform the department of the
18 value of bid guarantees once the bids are accepted.

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

23 (a) Registered entities intending to participate in an auction
24 must submit an application to participate at least 30 days prior to
25 the auction. The application must include the documentation required
26 for review and approval by the department. A registered entity is
27 eligible to participate only after receiving a notice of approval by
28 the department.

29 (b) Each registered entity that elects to participate in the
30 auction must have a different representative. Only a representative
31 with an approved auction account is authorized to access the auction
32 platform to submit an application or confirm the intent to bid for
33 the registered entity, submit bids on behalf of the registered entity
34 during the bidding window, or to download reports specific to the
35 auction.

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

1 (6) To protect the integrity of the auctions, a registered entity
2 or group of registered entities with a direct corporate association
3 are subject to auction purchase and holding limits. The department
4 may limit these if it deems necessary to protect the integrity and
5 functioning of the auctions:

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

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

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

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

16 (7) (a) For fiscal year 2023, upon completion and verification of
17 the auction results, the financial services administrator shall
18 notify winning bidders and transfer the auction proceeds to the state
19 treasurer for deposit as follows: (i) \$127,341,000 must be deposited
20 into the forward flexible account created in (g) of this subsection;
21 and (ii) the remaining auction proceeds to the climate investment
22 account created in section 24 of this act.

23 (b) For fiscal year 2024, upon completion and verification of the
24 auction results, the financial services administrator shall notify
25 winning bidders and transfer the auction proceeds to the state
26 treasurer for deposit as follows: (i) \$356,697,000 must be deposited
27 into the forward flexible account created in (g) of this subsection;
28 and (ii) the remaining auction proceeds to the climate investment
29 account created in section 24 of this act.

30 (c) For fiscal year 2025, upon completion and verification of the
31 auction results, the financial services administrator shall notify
32 winning bidders and transfer the auction proceeds to the state
33 treasurer for deposit as follows: (i) \$366,558,000 must be deposited
34 into the forward flexible account created in (g) of this subsection;
35 and (ii) the remaining auction proceeds to the climate investment
36 account created in section 24 of this act.

37 (d) For fiscal years 2026 through 2037, upon completion and
38 verification of the auction results, the financial services
39 administrator shall notify winning bidders and transfer the auction
40 proceeds to the state treasurer for deposit as follows: (i)

1 \$359,117,000 per year must be deposited into the forward flexible
2 account created in (g) of this subsection; and (ii) the remaining
3 auction proceeds to the climate investment account created in section
4 24 of this act.

5 (e) The deposits into the forward flexible account pursuant to
6 (a) through (d) of this subsection must not exceed \$5,200,000,000
7 over the first 16 years and any remaining auction proceeds must be
8 deposited into the climate investment account created in section 24
9 of this act. The deposits into the forward flexible account pursuant
10 to (a) through (d) of this subsection must be prorated equally from
11 the proceeds of each of the auctions occurring during each fiscal
12 year.

13 (f) For fiscal year 2038 and each year thereafter, upon
14 completion and verification of the auction results, the financial
15 services administrator shall notify winning bidders and transfer the
16 auction proceeds to the state treasurer for deposit as follows: (i)
17 50 percent of the auction proceeds to the forward flexible account
18 created in (g) of this subsection; and (ii) the remaining auction
19 proceeds to the climate investment account created in section 24 of
20 this act.

21 (g) The forward flexible account is created in the state
22 treasury. All receipts from proceeds directed to the account under
23 (a) through (f) of this subsection must be deposited in the account.
24 Moneys in the account may be spent only after appropriation.
25 Expenditures from the account may be used only for transportation
26 projects, programs, or activities identified as forward flexible
27 projects, programs, or activities in an omnibus transportation
28 appropriations act.

29 (8) The department shall adopt by rule provisions to guard
30 against bidder collusion and minimize the potential for market
31 manipulation. A registered entity may not release or disclose any
32 bidding information including: Intent to participate or refrain from
33 participation; auction approval status; intent to bid; bidding
34 strategy; bid price or bid quantity; or information on the bid
35 guarantee provided to the financial services administrator. The
36 department may cancel or restrict a previously approved auction
37 participation application or reject a new application if the
38 department determines that a registered entity has:

39 (a) Provided false or misleading facts;

1 (b) Withheld material information that could influence a decision
2 by the department;

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

4 (d) Violated registration requirements; or

5 (e) Violated any of the rules regarding the conduct of the
6 auction.

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

13 (10) The department shall design allowance auctions so as to
14 allow, to the maximum extent practicable, linking with external
15 greenhouse gas emissions trading programs in other jurisdictions and
16 to facilitate the transfer of allowances when the state's program is
17 linked with other external greenhouse gas emissions trading programs.
18 The department may conduct auctions jointly with other linked
19 jurisdictions.

20 NEW SECTION. **Sec. 12.** ALLOCATION OF ALLOWANCES TO EMISSIONS-
21 INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) Facilities owned or operated
22 by a covered entity must receive an allocation of allowances for the
23 covered emissions at those facilities under this subsection at no
24 cost if the operations of the facility are classified as emissions-
25 intensive and trade-exposed, as determined by being engaged in one or
26 more of the processes described by the following industry
27 descriptions and codes in the North American industry classification
28 system:

29 (a) Metals manufacturing, including iron and steel making,
30 ferroalloy and primary metals manufacturing, secondary aluminum
31 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
32 and smelting, refining, and alloying of other nonferrous metals,
33 North American industry classification system codes beginning with
34 331;

35 (b) Paper manufacturing, including pulp mills, paper mills, and
36 paperboard milling, North American industry classification system
37 codes beginning with 322;

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

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

3 (e) Nonmetallic mineral manufacturing, including glass container
4 manufacturing, North American industry classification system codes
5 beginning with 327;

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

8 (g) Computer and electronic product manufacturing, including
9 semiconductor and related device manufacturing, North American
10 industry classification system codes beginning with 334;

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

13 (i) Cement manufacturing, North American industry classification
14 system code 327310;

15 (j) Petroleum refining, North American industry classification
16 system code 324110;

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

19 (l) Asphalt single and coating manufacturing from refined
20 petroleum, North American industry classification system code 324122;
21 and

22 (m) All other petroleum and coal products manufacturing from
23 refined petroleum, North American industry classification system code
24 324199.

25 (2) By July 1, 2022, the department must adopt by rule objective
26 criteria for both emissions' intensity and trade exposure for the
27 purpose of identifying emissions-intensive, trade-exposed
28 manufacturing businesses during the second compliance period of the
29 program and subsequent compliance periods. A facility covered by
30 subsection (1)(a) through (m) of this section is considered an
31 emissions-intensive, trade-exposed facility and is eligible for
32 allocation of no cost allowances as described in this section. In
33 addition, any covered party that is a manufacturing business that can
34 demonstrate to the department that it meets this criteria, is also
35 eligible for treatment as emissions-intensive, trade-exposed and is
36 eligible for allocation of no cost allowances as described in this
37 section.

38 (3)(a) For all compliance periods prior to December 31, 2034, the
39 annual allocation of allowances for direct distribution to a facility
40 identified as emissions-intensive and trade-exposed must be equal to

1 the facility's proportional obligation of the program budget under
2 section 8 of this act, multiplied by 100 percent.

3 (b) The department shall by rule provide for emissions-intensive
4 and trade-exposed facilities to apply and receive from the department
5 an adjustment to the allocation for direct distribution of allowances
6 based on a facility-specific carbon intensity benchmark as calculated
7 in this subsection. If the department determines that the net
8 quantity of no cost allowances awarded pursuant to (a) of this
9 subsection is lower than when using the facility-specific carbon
10 intensity benchmark, the department shall award additional no cost
11 allowances up to the quantity of allowances resulting from using the
12 facility-specific carbon intensity benchmark. The department shall
13 adjust the no cost allocation of allowances and credits to an
14 emissions-intensive and trade-exposed facility to avoid duplication
15 with any no cost allowances transferred pursuant to sections 13 and
16 14 of this act, if applicable.

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

22 (ii) If an emissions-intensive and trade-exposed facility is not
23 able to feasibly determine a carbon intensity benchmark based on its
24 unique circumstances, the entity may elect to use a mass-based
25 baseline that does not vary based on changes in production volumes.
26 For each year during the first four-year compliance period that
27 begins January 1, 2023, these facilities must be awarded no cost
28 allowances equal to 100 percent of the facility's mass-based
29 baseline. For each year during the second four-year compliance period
30 that begins January 1, 2027, these facilities must be awarded no cost
31 allowances equal to 97 percent of the facility's mass-based baseline.
32 For each year during the third compliance period that begins January
33 1, 2031, these facilities must be awarded no cost allowances equal to
34 94 percent of the facility's mass-based baseline. Except as provided
35 in (b)(iii) of this subsection, if a facility elects to use a mass-
36 based baseline, it may not later convert to a carbon intensity
37 benchmark during the first three compliance periods.

38 (iii) A facility with a North American industry classification
39 system code beginning with 3364 that is utilizing a mass-based
40 baseline in (b)(ii) of this subsection must receive an additional no

1 cost allowance allocation under this section in order to accommodate
2 an increase in production that increases its emissions above the
3 baseline on a basis equivalent in principle to those awarded to
4 entities utilizing a carbon intensity benchmark pursuant to this
5 subsection (3)(b). The department shall establish methods to award,
6 for any annual period, additional no cost allowance allocations under
7 this section and, if appropriate based on projected production, to
8 achieve a similar ongoing result through the adjustment of the
9 facility's mass-based baseline. An eligible facility under this
10 subsection that has elected to use a mass-based baseline may not
11 convert to a carbon intensity benchmark until the next compliance
12 period.

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

18 (ii) By July 31, 2022, the work group shall establish procedures
19 for calculating carbon intensity benchmarks. The carbon intensity
20 benchmark must be based upon data from 2015-2019, unless the
21 emissions-intensive, trade-exposed facility can demonstrate that
22 there have been abnormal periods of operation that materially
23 impacted the facility and the baseline period should be expanded to
24 include years prior to 2015.

25 (iii) By September 15, 2022, each emissions-intensive, trade-
26 exposed facility shall submit its carbon intensity benchmark for the
27 first compliance period to the department. The calculation must be
28 consistent with the work group established procedures.

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

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

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

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

5 (f)(i) Prior to the beginning of either the second or third
6 compliance periods, an emissions-intensive, trade-exposed facility
7 may make an upward adjustment in the next compliance period's
8 benchmark based on a demonstration that additional reductions in
9 carbon intensity or mass emissions are not technically or
10 economically feasible. An emissions-intensive, trade-exposed facility
11 may base its upward adjustment in the next compliance period on the
12 facility's best available technology analysis. The department shall
13 by rule provide for emissions-intensive, trade-exposed facilities to
14 apply to the department for an adjustment to the allocation for
15 direct distribution of no cost allowances based on its facility-
16 specific carbon intensity benchmark or mass emissions baseline. The
17 department shall make adjustments based on:

18 (A) A significant change in the emissions use or emissions
19 attributable to the manufacture of an individual good or goods in
20 this state by an emissions-intensive, trade-exposed facility based on
21 a finding by the department that an adjustment is necessary to
22 accommodate for changes in the manufacturing process that have a
23 material impact on emissions;

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

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

32 (ii) For the purpose of this section, "best available technology"
33 means a greenhouse gas emissions limitation determined by the
34 department on a case-by-case basis taking into account the fuels,
35 processes, equipment, and technology used by facilities to produce
36 goods of comparable type, quantity, and quality, that will most
37 effectively reduce those greenhouse gas emissions for which the
38 source has a compliance obligation. Best available technology must be
39 technically feasible, commercially available, economically viable,
40 not create excessive environmental impacts, and be compliant with all

1 applicable laws while not changing the characteristics of the good
2 being manufactured.

3 (4) (a) Beginning January 1, 2035, and each year thereafter, the
4 annual allocation of no cost allowances for direct distribution to
5 facilities identified as emissions-intensive and trade-exposed must
6 reduce by an equal amount each year between 2035 and 2050 such that
7 in 2050 the facility's proportionate share of the allowance budget is
8 equal to the share in 2035. The annual allocation must decline from
9 the average of the facility's annual allocation of no cost allowances
10 from 2031-2034. If the emissions-intensive, trade-exposed facility
11 can demonstrate that there have been abnormal periods of operation
12 that materially impacted the facility, then the baseline period
13 should be expanded to include years prior to 2031. The department
14 shall provide a recommendation to the legislature for the adoption of
15 an annual allocation for a covered facility for its process
16 emissions, separate from emissions associated with energy or heat
17 production, based on a best available technology limitation.

18 (b) By December 1, 2030, the department shall provide a report to
19 the appropriate committees of the senate and house of representatives
20 that describes alternative methods for determining the amount and a
21 schedule of allowances to be provided to facilities owned or operated
22 by each covered entity designated as an emissions-intensive, trade-
23 exposed manufacturing business. The report must include a review of
24 global best practices in ensuring against emissions leakage and
25 economic harm to businesses in carbon pricing programs and describe
26 alternative methods of emissions performance benchmarking and mass-
27 based allocation of no cost allowances. In developing the report, the
28 department shall form an advisory group that includes representatives
29 of the manufacturers listed in subsection (1) of this section.

30 (5) If the actual emissions of an emissions-intensive, trade-
31 exposed facility exceed the facility's no cost allowances assigned
32 for that compliance period, it must acquire additional compliance
33 instruments such that the total compliance instruments transferred to
34 its compliance account consistent with section 20 of this act equals
35 emissions during the compliance period. The department shall limit
36 the use of offset credits for compliance by an emissions-intensive,
37 trade-exposed facility, such that the quantity of no cost allowances
38 plus the provision of offset credits does not exceed 100 percent of
39 the facility's total compliance obligation over a compliance period.

1 (6) The department must withhold or withdraw the relevant share
2 of allowances allocated to a covered entity under this section in the
3 event that the covered entity ceases production in the state and
4 becomes a closed facility. In the event an entity curtails all
5 production becoming a curtailed facility, the allowances are retained
6 but cannot be traded, sold, or transferred and are still subject to
7 prescribed emission reductions had the facility not curtailed. An
8 operator of a curtailed facility may transfer the allowances to a new
9 operator of the facility that will be operated under the same North
10 American industry classification system codes. If the curtailed
11 facility becomes a closed facility, then all unused allowances will
12 be transferred to the emissions containment reserve. A curtailed
13 facility is not eligible to receive free allowances during a period
14 of curtailment. Any allowances withheld or withdrawn under this
15 subsection must be transferred to the emissions containment reserve.

16 NEW SECTION. **Sec. 13.** ALLOCATION OF ALLOWANCES TO ELECTRIC
17 UTILITIES. (1) The legislature intends by this section to allow all
18 consumer-owned electric utilities and investor-owned electric
19 utilities subject to the requirements of chapter 19.405 RCW, the
20 Washington clean energy transformation act, to be eligible for
21 allowance allocation as provided in this section in order to mitigate
22 the cost burden of the program on electricity customers.

23 (2)(a) By October 1, 2022, the department shall adopt rules, in
24 consultation with the department of commerce and the utilities and
25 transportation commission, establishing the methods and procedures
26 for allocating allowances for consumer-owned and investor-owned
27 electric utilities. The rules must take into account the cost burden
28 of the program on electricity customers.

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

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

1 the utilities and transportation commission, for the provision of
2 allowances for the second compliance period at no cost to consumer-
3 owned and investor-owned electric utilities. This allocation must be
4 consistent with a forecast, that is approved by the appropriate
5 governing board or the utilities and transportation commission, of
6 each utility's supply and demand, and the cost burden resulting from
7 the inclusion of covered entities in the second compliance period.
8 The allowances included in this schedule must reflect the increased
9 scope of coverage in the electricity sector relative to the program
10 budget of allowances established in 2022.

11 (d) By October 1, 2028, the department shall adopt an allocation
12 schedule by rule, in consultation with the department of commerce and
13 the utilities and transportation commission, for the provision of
14 allowances at no cost to consumer-owned and investor-owned electric
15 utilities for the compliance periods contained within calendar years
16 2031 through 2045. This allocation must be consistent with a
17 forecast, that is approved by the appropriate governing board or the
18 utilities and transportation commission, of each utility's supply and
19 demand, and the cost burden resulting from the inclusion of the
20 covered entities in the compliance periods. The rule developed under
21 this subsection (2)(d) may prescribe an amount of allowances
22 allocated at no cost that must be consigned to auction by consumer-
23 owned and investor-owned electric utilities. However, utilities may
24 use allowances for compliance equal to their covered emissions in any
25 calendar year they were not subject to potential penalty under RCW
26 19.405.090. Under no circumstances may utilities receive any free
27 allowances after 2045.

28 (3)(a) During the first compliance period, allowances allocated
29 at no cost to consumer-owned and investor-owned electric utilities
30 may be consigned to auction for the benefit of ratepayers, deposited
31 for compliance, or a combination of both. The rules adopted by the
32 department under subsection (2) of this section must include
33 provisions for directing revenues generated under this subsection to
34 the applicable utilities.

35 (b) By October 1, 2026, the department, in consultation with the
36 department of commerce and the utilities and transportation
37 commission, must adopt rules governing the amount of allowances
38 allocated at no cost under subsection (2)(c) of this section that
39 must be consigned to auction. For calendar year 2030, electric

1 utilities may use allowances for compliance equal to their covered
2 emissions if not subject to potential penalty under RCW 19.405.090.

3 (4) The benefits of all allowances consigned to auction under
4 this section must be used by consumer-owned and investor-owned
5 electric utilities for the benefit of ratepayers, with the first
6 priority the mitigation of any rate impacts to low-income customers.

7 (5) If an entity is identified by the department as an emissions-
8 intensive, trade-exposed industry under section 12 of this act,
9 unless allowances have been otherwise allocated for electricity-
10 related emissions to the entity under section 12 of this act or to a
11 consumer-owned utility under this section, the department shall
12 allocate allowances at no cost to the electric utility or power
13 marketing administration that is providing electricity to the entity
14 in an amount equal to the forecasted emissions for electricity
15 consumption for the entity for the compliance period.

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

19 (7) Rules establishing the allocation of allowances to consumer-
20 owned utilities and investor-owned utilities must consider the impact
21 of electrification of buildings, transportation, and industry on the
22 electricity sector.

23 (8) Nothing in this section affects the requirements of chapter
24 19.405 RCW.

25 NEW SECTION. **Sec. 14.** ALLOCATION OF ALLOWANCES TO NATURAL GAS
26 COMPANIES. (1) Allowances must be allocated at no cost to covered
27 entities that are natural gas utilities for the benefit of
28 ratepayers.

29 (a) By October 1, 2022, the department shall adopt rules, in
30 consultation with the utilities and transportation commission,
31 establishing the methods and procedures for allocating allowances to
32 natural gas utilities. Rules adopted under this subsection must allow
33 for a natural gas utility to be provided allowances at no cost to
34 cover their emissions and decline proportionally with the cap,
35 consistent with section 8 of this act. Allowances allocated at no
36 cost to natural gas utilities must be consigned to auction for the
37 benefit of ratepayers consistent with subsection (2) of this section,
38 deposited for compliance, or a combination of both. The rules adopted
39 by the department pursuant to this section must include provisions

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

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

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

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

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

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

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

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

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

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

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

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

38 (4) Allowances shall also be transferred to the emissions
39 containment reserve in the following situations:

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

4 (b) When allowances are unsold in auctions under section 11 of
5 this act;

6 (c) When facilities curtail or close consistent with section
7 12(6) of this act; or

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

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

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

23 NEW SECTION. **Sec. 16.** ALLOWANCE PRICE CONTAINMENT. (1) To help
24 minimize allowance price volatility in the auction, the department
25 shall adopt by rule an auction floor price and a schedule for the
26 floor price to increase by a predetermined amount every year. The
27 department may not sell allowances at bids lower than the auction
28 floor price. The department's rules must specify holding limits that
29 determine the maximum number of allowances that may be held for use
30 or trade by a registered entity at any one time. The department shall
31 also establish an auction ceiling price to limit extraordinary prices
32 and to determine when to offer allowances through the allowance price
33 containment reserve auctions authorized under this section.

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

1 opt-in entities in the event of unanticipated high costs for
2 compliance instruments.

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

8 (b) Allowances must also be distributed from the allowance price
9 containment reserve by auction when new covered and opt-in entities
10 enter the program and allowances in the emissions containment reserve
11 under section 15 of this act are exhausted.

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

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

17 (6) The department shall by rule:

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

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

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

26 NEW SECTION. **Sec. 17.** PRICE CONTAINMENT. (1) The department
27 shall establish a price ceiling to provide cost protection for
28 facilities obligated to comply with this chapter. The ceiling must be
29 set at a level sufficient to facilitate investments to achieve
30 further emission reductions beyond those enabled by the price
31 ceiling, with the intent that investments accelerate the state's
32 achievement of greenhouse gas limits established under RCW
33 70A.45.020. The price ceiling must increase annually in proportion to
34 the price floor.

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

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

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

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

21 (2) Offset projects must:

22 (a) Provide direct environmental benefits to the state or be
23 located in a linked jurisdiction;

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

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

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

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

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

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

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

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

18 (i) Contribute substantively to cumulative air pollution burden
19 in an overburdened community as determined by criteria established by
20 the department; or

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

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

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

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

39 (b) Encourage opportunities for the development of offset
40 projects in this state by adopting offset protocols that may include,

1 but need not be limited to, protocols that make use of aggregation or
2 other mechanisms to reduce transaction costs related to the
3 development of offset projects and that support the development of
4 carbon dioxide removal projects;

5 (c) Adopt a process for monitoring and invalidating offset
6 credits as necessary to ensure the credit reflects emission
7 reductions or removals that continue to meet the standards required
8 by subsection (1) of this section. If an offset credit is
9 invalidated, the covered or opt-in entity must, within six months of
10 the invalidation, transfer replacement credits or allowances to meet
11 its compliance obligation. Failure to transfer the required credits
12 or allowances is a violation subject to penalties as provided in
13 section 21 of this act.

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

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

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

22 NEW SECTION. **Sec. 19.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL
23 LANDS. (1) In order to ensure that a sufficient number of high
24 quality offset projects are available under the limits set in section
25 18 of this act, the department must establish an assistance program
26 for offset projects on federally recognized tribal lands in
27 Washington. The assistance may include, but is not limited to,
28 funding or consultation for federally recognized tribal governments
29 to assess a project's technical feasibility, investment requirements,
30 development and operational costs, expected returns, administrative
31 and legal hurdles, and project risks and pitfalls. Funding or
32 assistance may be provided upon request by a federally recognized
33 tribe.

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

37 NEW SECTION. **Sec. 20.** COMPLIANCE OBLIGATIONS. (1) A covered or
38 opt-in entity has a compliance obligation for its emissions during

1 each four-year compliance period, with the first compliance period
2 commencing January 1, 2023, except when the first compliance period
3 commences at a later date as provided in subsection (7) of this
4 section. A covered or opt-in entity shall transfer a number of
5 compliance instruments equal to their covered emissions by November
6 1st of each calendar year in which a covered or opt-in entity has a
7 compliance obligation. The department shall set by rule a percentage
8 of compliance instruments that must be transferred in each year of
9 the compliance period such that covered or opt-in entities are
10 allowed to smooth their compliance obligation within the compliance
11 period but must fully satisfy their compliance obligation over the
12 course of the compliance period, in a manner similar to external
13 greenhouse gas emissions trading programs in other jurisdictions.

14 (2) Submission of allowances occurs through the transfer of
15 compliance instruments, on or before the transfer date, from the
16 holding account to the compliance account of the covered or opt-in
17 entity as described in section 9 of this act.

18 (3) A covered or opt-in entity submitting insufficient compliance
19 instruments to meet its compliance obligation is subject to a penalty
20 as provided in section 21 of this act.

21 (4) Allowances must be transferred in the order in which they
22 were purchased.

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

26 (6) Upon receipt by the department of all compliance instruments
27 transferred by a covered entity or opt-in entity to meet its
28 compliance obligation, the department shall retire the allowances or
29 offset credits.

30 (7)(a) This section does not take effect until a separate
31 additive transportation funding act becomes law, at which time the
32 department of licensing must provide written notice to the chief
33 clerk of the house of representatives, the secretary of the senate,
34 and the office of the code reviser.

35 (b) For the purposes of this subsection, "additive transportation
36 funding act" means an act in which the combined total of new state
37 revenues deposited into the motor vehicle fund and multimodal
38 transportation account exceed \$500,000,000 per biennium attributable
39 solely to an increase in revenue from the enactment of the act.

1 NEW SECTION. **Sec. 21.** ENFORCEMENT. (1) All covered and opt-in
2 entities are required to submit compliance instruments in a timely
3 manner to meet the entities' compliance obligations and shall comply
4 with all requirements for monitoring, reporting, holding, and
5 transferring emission allowances and other provisions of this
6 chapter.

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

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

22 (4) The department may issue a penalty up to \$50,000 per day per
23 violation for violations of section 11(8) (a) through (e) of this
24 act.

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

32 (6) Appeals of orders and penalties issued under this chapter
33 must be to the pollution control hearings board under chapter 43.21B
34 RCW.

35 (7) For the first compliance period, the department may reduce
36 the amount of the penalty by adjusting the monetary amount or the
37 number of penalty allowances described in subsections (2) and (3) of
38 this section.

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

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

7 NEW SECTION. **Sec. 22.** LINKAGE WITH OTHER JURISDICTIONS. (1)

8 Subject to making the findings and conducting the public comment
9 process described in subsection (3) of this section, the department
10 shall seek to link with other jurisdictions with established external
11 greenhouse gas emissions trading programs in order to:

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

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

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

18 (d) Enhance market security;

19 (e) Reduce program administration costs; and

20 (f) Provide consistent requirements for covered entities whose
21 operations span jurisdictional boundaries.

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

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

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

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

1 (d) Common program registry, electronic auction platform,
2 tracking systems for compliance instruments, and monitoring of
3 compliance instruments;

4 (e) Provisions to ensure coordinated administrative and technical
5 support;

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

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

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

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

24 (b) Ensure that the linking jurisdiction has provisions to ensure
25 the distribution of benefits from the program to vulnerable
26 populations and overburdened communities;

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

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

33 (4) The state must retain legal and policymaking authority over
34 its program design and enforcement.

35 NEW SECTION. **Sec. 23.** RULES. The department shall adopt rules
36 to implement the provisions of the program established in sections 7
37 through 22 of this act. The department may adopt emergency rules
38 pursuant to RCW 34.05.350 for initial implementation of the program,
39 to implement the state omnibus appropriations act for the 2021-2023

1 fiscal biennium, and to ensure that reporting and other program
2 requirements are determined early for the purpose of program design
3 and early notice to registered entities with a compliance obligation
4 under the program.

5 NEW SECTION. **Sec. 24.** CLIMATE INVESTMENT ACCOUNT. (1) The
6 climate investment account is created in the state treasury. Except
7 as otherwise provided in this act, all receipts from the auction of
8 allowances authorized in this chapter must be deposited into the
9 account. Projects or activities funded from the account must meet
10 high labor standards, including family sustaining wages, providing
11 benefits including health care and pensions, career development
12 opportunities, and maximize access to economic benefits from such
13 projects for local workers and diverse businesses. Each contracting
14 entity's proposal must be reviewed for equity and opportunity
15 improvement efforts, including: (a) Employer paid sick leave
16 programs; (b) pay practices in relation to living wage indicators
17 such as the federal poverty level; (c) efforts to evaluate pay equity
18 based on gender identity, race, and other protected status under
19 Washington law; (d) facilitating career development opportunities,
20 such as apprenticeship programs, internships, job-shadowing, and on-
21 the-job training; and (e) employment assistance and employment
22 barriers for justice affected individuals.

23 (2) Moneys in the account may only be spent after appropriation
24 and must be used for the following purposes:

25 (a) To cover the department's and other agencies' costs to
26 support and administer the program, including coordination of
27 allowance auctions, tracking of emissions and allowances, rule
28 making, evaluation, monitoring, and verification, and stakeholder
29 communication and outreach such as capacity grants for participation
30 to engage communities in the decision making and guidance of these
31 funds, as appropriated pursuant to the biennial and supplemental
32 omnibus operating appropriations acts, as enacted;

33 (b) Deposited into the state general fund to implement the
34 working families tax rebate in RCW 82.08.0206;

35 (c) Programs, activities, or projects that reduce and mitigate
36 impacts from greenhouse gases and copollutants in overburdened
37 communities, including strengthening the air quality monitoring
38 network to measure, track, and better understand air pollution levels

1 and trends and to inform the analysis, monitoring, and pollution
2 reduction measures required in section 3 of this act;

3 (d) Clean transportation programs, activities, or projects that
4 reduce transportation-related greenhouse gas emissions;

5 (e) Natural climate resilience solutions that improve the
6 resilience of the state's waters, forests, and other vital ecosystems
7 to the impacts of climate change, and increase their carbon pollution
8 reduction capacity through sequestration, storage, and overall
9 ecosystem integrity. This includes programs, activities, or projects
10 that: (i) Restore and protect estuaries, fisheries, and marine and
11 freshwater shoreline and riparian habitats, and prepare for sea level
12 rise; (ii) increase the ability to remediate and adapt to the impacts
13 of ocean acidification; (iii) reduce flood risk and restore natural
14 floodplain ecological function; (iv) increase the sustainable supply
15 of water and improve aquatic habitat, including groundwater mapping
16 and modeling; (v) improve infrastructure treating stormwater from
17 previously developed areas within an urban growth boundary designated
18 under chapter 36.70A RCW, with a preference given to projects that
19 use green stormwater infrastructure; (vi) either preserve or
20 increase, or both, carbon sequestration and storage benefits in
21 forests and agricultural soils; (vii) either preserve or establish,
22 or both, carbon sequestration by protecting and planting trees in
23 marine shorelines and freshwater riparian areas sufficient to promote
24 climate resilience, protect cold water fisheries, and achieve water
25 quality standards; (viii) increase forest and community resilience to
26 wildfire in the face of increased seasonal temperatures and drought;
27 (ix) improve forest health and reduce vulnerability to changes in
28 hydrology, insect infestation, and other impacts of climate change;
29 or (x) prevent emissions through preserving natural lands from the
30 threat of conversion to development;

31 (f) Clean energy transition and assistance programs, activities,
32 or projects that assist affected workers or people with lower incomes
33 during the transition to a clean energy economy, or grow and expand
34 clean manufacturing capacity in communities across Washington state
35 including, but not limited to:

36 (i) Programs, activities, or projects that directly improve
37 energy affordability and reduce the energy burden of people with
38 lower incomes, as well as the higher transportation fuel burden of
39 rural residents, such as bill assistance, energy efficiency, and
40 weatherization programs;

1 (ii) Reductions in dependence on fossil fuels used for
2 transportation, including public and shared transportation for access
3 and mobility;

4 (iii) Community renewable energy projects that allow qualifying
5 participants to own or receive the benefits of those projects at
6 reduced or no cost;

7 (iv) Programs, activities, or other worker-support projects for
8 bargaining unit and nonsupervisory fossil fuel workers who are
9 affected by the transition away from fossil fuels to a clean energy
10 economy. Worker support may include, but is not limited to: (A) Full
11 wage replacement, health benefits, and pension contributions for
12 every worker within five years of retirement; (B) full wage
13 replacement, health benefits, and pension contributions for every
14 worker with at least one year of service for each year of service up
15 to five years of service; (C) wage insurance for up to five years for
16 workers reemployed who have more than five years of service; (D) up
17 to two years of retraining costs, including tuition and related
18 costs, based on in-state community and technical college costs; (E)
19 peer counseling services during transition; (F) employment placement
20 services, prioritizing employment in the clean energy sector; and (G)
21 relocation expenses;

22 (v) Direct investment in workforce development, via technical
23 education, community college, apprenticeships, and other programs;

24 (vi) Transportation, municipal service delivery, and technology
25 investments that increase a community's capacity for clean
26 manufacturing, with an emphasis on communities in greatest need of
27 job creation and economic development and potential for commute-
28 reduction;

29 (g) Emissions reduction projects and programs that yield real,
30 verifiable reductions in greenhouse gas emissions in excess of
31 baseline estimates. Projects and programs eligible for funding from
32 the account must be physically located in Washington state and
33 include, but are not limited to, the following programs, activities,
34 or projects that: (i) Deploy renewable energy resources, such as
35 solar and wind power, and projects to deploy distributed generation,
36 energy storage, demand-side technologies and strategies, and other
37 grid modernization projects; (ii) increase the energy efficiency or
38 reduce greenhouse gas emissions of industrial facilities including,
39 but not limited to, proposals to implement combined heat and power,
40 district energy, or on-site renewables, such as solar and wind power,

1 to upgrade the energy efficiency of existing equipment, to reduce
2 process emissions, and to switch to less emission intensive fuel
3 sources; (iii) achieve energy efficiency or emission reductions in
4 the agricultural sector, including fertilizer management, soil
5 management, bioenergy, and biofuels; (iv) promote low-carbon
6 architecture, including use of newly emerging alternative building
7 materials that result in a lower carbon footprint in the built
8 environment over the life cycle of the building and component
9 building materials; (v) promote the decarbonization of new and
10 existing buildings, including residential, commercial, and industrial
11 buildings; (vi) improve energy efficiency, including district energy,
12 and investments in market transformation of high-efficiency electric
13 appliances and equipment for space and water heating; (vii) reduce
14 emissions from landfills and waste to energy facilities through
15 diversion of organic materials, methane capture or conversion
16 strategies, or other means; (viii) retrofit vehicles and vessels for
17 increased efficiency when electrification options are unavailable;
18 and (ix) develop carbon dioxide removal projects and technologies.

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

24 **Sec. 25.** RCW 70A.15.2200 and 2020 c 20 s 1090 are each amended
25 to read as follows:

26 (1) The board of any activated authority or the department, may
27 classify air contaminant sources, by ordinance, resolution, rule or
28 regulation, which in its judgment may cause or contribute to air
29 pollution, according to levels and types of emissions and other
30 characteristics which cause or contribute to air pollution, and may
31 require registration or reporting or both for any such class or
32 classes. Classifications made pursuant to this section may be for
33 application to the area of jurisdiction of such authority, or the
34 state as a whole or to any designated area within the jurisdiction,
35 and shall be made with special reference to effects on health,
36 economic and social factors, and physical effects on property.

37 (2) Except as provided in subsection (3) of this section, any
38 person operating or responsible for the operation of air contaminant
39 sources of any class for which the ordinances, resolutions, rules or

1 regulations of the department or board of the authority, require
2 registration or reporting shall register therewith and make reports
3 containing information as may be required by such department or board
4 concerning location, size and height of contaminant outlets,
5 processes employed, nature of the contaminant emission and such other
6 information as is relevant to air pollution and available or
7 reasonably capable of being assembled. In the case of emissions of
8 greenhouse gases as defined in RCW 70A.45.010 the department shall
9 adopt rules requiring reporting of those emissions. The department or
10 board may require that such registration or reporting be accompanied
11 by a fee, and may determine the amount of such fee for such class or
12 classes: PROVIDED, That the amount of the fee shall only be to
13 compensate for the costs of administering such registration or
14 reporting program which shall be defined as initial registration and
15 annual or other periodic reports from the source owner providing
16 information directly related to air pollution registration, on-site
17 inspections necessary to verify compliance with registration
18 requirements, data storage and retrieval systems necessary for
19 support of the registration program, emission inventory reports and
20 emission reduction credits computed from information provided by
21 sources pursuant to registration program requirements, staff review,
22 including engineering or other reliable analysis for accuracy and
23 currentness, of information provided by sources pursuant to
24 registration program requirements, clerical and other office support
25 provided in direct furtherance of the registration program, and
26 administrative support provided in directly carrying out the
27 registration program: PROVIDED FURTHER, That any such registration
28 made with either the board or the department shall preclude a further
29 registration and reporting with any other board or the department,
30 except that emissions of greenhouse gases as defined in RCW
31 70A.45.010 must be reported as required under subsection (5) of this
32 section.

33 All registration program and reporting fees collected by the
34 department shall be deposited in the air pollution control account.
35 All registration program fees collected by the local air authorities
36 shall be deposited in their respective treasuries.

37 (3) If a registration or report has been filed for a grain
38 warehouse or grain elevator as required under this section,
39 registration, reporting, or a registration program fee shall not,
40 after January 1, 1997, again be required under this section for the

1 warehouse or elevator unless the capacity of the warehouse or
2 elevator as listed as part of the license issued for the facility has
3 been increased since the date the registration or reporting was last
4 made. If the capacity of the warehouse or elevator listed as part of
5 the license is increased, any registration or reporting required for
6 the warehouse or elevator under this section must be made by the date
7 the warehouse or elevator receives grain from the first harvest
8 season that occurs after the increase in its capacity is listed in
9 the license.

10 This subsection does not apply to a grain warehouse or grain
11 elevator if the warehouse or elevator handles more than ten million
12 bushels of grain annually.

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

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

19 (b) A "license" is a license issued by the department of
20 agriculture licensing a facility as a grain warehouse or grain
21 elevator under chapter 22.09 RCW or a license issued by the federal
22 government licensing a facility as a grain warehouse or grain
23 elevator for purposes similar to those of licensure for the facility
24 under chapter 22.09 RCW; and

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

26 (5)(a) The department shall adopt rules requiring persons to
27 report emissions of greenhouse gases as defined in RCW 70A.45.010
28 where those emissions from a single facility, ~~((source, or site,))~~ or
29 from electricity or fossil fuels sold in Washington by a single
30 supplier or local distribution company, meet or exceed ten thousand
31 metric tons of carbon dioxide equivalent annually. The ~~((department~~
32 ~~may phase in the requirement to report greenhouse gas emissions until~~
33 ~~the reporting threshold in this subsection is met, which must occur~~
34 ~~by January 1, 2012))~~ rules adopted by the department must support
35 implementation of the program created in section 7 of this act. In
36 addition, the rules must require that:

37 (i) Emissions of greenhouse gases resulting from the combustion
38 of fossil fuels be reported separately from emissions of greenhouse
39 gases resulting from the combustion of biomass; and

1 (ii) ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each
2 annual report must include emissions data for the preceding calendar
3 year and must be submitted to the department by ~~((October))~~ March
4 31st of the year in which the report is due. ~~((However, starting in~~
5 ~~2011, a person who is required to report greenhouse gas emissions to~~
6 ~~the United States environmental protection agency under 40 C.F.R.~~
7 ~~Part 98, as adopted on September 22, 2009, must submit the report~~
8 ~~required under this section to the department concurrent with the~~
9 ~~submission to the United States environmental protection agency.~~
10 ~~Except as otherwise provided in this section, the data for emissions~~
11 ~~in Washington and any corrections thereto that are reported to the~~
12 ~~United States environmental protection agency must be the emissions~~
13 ~~data reported to the department; and~~

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

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

1 ~~(ii))~~) The department may by rule include additional gases to the
2 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
3 been designated as a greenhouse gas by the United States congress
4 ~~((of)),~~ by the United States environmental protection agency, or
5 included in external greenhouse gas emission trading programs where
6 Washington has linked pursuant to section 22 of this act. Prior to
7 including additional gases to the definition of "greenhouse gas" in
8 RCW 70A.45.010, the department shall notify the appropriate
9 committees of the legislature. ~~((Decisions to amend the rule to~~
10 ~~include additional gases must be made prior to December 1st of any~~
11 ~~year and the amended rule may not take effect before the end of the~~
12 ~~regular legislative session in the next year.~~

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

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

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

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

25 (B) Needed to ensure consistency with emissions reporting
26 requirements for linked jurisdictions. ~~((However, the))~~

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

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

32 (e) The fee provisions in subsection (2) of this section apply to
33 reporting of emissions of greenhouse gases. Persons required to
34 report under (a) of this subsection who fail to report or pay the fee
35 required in subsection (2) of this section are subject to enforcement
36 penalties under this chapter. The department shall enforce the
37 reporting rule requirements ~~((unless it approves a local air~~
38 ~~authority's request to enforce the requirements for persons operating~~
39 ~~within the authority's jurisdiction. However, neither the department~~
40 ~~nor a local air authority approved under this section are authorized~~

1 ~~to assess enforcement penalties on persons required to report under~~
2 ~~(a) of this subsection until six months after the department adopts~~
3 ~~its reporting rule in 2010)).~~ When a person that holds a compliance
4 obligation under section 9 of this act fails to submit an emissions
5 data report or fails to obtain a positive emissions data verification
6 statement in accordance with (g)(ii) of this subsection, the
7 department may assign an emissions level for that person.

8 (f) The energy facility site evaluation council shall,
9 simultaneously with the department, adopt rules that impose
10 greenhouse gas reporting requirements in site certifications on
11 owners or operators of a facility permitted by the energy facility
12 site evaluation council. The greenhouse gas reporting requirements
13 imposed by the energy facility site evaluation council must be the
14 same as the greenhouse gas reporting requirements imposed by the
15 department. The department shall share any information reported to it
16 from facilities permitted by the energy facility site evaluation
17 council with the council, including notice of a facility that has
18 failed to report as required. The energy facility site evaluation
19 council shall contract with the department to monitor the reporting
20 requirements adopted under this section.

21 (g) (i) ~~The ((inclusion or failure to include any person, source,~~
22 ~~classes of persons or sources, or types of emissions of greenhouse~~
23 ~~gases into the department's rules for reporting under this section~~
24 ~~does not indicate whether such a person, source, or category is~~
25 ~~appropriate for inclusion in state, regional, or national greenhouse~~
26 ~~gas reduction programs or strategies. Furthermore, aircraft fuel~~
27 ~~purchased in the state may not be considered equivalent to aircraft~~
28 ~~fuel combusted in the state))~~ department must establish by rule the
29 methods of verifying the accuracy of emissions reports.

30 (ii) Verification requirements apply at a minimum to persons
31 required to report under (a) of this subsection with emissions that
32 equal or exceed 25,000 metric tons of carbon dioxide equivalent
33 emissions, including carbon dioxide from biomass-derived fuels, or to
34 persons who have a compliance obligation under section 9 of this act
35 in any year of the current compliance period. The department may
36 adopt rules to accept verification reports from another jurisdiction
37 with a linked agreement pursuant to section 19 of this act in cases
38 where the department deems that the methods or procedures are
39 substantively similar.

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

3 (ii) For the purpose of this subsection (5), the term "supplier"
4 includes: (A) ~~((A motor vehicle fuel supplier or a motor vehicle fuel~~
5 ~~importer, as those terms are defined in RCW 82.36.010; (B) a special~~
6 ~~fuel supplier or a special fuel importer, as those terms are defined~~
7 ~~in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those~~
8 ~~terms are defined in RCW 82.42.010)) Suppliers that produce, import,
9 or deliver, or any combination of producing, importing, or
10 delivering, a quantity of fuel products in Washington that, if
11 completely combusted, oxidized, or used in other processes, would
12 result in the release of greenhouse gases equivalent to or higher
13 than the threshold established under (a) of this subsection; and (B)
14 suppliers of carbon dioxide that produce, import, or deliver a
15 quantity of carbon dioxide in Washington that, if released, would
16 result in emissions equivalent to or higher than the threshold
17 established under (a) of this subsection.~~

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

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

31 (v) For the purpose of this subsection (5), the term "electric
32 power entity" includes any of the following that supply electric
33 power in Washington with associated emissions of greenhouse gases
34 equal to or above the threshold established under (a) of this
35 subsection: (A) Electricity importers and exporters; (B) retail
36 providers, including multijurisdictional retail providers; and (C)
37 first jurisdictional deliverers, as defined in section 2 of this act,
38 not otherwise included here.

1 NEW SECTION. **Sec. 26.** This act may be known and cited as the
2 Washington climate commitment act.

3 NEW SECTION. **Sec. 27.** Sections 1 through 24 and 26 of this act
4 constitute a new chapter in Title 70A RCW.

5 NEW SECTION. **Sec. 28.** (1) Sections 7 through 22 of this act,
6 and any rules adopted by the department of ecology to implement the
7 program established under those sections, are suspended on December
8 31, 2055, in the event that the department of ecology determines by
9 December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020
10 have been met for two or more consecutive years.

11 (2) Upon the occurrence of the events identified in subsection
12 (1) of this section, the department of ecology must provide written
13 notice of the suspension date of sections 7 through 22 of this act to
14 affected parties, the chief clerk of the house of representatives,
15 the secretary of the senate, the office of the code reviser, and
16 others as deemed appropriate by the department.

17 **Sec. 29.** RCW 43.88.055 and 2020 c 218 s 2 are each amended to
18 read as follows:

19 (1) The legislature must adopt a four-year balanced budget as
20 follows:

21 (a) Beginning in the 2013-2015 fiscal biennium, the legislature
22 shall enact a balanced omnibus operating appropriations bill that
23 leaves, in total, a positive ending fund balance in the general fund
24 and related funds.

25 (b) Beginning in the 2013-2015 fiscal biennium, the projected
26 maintenance level of the omnibus appropriations bill enacted by the
27 legislature shall not exceed the available fiscal resources for the
28 next ensuing fiscal biennium.

29 (2) For purposes of this section:

30 (a) "Available fiscal resources" means the beginning general fund
31 and related fund balances and any fiscal resources estimated for the
32 general fund and related funds, adjusted for enacted legislation, and
33 with forecasted revenues adjusted to the greater of (i) the official
34 general fund and related funds revenue forecast for the ensuing
35 biennium, or (ii) the official general fund and related funds
36 forecast for the second fiscal year of the current fiscal biennium,

1 increased by 4.5 percent for each fiscal year of the ensuing
2 biennium;

3 (b) "Projected maintenance level" means estimated appropriations
4 necessary to maintain the continuing costs of program and service
5 levels either funded in that appropriations bill or mandated by other
6 state or federal law, and the amount of any general fund moneys
7 projected to be transferred to the budget stabilization account
8 pursuant to Article VII, section 12 of the state Constitution;

9 (c) "Related funds," as used in this section, means the
10 Washington opportunity pathways account, the workforce education
11 investment account, the climate investment account, and the education
12 legacy trust account.

13 (3) Subsection (1)(a) and (b) of this section does not apply to
14 an appropriations bill that makes net reductions in general fund and
15 related funds appropriations and is enacted between July 1st and
16 February 15th of any fiscal year.

17 (4) Subsection (1)(b) of this section does not apply in a fiscal
18 biennium in which money is appropriated from the budget stabilization
19 account pursuant to Article VII, section 12(d)(ii) of the state
20 Constitution.

21 NEW SECTION. **Sec. 30.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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