
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.

15 (2) In 2020, the legislature updated the state's greenhouse gas
16 emissions limits that are to be achieved by 2030, 2040, and 2050,
17 based on current science and emissions trends, to support local and
18 global efforts to avoid the most significant impacts from climate
19 change. While these limits beneficially guide the implementation of
20 all other state laws and policies that have an impact on greenhouse
21 gas emissions in the state, meeting these limits will require

1 coordinated, comprehensive, and multisectoral implementation of
2 policies, programs, and laws, as currently enacted systems approaches
3 are insufficient to meet the limits.

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

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

23 (5) The legislature further finds that by exercising a leadership
24 role in addressing climate change, Washington will position its
25 economy, technology centers, financial institutions, and
26 manufacturers to benefit from national and international efforts that
27 must occur to reduce greenhouse gases. The legislature intends to
28 create climate policy that recognizes the special nature of
29 emissions-intensive, trade-exposed industries by minimizing leakage
30 and increased life-cycle emissions associated with product imports.
31 The legislature further finds that if appropriate climate policies
32 are not enacted, leakage can occur that results in net increases in
33 global greenhouse gas emissions and increased negative impacts to
34 those communities most impacted by environmental harms from climate
35 change. The legislature further intends to encourage these industries
36 to continue to innovate, find new ways to be more energy efficient,
37 use lower carbon products, and be positioned to be global leaders in
38 a low carbon economy.

39 (6) Therefore, in establishing a program to ensure that the
40 state's 2030, 2040, and 2050 greenhouse gas emissions limits are

1 achieved, the legislature intends to ensure that overburdened
2 communities and vulnerable populations are no longer overlooked in
3 the establishment of environmental policies. Under the program, the
4 legislature intends to identify overburdened communities where the
5 highest concentrations of criteria pollutants occur, determine the
6 sources of those emissions and pollutants, and ensure that emissions
7 or concentration reductions are achieved in those communities. The
8 legislature further intends to conduct an environmental justice
9 assessment to ensure that funds and programs created under this
10 chapter provide direct and meaningful benefits to vulnerable
11 populations and overburdened communities. Additionally, the
12 legislature intends to prevent job loss and provide protective
13 measures for workers adversely impacted by the transition to a clean
14 energy economy through transition and assistance programs, worker-
15 support projects, and workforce development and other activities
16 designed to grow and expand the clean manufacturing sector in
17 communities across Washington state. The legislature further intends
18 to establish an environmental justice and equity advisory panel to
19 provide recommendations for the development and implementation of the
20 program, the distribution of funds, and the establishment of
21 programs, activities, and projects to achieve environmental justice
22 and environmental health goals. The legislature further intends to
23 create and adopt community engagement plans and tribal consultation
24 frameworks in the administration of the program to ensure equitable
25 practices for meaningful community and federally recognized tribal
26 involvement. Finally, the legislature intends to establish this
27 program to contribute to a healthy environment for all of
28 Washington's communities.

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

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

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

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

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

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

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

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

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

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

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

37 (11) "Carbon dioxide removal" means, consistent with the
38 intergovernmental panel on climate change's 2019 report entitled
39 global warming of 1.5°C, deliberate human activities removing carbon
40 dioxide from the atmosphere and durably storing it in geological,

1 terrestrial, or ocean reservoirs, or in products. "Carbon dioxide
2 removal" includes existing and potential anthropogenic enhancement of
3 biological or geochemical sinks and including, but not limited to,
4 direct air capture and storage and carbon mineralization.

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

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

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

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

27 (16) "Compliance obligation" means the requirement to turn into
28 the department the number of compliance instruments equivalent to a
29 covered or opt-in entity's covered emissions during the compliance
30 period.

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

33 (18) "Cost burden" means the impact on rates or charges to
34 customers of electric utilities in Washington state for the
35 incremental cost of electricity service to serve load due to the
36 compliance cost for greenhouse gas emissions caused by the program.
37 Cost burden includes administrative costs from the utility's
38 participation in the program.

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

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

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

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

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

11 (24) "Electricity importer" means:

12 (a) For electricity that is scheduled with a NERC e-tag to a
13 final point of delivery inside the state of Washington, the
14 electricity importer is identified on the NERC e-tag as the
15 purchasing-selling entity on the last segment of the tag's physical
16 path with the point of receipt located outside the state of
17 Washington and the point of delivery located inside the state of
18 Washington;

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

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

27 (d) For electricity from facilities allocated to serve retail
28 electricity customers of a multijurisdictional electric company, the
29 electricity importer is the multijurisdictional electric company;

30 (e) If the importer identified under (a) of this subsection is a
31 federal power marketing administration over which the state of
32 Washington does not have jurisdiction, and the federal power
33 marketing administration has not voluntarily elected to comply with
34 the program, then the electricity importer is the next purchasing-
35 selling entity in the physical path on the NERC e-tag, or if no
36 additional purchasing-selling entity over which the state of
37 Washington has jurisdiction, then the electricity importer is the
38 electric utility that operates the Washington transmission or
39 distribution system, or the generation balancing authority; or

1 (f) If the importer identified under (b) of this subsection is a
2 federal power marketing administration over which the state of
3 Washington does not have jurisdiction, and the federal power
4 marketing administration has not voluntarily elected to comply with
5 the program, then the electricity importer is the electric utility
6 that operates the Washington transmission or distribution system, or
7 the generation balancing authority.

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

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

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

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

20 (a) Prevent or reduce existing environmental harms or associated
21 risks that contribute significantly to cumulative environmental
22 health impacts;

23 (b) Prevent or mitigate impacts to overburdened communities and
24 vulnerable populations from, or support community response to, the
25 impacts of environmental harm; or

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

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

32 (a) Exposure to pollution, conventional or toxic pollutants,
33 environmental hazards, or other contamination in the air, water, and
34 land;

35 (b) Adverse environmental effects, including exposure to
36 contamination, hazardous substances, or pollution that increase the
37 risk of adverse environmental health outcomes or create
38 vulnerabilities to climate impacts; and

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

1 (30) "Environmental impacts" means environmental benefits or
2 environmental harms, or the combination of environmental benefits and
3 harms, resulting from a proposed action.

4 (31) "Environmental justice" means the fair treatment and
5 meaningful involvement of all people regardless of race, color,
6 national origin, or income with respect to the development,
7 implementation, and enforcement of environmental laws, regulations,
8 and policies. This includes addressing disproportionate environmental
9 and health impacts in all laws, rules, and policies with
10 environmental impacts by prioritizing vulnerable populations and
11 overburdened communities, equitably distributing resources and
12 benefits, and eliminating harm.

13 (32) "Environmental justice assessment" means using an
14 intersectional lens to address disproportionate environmental and
15 health impacts in all laws, rules, and policies with environmental
16 impacts by prioritizing vulnerable populations in overburdened
17 communities, equitably distributing resources and benefits, and
18 eliminating harm.

19 (33) "External greenhouse gas emissions trading program" means a
20 government program, other than Washington's program created in this
21 chapter, that restricts greenhouse gas emissions from sources outside
22 of Washington through emissions trading.

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

29 (35) "First jurisdictional deliverer" means the owner or operator
30 of an electric generating facility in Washington or an electricity
31 importer.

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

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

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

39 (39) "Imported electricity" means electricity generated outside
40 the state of Washington with a final point of delivery within the

1 state, but which did not originate from any jurisdiction with which
2 Washington has a linkage agreement.

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

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

8 (c) "Imported electricity" does not include electricity imports
9 of unspecified electricity that are netted by exports of unspecified
10 electricity to any jurisdiction not covered by a linked program by
11 the same entity within the same hour.

12 (d) For a multijurisdictional electric company, "imported
13 electricity" includes electricity from facilities that contribute to
14 a common system power pool that are allocated to serve retail load in
15 Washington pursuant to a cost allocation methodology approved by the
16 utilities and transportation commission.

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

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

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

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

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

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

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

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

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

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

13 (50) "Person" has the same meaning as defined in RCW
14 70A.15.2200(5)(h)(iii).

15 (51) "Point of delivery" means a point on the electricity
16 transmission or distribution system physically located in Washington
17 where a power supplier delivers electricity. This point may be an
18 interconnection with another system or a substation where the
19 transmission provider's transmission and distribution systems are
20 connected to another system, or a distribution substation where
21 electricity is imported into the state over a multijurisdictional
22 retail provider's distribution system.

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

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

29 (54) "Program registry" means the data system in which covered
30 parties, opt-in entities, and general market participants are
31 registered and in which compliance instruments are recorded and
32 tracked.

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

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

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

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

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

9 (60)(a) "Vulnerable populations" means population groups that may
10 be more likely to have adverse health outcomes in response to
11 environmental harms, due to: (i) Adverse socioeconomic factors, such
12 as unemployment, high housing and transportation costs relative to
13 income, limited access to nutritious food and adequate health care,
14 linguistic isolation, and other factors that negatively affect health
15 outcomes and increase vulnerability to the effects of environmental
16 harms; and (ii) sensitivity factors, such as low birth weight and
17 higher rates of hospitalization.

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

22 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE REVIEW. (1) To
23 ensure that the program created in sections 7 through 22 of this act
24 achieves reductions in criteria pollutants in overburdened
25 communities highly impacted by air pollution, the department must:

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

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

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

37 (ii) Prior to listing any entity as a high priority emitter, the
38 department must notify that entity and share the data used to rank
39 that entity as a high priority emitter, and provide a period of not

1 less than 60 days for the covered entity to submit more recent data
2 or other information relevant to the designation of that entity as a
3 high priority emitter.

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

8 (b) If this review finds that criteria pollutants are not being
9 reduced in any identified overburdened community, then the
10 department, in consultation with local air pollution control
11 authorities, must establish air quality targets to achieve air
12 quality consistent with neighboring communities that are not
13 identified as overburdened; identify the sources that are the
14 contributors of those emissions that are either increasing or not
15 decreasing; and achieve the reduction targets through adoption of
16 emission control strategies or other methods. Actions imposed under
17 this section may not impose requirements on covered entities or opt-
18 in entities that are disproportionate to their contribution to air
19 pollution compared to other sources of criteria pollutants in the
20 overburdened community. The department may:

21 (i) Adopt, along with local air pollution control authorities,
22 stricter air quality standards, emission standards, or emissions
23 limitations on criteria pollutants;

24 (ii) If a covered entity or opt-in entity is identified as a high
25 priority emitter of criteria pollutants, and the emissions of
26 greenhouse gases and the source of criteria pollutants are
27 correlated, reduce offset limits as established in section 18 of this
28 act for any covered entity identified under this subsection (2)(b);
29 or

30 (iii) Revise any linkage agreement necessary to ensure reductions
31 of criteria pollutant emissions by any covered entity identified
32 under this subsection (2)(b).

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

37 (i) Identifying high priority communities and emitters in those
38 communities; and

39 (ii) Monitoring and evaluating criteria pollutant emissions in
40 those areas.

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

4 NEW SECTION. **Sec. 4.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1) When
5 allocating funds from the climate investment account created in
6 section 24 of this act or administering grants or programs funded by
7 the account, agencies shall conduct an environmental justice
8 assessment and establish a minimum of not less than 35 percent and a
9 goal of 40 percent of total investments that provide direct and
10 meaningful benefits to vulnerable populations within the boundaries
11 of overburdened communities identified in section 3 of this act
12 through: (a) The direct reduction of environmental burdens in
13 overburdened communities; (b) the reduction of disproportionate,
14 cumulative risk from environmental burdens, including climate change;
15 (c) the support of community led project development, planning, and
16 participation costs; or (d) meeting a community need identified by
17 vulnerable members of the community that is consistent with the
18 intent of this chapter.

19 (2) The environmental justice assessment must adhere to the
20 following principles: (a) Benefits and programs should be directed to
21 areas and targeted to vulnerable populations and overburdened
22 communities to reduce statewide disparities; (b) investments and
23 benefits should be made proportional to the health disparities that a
24 specific community experiences to eliminate the disparities; (c)
25 investments and programs should focus on creating environmental
26 benefits, including eliminating health burdens, creating community
27 and population resilience, and raising the quality of life of those
28 in the community; and (d) efforts should be made to balance
29 investments and benefits across the state and within counties, local
30 jurisdictions, and unincorporated areas as appropriate to reduce
31 disparities by location and to ensure efforts contribute to a
32 reduction in disparities that exist based on race or ethnicity,
33 socioeconomic status, or other factors.

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

36 (a) Report annually to the environmental justice and equity
37 advisory panel in section 5 of this act and the office of equity
38 regarding progress toward meeting environmental justice and
39 environmental health goals; and

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

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

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

10 NEW SECTION. **Sec. 5.** ENVIRONMENTAL JUSTICE AND EQUITY ADVISORY
11 PANEL. (1) The office of equity shall establish an environmental
12 justice and equity advisory panel to provide recommendations to the
13 legislature, agencies, and the governor in the development and
14 implementation of the program established in sections 7 through 22 of
15 this act, and the programs funded from the climate investment account
16 created in section 24 of this act.

17 (2) The office of equity must convene the environmental justice
18 and equity advisory panel by January 1, 2023. The office of equity
19 may seek nominations or recommendations from organizations across the
20 state representing the interests specified in this section. Members
21 of the panel must be selected for geographic and organizational
22 diversity and must include the following:

23 (a) Individuals representing the interests of vulnerable
24 populations residing in overburdened communities in different
25 geographic areas of the state with expertise in environmental justice
26 and equity issues;

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

30 (c) At least two members representing federally recognized
31 tribes, with at least one from eastern Washington and one from
32 western Washington; and

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

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

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

37 (i) The program established in sections 7 through 22 of this act
38 including, but not limited to, linkage agreements with other
39 jurisdictions, protocols for establishing offset projects and

1 securing offset credits, designation of emissions-intensive and
2 trade-exposed industries, and administration of allowances under the
3 program; and

4 (ii) Investment plans and funding proposals for the programs
5 funded from the climate investment account for the purpose of
6 providing environmental benefits and reducing environmental health
7 disparities within overburdened communities identified under section
8 3 of this act;

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

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

14 (d) Recommend copollutant emissions reduction goals in
15 overburdened communities;

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

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

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

27 (h) Recommend how to support public participation through
28 capacity grants for participation.

29 (4) The governor shall appoint a chair, subject to confirmation
30 by the senate, who is responsible for overseeing the duties of the
31 environmental justice and equity advisory panel. The chair is paid a
32 salary fixed by the governor in accordance with RCW 43.03.040. If a
33 vacancy occurs in the position of the chair while the senate is not
34 in session, the governor shall make a temporary appointment until the
35 next meeting of the senate at which time the governor shall present
36 to that body the governor's nomination for the position.

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

1 (6) The office of equity shall provide all administrative and
2 staff support for the environmental justice and equity advisory
3 panel.

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

8 (8) In consultation with the office of equity and the
9 environmental justice council, the governor may administratively
10 address how to effectively coordinate the work of the environmental
11 justice and equity advisory panel with the work of the environmental
12 justice council, to ensure efficient operations and policy alignment
13 across state environmental justice work, subject to enactment of
14 chapter . . . (Substitute Senate Bill No. 5141), Laws of 2021.

15 NEW SECTION. **Sec. 6.** TRIBAL CONSULTATION. (1) Before allocating
16 funding or administering grant programs appropriated from the climate
17 investment account, agencies must engage in consultation with
18 federally recognized tribes on all funding decisions and programs
19 that may impact, infringe upon, or impair the governmental efforts of
20 federally recognized tribes to adopt or enforce their own standards
21 governing or protecting the tribe's resources or other rights and
22 interests in their tribal lands and lands within which a tribe or
23 tribes possess rights reserved by treaty. The consultation shall
24 occur pursuant to chapter 43.376 RCW and is independent of any public
25 participation process required by state law, or by a state agency,
26 and regardless of whether the agency receives a request for
27 consultation from a federally recognized tribe. Agencies shall
28 develop a consultation framework in coordination with tribal
29 governments that includes best practices, protocols for
30 communication, and collaboration with federally recognized tribes.

31 (2) If any funding decision or program that impacts lands within
32 which a tribe or tribes possess rights reserved by federal treaty,
33 statute, or executive order is undertaken or funded under this act
34 without such consultation with a federally recognized tribe, an
35 affected tribe may request that all further action on the decision or
36 program cease until meaningful consultation with any directly
37 impacted federally recognized tribe is completed.

1 NEW SECTION. **Sec. 7.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In

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

7 (2) The program must consist of:

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

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

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

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

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

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

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

26 (h) Providing for the transfer of allowances and recognition of
27 compliance instruments, including those issued by jurisdictions that
28 enter into linkage agreements with the state;

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

31 (j) Creating, in section 5 of this act, an environmental justice
32 and equity advisory panel to monitor impacts of this policy on
33 overburdened communities, advise on achieving positive workforce and
34 job outcomes, and the equitable distribution of benefits to
35 overburdened communities; and

36 (k) Creating a price ceiling and associated mechanisms in section
37 17 of this act.

38 (3) The department shall consider opportunities to implement the
39 program in a manner that allows linking the state's program with
40 other jurisdictions having similar programs, considering if such

1 linkage will provide for a more cost-effective means for Washington
2 covered entities to meet their compliance obligations while
3 recognizing the special characteristics of the state's economy,
4 communities, and industries. The department is authorized to enter
5 into a linkage agreement with another jurisdiction after formal
6 notice and opportunity for a public hearing, and when consistent with
7 the requirements of section 22 of this act.

8 NEW SECTION. **Sec. 8.** PROGRAM BUDGET AND TIMELINES. (1)(a) The
9 department shall commence the program by January 1, 2023, by
10 determining an emissions baseline establishing the proportionate
11 share that the total greenhouse gas emissions of covered entities for
12 the first compliance period bears to the total anthropogenic
13 greenhouse gas emissions in the state during 2015 through 2019, based
14 on data reported to the department under RCW 70A.15.2200 or provided
15 as required by this chapter. By October 1, 2022, the department shall
16 adopt a program budget of allowances for the first compliance period
17 of the program, calendar years 2023 through 2026, to be distributed
18 from January 1, 2023, through December 31, 2026. If the first
19 compliance period is delayed pursuant to section 20(7) of this act,
20 the department shall adjust the program budget to reflect a shorter
21 first compliance period.

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

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

38 (2) The program budgets must be set to achieve the share of
39 reductions by covered entities necessary to achieve the 2030, 2040,

1 and 2050 statewide emissions limits established in RCW 70A.45.020,
2 based on data reported to the department under chapter 70A.15 RCW or
3 provided as required by this chapter. The department must adopt
4 annual allowance budgets for the program on a calendar year basis
5 that provide for substantially equivalent reductions on an absolute
6 basis for each year. An allowance distributed under the program,
7 either directly by the department under sections 12 through 14 of
8 this act or through auctions under section 11 of this act, does not
9 expire and may be held or banked consistent with sections 11(6) and
10 16(1) of this act.

11 (3) The department must complete an evaluation by December 31,
12 2028, and by December 31, 2035, of the performance of the program,
13 including its performance in reducing greenhouse gases. If the
14 evaluation shows that adjustments to the annual budgets are necessary
15 to ensure achievement of 2030 and 2040 emission reduction limits
16 identified in RCW 70A.45.020, the department shall adjust the annual
17 budgets accordingly. The department must complete additional
18 evaluations by December 31, 2040, and by December 31, 2045, of the
19 performance of the program, and make adjustments in the annual
20 budgets to ensure achievement of 2050 emission reduction limits
21 identified in RCW 70A.45.020. Nothing in this subsection precludes
22 the department from making additional adjustments as necessary to
23 ensure successful achievement of emission reduction limits.

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

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

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

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

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

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

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

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

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

38 (a) Where the person is a first jurisdictional deliverer
39 importing electricity into the state and the cumulative annual total
40 of emissions associated with imported electricity into the state from

1 specified or unspecified sources equals or exceeds 25,000 metric tons
2 of carbon dioxide equivalent. For a specified source, the person must
3 have either full or partial ownership in the facility, or a written
4 power contract to procure electricity at the facility or from an
5 asset controlling supplier at the time of entry of the transaction to
6 procure electricity. In consultation with any jurisdiction that is
7 linked to the program created by this chapter, by October 1, 2026,
8 the department, in consultation with the department of commerce and
9 the utilities and transportation commission, shall adopt a
10 methodology for addressing imported electricity associated with a
11 centralized electricity market; and

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

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

23 (4) When a covered entity reports, during a compliance period,
24 emissions from a facility under RCW 70A.15.2200 that are below the
25 thresholds specified in subsection (1) or (2) of this section, the
26 covered entity continues to have a compliance obligation through the
27 current compliance period. When a covered entity reports emissions
28 below the threshold during an entire compliance period, or has ceased
29 all processes at the facility requiring reporting under RCW
30 70A.15.2200, the entity is no longer a covered entity unless the
31 department provides notice at least 12 months before the end of the
32 compliance period that the facility's emissions were within 10
33 percent of the threshold and that the person will continue to be
34 designated as a covered entity in order to ensure equity among all
35 covered entities.

36 (5) For types of emission sources described in subsection (1) of
37 this section that begin or modify operation after January 1, 2023,
38 and types of emission sources described in subsection (2) of this
39 section that begin or modify operation after 2027, coverage under the
40 program starts in the calendar year in which emissions from the

1 source exceed the applicable thresholds in subsection (1) or (2) of
2 this section, or upon formal notice from the department that the
3 source is expected to exceed the applicable emissions threshold,
4 whichever happens first. Sources meeting these conditions are
5 required to transfer their first allowances on the first transfer
6 deadline of the year following the year in which their emissions were
7 equal to or exceeded the emissions threshold.

8 (6) For emission sources described in subsection (1) of this
9 section that are in operation or otherwise active between 2015 and
10 2019 but were not required to report emissions for those years under
11 RCW 70A.15.2200 as written for the reporting periods between 2015 and
12 2019, coverage under the program starts in the calendar year
13 following the year in which emissions from the source exceed the
14 applicable thresholds in subsection (1) of this section as reported
15 pursuant to RCW 70A.15.2200 or provided as required by this chapter,
16 or upon formal notice from the department that the source is expected
17 to exceed the applicable emissions threshold for the first year that
18 source is required to report emissions, whichever happens first.
19 Sources meeting these conditions are required to transfer their first
20 allowances on the first transfer deadline of the year following the
21 year in which their emissions, as reported under RCW 70A.15.2200 or
22 provided as required by this chapter, were equal to or exceeded the
23 emissions threshold.

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

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

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

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

33 (d) Carbon dioxide emissions from the combustion of biomass or
34 biofuels; and

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

37 (8) The department shall not require multiple covered entities to
38 have a compliance obligation for the same emissions. The department
39 may by rule authorize refineries, fuel suppliers, facilities using
40 natural gas, and natural gas local distribution companies to provide

1 by agreement for the assumption of the compliance obligation for fuel
2 or natural gas supplied and combusted in the state. The department
3 must be notified of such an agreement at least 12 months prior to the
4 compliance obligation period for which the agreement is applicable

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

8 (2) Entities registering to participate in the program must
9 describe any direct or indirect affiliation with other registered
10 entities.

11 (3) A person responsible for greenhouse gas emissions that is not
12 a covered entity may voluntarily participate in the program by
13 registering as an opt-in entity. An opt-in entity must satisfy the
14 same registration requirements as covered entities. Once registered,
15 an opt-in entity is allowed to participate as a covered entity in
16 auctions and must assume the same compliance obligation to transfer
17 compliance instruments equal to their emissions at the appointed
18 transfer dates. An opt-in entity may opt out of the program at the
19 end of any compliance period by providing written notice to the
20 department at least six months prior to the end of the compliance
21 period. The opt-in entity continues to have a compliance obligation
22 through the current compliance period. An opt-in entity is not
23 eligible to receive allowances directly distributed under section 12,
24 13, or 14 of this act.

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

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

32 (6) The department shall use a secure, online electronic tracking
33 system to: Register entities in the state program; issue compliance
34 instruments; track ownership of compliance instruments; enable and
35 record compliance instrument transfers; facilitate program
36 compliance; and support market oversight.

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

1 (a) A compliance account where the compliance instruments are
2 transferred to the department for retirement. Compliance instruments
3 in compliance accounts may not be sold, traded, or otherwise provided
4 to another account or person, except as provide for in section 11 of
5 this act.

6 (b) A holding account that is used when a registered entity is
7 interested in trading allowances. Allowances in holding accounts may
8 be bought, sold, transferred to another registered entity, or traded.
9 The amount of allowances a registered entity may have in its holding
10 account is constrained by the holding limit as determined by the
11 department by rule.

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

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

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

21 (2) The department shall hold a maximum of four auctions
22 annually, plus any necessary reserve auctions. An auction may include
23 allowances from the annual allowance budget of the current year and
24 allowances from the annual allowance budgets from prior years that
25 remain to be distributed. The department must make future vintage
26 allowances available through parallel auctions at least twice
27 annually in addition to the auctions through which current vintage
28 allowances are exclusively offered.

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

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

38 (a) Registered entities intending to participate in an auction
39 must submit an application to participate at least 30 days prior to

1 the auction. The application must include the documentation required
2 for review and approval by the department. A registered entity is
3 eligible to participate only after receiving a notice of approval by
4 the department.

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

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

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

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

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

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

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

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

38 (b) For fiscal year 2024, upon completion and verification of the
39 auction results, the financial services administrator shall notify
40 winning bidders and transfer the auction proceeds to the state

1 treasurer for deposit as follows: (i) \$356,697,000 must first be
2 deposited into the forward flexible account created in (g) of this
3 subsection; and (ii) the remaining auction proceeds to the climate
4 investment account created in section 24 of this act.

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

12 (d) For fiscal years 2026 through 2037, upon completion and
13 verification of the auction results, the financial services
14 administrator shall notify winning bidders and transfer the auction
15 proceeds to the state treasurer for deposit as follows: (i)
16 \$359,117,000 per year must first be deposited into the forward
17 flexible account created in (g) of this subsection; and (ii) the
18 remaining auction proceeds to the climate investment account created
19 in section 24 of this act.

20 (e) The deposits into the forward flexible account pursuant to
21 (a) through (d) of this subsection must not exceed \$5,200,000,000
22 over the first 16 years and any remaining auction proceeds must be
23 deposited into the climate investment account created in section 24
24 of this act.

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

33 (g) The forward flexible account is created in the state
34 treasury. All receipts from proceeds directed to the account under
35 (a) through (f) of this subsection must be deposited in the account.
36 Moneys in the account may be spent only after appropriation.
37 Expenditures from the account may be used only for transportation
38 projects, programs, or activities identified as forward flexible
39 projects, programs, or activities in an omnibus transportation
40 appropriations act.

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

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

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

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

31 NEW SECTION. **Sec. 12.** ALLOCATION OF ALLOWANCES TO EMISSIONS-
32 INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) A covered entity must
33 receive an allocation of allowances under this subsection at no cost
34 if the entity is classified as emissions-intensive and trade-exposed,
35 as determined by being engaged in one or more of the processes
36 described by the following industry descriptions and codes in the
37 North American industry classification system:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (ii) If an emissions-intensive and trade-exposed facility is not
31 able to feasibly determine a carbon intensity benchmark based on its
32 unique circumstances, the entity may elect to use a mass-based
33 baseline that does not vary based on changes in production volumes.
34 The department shall establish a comparable compliance obligation and
35 no cost allowance allocation under this section between an entity
36 utilizing a carbon intensity benchmark and a mass-based baseline. If
37 a facility elects to use a mass-based baseline, it may not later
38 convert to a carbon intensity benchmark during the first three
39 compliance periods.

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

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

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

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

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

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

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

32 (f) (i) Prior to the beginning of either the second or third
33 compliance periods, an emissions-intensive, trade-exposed facility
34 may make an upward adjustment in the next compliance period's
35 benchmark based on a demonstration that additional reductions in
36 carbon intensity or mass emissions are not technically or
37 economically feasible. An emissions-intensive, trade-exposed facility
38 may base its upward adjustment in the next compliance period on the
39 facility's best available technology analysis. The department shall
40 by rule provide for emissions-intensive, trade-exposed facilities to

1 apply to the department for an adjustment to the allocation for
2 direct distribution of no cost allowances based on its facility-
3 specific carbon intensity benchmark or mass emissions baseline. The
4 department shall make adjustments based on:

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

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

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

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

30 (4)(a) Beginning January 1, 2035, and each year thereafter, the
31 annual allocation of no cost allowances for direct distribution to an
32 entity identified as emissions-intensive and trade-exposed must
33 reduce by an equal amount each year between 2035 and 2050 such that
34 in 2050 the facility's proportionate share of the allowance budget is
35 equal to the share in 2035. The annual allocation must decline from
36 the average of the facility's annual allocation of no cost allowances
37 from 2031-2034. If the emissions-intensive, trade-exposed facility
38 can demonstrate that there have been abnormal periods of operation
39 that materially impacted the facility, then the baseline period
40 should be expanded to include years prior to 2031.

1 (b) By December 1, 2030, the department shall provide a report to
2 the appropriate committees of the senate and house of representatives
3 that describes alternative methods for determining the amount and a
4 schedule of allowances to be provided to each covered entity
5 designated as an emissions-intensive, trade-exposed manufacturing
6 business. The report must include a review of global best practices
7 in ensuring against emissions leakage and economic harm to businesses
8 in carbon pricing programs and describe alternative methods of
9 emissions performance benchmarking and mass-based allocation of no
10 cost allowances. In developing the report, the department shall form
11 an advisory group that includes representatives of the manufacturers
12 listed in subsection (1) of this section.

13 (5) If the actual emissions of an emissions-intensive, trade-
14 exposed facility exceed the facility's no cost allowances assigned
15 for that compliance period, it must acquire additional compliance
16 instruments such that the total compliance instruments transferred to
17 its compliance account consistent with section 20 of this act equals
18 emissions during the compliance period. The department shall limit
19 the use of offset credits for compliance by an emissions-intensive,
20 trade-exposed facility, such that the quantity of no cost allowances
21 plus the provision of offset credits does not exceed 100 percent of
22 the facility's total compliance obligation over a compliance period.

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

38 NEW SECTION. **Sec. 13.** ALLOCATION OF ALLOWANCES TO ELECTRIC
39 UTILITIES. (1) The legislature intends by this section to allow all

1 consumer-owned electric utilities and investor-owned electric
2 utilities subject to the requirements of chapter 19.405 RCW, the
3 Washington clean energy transformation act, to be eligible for
4 allowance allocation as provided in this section in order to mitigate
5 the cost burden of the program on electricity customers.

6 (2)(a) By October 1, 2022, the department shall adopt rules, in
7 consultation with the department of commerce and the utilities and
8 transportation commission, establishing the methods and procedures
9 for allocating allowances for consumer-owned and investor-owned
10 electric utilities. The rules must take into account the cost burden
11 of the program on electricity customers.

12 (b) By October 1, 2022, the department shall adopt an allocation
13 schedule by rule, in consultation with the department of commerce and
14 the utilities and transportation commission, for the first compliance
15 period for the provision of allowances at no cost to consumer-owned
16 and investor-owned electric utilities. This allocation must be
17 consistent with a forecast, that is approved by the appropriate
18 governing board or the utilities and transportation commission, of
19 each utility's supply and demand, and the cost burden resulting from
20 the inclusion of the covered entities in the first compliance period.

21 (c) By October 1, 2026, the department shall adopt an allocation
22 schedule by rule, in consultation with the department of commerce and
23 the utilities and transportation commission, for the provision of
24 allowances for the second compliance period at no cost to consumer-
25 owned and investor-owned electric utilities. This allocation must be
26 consistent with a forecast, that is approved by the appropriate
27 governing board or the utilities and transportation commission, of
28 each utility's supply and demand, and the cost burden resulting from
29 the inclusion of covered entities in the second compliance period.
30 The allowances included in this schedule must reflect the increased
31 scope of coverage in the electricity sector relative to the program
32 budget of allowances established in 2022.

33 (d) By October 1, 2028, the department shall adopt an allocation
34 schedule by rule, in consultation with the department of commerce and
35 the utilities and transportation commission, for the provision of
36 allowances at no cost to consumer-owned and investor-owned electric
37 utilities for the compliance periods contained within calendar years
38 2031 through 2045. This allocation must be consistent with a
39 forecast, that is approved by the appropriate governing board or the
40 utilities and transportation commission, of each utility's supply and

1 demand, and the cost burden resulting from the inclusion of the
2 covered entities in the compliance periods. The rule developed under
3 this subsection (2)(d) may prescribe an amount of allowances
4 allocated at no cost that must be consigned to auction by consumer-
5 owned and investor-owned electric utilities. However, utilities may
6 use allowances for compliance equal to their covered emissions in any
7 calendar year they were not subject to potential penalty under RCW
8 19.405.090. Under no circumstances may utilities receive any free
9 allowances after 2045.

10 (3)(a) During the first compliance period, allowances allocated
11 at no cost to consumer-owned and investor-owned electric utilities
12 may be consigned to auction for the benefit of ratepayers, deposited
13 for compliance, or a combination of both. The rules adopted by the
14 department under subsection (2) of this section must include
15 provisions for directing revenues generated under this subsection to
16 the applicable utilities.

17 (b) By October 1, 2026, the department, in consultation with the
18 department of commerce and the utilities and transportation
19 commission, must adopt rules governing the amount of allowances
20 allocated at no cost under subsection (2)(c) of this section that
21 must be consigned to auction. For calendar year 2030, electric
22 utilities may use allowances for compliance equal to their covered
23 emissions if not subject to potential penalty under RCW 19.405.090.

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

28 (5) If an entity is identified by the department as an emissions-
29 intensive, trade-exposed industry under section 12 of this act,
30 unless allowances have been otherwise allocated for electricity-
31 related emissions to the entity under section 12 of this act or to a
32 consumer-owned utility under this section, the department shall
33 allocate allowances at no cost to the electric utility or power
34 marketing administration that is providing electricity to the entity
35 in an amount equal to the forecasted emissions for electricity
36 consumption for the entity for the compliance period.

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

1 (7) Rules establishing the allocation of allowances to consumer-
2 owned utilities and investor-owned utilities must consider the impact
3 of electrification of buildings, transportation, and industry on the
4 electricity sector.

5 (8) Nothing in this section affects the requirements of chapter
6 19.405 RCW.

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

11 (a) By October 1, 2022, the department shall adopt rules, in
12 consultation with the utilities and transportation commission,
13 establishing the methods and procedures for allocating allowances to
14 natural gas utilities. Rules adopted under this subsection must allow
15 for a natural gas utility to be provided allowances at no cost to
16 cover their emissions and decline proportionally with the cap,
17 consistent with section 8 of this act. Allowances allocated at no
18 cost to natural gas utilities must be consigned to auction for the
19 benefit of ratepayers consistent with subsection (2) of this section,
20 deposited for compliance, or a combination of both. The rules adopted
21 by the department pursuant to this section must include provisions
22 directing revenues generated under this subsection to the applicable
23 utilities.

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

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

34 (2)(a) Beginning in 2023, 65 percent of the no cost allowances
35 must be consigned to auction for the benefit of customers, including
36 at a minimum eliminating any additional cost burden to low-income
37 customers, from the implementation of this chapter. Rules adopted
38 under this subsection must increase the percentage of allowances

1 consigned to auction by five percent each year until a total of 100
2 percent is reached.

3 (b) Revenues from allowances sold at auction must be returned by
4 providing nonvolumetric credits on ratepayer utility bills,
5 prioritizing low-income customers, or used to minimize cost impacts
6 on low-income, residential, and small business customers through
7 actions that include, but are not limited to, weatherization,
8 decarbonization, conservation and efficiency services, and bill
9 assistance. The customer benefits provided from allowances consigned
10 to auction under this section must be in addition to existing
11 requirements in statute, rule, or other legal requirements.

12 (c) Except for low-income customers, the credits under this
13 subsection are reserved exclusively for customers at locations
14 connected to a natural gas utility's system on the effective date of
15 this section. Credits may not be provided to customers of the gas
16 utility at a location connected to the system after the effective
17 date of this section.

18 (3) In order to qualify for no cost allowances, covered entities
19 that are natural gas utilities must provide copies of their
20 greenhouse gas emissions reports filed with the United States
21 environmental protection agency under 40 C.F.R. Part 98 subpart NN -
22 suppliers of natural gas and natural gas liquids for calendar years
23 2015 through 2021 to the department on or before March 31, 2022. The
24 copies of the reports must be provided in electronic form to the
25 department, in a manner prescribed by the department. The reports
26 must be complete and contain all information required by 40 C.F.R.
27 Sec. 98.406 including, but not limited to, information on large end-
28 users served by the natural gas utility. For any year where a natural
29 gas utility was not required to file this report with the United
30 States environmental protection agency, a report may be submitted in
31 a manner prescribed by the department containing all of the
32 information required in the subpart NN report.

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

38 NEW SECTION. **Sec. 15.** EMISSIONS CONTAINMENT RESERVE
39 WITHHOLDING. (1) To help ensure that the price of allowances remains

1 sufficient to incentivize reductions in greenhouse gas emissions, the
2 department must establish an emissions containment reserve and set an
3 emissions containment reserve trigger price by rule. The price must
4 be set at a reasonable amount above the auction floor price and equal
5 to the level established in jurisdictions with which the department
6 has entered into a linkage agreement. In the event that a
7 jurisdiction with which the department has entered into a linkage
8 agreement has no emissions containment trigger price, the department
9 shall suspend the trigger price under this subsection. The purpose of
10 withholding allowances in the emissions containment reserve is to
11 secure additional emissions reductions.

12 (2) In the event that the emissions containment reserve trigger
13 price is met during an auction, the department must automatically
14 withhold allowances as needed. The department must convert and
15 transfer any allowances that have been withheld from auction into the
16 emissions containment reserve account.

17 (3) Emissions containment reserve allowances may only be withheld
18 from an auction if the demand for allowances would result in an
19 auction clearing price that is less than the emissions containment
20 reserve trigger price prior to the withholding from the auction of
21 any emissions containment reserve allowances.

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

24 (a) No less than two percent of the total number of allowances
25 available from the allowance budgets for calendar years 2023 through
26 2026;

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

29 (c) When facilities curtail or close consistent with section
30 12(6) of this act; or

31 (d) When facilities fall below the emissions threshold. The
32 amount of allowances withdrawn from the program budget must be
33 proportionate to the amount of emissions such a facility was
34 previously using.

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

38 (b) Allowances equal to the greenhouse gas emissions resulting
39 from a new or expanded emissions-intensive, trade-exposed facility
40 with emissions in excess of 25,000 metric tons per year during the

1 first applicable compliance period will be provided to the facility
2 from the reserve created in this section and must be retired by the
3 facility. In subsequent compliance periods, the facility will be
4 subject to the regulatory cap and related requirements under this
5 chapter.

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

17 (2) For calendar years 2023 through 2026, the department must
18 place no less than two percent of the total number of allowances
19 available from the allowance budgets for those years in an allowance
20 price containment reserve. The reserve must be designed as a
21 mechanism to assist in containing compliance costs for covered and
22 opt-in entities in the event of unanticipated high costs for
23 compliance instruments.

24 (3)(a) The department shall adopt rules for holding auctions of
25 allowances from the price containment reserve when the settlement
26 prices in the preceding auction approach the adopted auction ceiling
27 price. The auction must be separate from auctions of other
28 allowances.

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

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

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

38 (6) The department shall by rule:

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

4 (b) Establish the requirements and schedule for the allowance
5 price containment reserve auctions; and

6 (c) Establish the amount of allowances to be placed in the
7 allowance price containment reserve after the first compliance period
8 ending in 2026.

9 NEW SECTION. **Sec. 17.** PRICE CONTAINMENT. (1) The department
10 shall establish a price ceiling to provide cost protection for
11 facilities obligated to comply with this chapter. The ceiling must be
12 set at a level sufficient to facilitate investments to achieve
13 further emission reductions beyond those enabled by the price
14 ceiling, with the intent that investments accelerate the state's
15 achievement of greenhouse gas limits established under RCW
16 70A.45.020. The price ceiling must increase annually in proportion to
17 the price floor.

18 (2) In the event that no allowances remain in the allowance price
19 containment reserve, the department must issue the number of price
20 ceiling units for sale sufficient to provide cost protection for
21 facilities as established under subsection (1) of this section.
22 Purchases must be limited to entities that do not have sufficient
23 eligible compliance instruments in their holding and compliance
24 accounts for the next compliance period and these entities may only
25 purchase what they need to meet their compliance obligation for the
26 current compliance period. Price ceiling units may not be sold or
27 transferred and must be retired for compliance in the current
28 compliance period.

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

36 NEW SECTION. **Sec. 18.** OFFSETS. (1) The department shall adopt
37 by rule the protocols for establishing offset projects and securing
38 offset credits that may be used to meet a portion of a covered or

1 opt-in entity's compliance obligation under section 20 of this act.
2 The protocols adopted by the department under this section must align
3 with the policies of the state established under RCW 70A.45.090 and
4 70A.45.100.

5 (2) Offset projects must:

6 (a) Provide direct environmental benefits to the state or be
7 located in a jurisdiction with which the department has entered into
8 a linkage agreement or memorandum of understanding;

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

10 (i) Are real, permanent, quantifiable, verifiable, and
11 enforceable; and

12 (ii) Are in addition to greenhouse gas emission reductions or
13 removals otherwise required by law and other greenhouse gas emission
14 reductions or removals that would otherwise occur; and

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

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

24 (b) A total of no more than four percent of a covered or opt-in
25 entity's compliance obligation during the second compliance period
26 may be met by transferring offset credits. During these years, at
27 least 75 percent of a covered or opt-in entity's compliance
28 obligation satisfied by offset credits must be sourced from offset
29 projects that provide direct environmental benefits in the state. The
30 department may reduce the 75 percent requirement if it determines
31 there is not sufficient offset supply in the state to meet offset
32 demand during the second compliance period.

33 (c) The limits in (a) and (b) of this subsection may be modified
34 by rule as adopted by the department when appropriate to ensure
35 achievement of the statewide emissions limits established in RCW
36 70A.45.020 and to provide for alignment with other jurisdictions to
37 which the state has entered or proposes to enter a linkage agreement.

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

1 (i) Contribute substantively to cumulative air pollution burden
2 in an overburdened community as determined by criteria established by
3 the department; or

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

7 (e) An offset project on federally recognized tribal land does
8 not count against the offset credit limits described in (a) and (b)
9 of this subsection. No more than three percent of a covered or opt-in
10 entity's compliance obligation may be met by transferring offset
11 credits from projects on federally recognized tribal land during the
12 first compliance period. No more than two percent of a covered or
13 opt-in entity's compliance obligation may be met by transferring
14 offset credits from projects on federally recognized tribal land
15 during the second compliance period.

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

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

22 (b) Encourage opportunities for the development of offset
23 projects in this state by adopting offset protocols that may include,
24 but need not be limited to, protocols that make use of aggregation or
25 other mechanisms to reduce transaction costs related to the
26 development of offset projects and that support the development of
27 carbon dioxide removal projects;

28 (c) Adopt a process for monitoring and invalidating offset
29 credits as necessary to ensure the credit reflects emission
30 reductions or removals that continue to meet the standards required
31 by subsection (1) of this section. If an offset credit is
32 invalidated, the covered or opt-in entity must, within six months of
33 the invalidation, transfer replacement credits or allowances to meet
34 its compliance obligation. Failure to transfer the required credits
35 or allowances is a violation subject to penalties as provided in
36 section 21 of this act.

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

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

3 NEW SECTION. **Sec. 19.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL
4 LANDS. (1) In order to ensure that a sufficient number of high
5 quality offset projects are available under the limits set in section
6 18 of this act, the department must establish an assistance program
7 for offset projects on federally recognized tribal lands in
8 Washington. The assistance may include, but is not limited to,
9 funding or consultation for federally recognized tribal governments
10 to assess a project's technical feasibility, investment requirements,
11 development and operational costs, expected returns, administrative
12 and legal hurdles, and project risks and pitfalls. Funding or
13 assistance may be provided upon request by a federally recognized
14 tribe.

15 (2) It is the intent of the legislature that not less than
16 \$5,000,000 be provided in the biennial omnibus operating
17 appropriations act for the purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (d) Enhance market security;

1 (e) Reduce program administration costs; and

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

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

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

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

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

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

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

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

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

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

1 jurisdictions and other limitations deemed necessary by the
2 department. A linkage agreement approved by the department must:

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

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

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

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

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

16 NEW SECTION. **Sec. 23.** RULES. The department shall adopt rules
17 to implement the provisions of the program established in sections 7
18 through 22 of this act. The department may adopt emergency rules
19 pursuant to RCW 34.05.350 for initial implementation of the program,
20 to implement the state omnibus appropriations act for the 2021-2023
21 fiscal biennium, and to ensure that reporting and other program
22 requirements are determined early for the purpose of program design
23 and early notice to registered entities with a compliance obligation
24 under the program.

25 NEW SECTION. **Sec. 24.** CLIMATE INVESTMENT ACCOUNT. (1) The
26 climate investment account is created in the state treasury. Except
27 as otherwise provided in this act, all receipts from the auction of
28 allowances authorized in this chapter must be deposited into the
29 account. Projects or activities funded from the account must meet
30 high labor standards, including family sustaining wages, providing
31 benefits including health care and pensions, career development
32 opportunities, and maximize access to economic benefits from such
33 projects for local workers and diverse businesses. Each contracting
34 entity's proposal must be reviewed for equity and opportunity
35 improvement efforts, including: (a) Employer paid sick leave
36 programs; (b) pay practices in relation to living wage indicators
37 such as the federal poverty level; (c) efforts to evaluate pay equity
38 based on gender identity, race, and other protected status under

1 Washington law; (d) facilitating career development opportunities,
2 such as apprenticeship programs, internships, job-shadowing, and on-
3 the-job training; and (e) employment assistance and employment
4 barriers for justice affected individuals.

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

7 (a) To cover the department's and other agencies' costs to
8 support and administer the program, including coordination of
9 allowance auctions, tracking of emissions and allowances, rule
10 making, evaluation, monitoring, and verification, and stakeholder
11 communication and outreach such as capacity grants for participation
12 to engage communities in the decision making and guidance of these
13 funds, as appropriated pursuant to the biennial and supplemental
14 omnibus operating appropriations acts, as enacted;

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

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

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

25 (e) Natural climate resilience solutions that improve the
26 resilience of the state's waters, forests, and other vital ecosystems
27 to the impacts of climate change, and increase their carbon pollution
28 reduction capacity through sequestration, storage, and overall
29 ecosystem integrity. This includes programs, activities, or projects
30 that: (i) Restore and protect estuaries, fisheries, and marine and
31 freshwater shoreline and riparian habitats, and prepare for sea level
32 rise; (ii) increase the ability to remediate and adapt to the impacts
33 of ocean acidification; (iii) reduce flood risk and restore natural
34 floodplain ecological function; (iv) increase the sustainable supply
35 of water and improve aquatic habitat, including groundwater mapping
36 and modeling; (v) improve infrastructure treating stormwater from
37 previously developed areas within an urban growth boundary designated
38 under chapter 36.70A RCW, with a preference given to projects that
39 use green stormwater infrastructure; (vi) either preserve or
40 increase, or both, carbon sequestration and storage benefits in

1 forests and agricultural soils; (vii) either preserve or establish,
2 or both, carbon sequestration in marine and freshwater riparian areas
3 through forest management sufficient to promote climate resilience,
4 protect cold water fisheries, and achieve water quality standards;
5 (viii) increase forest and community resilience to wildfire in the
6 face of increased seasonal temperatures and drought; (ix) improve
7 forest health and reduce vulnerability to changes in hydrology,
8 insect infestation, and other impacts of climate change; or (x)
9 prevent emissions through preserving natural lands from the threat of
10 conversion to development;

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

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

21 (ii) Reductions in dependence on fossil fuels used for
22 transportation, including public and shared transportation for access
23 and mobility;

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

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

1 services, prioritizing employment in the clean energy sector; and (G)
2 relocation expenses;

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

5 (vi) Transportation, municipal service delivery, and technology
6 investments that increase a community's capacity for clean
7 manufacturing, with an emphasis on communities in greatest need of
8 job creation and economic development and potential for commute-
9 reduction;

10 (g) Emissions reduction projects and programs that yield real,
11 verifiable reductions in greenhouse gas emissions in excess of
12 baseline estimates. Projects and programs eligible for funding from
13 the account must be physically located in Washington state and
14 include, but are not limited to, the following programs, activities,
15 or projects that: (i) Deploy renewable energy resources, such as
16 solar and wind power, and projects to deploy distributed generation,
17 energy storage, demand-side technologies and strategies, and other
18 grid modernization projects; (ii) increase the energy efficiency or
19 reduce greenhouse gas emissions of industrial facilities including,
20 but not limited to, proposals to implement combined heat and power,
21 district energy, or on-site renewables, such as solar and wind power,
22 to upgrade the energy efficiency of existing equipment, to reduce
23 process emissions, and to switch to less emission intensive fuel
24 sources; (iii) achieve energy efficiency or emission reductions in
25 the agricultural sector, including fertilizer management, soil
26 management, bioenergy, and biofuels; (iv) promote low-carbon
27 architecture, including use of newly emerging alternative building
28 materials that result in a lower carbon footprint in the built
29 environment over the life cycle of the building and component
30 building materials; (v) promote the decarbonization of new and
31 existing buildings, including residential, commercial, and industrial
32 buildings; (vi) improve energy efficiency, including district energy,
33 and investments in market transformation of high-efficiency electric
34 appliances and equipment for space and water heating; (vii) reduce
35 emissions from landfills and waste to energy facilities through
36 diversion of organic materials, methane capture or conversion
37 strategies, or other means; (viii) retrofit vehicles and vessels for
38 increased efficiency when electrification options are unavailable;
39 and (ix) develop carbon dioxide removal projects and technologies.

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

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

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

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

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

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

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

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

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

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

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

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

8 (5)(a) The department shall adopt rules requiring persons to
9 report emissions of greenhouse gases as defined in RCW 70A.45.010
10 where those emissions from a single facility, ~~((source, or site,))~~ or
11 from electricity or fossil fuels sold in Washington by a single
12 supplier or local distribution company, meet or exceed ten thousand
13 metric tons of carbon dioxide equivalent annually. The ~~((department~~
14 ~~may phase in the requirement to report greenhouse gas emissions until~~
15 ~~the reporting threshold in this subsection is met, which must occur~~
16 ~~by January 1, 2012))~~ rules adopted by the department must support
17 implementation of the program created in section 7 of this act. In
18 addition, the rules must require that:

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

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

35 ~~((iii) Emissions of carbon dioxide associated with the complete~~
36 ~~combustion or oxidation of liquid motor vehicle fuel, special fuel,~~
37 ~~or aircraft fuel that is sold in Washington where the annual~~
38 ~~emissions associated with that combustion or oxidation equal or~~
39 ~~exceed ten thousand metric tons be reported to the department. Each~~
40 ~~person who is required to file periodic tax reports of motor vehicle~~

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

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

22 ~~(ii))~~ The department may by rule include additional gases to the
23 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
24 been designated as a greenhouse gas by the United States congress
25 ~~((~~or~~)),~~ by the United States environmental protection agency, or
26 included in external greenhouse gas emission trading programs where
27 Washington has a linkage agreement in effect pursuant to section 22
28 of this act. Prior to including additional gases to the definition of
29 "greenhouse gas" in RCW 70A.45.010, the department shall notify the
30 appropriate committees of the legislature. (~~Decisions to amend the~~
31 ~~rule to include additional gases must be made prior to December 1st~~
32 ~~of any year and the amended rule may not take effect before the end~~
33 ~~of the regular legislative session in the next year.~~

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

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

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

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

6 (B) Needed to ensure consistency with emissions reporting
7 requirements for jurisdictions with a linkage agreement pursuant to
8 section 22 of this act. ~~((However, the))~~

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

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

14 (e) The fee provisions in subsection (2) of this section apply to
15 reporting of emissions of greenhouse gases. Persons required to
16 report under (a) of this subsection who fail to report or pay the fee
17 required in subsection (2) of this section are subject to enforcement
18 penalties under this chapter. The department shall enforce the
19 reporting rule requirements ~~((unless it approves a local air~~
20 ~~authority's request to enforce the requirements for persons operating~~
21 ~~within the authority's jurisdiction. However, neither the department~~
22 ~~nor a local air authority approved under this section are authorized~~
23 ~~to assess enforcement penalties on persons required to report under~~
24 ~~(a) of this subsection until six months after the department adopts~~
25 ~~its reporting rule in 2010)). When a person that holds a compliance
26 obligation under section 9 of this act fails to submit an emissions
27 data report or fails to obtain a positive emissions data verification
28 statement in accordance with (g)(ii) of this subsection, the
29 department may assign an emissions level for that person.~~

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

1 council shall contract with the department to monitor the reporting
2 requirements adopted under this section.

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

12 (ii) Verification requirements apply at a minimum to persons
13 required to report under (a) of this subsection with emissions that
14 equal or exceed 25,000 metric tons of carbon dioxide equivalent
15 emissions, including carbon dioxide from biomass-derived fuels, or to
16 persons who have a compliance obligation under section 9 of this act
17 in any year of the current compliance period. The department may
18 adopt rules to accept verification reports from another jurisdiction
19 with a linked agreement pursuant to section 19 of this act in cases
20 where the department deems that the methods or procedures are
21 substantively similar.

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

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

39 (iii) For the purpose of this subsection (5), the term "person"
40 includes: (A) An owner or operator(~~, as those terms are defined by~~

1 ~~the United States environmental protection agency in its mandatory~~
2 ~~greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted~~
3 ~~on September 22, 2009; and (B) a supplier)) of a facility; (B) a~~
4 ~~supplier; or (C) an electric power entity.~~

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

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

20 NEW SECTION. Sec. 26. CONSISTENCY WITH REVIEW OF NEW
21 FACILITIES. (1) The legislature intends to promote a growing and
22 sustainable economy and to avoid leakage of emissions from
23 manufacturing to other locations. The legislature further intends to
24 see innovative new businesses locate and grow in Washington that
25 contribute to Washington's prosperity and environmental objectives.

26 (2) Consistent with the intent of the legislature to avoid the
27 leakage of emissions to other jurisdictions, in achieving the state's
28 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the
29 limits in a manner that recognizes that the siting and placement of
30 new best in class facilities that provide for the displacement of
31 more carbon-intensive processes is in the economic and environmental
32 interests of the state of Washington.

33 (3) For new or expanded facilities that require review under
34 chapter 43.21C RCW, and which would result in annual greenhouse gas
35 emissions in excess of 25,000 metric tons per year, the department
36 must evaluate the net cumulative greenhouse gas emissions of the
37 facility, including any net displacement of global emissions
38 resulting from the project. The department may adopt rules to
39 determine how to evaluate net cumulative emissions reductions.

1 (4) The limits in RCW 70A.45.020 or greenhouse gas emissions that
2 are addressed under this section may not be the basis for denial of a
3 permit application or for judicial review of the grant of a permit
4 for a new or expanded emissions-intensive and trade-exposed facility.

5 (5) Compliance with the requirements of this chapter is the only
6 mitigation for greenhouse gases that can be required from these
7 facilities.

8 (6) Inclusion as a covered entity under this chapter constitutes
9 mitigation of any significant adverse impacts with respect to
10 greenhouse gases for a facility subject to the requirements of the
11 state environmental policy act.

12 NEW SECTION. **Sec. 27.** This act may be known and cited as the
13 Washington climate commitment act.

14 NEW SECTION. **Sec. 28.** Sections 1 through 24, 26, and 27 of this
15 act constitute a new chapter in Title 70A RCW.

16 NEW SECTION. **Sec. 29.** (1) Sections 7 through 22 of this act,
17 and any rules adopted by the department of ecology to implement the
18 program established under those sections, are suspended on December
19 31, 2055, in the event that the department of ecology determines by
20 December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020
21 have been met for two or more consecutive years.

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

28 **Sec. 30.** RCW 43.88.055 and 2020 c 218 s 2 are each amended to
29 read as follows:

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

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

1 (b) Beginning in the 2013-2015 fiscal biennium, the projected
2 maintenance level of the omnibus appropriations bill enacted by the
3 legislature shall not exceed the available fiscal resources for the
4 next ensuing fiscal biennium.

5 (2) For purposes of this section:

6 (a) "Available fiscal resources" means the beginning general fund
7 and related fund balances and any fiscal resources estimated for the
8 general fund and related funds, adjusted for enacted legislation, and
9 with forecasted revenues adjusted to the greater of (i) the official
10 general fund and related funds revenue forecast for the ensuing
11 biennium, or (ii) the official general fund and related funds
12 forecast for the second fiscal year of the current fiscal biennium,
13 increased by 4.5 percent for each fiscal year of the ensuing
14 biennium;

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

21 (c) "Related funds," as used in this section, means the
22 Washington opportunity pathways account, the workforce education
23 investment account, the climate investment account, and the education
24 legacy trust account.

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

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

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

--- END ---