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**HOUSE BILL 1190**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Dye, Sandlin, Abbarno, Goehner, and Barnard

AN ACT Relating to environmental leadership through outdoor recreation and climate adaptation investments; amending RCW 70A.65.250 and 70A.65.305; reenacting and amending RCW 70A.65.030, 70A.65.040, and 70A.65.230; adding a new section to chapter 70A.65 RCW; creating a new section; and repealing RCW 70A.65.260 and 70A.65.270.

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

NEW SECTION. **Sec.**  The legislature intends for the revenue from the climate commitment act to fund outdoor recreation and climate adaptation.

The legislature finds that carbon dioxide is both persistent and dynamic in the earth's atmosphere. Since 1850, nearly 40 percent of the total 2,504,000,000,000 metric tons of carbon dioxide emissions released from burning of both fossil fuels and forests have been absorbed by the ocean and terrestrial biome. The legislature recognizes the reality that the impacts of legacy emissions cannot be contained by cutting emissions alone. The legislature intends to optimize the potential of Washington's natural environment to absorb and sequester carbon dioxide emissions by improving the health and resiliency of its forests and inland seas. The legislature intends for these adaptation and resilience investments to be in addition to planned investments to reduce the use of fossil fuels. Combining the power of landscape scale improvements to the health of our natural environment while also incentivizing the development of new energy technologies, Washington can be a leader in effective public policy responses to climate impacts.

The legislature recognizes that higher concentrations of carbon dioxide in the earth's atmosphere will persist and will take over 1,000 years to be incorporated into the ocean and land ecosystems. Warmer and wetter conditions on land will assist in developing more robust farming and forest ecosystems. Longer growing seasons will allow more effective adaptive measures in farming and forestry to increase the carbon capture capacity of the terrestrial environment. The legislature can provide permanent funding for the forest health initiative and invest in new and innovative mills to create a forest products industry that utilizes the small diameter trees and undergrowth that are choking our forests. These investments will provide strong, long-term incentives to manage forest health and reduce emissions from catastrophic wildfires.

The legislature finds that both urban heat island effect and greenhouse gas emissions are creating impacts on land surface temperatures in Washington. The impact of this new reality requires prioritized public investment to offset the detrimental environmental impacts of deep urbanization and the excess heat absorption of built spaces. Investments in wastewater and stormwater infrastructure will improve water quality in Puget Sound, which is needed to correct the hypoxic condition in Puget Sound, and will result in the reduction of methane and nitrogen oxides emissions and a reduction in greenhouse gases that are less persistent but substantially more potent.

Rainfall patterns will continue to change and will require investments in infrastructure to store and deliver water for irrigated agriculture. High rainfall events west of the Cascade crest will require both storage capacity and green and gray infrastructure investments to protect from catastrophic loss of life and property. These investments must be appropriately coordinated with our Canadian counterparts that share Washington state rivers.

By investing in our naturehood, we provide an opportunity for a significant expansion of outdoor recreation facilities, including additional camping, wildlife and waterfowl habitat viewing, and beaches and trails accessible to urban and suburban population centers.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.65 RCW to read as follows:

The outdoor recreation and climate adaptation account is created in the state treasury. The account must receive moneys distributed to the account from the climate investment account created in RCW 70A.65.250. Moneys in the account may be spent only after appropriation. Expenditures from the account are intended to enhance outdoor recreation and to contribute to climate change adaptation by investing in forest health, drought resilience, flood risk mitigation, and Puget Sound recovery and water quality. The criteria of RCW 70A.65.250(1)(b) apply to expenditures from the outdoor recreation and climate adaptation account. Moneys in the account must be used for the following purposes:

(1) Forest health investments that contribute to climate change adaptation. Funding under this subsection must be used:

(a) To address long-term forest health and the reduction of wildfire dangers. In recognition of the significant greenhouse gas emissions from wildfires as calculated by the department of natural resources consistent with RCW 70A.45.020, and the statewide air quality impacts associated with wildfires, the state treasurer must transfer a total of $125,000,000 each biennium, provided such sums are available in the account, in installments of $15,625,000 on July 1st, October 1st, January 1st, and April 1st of each year, from the account created in this section into the wildfire response, forest restoration, and community resilience account established in RCW 76.04.511 to carry out the purposes of chapter 298, Laws of 2021;

(b) For grants and loans to small forestland owners for activities that increase carbon sequestration;

(c) For purposes of the forestry riparian easement program. It is the intent of the legislature that not less than $10,000,000 be expended each biennium for the forestry riparian easement program created in chapter 76.13 RCW or for riparian easement projects funded under the agricultural conservation easements program established under RCW 89.08.530, or similar riparian enhancement programs;

(d) For the purposes of the family forest fish passage program, created pursuant to RCW 76.13.150; or

(e) To provide grants under a new grant program that invests in the institutions and infrastructure that make timber and farming towns sustainable and vibrant. The new grant program must be administered by the community economic revitalization board;

(2) Drought resilience investments that contribute to climate change adaptation. Funding under this subsection must be transferred to the state drought preparedness and response account established in RCW 43.83B.430;

(3) Flood risk mitigation investments that contribute to climate change adaptation. Funding under this subsection must be used to:

(a) Reduce flood damage and improve aquatic species' habitat in the basins most at risk of catastrophic flooding;

(b) Fund established flood control authorities to improve floodplains and flood protection infrastructure; or

(c) Fund sustainable water supply projects that will secure the agricultural industry against the risks of a changing climate;

(4) Puget Sound water quality investments, including assistance to regulated entities for upgrading pollution controls required by state permits;

(5) Outdoor recreation enhancement and amenities, including the support and expansion of state and local outdoor recreation programs, activities, and infrastructure funded through the state parks and recreation commission, department of fish and wildlife, department of natural resources, and the recreation and conservation office;

(6) Grants to support marinas in compliance with the environment protecting measures in aquatic lands or water quality permits;

(7) Grants for the replacement or addition of buoys at locations that appropriately balance environmental protection and the needs of on-water recreation;

(8) Grants to improve equitable access to local trails and connectivity of local trails to parks and regional trail networks;

(9) Stormwater investments that are helpful to salmon survival;

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

(11) Decarbonization of medium and heavy duty vehicles in a technology-neutral way. The legislature intends to dedicate at least $50,000,000 per biennium from the account created in this section for the purposes of this subsection.

**Sec.**  RCW 70A.65.030 and 2022 c 182 s 104 and 2022 c 181 s 13 are each reenacted and amended to read as follows:

(1) Each year or biennium, as appropriate, when allocating funds from the carbon emissions reduction account created in RCW 70A.65.240, the ((~~climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270~~)) outdoor recreation and climate adaptation account created in section 2 of this act, the climate investment account created in RCW 70A.65.250, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, or the climate active transportation account created in RCW 46.68.490, or administering grants or programs funded by the accounts, agencies shall conduct an environmental justice assessment consistent with the requirements of RCW 70A.02.060 and establish a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities through: (a) The direct reduction of environmental burdens in overburdened communities; (b) the reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change; (c) the support of community led project development, planning, and participation costs; or (d) meeting a community need identified by the community that is consistent with the intent of this chapter or RCW 70A.02.010.

(2) The allocation of funding under subsection (1) of this section must adhere to the following principles, additional to the requirements of RCW 70A.02.080: (a) Benefits and programs should be directed to areas and targeted to vulnerable populations and overburdened communities to reduce statewide disparities; (b) investments and benefits should be made roughly proportional to the health disparities that a specific community experiences, with a goal of eliminating the disparities; (c) investments and programs should focus on creating environmental benefits, including eliminating health burdens, creating community and population resilience, and raising the quality of life of those in the community; and (d) efforts should be made to balance investments and benefits across the state and within counties, local jurisdictions, and unincorporated areas as appropriate to reduce disparities by location and to ensure efforts contribute to a reduction in disparities that exist based on race or ethnicity, socioeconomic status, or other factors.

(3) State agencies allocating funds or administering grants or programs from the carbon emissions reduction account created in RCW 70A.65.240, the ((~~climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270~~)) outdoor recreation and climate adaptation account created in section 2 of this act, the climate investment account created in RCW 70A.65.250, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, or the climate active transportation account created in RCW 46.68.490, must:

(a) Report annually to the environmental justice council created in RCW 70A.02.110 regarding progress toward meeting environmental justice and environmental health goals;

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

(c)(i) If the agency is not a covered agency subject to the requirements of chapter 70A.02 RCW, create and adopt a community engagement plan to describe how it will engage with overburdened communities and vulnerable populations in allocating funds or administering grants or programs from the climate investment account.

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

**Sec.**  RCW 70A.65.040 and 2022 c 182 s 105 and 2022 c 181 s 14 are each reenacted and amended to read as follows:

(1) The environmental justice council created in RCW 70A.02.110 must provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in RCW 70A.65.060 through 70A.65.210, and the programs funded from the carbon emissions reduction account created in RCW 70A.65.240, the ((~~climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270~~)) outdoor recreation and climate adaptation account created in section 2 of this act, the climate investment account created in RCW 70A.65.250, the climate transit programs account created in RCW 46.68.500, and the climate active transportation account created in RCW 46.68.490.

(2) In addition to the duties and authorities granted in chapter 70A.02 RCW to the environmental justice council, the environmental justice council must:

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

(i) The program established in RCW 70A.65.060 through 70A.65.210 including, but not limited to, linkage with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries under RCW 70A.65.110, and administration of allowances under the program; and

(ii) Investment plans and funding proposals for the programs funded from the climate investment account created in RCW 70A.65.250 for the purpose of providing environmental benefits and reducing environmental health disparities within overburdened communities;

(b) Provide a forum to analyze policies adopted under this chapter to determine if the policies lead to improvements within overburdened communities;

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

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

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

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

(g) Provide recommendations to implementing agencies for meaningful consultation with vulnerable populations, including community engagement plans under RCW 70A.65.020 and 70A.65.030; and

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

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

**Sec.**  RCW 70A.65.230 and 2022 c 182 s 426 and 2022 c 181 s 8 are each reenacted and amended to read as follows:

(1) It is the intent of the legislature that each year the total investments made through the carbon emissions reduction account created in RCW 70A.65.240, the ((~~climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270~~)) outdoor recreation and climate adaptation account created in section 2 of this act, the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in RCW 46.68.500, and the climate active transportation account created in RCW 46.68.490, achieve the following:

(a) A minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified under chapter 70A.02 RCW; and

(b) In addition to the requirements of (a) of this subsection, a minimum of not less than 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe. An investment that meets the requirements of both this subsection (1)(b) and (a) of this subsection may count toward the minimum percentage targets for both subsections.

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

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

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

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

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

(4) The state must develop a process by which to evaluate the impacts of the investments made under this chapter, work across state agencies to develop and track priorities across the different eligible funding categories, and work with the environmental justice council pursuant to RCW 70A.65.040.

**Sec.**  RCW 70A.65.250 and 2022 c 253 s 2 are each amended to read as follows:

(1)(a) The climate investment account is created in the state treasury. Except as otherwise provided in chapter 316, Laws of 2021, all receipts from the auction of allowances authorized in this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation.

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

(2) Moneys in the account may be used only for projects and programs that achieve the purposes of the greenhouse gas emissions cap and invest program established under this chapter and for tribal capacity grants under RCW 70A.65.305. Moneys in the account as described in this subsection must first be appropriated for the administration of the requirements of this chapter, in an amount not to exceed five percent of the total receipt of funds from allowance auction proceeds under this chapter. Beginning July 1, 2024, and annually thereafter, the state treasurer shall distribute funds in the account that exceed the amounts appropriated for the purposes of this subsection (2) ((~~as follows:~~

~~(a) Seventy-five percent of the moneys to the climate commitment account created in RCW 70A.65.260; and~~

~~(b) Twenty-five percent of the moneys to the natural climate solutions account created in RCW 70A.65.270.~~

~~(3) The allocations specified in subsection (2)(a) and (b) of this section must be reviewed by the legislature on a biennial basis based on the changing needs of the state in meeting its clean economy and greenhouse gas reduction goals in a timely, economically advantageous, and equitable manner~~)) to the outdoor recreation and climate adaptation account created in section 2 of this act.

**Sec.**  RCW 70A.65.305 and 2022 c 253 s 1 are each amended to read as follows:

(1) Agencies that allocate funding or administer grant programs appropriated from the climate investment account created in RCW 70A.65.250((~~, the climate commitment account created in RCW 70A.65.260, and the natural climate solutions account created in RCW 70A.65.270~~)) and the outdoor recreation and climate adaptation account created in section 2 of this act must offer early, meaningful, and individual consultation with any affected federally recognized tribe on all funding decisions and funding programs that may impact tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by federal or state law, or by a federal or state agency, including the requirements of Executive Order 21-02 related to archaeological and cultural resources, and regardless of whether the agency receives a request for consultation from a federally recognized tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the funding decisions and funding programs, assess their effects, and seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights.

(2) At the earliest possible date prior to submittal of an application, applicants for funding from the accounts created in RCW 70A.65.250((~~, 70A.65.260, and 70A.65.270~~)) and section 2 of this act shall engage in a preapplication process with all affected federally recognized tribes within the project area.

(a) The preapplication process must include the applicant notifying the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized tribes within the project area. The notification must include geographical location, detailed scope of the proposed project, preliminary application details available to federal, state, or local governmental jurisdictions, and all publicly available materials, including public funding sources.

(b) The applicant must also offer to discuss the project with the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized tribes within the project area. Discussions may include the project's impact to tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order.

(c) All affected federally recognized tribes may submit to the appropriate agency or agencies a summary of tribal issues, questions, concerns, or other statements regarding the project, which must become part of the official application file. The summary does not limit what issues affected federally recognized tribes may raise in the consultation process identified in subsections (1), (3) through (7), and (9) of this section.

(d) The notification and offer to initiate discussion must be documented with the application when it is filed, and a copy of the application must be delivered to the department of archaeology and historic preservation, the department of fish and wildlife, and to the affected federally recognized tribe or tribes. If the discussions pursuant to (b) of this subsection do not occur, the applicant must document the reason why the discussion or discussions did not occur.

(e) Nothing in this section may be interpreted to require the disclosure of information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966. Any information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966, shall not become part of the official application file.

(3) If any funding decision, program, project, or activity that may impact tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved by federal treaty, statute, or executive order is funded from the accounts created in RCW 70A.65.250((~~, 70A.65.260, and 70A.65.270~~)) and section 2 of this act without such a consultation with an affected federally recognized tribe, the affected federally recognized tribe may request that all further action on the decision, program, project, or activity cease until meaningful consultation is completed. Upon receipt of such a request by an agency or agencies with the authority to allocate funding or administer grant programs from the accounts listed in subsection (1) of this section in support of the proposed project, further action by the agency or agencies on any decision, program, project, or activity that would result in significant physical disturbance of the tribal resource or resources described in this subsection must cease until the consultation has been completed.

(4) Upon completion of agency and tribal consultation, an affected federally recognized tribe may request a formal review of the consultation by submitting a request to the governor's office of Indian affairs and notifying the appropriate agencies and the department of archaeology and historic preservation. The state agencies and tribe must meet to initiate discussion within no more than 20 days of the request. This consultation must be offered and conducted separately with each affected federally recognized tribe, unless the tribes agree to conduct a joint consultation with the state.

(5) After the state agencies and tribe or tribes have conducted a formal review under subsection (4) of this section, an affected federally recognized tribe or state agency may request that the governor and an elected tribal leader or leaders of a federally recognized tribal government meet to formally consider the recommendations from the parties. If requested, this meeting must occur within 30 days of the request, except that a federally recognized tribe may choose to opt out of the meeting. This timeline may be extended by mutual agreement between the governor and the tribal leaders.

(6) After the meeting identified in subsection (5) of this section has occurred, the governor or an elected tribal leader of a federally recognized tribe may call for the state and tribe or tribes to enter into formal mediation, except that a federally recognized tribe may choose to opt out of the mediation. If entered into, the mediation must be conducted as a government-to-government proceeding, with each sovereign government retaining their right to a final decision that meets their separate obligations and interests. Mediators must be jointly selected by the parties to the mediation. An agreement between the governor and a tribal leader or leaders resulting from the mediation is formally recognized and binding on the signatory parties. Absent an agreement, participation in mediation does not preclude any additional steps that any party can initiate, including legal review, to resolve a continuing disagreement.

(7) During the proceedings outlined in subsections (4) through (6) of this section, the agency or agencies with the authority to allocate funding or administer grant programs from the accounts listed in subsection (1) of this section in support of the proposed project may not approve or release funding, or make other formal decisions, including permitting, that advance the proposed project except where required by law.

(8) By June 30, 2023, the governor's office of Indian affairs, in coordination with the department of archaeology and historic preservation and federally recognized tribes, shall develop a state agency tribal consultation process, including best practices for early, meaningful, and effective consultation, early notification and engagement by applicants with federally recognized tribes as a part of the preapplication process in subsection (2) of this section, and protocols for communication and collaboration with federally recognized tribes. The consultation process developed under this section must be periodically reviewed and updated in coordination with federally recognized tribes. The governor's office of Indian affairs must provide training and other technical assistance to state agencies, as they implement the required consultation. Notwithstanding the governor's office of Indian affairs' ongoing work pursuant to this subsection, the provisions of subsections (1) through (7) and (9) of this section become effective as of June 9, 2022.

(9) The requirements of this section apply to local governments that receive funding from the accounts created in RCW 70A.65.250((~~, 70A.65.260, and 70A.65.270,~~)) and section 2 of this act where that funding is disbursed to project and program applicants. Where requested, the governor's office of Indian affairs must provide training and other technical assistance to local government agencies as they implement the consultation requirements of this section.

(10) Any agency subject to or implementing this section may adopt rules in furtherance of its duties under this section.

(11) Subject to the availability of amounts appropriated for this specific purpose, the department must establish a tribal capacity grant program to provide funding to federally recognized tribes for the costs of implementing this section.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 70A.65.260 (Climate commitment account) and 2022 c 179 s 17 & 2021 c 316 s 29; and

(2) RCW 70A.65.270 (Natural climate solutions account) and 2021 c 316 s 30.

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