

1 Strike everything after the enacting clause and insert the  
2 following:

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

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. Meeting these limits will require coordinated, comprehensive,  
20 and multisectoral implementation of policies, programs, and laws, as  
21 currently enacted systems approaches are insufficient to meet the  
22 limits.

23 (3) The legislature further finds that while climate change is a  
24 global problem, there are communities that have historically borne  
25 the disproportionate impacts of environmental burdens and that now  
26 bear the disproportionate negative impacts of climate change.  
27 Although the state has done significant work in the past to highlight  
28 these environmental health disparities, beginning with senator Rosa  
29 Franklin's environmental equity study, and continuing through the  
30 work of the governor's interagency council on health disparities, the  
31 creation of the Washington environmental health disparities map, and  
32 recommendations of the environmental justice task force, the state

1 can do much more to ensure that state programs address environmental  
2 equity.

3 (4) The legislature further finds that while enacted carbon  
4 policies can be well-intended to reduce greenhouse gas emissions and  
5 provide environmental benefits to communities, the policies may not  
6 do enough to ensure environmental health disparities are reduced and  
7 environmental benefits are provided to those communities most  
8 impacted by environmental harms from greenhouse gas and air pollutant  
9 emissions.

10 (5) The legislature further finds that wildfires have become one  
11 of the largest sources of black carbon in the last five years. From  
12 2014 through 2018, wildfires in Washington state generated 39,200,000  
13 metric tons of carbon, the equivalent of more than 8,500,000 cars on  
14 the road a year. In 2015, when 1,130,000 acres burned in Washington,  
15 wildfires were the second largest source of greenhouse gas emissions  
16 releasing 17,975,112 metric tons of carbon dioxide into the  
17 atmosphere. Wildfire pollution affects all Washingtonians, but has  
18 disproportionate health effects on low-income communities,  
19 communities of color, and the most vulnerable of our population.  
20 Restoring the health of our forests and investing in wildfire  
21 prevention and preparedness will therefore contribute to improved air  
22 quality and improved public health outcomes.

23 (6) 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 climate policies must be  
32 appropriately designed, in order to avoid leakage that results in net  
33 increases in global greenhouse gas emissions and increased negative  
34 impacts to those communities most impacted by environmental harms  
35 from climate change. The legislature further intends to encourage  
36 these industries to continue to innovate, find new ways to be more  
37 energy efficient, use lower carbon products, and be positioned to be  
38 global leaders in a low carbon economy.

39 (7) Under the program, the legislature intends to identify  
40 overburdened communities where the highest concentrations of criteria

1 pollutants occur, determine the sources of those emissions and  
2 pollutants, and pursue significant reductions of emissions and  
3 pollutants in those communities. The legislature further intends for  
4 the department of ecology to conduct an environmental justice  
5 assessment to ensure that funds and programs created under this  
6 chapter provide direct and meaningful benefits to vulnerable  
7 populations and overburdened communities. Additionally, the  
8 legislature intends to prevent job loss and provide protective  
9 measures for workers adversely impacted by the transition to a clean  
10 energy economy through transition and assistance programs, worker-  
11 support projects, and workforce development and other activities  
12 designed to grow and expand the clean manufacturing sector in  
13 communities across Washington state. The legislature further intends  
14 to empower the environmental justice council established under RCW  
15 70A.---.--- (section 20, chapter . . ., Laws of 2021 (Engrossed  
16 Second Substitute Senate Bill No. 5141)) to provide recommendations  
17 for the development and implementation of the program, the  
18 distribution of funds, and the establishment of programs, activities,  
19 and projects to achieve environmental justice and environmental  
20 health goals. The legislature further intends for the department of  
21 ecology to create and adopt community engagement plans and tribal  
22 consultation frameworks in the administration of the program to  
23 ensure equitable practices for meaningful community and federally  
24 recognized tribal involvement. Finally, the legislature intends to  
25 establish this program to contribute to a healthy environment for all  
26 of Washington's communities.

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

30 (1) "Allowance" means an authorization to emit up to one metric  
31 ton of carbon dioxide equivalent.

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

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

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

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

14 (6) "Auction floor price" means a price for allowances below  
15 which bids at auction are not eligible to be accepted.

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

20 (8) "Balancing authority" means the responsible entity that  
21 integrates resource plans ahead of time, maintains load-interchange-  
22 generation balance within a balancing authority area, and supports  
23 interconnection frequency in real time.

24 (9) "Balancing authority area" means the collection of  
25 generation, transmission, and load within the metered boundaries of a  
26 balancing authority. A balancing authority maintains load-resource  
27 balance within this area.

28 (10) "Biomass" means nonfossilized and biodegradable organic  
29 material originating from plants, animals, and microorganisms,  
30 including products, by-products, residues, and waste from  
31 agriculture, forestry, and related industries as well as the  
32 nonfossilized and biodegradable organic fractions of industrial  
33 waste, including gases and liquids recovered from the decomposition  
34 of nonfossilized and biodegradable organic material.

35 (11) "Biomass-derived fuels," "biomass fuels," or "biofuels"  
36 means fuels derived from biomass that have at least 40 percent lower  
37 greenhouse gas emissions based on a full life-cycle analysis when  
38 compared to petroleum fuels for which biofuels are capable as serving  
39 as a substitute.

1 (12) "Carbon dioxide equivalents" means a measure used to compare  
2 the emissions from various greenhouse gases based on their global  
3 warming potential.

4 (13) "Carbon dioxide removal" means deliberate human activities  
5 removing carbon dioxide from the atmosphere and durably storing it in  
6 geological, terrestrial, or ocean reservoirs, or in products. "Carbon  
7 dioxide removal" includes existing and potential anthropogenic  
8 enhancement of biological or geochemical sinks and including, but not  
9 limited to, carbon mineralization, direct air capture and storage,  
10 and carbon mineralization.

11 (14) "Climate commitment" means the process and mechanisms to  
12 ensure a coordinated and strategic approach to advancing climate  
13 resilience and environmental justice and achieving an equitable and  
14 inclusive transition to a carbon neutral economy.

15 (15) "Climate resilience" is the ongoing process of anticipating,  
16 preparing for, and adapting to changes in climate and minimizing  
17 negative impacts to our natural systems, infrastructure, and  
18 communities. For natural systems, increasing climate resilience  
19 involves restoring and increasing the health, function, and integrity  
20 of our ecosystems and improving their ability to absorb and recover  
21 from climate-affected disturbances. For communities, increasing  
22 climate resilience means enhancing their ability to understand,  
23 prevent, adapt, and recover from climate impacts to people and  
24 infrastructure.

25 (16) "Closed facility" means a facility at which the current  
26 owner or operator has elected to permanently stop production and will  
27 no longer be an emissions source.

28 (17) "Compliance instrument" means an allowance or offset credit  
29 issued by the department or by an external greenhouse gas emissions  
30 trading program to which Washington has linked its greenhouse gas  
31 emissions cap and invest program. One compliance instrument is equal  
32 to one metric ton of carbon dioxide equivalent.

33 (18) "Compliance obligation" means the requirement to submit to  
34 the department the number of compliance instruments equivalent to a  
35 covered or opt-in entity's covered emissions during the compliance  
36 period.

37 (19) "Compliance period" means the four-year period for which the  
38 compliance obligation is calculated for covered entities.

39 (20) "Cost burden" means the impact on rates or charges to  
40 customers of electric utilities in Washington state for the

1 incremental cost of electricity service to serve load due to the  
2 compliance cost for greenhouse gas emissions caused by the program.  
3 Cost burden includes administrative costs from the utility's  
4 participation in the program.

5 (21) "Covered emissions" means the emissions for which a covered  
6 entity has a compliance obligation under section 10 of this act.

7 (22) "Covered entity" means a person that is designated by the  
8 department as subject to sections 8 through 24 of this act.

9 (23) "Cumulative environmental health impact" has the same  
10 meaning as provided in RCW 70A.---.--- (section 2, chapter . . . ,  
11 Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

12 (24) "Curtailed facility" means a facility at which the owner or  
13 operator has temporarily suspended production but for which the owner  
14 or operator maintains operating permits and retains the option to  
15 resume production if conditions become amenable.

16 (25) "Department" means the department of ecology.

17 (26) "Electricity importer" means:

18 (a) For electricity that is scheduled with a NERC e-tag to a  
19 final point of delivery into a balancing authority area located  
20 entirely within the state of Washington, the electricity importer is  
21 identified on the NERC e-tag as the purchasing-selling entity on the  
22 last segment of the tag's physical path with the point of receipt  
23 located outside the state of Washington and the point of delivery  
24 located inside the state of Washington;

25 (b) For facilities physically located outside the state of  
26 Washington with the first point of interconnection to a balancing  
27 authority area located entirely within the state of Washington when  
28 the electricity is not scheduled on a NERC e-tag, the electricity  
29 importer is the facility operator or owner;

30 (c) For electricity imported through a centralized market, the  
31 electricity importer will be defined by rule consistent with the  
32 rules required under section 10(1)(c) of this act;

33 (d) For electricity from facilities allocated to serve retail  
34 electricity customers of a multijurisdictional electric company, the  
35 electricity importer is the multijurisdictional electric company;

36 (e) If the importer identified under (a) of this subsection is a  
37 federal power marketing administration over which the state of  
38 Washington does not have jurisdiction, and the federal power  
39 marketing administration has not voluntarily elected to comply with  
40 the program, then the electricity importer is the next purchasing-

1 selling entity in the physical path on the NERC e-tag, or if no  
2 additional purchasing-selling entity over which the state of  
3 Washington has jurisdiction, then the electricity importer is the  
4 electric utility that operates the Washington transmission or  
5 distribution system, or the generation balancing authority;

6 (f) For electricity that is imported into the state by a federal  
7 power marketing administration and sold to a public body or  
8 cooperative customer or direct service industrial customer located in  
9 Washington pursuant to section 5(b) or (d) of the Pacific Northwest  
10 electric power planning and conservation act of 1980, P.L. 96-501,  
11 the electricity importer is the federal marketing administration;

12 (g) If the importer identified under (f) of this subsection has  
13 not voluntarily elected to comply with the program, then the  
14 electricity importer is the public body or cooperative customer or  
15 direct service industrial customer; or

16 (h) For electricity from facilities allocated to a consumer-owned  
17 utility inside the state of Washington from a multijurisdictional  
18 consumer-owned utility, the electricity importer is the consumer-  
19 owned utility inside the state of Washington.

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

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

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

31 (30) "Environmental benefits" has the same meaning as defined in  
32 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
33 Second Substitute Senate Bill No. 5141)).

34 (31) "Environmental harm" has the same meaning as defined in RCW  
35 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
36 Substitute Senate Bill No. 5141)).

37 (32) "Environmental impacts" has the same meaning as defined in  
38 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
39 Second Substitute Senate Bill No. 5141)).

1 (33) "Environmental justice" has the same meaning as defined in  
2 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
3 Second Substitute Senate Bill No. 5141)).

4 (34) "Environmental justice assessment" has the same meaning as  
5 identified in RCW 70A.---.--- (section 14, chapter . . ., Laws of  
6 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

7 (35) "External greenhouse gas emissions trading program" means a  
8 government program, other than Washington's program created in this  
9 chapter, that restricts greenhouse gas emissions from sources outside  
10 of Washington and that allows emissions trading.

11 (36) "Facility" means any physical property, plant, building,  
12 structure, source, or stationary equipment located on one or more  
13 contiguous or adjacent properties in actual physical contact or  
14 separated solely by a public roadway or other public right-of-way and  
15 under common ownership or common control, that emits or may emit any  
16 greenhouse gas.

17 (37) "First jurisdictional deliverer" means the owner or operator  
18 of an electric generating facility in Washington or an electricity  
19 importer.

20 (38) "General market participant" means a registered entity that  
21 is not identified as a covered entity or an opt-in entity that is  
22 registered in the program registry and intends to purchase, hold,  
23 sell, or voluntarily retire compliance instruments.

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

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

27 (41) "Imported electricity" means electricity generated outside  
28 the state of Washington with a final point of delivery within the  
29 state.

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

32 (b) "Imported electricity" includes imports from linked  
33 jurisdictions, but such imports shall be construed as having no  
34 emissions.

35 (c) Electricity from a system that is marketed by a federal power  
36 marketing administration shall be construed as "imported  
37 electricity," not electricity generated in the state of Washington.

38 (d) "Imported electricity" does not include electricity imports  
39 of unspecified electricity that are netted by exports of unspecified



1 electricity to any jurisdiction not covered by a linked program by  
2 the same entity within the same hour.

3 (e) For a multijurisdictional electric company, "imported  
4 electricity" means electricity, other than from in-state facilities,  
5 that contributes to a common system power pool. Where a  
6 multijurisdictional electric company has a cost allocation  
7 methodology approved by the utilities and transportation commission,  
8 the allocation of specific facilities to Washington's retail load  
9 will be in accordance with that methodology.

10 (f) For a multijurisdictional consumer-owned utility, "imported  
11 electricity" includes electricity from facilities that contribute to  
12 a common system power pool that are allocated to a consumer-owned  
13 utility inside the state of Washington pursuant to a methodology  
14 approved by the governing board of the consumer-owned utility.

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

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

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

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

32 (46) "Multijurisdictional consumer-owned utility" means a  
33 consumer-owned utility that provides electricity to member owners in  
34 Washington and in one or more other states in a contiguous service  
35 territory or from a common power system.

36 (47) "Multijurisdictional electric company" means an investor-  
37 owned utility that provides electricity to customers in Washington  
38 and in one or more other states in a contiguous service territory or  
39 from a common power system.

1 (48) "NERC e-tag" means North American electric reliability  
2 corporation (NERC) energy tag representing transactions on the North  
3 American bulk electricity market scheduled to flow between or across  
4 balancing authority areas.

5 (49) "Offset credit" means a tradable compliance instrument that  
6 represents an emissions reduction or emissions removal of one metric  
7 ton of carbon dioxide equivalent.

8 (50) "Offset project" means a project that reduces or removes  
9 greenhouse gases that are not covered emissions under this chapter.

10 (51) "Offset protocols" means a set of procedures and standards  
11 to quantify greenhouse gas reductions or greenhouse gas removals  
12 achieved by an offset project.

13 (52) "Overburdened community" means a geographic area where  
14 vulnerable populations face combined, multiple environmental harms  
15 and health impacts or risks due to exposure to environmental  
16 pollutants or contaminants through multiple pathways, which may  
17 result in significant disparate adverse health outcomes or effects.  
18 "Overburdened community" includes, but is not limited to:

19 (a) Highly impacted communities as defined in RCW 19.405.020;

20 (b) Communities located in census tracts that are fully or  
21 partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

22 (c) Populations, including Native Americans or immigrant  
23 populations, who may be exposed to environmental contaminants and  
24 pollutants outside of the geographic area in which they reside based  
25 on the populations' use of traditional or cultural foods and  
26 practices, such as the use of resources, access to which is protected  
27 under treaty rights in ceded areas, when those exposures in  
28 conjunction with other exposures may result in disproportionately  
29 greater risks, including risks of certain cancers or other adverse  
30 health effects and outcomes.

31 (53) "Person" has the same meaning as defined in RCW  
32 70A.15.2200(5)(h)(iii).

33 (54) "Point of delivery" means a point on the electricity  
34 transmission or distribution system where a deliverer makes  
35 electricity available to a receiver, or available to serve load. This  
36 point may be an interconnection with another system or a substation  
37 where the transmission provider's transmission and distribution  
38 systems are connected to another system, or a distribution substation  
39 where electricity is imported into the state over a  
40 multijurisdictional retail provider's distribution system.

1 (55) "Price ceiling unit" means the units issued at a fixed price  
2 by the department for the purpose of limiting price increases and  
3 funding further investments in greenhouse gas reductions.

4 (56) "Program" means the greenhouse gas emissions cap and invest  
5 program created by and implemented pursuant to this chapter.

6 (57) "Program registry" means the data system in which covered  
7 entities, opt-in entities, and general market participants are  
8 registered and in which compliance instruments are recorded and  
9 tracked.

10 (58) "Registered entity" means a covered entity, opt-in entity,  
11 or general market participant that has completed the process for  
12 registration in the program registry.

13 (59) "Resilience" means the ability to prepare, mitigate and plan  
14 for, withstand, recover from, and more successfully adapt to adverse  
15 events and changing conditions, and reorganize in an equitable manner  
16 that results in a new and better condition.

17 (60) "Retire" means to permanently remove a compliance instrument  
18 such that the compliance instrument may never be sold, traded, or  
19 otherwise used again.

20 (61) "Specified source of electricity" or "specified source"  
21 means a facility, unit, or asset controlling supplier that is  
22 permitted to be claimed as the source of electricity delivered. The  
23 reporting entity must have either full or partial ownership in the  
24 facility or a written power contract to procure electricity generated  
25 by that facility or unit or from an asset controlling supplier at the  
26 time of entry into the transaction to procure electricity.

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

29 (63) "Tribal lands" has the same meaning as defined in RCW  
30 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
31 Substitute Senate Bill No. 5141)).

32 (64) "Unspecified source of electricity" or "unspecified source"  
33 means a source of electricity that is not a specified source at the  
34 time of entry into the transaction to procure electricity.

35 (65) "Voluntary renewable reserve account" means a holding  
36 account maintained by the department from which allowances may be  
37 retired for voluntary renewable electricity generation, which is  
38 directly delivered to the state and has not and will not be sold or  
39 used to meet any other mandatory requirements in the state or any

1 other jurisdiction, on behalf of voluntary renewable energy  
2 purchasers or end users.

3 (66) (a) "Vulnerable populations" has the same meaning as defined  
4 in RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
5 Second Substitute Senate Bill No. 5141)).

6 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE REVIEW. (1) To  
7 ensure that the program created in sections 8 through 24 of this act  
8 achieves reductions in criteria pollutants as well as greenhouse gas  
9 emissions in overburdened communities highly impacted by air  
10 pollution, the department must:

11 (a) Identify overburdened communities, consistent with the  
12 requirements of chapter . . ., Laws of 2021 (Engrossed Second  
13 Substitute Senate Bill No. 5141);

14 (b) Deploy an air monitoring network in overburdened communities  
15 to collect sufficient air quality data for the 2023 review and  
16 subsequent reviews of criteria pollutant reductions conducted under  
17 subsection (2) of this section; and

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

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

27 (2) (a) Beginning in 2023, and every two years thereafter, the  
28 department must conduct a review to determine levels of criteria  
29 pollutants, as well as greenhouse gas emissions, in the overburdened  
30 communities identified under subsection (1) of this section. This  
31 review must also include an evaluation of initial and subsequent  
32 health impacts related to criteria pollution in overburdened  
33 communities. The department may conduct this evaluation jointly with  
34 the department of health.

35 (b) Once this review determines the levels of criteria pollutants  
36 in an identified overburdened community, then the department, in  
37 consultation with local air pollution control authorities, must  
38 establish air quality targets to achieve air quality consistent with  
39 neighboring communities that are not identified as overburdened;

1 identify the sources that are the contributors of those emissions  
2 that are either increasing or not decreasing; and achieve the  
3 reduction targets through adoption of emission control strategies or  
4 other methods, and the department must:

5 (i) Adopt, along with local air pollution control authorities,  
6 stricter air quality standards, emission standards, or emissions  
7 limitations on criteria pollutants, consistent with the authority of  
8 the department provided under RCW 70A.15.3000, and may consider  
9 alternative mitigation actions that would reduce criteria pollution  
10 by similar amounts; and

11 (ii) After adoption of the stricter air quality standards,  
12 emission standards, or emissions limitations on criteria pollutants,  
13 issue an enforceable order or the local air authority must issue an  
14 enforceable order, as authorized under chapter 70A.15 RCW, as  
15 necessary to comply with the stricter standards or limitations and  
16 the requirements of this section. The department or local air  
17 authority must initiate the process, including provision of notice to  
18 all relevant affected permittees or registered sources and to the  
19 public, to adopt and implement an enforceable order required under  
20 this subsection within six months of the adoption of standards or  
21 limitations under (b) (i) of this subsection;

22 (c) Actions imposed under this section may not impose  
23 requirements on a permitted stationary source that are  
24 disproportionate to the permitted stationary source's contribution to  
25 air pollution compared to other nonpermitted sources of criteria  
26 pollutants in the overburdened community.

27 (3) (a) The department must create and adopt a supplement to the  
28 department's community engagement plan developed pursuant to  
29 chapter . . . , Laws of 2021 (Engrossed Second Substitute Senate Bill  
30 No. 5141). The supplement must describe how the department will  
31 engage with overburdened communities and vulnerable populations in:

32 (i) Identifying emitters in overburdened communities; and

33 (ii) Monitoring and evaluating criteria pollutant emissions in  
34 those areas.

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

38 NEW SECTION. **Sec. 4.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1) When  
39 allocating funds from the carbon emissions reduction account created

1 in section 27 of this act, the climate investment account created in  
2 section 28 of this act, or the air quality and health disparities  
3 improvement account created in section 31 of this act, or  
4 administering grants or programs funded by the accounts, agencies  
5 shall conduct an environmental justice assessment consistent with the  
6 requirements of RCW 70A.---.--- (section 14, chapter . . ., Laws of  
7 2021 (Engrossed Second Substitute Senate Bill No. 5141)) and  
8 establish a minimum of not less than 35 percent and a goal of 40  
9 percent of total investments that provide direct and meaningful  
10 benefits to vulnerable populations within the boundaries of  
11 overburdened communities identified under chapter . . ., Laws of 2021  
12 (Engrossed Second Substitute Senate Bill No. 5141) through: (a) The  
13 direct reduction of environmental burdens in overburdened  
14 communities; (b) the reduction of disproportionate, cumulative risk  
15 from environmental burdens, including those associated with climate  
16 change; (c) the support of community led project development,  
17 planning, and participation costs; or (d) meeting a community need  
18 identified by the community that is consistent with the intent of  
19 this chapter.

20 (2) The allocation of funding under subsection (1) of this  
21 section must adhere to the following principles, additional to the  
22 requirements of RCW 70A.---.--- (section 16, chapter . . ., Laws of  
23 2021 (Engrossed Second Substitute Senate Bill No. 5141)): (a)  
24 Benefits and programs should be directed to areas and targeted to  
25 vulnerable populations and overburdened communities to reduce  
26 statewide disparities; (b) investments and benefits should be made  
27 roughly proportional to the health disparities that a specific  
28 community experiences, with a goal of eliminating the disparities;  
29 (c) investments and programs should focus on creating environmental  
30 benefits, including eliminating health burdens, creating community  
31 and population resilience, and raising the quality of life of those  
32 in the community; and (d) efforts should be made to balance  
33 investments and benefits across the state and within counties, local  
34 jurisdictions, and unincorporated areas as appropriate to reduce  
35 disparities by location and to ensure efforts contribute to a  
36 reduction in disparities that exist based on race or ethnicity,  
37 socioeconomic status, or other factors.

38 (3) State agencies allocating funds or administering grants or  
39 programs from the carbon emissions reduction account created in  
40 section 27 of this act, the climate investment account created in

1 section 28 of this act, or the air quality and health disparities  
2 improvement account created in section 31 of this act, must:

3 (a) Report annually to the environmental justice council created  
4 in RCW 70A.---.--- (section 20, chapter . . ., Laws of 2021  
5 (Engrossed Second Substitute Senate Bill No. 5141)) regarding  
6 progress toward meeting environmental justice and environmental  
7 health goals;

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

10 (c)(i) If the agency is not a covered agency subject to the  
11 requirements of chapter . . ., Laws of 2021 (Engrossed Second  
12 Substitute Senate Bill No. 5141), create and adopt a community  
13 engagement plan to describe how it will engage with overburdened  
14 communities and vulnerable populations in allocating funds or  
15 administering grants or programs from the climate investment account.

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

19 NEW SECTION. **Sec. 5.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The  
20 environmental justice council created in RCW 70A.---.--- (section 20,  
21 chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill  
22 No. 5141)) must provide recommendations to the legislature, agencies,  
23 and the governor in the development and implementation of the program  
24 established in sections 8 through 24 of this act, and the programs  
25 funded from the carbon emissions reduction account created in section  
26 27 of this act and from the climate investment account created in  
27 section 28 of this act.

28 (2) In addition to the duties and authorities granted in chapter  
29 70A.--- RCW (the new chapter created in section 22, chapter . . .,  
30 Laws of 2021 (Engrossed Second Substitute Senate Bill No. 5141)) to  
31 the environmental justice council, the environmental justice council  
32 must:

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

35 (i) The program established in sections 8 through 24 of this act  
36 including, but not limited to, linkage with other jurisdictions,  
37 protocols for establishing offset projects and securing offset  
38 credits, designation of emissions-intensive and trade-exposed

1 industries under section 13 of this act, and administration of  
2 allowances under the program; and

3 (ii) Investment plans and funding proposals for the programs  
4 funded from the climate investment account created in section 28 of  
5 this act for the purpose of providing environmental benefits and  
6 reducing environmental health disparities within overburdened  
7 communities identified under chapter 70A.--- RCW (the new chapter  
8 created in section 22, chapter . . ., Laws of 2021 (Engrossed Second  
9 Substitute Senate Bill No. 5141));

10 (b) Provide a forum to analyze policies adopted under this  
11 chapter to determine if the policies lead to improvements within  
12 overburdened communities identified under chapter 70A.--- RCW (the  
13 new chapter created in section 22, chapter . . ., Laws of 2021  
14 (Engrossed Second Substitute Senate Bill No. 5141));

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 6.** TRIBAL CONSULTATION. (1) Agencies that  
36 allocate funding or administer grant programs appropriated from the  
37 climate investment account created in section 28 of this act must  
38 develop a consultation framework in coordination with tribal  
39 governments that includes best practices, protocols for



1 communication, and collaboration with federally recognized tribes.  
2 Under this consultation framework, before allocating funding or  
3 administering grant programs appropriated from the climate investment  
4 account, agencies must offer consultation with federally recognized  
5 tribes on all funding decisions and programs that may impact,  
6 infringe upon, or impair the governmental efforts of federally  
7 recognized tribes to adopt or enforce their own standards governing  
8 or protecting the tribe's resources or other rights and interests in  
9 their tribal lands and lands within which a tribe or tribes possess  
10 rights reserved by treaty. The consultation is independent of any  
11 public participation process required by state law, or by a state  
12 agency, and regardless of whether the agency receives a request for  
13 consultation from a federally recognized tribe.

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

22 (b) A project or activity funded in whole or in part from the  
23 account created in section 28 of this act must be paused or ceased in  
24 the event that an affected federally recognized Indian tribe or the  
25 department of archaeology and historic preservation provides timely  
26 notice of a determination to the department that the project will  
27 adversely impact cultural resources, archaeological sites, or sacred  
28 sites. A project or activity paused at the direction of the  
29 department under this subsection may not be resumed or completed  
30 unless the potentially impacted tribe provides consent to the  
31 department and the proponent of the project or activity.

32 NEW SECTION. **Sec. 7.** GOVERNANCE STRUCTURE. (1) The governor  
33 shall establish a governance structure to implement the state's  
34 climate commitment under the authority provided under this chapter  
35 and other statutory authority to provide accountability for achieving  
36 the state's greenhouse gas limits in RCW 70A.45.020, to establish a  
37 coordinated and strategic statewide approach to climate resilience,  
38 to build an equitable and inclusive clean energy economy, and to  
39 ensure that the government provides clear policy and requirements,

1 financial tools, and other mechanisms to support achieving those  
2 limits.

3 (2) The governance structure for implementing the state's climate  
4 commitment must:

5 (a) Be holistic and address the needs, challenges, and  
6 opportunities to meet the climate commitment;

7 (b) Address emission reductions from all relevant sectors and  
8 sources by ensuring that emitters are responsible for meeting  
9 targeted greenhouse gas reductions and that the government provides  
10 clear policy and requirements, financial tools, and other mechanisms  
11 to support achieving those reductions;

12 (c) Support an equitable transition for vulnerable populations  
13 and overburdened communities, including through early and meaningful  
14 engagement of overburdened communities and workers to ensure the  
15 program achieves equitable and just outcomes;

16 (d) Build increasing climate resilience for at-risk communities  
17 and ecosystems through cross-sectoral coordination, strategic  
18 planning, and cohesive policies; and

19 (e) Apply the most current, accurate, and complete scientific and  
20 technical information available to guide the state's climate actions  
21 and strategies.

22 (3) The governance structure for implementing the state's climate  
23 commitment must include, but not be limited to, the following  
24 elements:

25 (a) A strategic plan for aligning existing law, rules, policies,  
26 programs, and plans with the state's greenhouse gas limits, to the  
27 full extent allowed under existing authority;

28 (b) Common state policies, standards, and procedures for  
29 addressing greenhouse gas emissions and climate resilience, including  
30 grant and funding programs, infrastructure investments, and planning  
31 and siting decisions;

32 (c) A process for prioritizing and coordinating funding  
33 consistent with strategic needs for greenhouse gas reductions, equity  
34 and environmental justice, and climate resilience actions;

35 (d) An updated statewide strategy for addressing climate risks  
36 and improving resilience of communities and ecosystems;

37 (e) A comprehensive community engagement plan that addresses and  
38 mitigates barriers to engagement from vulnerable populations,  
39 overburdened communities, and other historically or currently  
40 marginalized groups; and

1 (f) An analysis of gaps and conflicts in state law and programs,  
2 with recommendations for improvements to state law.

3 (4) The governor's office shall develop policy and budget  
4 recommendations to the legislature necessary to implement the state's  
5 climate commitment by December 31, 2021, in accordance with the  
6 purpose, principles, and elements in subsections (1) through (3) of  
7 this section.

8 (5) Nothing in this section establishes or creates legal  
9 authority for the department or any other state agency to enact,  
10 adopt, issue an order, or in any way implement additional regulatory  
11 programs beyond what is provided for under this chapter and other  
12 statutes.

13 NEW SECTION. **Sec. 8.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In  
14 order to ensure that greenhouse gas emissions are reduced by covered  
15 entities consistent with the limits established in RCW 70A.45.020,  
16 the department must implement a cap on greenhouse gas emissions from  
17 covered entities and a program to track, verify, and enforce  
18 compliance through the use of compliance instruments.

19 (2) The program must consist of:

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

23 (b) Defining those entities covered by the program, and those  
24 entities that may voluntarily opt into coverage under the program, as  
25 provided in this section and sections 9 and 10 of this act;

26 (c) Distribution of emission allowances, as provided in section  
27 12 of this act, and through the allowance price containment  
28 provisions under sections 16 and 17 of this act;

29 (d) Providing for offset credits as a method for meeting a  
30 compliance obligation, pursuant to section 19 of this act;

31 (e) Defining the compliance obligations of covered entities, as  
32 provided in section 22 of this act;

33 (f) Establishing the authority of the department to enforce the  
34 program requirements, as provided in section 23 of this act;

35 (g) Creating a climate investment account for the deposit of  
36 receipts from the distribution of emission allowances, as provided in  
37 section 28 of this act;

1 (h) Providing for the transfer of allowances and recognition of  
2 compliance instruments, including those issued by jurisdictions with  
3 which Washington has linkage agreements;

4 (i) Providing monitoring and oversight of the sale and transfer  
5 of allowances by the department; and

6 (j) Creating a price ceiling and associated mechanisms as  
7 provided in section 18 of this act.

8 (3) The department shall consider opportunities to implement the  
9 program in a manner that allows linking the state's program with  
10 those of other jurisdictions. The department must evaluate whether  
11 such linkage will provide for a more cost-effective means for covered  
12 entities to meet their compliance obligations in Washington while  
13 recognizing the special characteristics of the state's economy,  
14 communities, and industries. The department is authorized to enter  
15 into a linkage agreement with another jurisdiction after formal  
16 notice and opportunity for a public hearing, and when consistent with  
17 the requirements of section 24 of this act.

18 (4) During the 2022 regular legislative session, the department  
19 must bring forth agency request legislation developed in consultation  
20 with emissions-intensive, trade-exposed businesses, covered entities,  
21 environmental advocates, and overburdened communities that outlines a  
22 compliance pathway specific to emissions-intensive, trade-exposed  
23 businesses for achieving their proportionate share of the state's  
24 emissions reduction limits through 2050.

25 NEW SECTION. **Sec. 9.** ANNUAL ALLOWANCE BUDGET AND TIMELINES.

26 (1)(a) The department shall commence the program by January 1, 2023,  
27 by determining an emissions baseline establishing the proportionate  
28 share that the total greenhouse gas emissions of covered entities for  
29 the first compliance period bears to the total anthropogenic  
30 greenhouse gas emissions in the state during 2015 through 2019, based  
31 on data reported to the department under RCW 70A.15.2200 or provided  
32 as required by this chapter, as well as other relevant data. By  
33 October 1, 2022, the department shall adopt annual allowance budgets  
34 for the first compliance period of the program, calendar years 2023  
35 through 2026, to be distributed from January 1, 2023, through  
36 December 31, 2026. If the first compliance period is delayed pursuant  
37 to section 22(7) of this act, the department shall adjust the annual  
38 allowance budgets to reflect a shorter first compliance period.

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

12 (c) By October 1, 2028, the department shall adopt by rule the  
13 annual allowance budgets for calendar years 2031 through 2040.

14 (2) The annual allowance budgets must be set to achieve the share  
15 of reductions by covered entities necessary to achieve the 2030,  
16 2040, and 2050 statewide emissions limits established in RCW  
17 70A.45.020, based on data reported to the department under chapter  
18 70A.15 RCW or provided as required by this chapter. Annual allowance  
19 budgets must be set such that the use of offsets as compliance  
20 instruments, consistent with section 19 of this act, does not prevent  
21 the achievement of the emissions limits established in RCW  
22 70A.45.020. In so setting annual allowance budgets, the department  
23 must reduce the annual allowance budget relative to the limits in an  
24 amount equivalent to offset use, or in accordance with a similar  
25 methodology adopted by the department. The department must adopt  
26 annual allowance budgets for the program on a calendar year basis  
27 that provide for progressively equivalent reductions year over year.  
28 An allowance distributed under the program, either directly by the  
29 department under sections 13 through 15 of this act or through  
30 auctions under section 12 of this act, does not expire and may be  
31 held or banked consistent with sections 12(6) and 17(1) of this act.

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

1 31, 2040, and by December 31, 2045, and make any necessary  
2 adjustments in the annual allowance budgets to ensure that covered  
3 entities achieve their proportionate share of the 2050 emission  
4 reduction limit identified in RCW 70A.45.020. Nothing in this  
5 subsection precludes the department from making additional  
6 adjustments to annual allowance budgets as necessary to ensure  
7 successful achievement of the proportionate emission reduction limits  
8 by covered entities. The department shall determine and make public  
9 the circumstances, metrics, and processes that would initiate the  
10 public consideration of additional allowance budget adjustments to  
11 ensure successful achievement of the emission reduction limits.

12 (4) Data reported to the department under RCW 70A.15.2200 or  
13 provided as required by this chapter for 2015 through 2019 is deemed  
14 sufficient for the purpose of adopting annual allowance budgets and  
15 serving as the baseline by which covered entities demonstrate  
16 compliance under the first compliance period of the program. Data  
17 reported to the department under RCW 70A.15.2200 or provided as  
18 required by this chapter for 2023 through 2025 is deemed sufficient  
19 for adopting annual allowance budgets and serving as the baseline by  
20 which covered entities demonstrate compliance under the second  
21 compliance period of the program.

22 NEW SECTION. **Sec. 10.** PROGRAM COVERAGE. (1) A person is a  
23 covered entity as of the beginning of the first compliance period and  
24 all subsequent compliance periods if the person reported emissions  
25 under RCW 70A.15.2200 for any calendar year from 2015 through 2019,  
26 or if additional data provided as required by this chapter indicates  
27 that emissions for any calendar year from 2015 through 2019 equaled  
28 or exceeded any of the following thresholds, or if the person is a  
29 first jurisdictional deliverer and imports electricity into the state  
30 during the compliance period:

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

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

38 (c) Where the person is a first jurisdictional deliverer  
39 importing electricity into the state and the cumulative annual total

1 of emissions associated with imported electricity from specified or  
2 unspecified sources exceeds 25,000 metric tons of carbon dioxide  
3 equivalent or from an unspecified source. In consultation with any  
4 jurisdiction that is linked to the program created by this chapter,  
5 by October 1, 2026, the department, in consultation with the  
6 department of commerce and the utilities and transportation  
7 commission, shall adopt a methodology for addressing imported  
8 electricity associated with a centralized electricity market;

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

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

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

25 (iii) Where the person is an end-use customer in the state who  
26 directly purchases natural gas from a person that is not a natural  
27 gas company and has the natural gas delivered through an interstate  
28 pipeline to a distribution system owned by the purchaser in amounts  
29 that would result in exceeding 25,000 metric tons of carbon dioxide  
30 equivalent emissions if fully combusted or oxidized, excluding the  
31 amounts: (A) Supplied to covered entities under (a) through (d) of  
32 this subsection; and (B) delivered to opt-in 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, where the person operates a waste to energy facility  
38 utilized by a county and city solid waste management program and the  
39 facility's emissions equal or exceed 25,000 metric tons of carbon  
40 dioxide equivalent.

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

8 (b) Subsection (a) of this subsection does not apply to landfills  
9 that:

10 (i) Capture at least 75 percent of the landfill gas generated by  
11 the decomposition of waste using methods under 40 C.F.R. Part 98,  
12 Subpart HH - Municipal Solid Waste landfills, and subsequent updates;  
13 and

14 (ii) Operate a program, individually or through partnership with  
15 another entity, that results in the production of renewable natural  
16 gas or electricity from landfill gas generated by the facility.

17 (c) It is the intent of the legislature to adopt a greenhouse gas  
18 reduction policy specific to landfills. If such a policy is not  
19 enacted by January 1, 2030, it is the intent of the legislature that  
20 the requirements of this subsection (3) take full effect.

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

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



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

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

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

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

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

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

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

36 (e) (i) Motor vehicle fuel or special fuel that is used  
37 exclusively for agricultural purposes by a farm fuel user. This  
38 exemption is available only if a buyer of motor vehicle fuel or  
39 special fuel provides the seller with an exemption certificate in a  
40 form and manner prescribed by the department. For the purposes of

1 this subsection, "agricultural purposes" and "farm fuel user" have  
2 the same meanings as provided in RCW 82.08.865.

3 (ii) The department must determine a method for expanding the  
4 exemption provided under (i) of this subsection to include fuels used  
5 for the purpose of transporting agricultural products on public  
6 highways. The department must maintain this expanded exemption for a  
7 period of five years, in order to provide the agricultural sector  
8 with a feasible transition period; and

9 (f) Emissions from facilities with North American industry  
10 classification system code 92811 (national security).

11 (8) The department shall not require multiple covered entities to  
12 have a compliance obligation for the same emissions. The department  
13 may by rule authorize refineries, fuel suppliers, facilities using  
14 natural gas, and natural gas utilities to provide by agreement for  
15 the assumption of the compliance obligation for fuel or natural gas  
16 supplied and combusted in the state. The department must be notified  
17 of such an agreement at least 12 months prior to the compliance  
18 obligation period for which the agreement is applicable.

19 (9) (a) The legislature intends to promote a growing and  
20 sustainable economy and to avoid leakage of emissions from  
21 manufacturing to other locations. The legislature further intends to  
22 see innovative new businesses locate and grow in Washington that  
23 contribute to Washington's prosperity and environmental objectives.

24 (b) Consistent with the intent of the legislature to avoid the  
25 leakage of emissions to other jurisdictions, in achieving the state's  
26 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the  
27 limits in a manner that recognizes that the siting and placement of  
28 new best-in-class facilities that facilitate decarbonization is in  
29 the economic and environmental interests of the state of Washington.

30 (c) For new or expanded facilities that require review under  
31 chapter 43.21C RCW and which would result in annual greenhouse gas  
32 emissions in excess of 25,000 metric tons per year, a lead agency  
33 must evaluate the life-cycle greenhouse gas emissions of the  
34 facility, including any potential net cumulative emissions resulting  
35 from the project. The department may adopt rules to determine how to  
36 evaluate net cumulative emissions.

37 (d) A lead agency may determine that compliance with the  
38 requirements of this chapter constitutes mitigation for covered  
39 greenhouse gases from the facilities that have a compliance  
40 obligation under this chapter.

1 (e) A lead agency may determine that inclusion as a covered  
2 entity under this chapter constitutes mitigation of significant  
3 adverse impacts with respect to covered greenhouse gases that have a  
4 compliance obligation under this chapter for a low carbon intensive  
5 facility subject to the requirements of chapter 43.21C RCW.

6 (f) A facility constructed with a new or revised permit after the  
7 effective date of this section must have included in applicable  
8 permits a conditional clause, should this chapter cease to apply to  
9 the facility, to require adherence to a greenhouse gas emissions  
10 performance standard and perform greenhouse gas mitigation consistent  
11 with the limits established under RCW 70A.45.020 as those  
12 requirements existed when the permit was granted.

13 NEW SECTION. **Sec. 11.** REQUIREMENTS. (1) All covered entities  
14 must register to participate in the program, following procedures  
15 adopted by the department by rule.

16 (2) Entities registering to participate in the program must  
17 describe any direct or indirect affiliation with other registered  
18 entities.

19 (3) A person responsible for greenhouse gas emissions that is not  
20 a covered entity may voluntarily participate in the program by  
21 registering as an opt-in entity. An opt-in entity must satisfy the  
22 same registration requirements as covered entities. Once registered,  
23 an opt-in entity is allowed to participate as a covered entity in  
24 auctions and must assume the same compliance obligation to transfer  
25 compliance instruments equal to their emissions at the appointed  
26 transfer dates. An opt-in entity may opt out of the program at the  
27 end of any compliance period by providing written notice to the  
28 department at least six months prior to the end of the compliance  
29 period. The opt-in entity continues to have a compliance obligation  
30 through the current compliance period. An opt-in entity is not  
31 eligible to receive allowances directly distributed under section 13,  
32 14, or 15 of this act.

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

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

1 (6) The department shall use a secure, online electronic tracking  
2 system to: Register entities in the state program; issue compliance  
3 instruments; track ownership of compliance instruments; enable and  
4 record compliance instrument transfers; facilitate program  
5 compliance; and support market oversight.

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

8 (a) A compliance account where the compliance instruments are  
9 transferred to the department for retirement. Compliance instruments  
10 in compliance accounts may not be sold, traded, or otherwise provided  
11 to another account or person.

12 (b) A holding account that is used when a registered entity is  
13 interested in trading allowances. Allowances in holding accounts may  
14 be bought, sold, transferred to another registered entity, or traded.  
15 The amount of allowances a registered entity may have in its holding  
16 account is constrained by the holding limit as determined by the  
17 department by rule. Information about the contents of each holding  
18 account, including but not limited to the number of allowances in the  
19 account, must be displayed on a regularly maintained and searchable  
20 public website established and updated by the department.

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

23 (9) The department shall maintain an account for the purpose of  
24 retiring allowances transferred by registered entities and from the  
25 voluntary renewable reserve account.

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

29 (11) The department shall include a voluntary renewable reserve  
30 account.

31 NEW SECTION. **Sec. 12.** AUCTIONS OF ALLOWANCES. (1) Except as  
32 provided in sections 13, 14, and 15 of this act, the department shall  
33 distribute allowances through auctions as provided in this section  
34 and in rules adopted by the department to implement these sections.  
35 An allowance is not a property right.

36 (2)(a) The department shall hold a maximum of four auctions  
37 annually, plus any necessary reserve auctions. An auction may include  
38 allowances from the annual allowance budget of the current year and

1 allowances from the annual allowance budgets from prior years that  
2 remain to be distributed.

3 (b) The department must make future vintage allowances available  
4 through parallel auctions at least twice annually in addition to the  
5 auctions through which current vintage allowances are exclusively  
6 offered under (a) of this subsection.

7 (3) The department shall engage a qualified, independent  
8 contractor to run the auctions. The department shall also engage a  
9 qualified financial services administrator to hold the bid  
10 guarantees, evaluate bid guarantees, and inform the department of the  
11 value of bid guarantees once the bids are accepted.

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

16 (a) Registered entities intending to participate in an auction  
17 must submit an application to participate at least 30 days prior to  
18 the auction. The application must include the documentation required  
19 for review and approval by the department. A registered entity is  
20 eligible to participate only after receiving a notice of approval by  
21 the department.

22 (b) Each registered entity that elects to participate in the  
23 auction must have a different representative. Only a representative  
24 with an approved auction account is authorized to access the auction  
25 platform to submit an application or confirm the intent to bid for  
26 the registered entity, submit bids on behalf of the registered entity  
27 during the bidding window, or to download reports specific to the  
28 auction.

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

33 (6) To protect the integrity of the auctions, a registered entity  
34 or group of registered entities with a direct corporate association  
35 are subject to auction purchase and holding limits. The department  
36 may impose additional limits if it deems necessary to protect the  
37 integrity and functioning of the auctions:

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

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

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

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

9 (7)(a) For fiscal year 2023, upon completion and verification of  
10 the auction results, the financial services administrator shall  
11 notify winning bidders and transfer the auction proceeds to the state  
12 treasurer for deposit as follows: (i) \$127,341,000 must be deposited  
13 into the carbon emissions reduction account created in section 27 of  
14 this act; and (ii) the remaining auction proceeds to the climate  
15 investment account created in section 28 of this act and the air  
16 quality and health disparities improvement account created in section  
17 31 of this act.

18 (b) For fiscal year 2024, upon completion and verification of the  
19 auction results, the financial services administrator shall notify  
20 winning bidders and transfer the auction proceeds to the state  
21 treasurer for deposit as follows: (i) \$356,697,000 must be deposited  
22 into the carbon emissions reduction account created in section 27 of  
23 this act; and (ii) the remaining auction proceeds to the climate  
24 investment account created in section 28 of this act and the air  
25 quality and health disparities improvement account created in section  
26 31 of this act.

27 (c) For fiscal year 2025, upon completion and verification of the  
28 auction results, the financial services administrator shall notify  
29 winning bidders and transfer the auction proceeds to the state  
30 treasurer for deposit as follows: (i) \$366,558,000 must be deposited  
31 into the carbon emissions reduction account created in section 27 of  
32 this act; and (ii) the remaining auction proceeds to the climate  
33 investment account created in section 28 of this act and the air  
34 quality and health disparities improvement account created in section  
35 31 of this act.

36 (d) For fiscal years 2026 through 2037, upon completion and  
37 verification of the auction results, the financial services  
38 administrator shall notify winning bidders and transfer the auction  
39 proceeds to the state treasurer for deposit as follows: (i)  
40 \$359,117,000 per year must be deposited into the carbon emissions

1 reduction account created in section 27 of this act; and (ii) the  
2 remaining auction proceeds to the climate investment account created  
3 in section 28 of this act and the air quality and health disparities  
4 improvement account created in section 31 of this act.

5 (e) The deposits into the carbon emissions reduction account  
6 pursuant to (a) through (d) of this subsection must not exceed  
7 \$5,200,000,000 over the first 16 years and any remaining auction  
8 proceeds must be deposited into the climate investment account  
9 created in section 28 of this act and the air quality and health  
10 disparities improvement account created in section 31 of this act.  
11 The deposits into the carbon emissions reduction account pursuant to  
12 (a) through (d) of this subsection must be prorated equally from the  
13 proceeds of each of the auctions occurring during each fiscal year.

14 (f) For fiscal year 2038 and each year thereafter, upon  
15 completion and verification of the auction results, the financial  
16 services administrator shall notify winning bidders and transfer the  
17 auction proceeds to the state treasurer for deposit as follows: (i)  
18 50 percent of the auction proceeds to the carbon emissions reduction  
19 account created in section 27 of this act; and (ii) the remaining  
20 auction proceeds to the climate investment account created in section  
21 28 of this act and the air quality and health disparities improvement  
22 account created in section 31 of this act.

23 (g) No auction proceeds may be transferred to the carbon  
24 emissions reduction account created in section 27 of this act after  
25 December 31, 2027, if a clean fuel standard with a carbon intensity  
26 reduction of greater than 10 percent is not enacted by that date.

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

37 (a) Provided false or misleading facts;

38 (b) Withheld material information that could influence a decision  
39 by the department;

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

1 (d) Violated registration requirements; or

2 (e) Violated any of the rules regarding the conduct of the  
3 auction.

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

10 (10) The department shall design allowance auctions so as to  
11 allow, to the maximum extent practicable, linking with external  
12 greenhouse gas emissions trading programs in other jurisdictions and  
13 to facilitate the transfer of allowances when the state's program has  
14 entered into a linkage agreement with other external greenhouse gas  
15 emissions trading programs. The department may conduct auctions  
16 jointly with jurisdictions with which it has entered into a linkage  
17 agreement.

18 (11) In setting the number of allowances offered at each auction,  
19 the department shall consider the allowances in the marketplace due  
20 to the marketing of allowances issued as required under sections 13,  
21 14, and 15 of this act in the department's determination of the  
22 number of allowances to be offered at auction. The department shall  
23 offer only such number of allowances at each auction as will enhance  
24 the likelihood of achieving the goals of RCW 70A.45.020.

25 NEW SECTION. **Sec. 13.** ALLOCATION OF ALLOWANCES TO EMISSIONS-  
26 INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) Facilities owned or operated  
27 by a covered entity must receive an allocation of allowances for the  
28 covered emissions at those facilities under this subsection at no  
29 cost if the operations of the facility are classified as emissions-  
30 intensive and trade-exposed, as determined by being engaged in one or  
31 more of the processes described by the following industry  
32 descriptions and codes in the North American industry classification  
33 system:

34 (a) Metals manufacturing, including iron and steel making,  
35 ferroalloy and primary metals manufacturing, secondary aluminum  
36 smelting and alloying, aluminum sheet, plate, and foil manufacturing,  
37 and smelting, refining, and alloying of other nonferrous metals,  
38 North American industry classification system codes beginning with  
39 331;



1 (b) Paper manufacturing, including pulp mills, paper mills, and  
2 paperboard milling, North American industry classification system  
3 codes beginning with 322;

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

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

8 (e) Nonmetallic mineral manufacturing, including glass container  
9 manufacturing, North American industry classification system codes  
10 beginning with 327;

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

13 (g) Computer and electronic product manufacturing, including  
14 semiconductor and related device manufacturing, North American  
15 industry classification system codes beginning with 334;

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

18 (i) Cement manufacturing, North American industry classification  
19 system code 327310;

20 (j) Petroleum refining, North American industry classification  
21 system code 324110;

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

24 (l) Asphalt single and coating manufacturing from refined  
25 petroleum, North American industry classification system code 324122;  
26 and

27 (m) All other petroleum and coal products manufacturing from  
28 refined petroleum, North American industry classification system code  
29 324199.

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

1 intensive, trade-exposed and is eligible for allocation of no cost  
2 allowances as described in this section.

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

8 (b) The department shall by rule provide for owners or operators  
9 of emissions-intensive and trade-exposed facilities to apply and  
10 receive from the department an adjustment to the allocation for  
11 direct distribution of allowances based on a facility-specific carbon  
12 intensity benchmark as calculated in this subsection. If the  
13 department determines that the net quantity of no cost allowances  
14 awarded pursuant to (a) of this subsection is lower than when using  
15 the facility-specific carbon intensity benchmark, the department  
16 shall award additional no cost allowances up to the quantity of  
17 allowances resulting from using the facility-specific carbon  
18 intensity benchmark, not to exceed the facility's emission baseline.  
19 Additional allowances awarded at no cost under this section must be  
20 withdrawn from auction under section 11 of this act as determined by  
21 the department by rule. The department shall adjust the no cost  
22 allocation of allowances and credits to an emissions-intensive and  
23 trade-exposed facility to avoid duplication with any no cost  
24 allowances transferred pursuant to sections 14 and 15 of this act, if  
25 applicable.

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

31 (ii) If an emissions-intensive and trade-exposed facility is not  
32 able to feasibly determine a carbon intensity benchmark based on its  
33 unique circumstances, the entity may elect to use a mass-based  
34 baseline that does not vary based on changes in production volumes.  
35 For each year during the first four-year compliance period that  
36 begins January 1, 2023, these facilities must be awarded no cost  
37 allowances equal to 100 percent of the facility's mass-based  
38 baseline. For each year during the second four-year compliance period  
39 that begins January 1, 2027, these facilities must be awarded no cost  
40 allowances equal to 97 percent of the facility's mass-based baseline.

1 For each year during the third compliance period that begins January  
2 1, 2031, these facilities must be awarded no cost allowances equal to  
3 94 percent of the facility's mass-based baseline. Except as provided  
4 in (b)(iii) of this subsection, if a facility elects to use a mass-  
5 based baseline, it may not later convert to a carbon intensity  
6 benchmark during the first three compliance periods.

7 (iii) A facility with a North American industry classification  
8 system code beginning with 3364 that is utilizing a mass-based  
9 baseline in (b)(ii) of this subsection must receive an additional no  
10 cost allowance allocation under this section in order to accommodate  
11 an increase in production that increases its emissions above the  
12 baseline on a basis equivalent in principle to those awarded to  
13 entities utilizing a carbon intensity benchmark pursuant to this  
14 subsection (3)(b). The department shall establish methods to award,  
15 for any annual period, additional no cost allowance allocations under  
16 this section and, if appropriate based on projected production, to  
17 achieve a similar ongoing result through the adjustment of the  
18 facility's mass-based baseline. An eligible facility under this  
19 subsection that has elected to use a mass-based baseline may not  
20 convert to a carbon intensity benchmark until the next compliance  
21 period.

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

27 (ii) By July 31, 2022, the work group shall recommend to the  
28 department procedures for calculating carbon intensity benchmarks.  
29 The carbon intensity benchmark must be based upon data from 2015  
30 through 2019 for each emissions-intensive, trade-exposed facility,  
31 unless an emissions-intensive, trade-exposed facility can demonstrate  
32 to the department that there have been abnormal periods of operation  
33 that materially impacted the facility and the baseline period should  
34 be expanded to include years prior to 2015.

35 (iii) By September 15, 2022, each emissions-intensive, trade-  
36 exposed facility shall submit its carbon intensity benchmark for the  
37 first compliance period to the department. The calculation must be  
38 consistent with procedures established by the work group and  
39 recommended to the department.

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

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

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

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

16 (f)(i) Prior to the beginning of either the second or third  
17 compliance periods, an emissions-intensive, trade-exposed facility  
18 may make an upward adjustment in the next compliance period's  
19 benchmark based on a demonstration to the department that additional  
20 reductions in carbon intensity or mass emissions are not technically  
21 or economically feasible. An emissions-intensive, trade-exposed  
22 facility may base its upward adjustment in the next compliance period  
23 on the facility's best available technology analysis. The department  
24 shall by rule provide for emissions-intensive, trade-exposed  
25 facilities to apply to the department for an adjustment to the  
26 allocation for direct distribution of no cost allowances based on its  
27 facility-specific carbon intensity benchmark or mass emissions  
28 baseline. The department shall make adjustments based on:

29 (A) A significant change in the emissions use or emissions  
30 attributable to the manufacture of an individual good or goods in  
31 this state by an emissions-intensive, trade-exposed facility based on  
32 a finding by the department that an adjustment is necessary to  
33 accommodate for changes in the manufacturing process that have a  
34 material impact on emissions;

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

38 (C) Abnormal operating periods when an emissions-intensive,  
39 trade-exposed facility's carbon intensity has been materially  
40 affected so that these abnormal operating periods are either excluded

1 or otherwise considered in the establishment of the compliance period  
2 carbon intensity benchmarks.

3 (ii) For the purpose of this section, "best available technology"  
4 means a greenhouse gas emissions limitation determined by the  
5 department on a case-by-case basis taking into account the fuels,  
6 processes, equipment, and technology used by facilities to produce  
7 goods of comparable type, quantity, and quality, that will most  
8 effectively reduce those greenhouse gas emissions for which the  
9 source has a compliance obligation. Best available technology must be  
10 technically feasible, commercially available, economically viable,  
11 not create excessive environmental impacts, and be compliant with all  
12 applicable laws while not changing the characteristics of the good  
13 being manufactured.

14 (4)(a) Beginning January 1, 2035, and each year thereafter, the  
15 annual allocation of no cost allowances for direct distribution to  
16 facilities identified as emissions-intensive and trade-exposed must  
17 be reduced by an equal amount each year between 2035 and 2050 such  
18 that in 2050 the facility's proportionate share of the allowance  
19 budget is equal to the proportionate share in 2035. The annual  
20 allocation beginning in 2035 must decline from the average of the  
21 facility's annual allocation of no cost allowances from 2031 through  
22 2034. If the emissions-intensive, trade-exposed facility can  
23 demonstrate that there have been abnormal periods of operation that  
24 materially impacted the facility, then the baseline period must be  
25 expanded to include years prior to 2031. The department shall provide  
26 a recommendation to the legislature for the adoption of an annual  
27 allocation for a covered facility for its process emissions, separate  
28 from emissions associated with energy or heat production, based on a  
29 best available technology limitation.

30 (b) By December 1, 2030, the department shall provide a report to  
31 the appropriate committees of the senate and house of representatives  
32 that describes alternative methods for determining the amount and a  
33 schedule of allowances to be provided to facilities owned or operated  
34 by each covered entity designated as an emissions-intensive, trade-  
35 exposed facility. The report must include a review of global best  
36 practices in ensuring against emissions leakage and economic harm to  
37 businesses in carbon pricing programs and describe alternative  
38 methods of emissions performance benchmarking and mass-based  
39 allocation of no cost allowances. In developing the report, the

1 department shall form an advisory group that includes representatives  
2 of the manufacturers listed in subsection (1) of this section.

3 (5) If the actual emissions of an emissions-intensive, trade-  
4 exposed facility exceed the facility's no cost allowances assigned  
5 for that compliance period, it must acquire additional compliance  
6 instruments such that the total compliance instruments transferred to  
7 its compliance account consistent with section 22 of this act equals  
8 emissions during the compliance period. The department shall limit  
9 the use of offset credits for compliance by an emissions-intensive,  
10 trade-exposed facility, such that the quantity of no cost allowances  
11 plus the provision of offset credits does not exceed 100 percent of  
12 the facility's total compliance obligation over a compliance period.

13 (6) The department must withhold or withdraw the relevant share  
14 of allowances allocated to a covered entity under this section in the  
15 event that the covered entity ceases production in the state and  
16 becomes a closed facility. In the event an entity curtails all  
17 production and becomes a curtailed facility, the allowances are  
18 retained but cannot be traded, sold, or transferred and are still  
19 subject to the emission reduction requirements specified in this  
20 section. An owner or operator of a curtailed facility may transfer  
21 the allowances to a new operator of the facility that will be  
22 operated under the same North American industry classification system  
23 codes. If the curtailed facility becomes a closed facility, then all  
24 unused allowances will be transferred to the emissions containment  
25 reserve. A curtailed facility is not eligible to receive free  
26 allowances during a period of curtailment. Any allowances withheld or  
27 withdrawn under this subsection must be transferred to the emissions  
28 containment reserve.

29 (7) An owner or operator of more than one facility receiving no  
30 cost allowances under this section may transfer allowances among the  
31 eligible facilities.

32 (8) Rules adopted by the department under this section must  
33 include protocols for allocating allowances at no cost to an eligible  
34 facility built after the effective date of this section. The  
35 protocols must include consideration of the products being produced  
36 by the facility, as well as the local environmental and health  
37 impacts associated with the facility.

38 (9) By January 1, 2028, the department of commerce, in  
39 consultation with the department, must submit a report to the  
40 appropriate committees of the legislature that includes a review of

1 the program established under this chapter as it pertains to  
2 emissions-intensive, trade-exposed businesses, including but not  
3 limited to an assessment of any leakage, compliance costs, and  
4 emissions reductions associated with the implementation of the  
5 program during the first compliance period.

6 NEW SECTION. **Sec. 14.** ALLOCATION OF ALLOWANCES TO ELECTRIC  
7 UTILITIES. (1) The legislature intends by this section to allow all  
8 consumer-owned electric utilities and investor-owned electric  
9 utilities subject to the requirements of chapter 19.405 RCW, the  
10 Washington clean energy transformation act, to be allocated  
11 allowances at no cost as provided in this section in order to  
12 mitigate the cost burden of the program on electric customers.

13 (2)(a) By October 1, 2022, the department shall adopt rules, in  
14 consultation with the department of commerce and the utilities and  
15 transportation commission, establishing the methods and procedures  
16 for allocating allowances to consumer-owned and investor-owned  
17 electric utilities. Rules adopted under this section must allow for a  
18 consumer-owned or investor-owned electric utility to be provided  
19 allowances at no cost to cover their emissions and decline  
20 proportionally with the cap, consistent with section 9 of this act,  
21 and the considerations of subsection (6) of this section. The rules  
22 must take into account the cost burden of the program on electric  
23 customers. Allowances allocated at no cost to consumer-owned and  
24 investor-owned electric utilities must be consigned to auction for  
25 the benefit of ratepayers consistent with subsection (3) of this  
26 section, deposited for compliance, or a combination of both. The  
27 rules adopted by the department pursuant to this section must include  
28 provisions directing revenues generated under this subsection to the  
29 applicable utilities. Under no circumstances may utilities receive  
30 any free allowances after 2045.

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

1 the cost burden resulting from the inclusion of the covered entities  
2 in the first compliance period.

3 (c) By October 1, 2026, the department shall adopt by rule an  
4 allocation schedule, in consultation with the department of commerce  
5 and the utilities and transportation commission, for the second  
6 compliance period for the provision of allowances for the benefit of  
7 ratepayers at no cost to consumer-owned and investor-owned electric  
8 utilities. This allocation must be consistent with a forecast, that  
9 is approved by the appropriate governing board or the utilities and  
10 transportation commission, of each utility's supply and demand, and  
11 the cost burden resulting from the inclusion of covered entities in  
12 the second compliance period.

13 (d) By October 1, 2028, the department shall adopt by rule an  
14 allocation schedule, in consultation with the department of commerce  
15 and the utilities and transportation commission, for the provision of  
16 allowances at no cost to consumer-owned and investor-owned electric  
17 utilities for the compliance periods contained within calendar years  
18 2031 through 2045. This allocation must be consistent with a  
19 forecast, that is approved by the appropriate governing board or the  
20 utilities and transportation commission, of each utility's supply and  
21 demand, and the cost burden resulting from the inclusion of the  
22 covered entities in the compliance periods.

23 (3)(a) During the first compliance period, 20 percent of the  
24 allowances allocated at no cost to consumer-owned and investor-owned  
25 electric utilities must be consigned to auction for the benefit of  
26 ratepayers, including at a minimum eliminating any additional cost  
27 burden to low-income customers from the implementation of this  
28 chapter. Rules adopted under this subsection must increase the  
29 percentage of allowances consigned to auction by 20 percent each  
30 subsequent compliance period until a total of 100 percent is reached.

31 (b) Revenues from allowances sold at auction must be returned by  
32 providing nonvolumetric credits on ratepayer utility bills,  
33 prioritizing low-income customers, or used to minimize cost impacts  
34 on low-income, residential, and small business customers through  
35 actions that include, but are not limited to, weatherization,  
36 conservation and efficiency services, and bill assistance. The  
37 customer benefits provided from allowances consigned to auction under  
38 this section must be in addition to existing requirements in statute,  
39 rule, or other legal requirements.



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

10 (5) The department shall allow for allowances to be transferred  
11 between a power marketing administration and electric utilities and  
12 used for direct compliance.

13 (6) Rules establishing the allocation of allowances to consumer-  
14 owned utilities and investor-owned utilities must consider the impact  
15 of electrification of buildings, transportation, and industry on the  
16 electricity sector.

17 (7) Nothing in this section affects the requirements of chapter  
18 19.405 RCW.

19 NEW SECTION. **Sec. 15.** ALLOCATION OF ALLOWANCES TO NATURAL GAS  
20 UTILITIES. (1) For the benefit of ratepayers, allowances must be  
21 allocated at no cost to covered entities that are natural gas  
22 utilities.

23 (a) By October 1, 2022, the department shall adopt rules, in  
24 consultation with the utilities and transportation commission,  
25 establishing the methods and procedures for allocating allowances to  
26 natural gas utilities. Rules adopted under this subsection must allow  
27 for a natural gas utility to be provided allowances at no cost to  
28 cover their emissions and decline proportionally with the cap,  
29 consistent with section 9 of this act. Allowances allocated at no  
30 cost to natural gas utilities must be consigned to auction for the  
31 benefit of ratepayers consistent with subsection (2) of this section,  
32 deposited for compliance, or a combination of both. The rules adopted  
33 by the department pursuant to this section must include provisions  
34 directing revenues generated under this subsection to the applicable  
35 utilities.

36 (b) By October 1, 2022, the department shall adopt an allocation  
37 schedule by rule, in consultation with the utilities and  
38 transportation commission, for the first two compliance periods for

1 the provision of allowances for the benefit of ratepayers at no cost  
2 to natural gas utilities.

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

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

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

24 (c) Except for low-income customers, the customer bill credits  
25 under this subsection are reserved exclusively for customers at  
26 locations connected to a natural gas utility's system on the  
27 effective date of this section. Bill credits may not be provided to  
28 customers of the gas utility at a location connected to the system  
29 after the effective date of this section.

30 (3) In order to qualify for no cost allowances, covered entities  
31 that are natural gas utilities must provide copies of their  
32 greenhouse gas emissions reports filed with the United States  
33 environmental protection agency under 40 C.F.R. Part 98 subpart NN -  
34 suppliers of natural gas and natural gas liquids for calendar years  
35 2015 through 2021 to the department on or before March 31, 2022. The  
36 copies of the reports must be provided in electronic form to the  
37 department, in a manner prescribed by the department. The reports  
38 must be complete and contain all information required by 40 C.F.R.  
39 Sec. 98.406 including, but not limited to, information on large end-  
40 users served by the natural gas utility. For any year where a natural

1 gas utility was not required to file this report with the United  
2 States environmental protection agency, a report may be submitted in  
3 a manner prescribed by the department containing all of the  
4 information required in the subpart NN report.

5 (4) To continue receiving no cost allowances, a natural gas  
6 utility must provide to the department the United States  
7 environmental protection agency subpart NN greenhouse gas emissions  
8 report for each reporting year in the manner and by the dates  
9 provided by RCW 70A.15.2200(5) as part of the greenhouse gas  
10 reporting requirements of this chapter.

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

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

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

34 (4) The department shall transfer allowances to the emissions  
35 containment reserve in the following situations:

36 (a) No less than two percent of the total number of allowances  
37 available from the allowance budgets for calendar years 2023 through  
38 2026;

1 (b) When allowances are unsold in auctions under section 12 of  
2 this act;

3 (c) When facilities curtail or close consistent with section  
4 13(6) of this act; or

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

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

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

20 NEW SECTION. **Sec. 17.** ALLOWANCE PRICE CONTAINMENT. (1) To help  
21 minimize allowance price volatility in the auction, the department  
22 shall adopt by rule an auction floor price and a schedule for the  
23 floor price to increase by a predetermined amount every year. The  
24 department may not sell allowances at bids lower than the auction  
25 floor price. The department's rules must specify holding limits that  
26 determine the maximum number of allowances that may be held for use  
27 or trade by a registered entity at any one time. The department shall  
28 also establish an auction ceiling price to limit extraordinary prices  
29 and to determine when to offer allowances through the allowance price  
30 containment reserve auctions authorized under this section.

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

38 (3)(a) The department shall adopt rules for holding auctions of  
39 allowances from the price containment reserve when the settlement

1 prices in the preceding auction approach the adopted auction ceiling  
2 price. The auction must be separate from auctions of other  
3 allowances.

4 (b) Allowances must also be distributed from the allowance price  
5 containment reserve by auction when new covered and opt-in entities  
6 enter the program and allowances in the emissions containment reserve  
7 under section 16 of this act are exhausted.

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

10 (5) The process for reserve auctions is the same as the process  
11 provided in section 12 of this act and the proceeds from reserve  
12 auctions must be treated the same.

13 (6) The department shall by rule:

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

17 (b) Establish the requirements and schedule for the allowance  
18 price containment reserve auctions; and

19 (c) Establish the amount of allowances to be placed in the  
20 allowance price containment reserve after the first compliance period  
21 ending in 2026.

22 NEW SECTION. **Sec. 18.** PRICE CEILING. (1) The department shall  
23 establish a price ceiling to provide cost protection for facilities  
24 obligated to comply with this chapter. The ceiling must be set at a  
25 level sufficient to facilitate investments to achieve further  
26 emission reductions beyond those enabled by the price ceiling, with  
27 the intent that investments accelerate the state's achievement of  
28 greenhouse gas limits established under RCW 70A.45.020. The price  
29 ceiling must increase annually in proportion to the price floor.

30 (2) In the event that no allowances remain in the allowance price  
31 containment reserve, the department must issue the number of price  
32 ceiling units for sale sufficient to provide cost protection for  
33 facilities as established under subsection (1) of this section.  
34 Purchases must be limited to entities that do not have sufficient  
35 eligible compliance instruments in their holding and compliance  
36 accounts for the next compliance period and these entities may only  
37 purchase what they need to meet their compliance obligation for the  
38 current compliance period. Price ceiling units may not be sold or

1 transferred and must be retired for compliance in the current  
2 compliance period. A price ceiling unit is not a property right.

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

10 NEW SECTION. **Sec. 19.** OFFSETS. (1) The department shall adopt  
11 by rule the protocols for establishing offset projects and securing  
12 offset credits that may be used to meet a portion of a covered or  
13 opt-in entity's compliance obligation under section 22 of this act.  
14 The protocols adopted by the department under this section must align  
15 with the policies of the state established under RCW 70A.45.090 and  
16 70A.45.100.

17 (2) Offset projects must:

18 (a) Provide direct environmental benefits to the state or be  
19 located in a jurisdiction with which Washington has entered into a  
20 linkage agreement;

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

22 (i) Are real, permanent, quantifiable, verifiable, and  
23 enforceable; and

24 (ii) Are in addition to greenhouse gas emission reductions or  
25 removals otherwise required by law and other greenhouse gas emission  
26 reductions or removals that would otherwise occur; and

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

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

36 (b) A total of no more than four percent of a covered or opt-in  
37 entity's compliance obligation during the second compliance period  
38 may be met by transferring offset credits. During these years, at  
39 least 75 percent of a covered or opt-in entity's compliance

1 obligation satisfied by offset credits must be sourced from offset  
2 projects that provide direct environmental benefits in the state. The  
3 department may reduce the 75 percent requirement if it determines  
4 there is not sufficient offset supply in the state to meet offset  
5 demand during the second compliance period.

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

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

14 (i) Contribute substantively to cumulative air pollution burden  
15 in an overburdened community as determined by criteria established by  
16 the department; or

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

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

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

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

35 (b) Encourage opportunities for the development of offset  
36 projects in this state by adopting offset protocols that may include,  
37 but need not be limited to, protocols that make use of aggregation or  
38 other mechanisms to reduce transaction costs related to the  
39 development of offset projects and that support the development of  
40 carbon dioxide removal projects;

1 (c) Adopt a process for monitoring and invalidating offset  
2 credits as necessary to ensure the credit reflects emission  
3 reductions or removals that continue to meet the standards required  
4 by subsection (1) of this section. If an offset credit is  
5 invalidated, the covered or opt-in entity must, within six months of  
6 the invalidation, transfer replacement credits or allowances to meet  
7 its compliance obligation. Failure to transfer the required credits  
8 or allowances is a violation subject to penalties as provided in  
9 section 23 of this act; and

10 (d) Make use of aggregation or other mechanisms, including cost-  
11 effective inventory and monitoring provisions, to increase the  
12 development of offset and carbon removal projects by landowners  
13 across the broadest possible variety of types and sizes of lands,  
14 including lands owned by small forestland owners.

15 (5) Any offset credits used may not be in addition to or allow  
16 for an increase in the emissions limits established under RCW  
17 70A.45.020, as reflected in the annual allowance budgets developed  
18 under section 9 of this act.

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

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

24 NEW SECTION. **Sec. 20.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL  
25 LANDS. (1) In order to ensure that a sufficient number of high  
26 quality offset projects are available under the limits set in section  
27 19 of this act, the department must establish an assistance program  
28 for offset projects on federally recognized tribal lands in  
29 Washington. The assistance may include, but is not limited to,  
30 funding or consultation for federally recognized tribal governments  
31 to assess a project's technical feasibility, investment requirements,  
32 development and operational costs, expected returns, administrative  
33 and legal hurdles, and project risks and pitfalls. The department may  
34 provide funding or assistance upon request by a federally recognized  
35 tribe.

36 (2) It is the intent of the legislature that not less than  
37 \$5,000,000 be provided in the biennial omnibus operating  
38 appropriations act for the purposes of this section.



1        NEW SECTION.    **Sec. 21.**    ASSISTANCE PROGRAM FOR SMALL FORESTLAND  
2 OWNERS. (1) The department, in cooperation with the department of  
3 natural resources, must establish an assistance program for small  
4 forestland owners that seeks to benefit from carbon sequestration  
5 markets, including the provision of offset credits that qualify under  
6 section 19 of this act. The assistance may include, but is not  
7 limited to, funding or consultation to assess a project's technical  
8 feasibility, investment requirements, development and operational  
9 costs, expected returns, administrative and legal hurdles, and  
10 project risks and pitfalls. The department may assist multiple  
11 landowners to develop projects that aggregate sufficient acreage to  
12 provide the scale necessary to offer offset credits at a competitive  
13 price in either or both voluntary and regulatory carbon markets.  
14 Funding or assistance may be provided upon request by a small  
15 forestland owner.

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

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

38        (2) Compliance occurs through the transfer of compliance  
39 instruments or price ceiling units, on or before the transfer date,

1 from the holding account to the compliance account of the covered or  
2 opt-in entity as described in section 10 of this act.

3 (3) (a) A covered entity with a facility eligible for use of price  
4 ceiling units under section 18 of this act may substitute the  
5 submission of compliance instruments with price ceiling units.

6 (b) A covered or opt-in entity submitting insufficient compliance  
7 instruments to meet its compliance obligation is subject to a penalty  
8 as provided in section 23 of this act.

9 (4) Allowances must be transferred in the order in which they  
10 were purchased or acquired.

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

14 (6) Upon receipt by the department of all compliance instruments  
15 transferred by a covered entity or opt-in entity to meet its  
16 compliance obligation, the department shall retire the allowances or  
17 offset credits.

18 (7) (a) This section does not take effect until separate additive  
19 transportation funding is received by the state, at which time the  
20 department of licensing must provide written notice to the chief  
21 clerk of the house of representatives, the secretary of the senate,  
22 and the office of the code reviser.

23 (b) For the purposes of this subsection, "additive transportation  
24 funding" means receipt of funding by the state in which the combined  
25 total of new revenues deposited into the motor vehicle fund and  
26 multimodal transportation account exceed \$500,000,000 in any biennium  
27 attributable solely to separate additive transportation funding.

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

34 (2) If a covered or opt-in entity does not submit sufficient  
35 compliance instruments to meet its compliance obligation by the  
36 specified transfer dates, a penalty of four allowances for every one  
37 compliance instrument that is missing must be submitted to the  
38 department within six months. When a covered entity or opt-in entity  
39 reasonably believes that it will be unable to meet a compliance

1 obligation, the entity shall immediately notify the department. Upon  
2 receiving notification, the department shall issue an order requiring  
3 the entity to submit the penalty allowances.

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

10 (4) The department may issue a penalty of up to \$50,000 per day  
11 per violation for violations of section 12(8) (a) through (e) of this  
12 act.

13 (5) Except as provided in subsections (3) and (4) of this  
14 section, any person that violates the terms of this chapter or an  
15 order issued under this chapter incurs a penalty of up to \$10,000 per  
16 day per violation for each day that the person does not comply. All  
17 penalties under subsections (3) and (4) of this section and this  
18 subsection must be deposited into the climate investment account  
19 created in section 28 of this act.

20 (6) Orders and penalties issued under this chapter are appealable  
21 to the pollution control hearings board under chapter 43.21B RCW.

22 (7) For the first compliance period, the department may reduce  
23 the amount of the penalty by adjusting the monetary amount or the  
24 number of penalty allowances described in subsections (2) and (3) of  
25 this section.

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

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

32 (c) This chapter preempts the provisions of chapter 173-442 WAC.

33 NEW SECTION. **Sec. 24.** LINKAGE WITH OTHER JURISDICTIONS. (1)

34 Subject to making the findings and conducting the public comment  
35 process described in subsection (3) of this section, the department  
36 shall seek to enter into linkage agreements with other jurisdictions  
37 with external greenhouse gas emissions trading programs in order to:

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

- 1 (b) Broaden the greenhouse gas emission reduction opportunities  
2 to reduce the costs of compliance on covered entities and consumers;  
3 (c) Enable allowance auctions to be held jointly and provide for  
4 the use of a unified tracking system for compliance instruments;  
5 (d) Enhance market security;  
6 (e) Reduce program administration costs; and  
7 (f) Provide consistent requirements for covered entities whose  
8 operations span jurisdictional boundaries.

9 (2) The director of the department is authorized to execute  
10 linkage agreements with other jurisdictions with external greenhouse  
11 gas emissions trading programs consistent with the requirements in  
12 this chapter. A linkage agreement must cover the following:

13 (a) Provisions relating to regular, periodic auctions, including  
14 requirements for eligibility for auction participation, the use of a  
15 single auction provider to facilitate joint auctions, publication of  
16 auction-related information, processes for auction participation,  
17 purchase limits by auction participant type, bidding processes, dates  
18 of auctions, and financial requirements;

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

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

25 (d) Common program registry, electronic auction platform,  
26 tracking systems for compliance instruments, and monitoring of  
27 compliance instruments;

28 (e) Provisions to ensure coordinated administrative and technical  
29 support;

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

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

33 (3) Before entering into a linkage agreement under this section,  
34 the department must establish a finding that the linking jurisdiction  
35 and the linkage agreement meet certain criteria identified under this  
36 subsection and conduct a public comment process to obtain input and a  
37 review of the linkage agreement by relevant stakeholders and other  
38 interested parties. The department must consider input received from  
39 the public comment process before finalizing a linkage agreement. In  
40 the event that the department determines that a full linkage

1 agreement is unlikely to meet the criteria, it may enter into a  
2 linkage agreement with limitations, including limits on the share of  
3 compliance that may be met with allowances originating from linked  
4 jurisdictions and other limitations deemed necessary by the  
5 department. A linkage agreement approved by the department must:

6 (a) Achieve the purposes identified in subsection (1) of this  
7 section;

8 (b) Ensure that the linking jurisdiction has provisions to ensure  
9 the distribution of benefits from the program to vulnerable  
10 populations and overburdened communities;

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

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

17 (4) The state retains all legal and policymaking authority over  
18 its program design and enforcement.

19 NEW SECTION. **Sec. 25.** RULES. The department shall adopt rules  
20 to implement the provisions of the program established in sections 8  
21 through 24 of this act. The department may adopt emergency rules  
22 pursuant to RCW 34.05.350 for initial implementation of the program,  
23 to implement the state omnibus appropriations act for the 2021-2023  
24 fiscal biennium, and to ensure that reporting and other program  
25 requirements are determined early for the purpose of program design  
26 and early notice to registered entities with a compliance obligation  
27 under the program.

28 NEW SECTION. **Sec. 26.** EXPENDITURE TARGETS. (1) It is the intent  
29 of the legislature that each year the total investments made through  
30 the carbon emissions reduction account created in section 27 of this  
31 act, the climate commitment account created in section 29 of this  
32 act, the natural climate solutions account created in section 30 of  
33 this act, and the air quality and health disparities improvement  
34 account created in section 31 of this act, achieve the following:

35 (a) A minimum of not less than 35 percent and a goal of 40  
36 percent of total investments that provide direct and meaningful  
37 benefits to vulnerable populations within the boundaries of

1 overburdened communities identified under chapter . . ., Laws of 2021  
2 (Engrossed Second Substitute Senate Bill No. 5141); and

3 (b) At least 10 percent of the total investments authorized under  
4 this chapter must be used for programs, activities, or projects  
5 formally supported by a resolution of an Indian tribe, with priority  
6 given to otherwise qualifying projects directly administered or  
7 proposed by an Indian tribe. An investment that meets the  
8 requirements of both this subsection (1)(b) and (a) of this  
9 subsection may count toward the requisite minimum percentage for both  
10 subsections.

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

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

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

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

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

25 (4) The state must develop a process by which to evaluate the  
26 impacts of the investments made under this chapter, work across state  
27 agencies to develop and track priorities across the different  
28 eligible funding categories, and work with the environmental justice  
29 council pursuant to section 5 of this act.

30 (5) No expenditures may be made from the carbon emissions  
31 reduction account created in section 27 of this act, the climate  
32 investment account created in section 28 of this act, or the air  
33 quality and health disparities improvement account created in section  
34 31 of this act if, by April 1, 2023, the legislature has not  
35 considered and enacted request legislation brought forth by the  
36 department under section 8 of this act that outlines a compliance  
37 pathway specific to emissions-intensive, trade-exposed businesses for  
38 achieving their proportionate share of the state's emissions  
39 reduction limits through 2050.

1        NEW SECTION.    **Sec. 27.**    CARBON EMISSIONS REDUCTION ACCOUNT. The  
2 carbon emissions reduction account is created in the state treasury.  
3 Moneys in the account may be spent only after appropriation.  
4 Expenditures from the account are intended to affect reductions in  
5 transportation sector carbon emissions through a variety of carbon  
6 reducing investments. These can include, but are not limited to:  
7 Transportation alternatives to single occupancy passenger vehicles;  
8 reductions in single occupancy passenger vehicle miles traveled;  
9 reductions in per mile emissions in vehicles, including through the  
10 funding of alternative fuel infrastructure and incentive programs;  
11 and emission reduction programs for freight transportation, including  
12 motor vehicles and rail, as well as for ferries and other maritime  
13 and port activities. Expenditures from the account may only be made  
14 for transportation carbon emission reducing purposes and may not be  
15 made for highway purposes authorized under the 18th Amendment of the  
16 Washington state Constitution. It is the legislature's intent that  
17 expenditures from the account used to reduce carbon emissions be made  
18 with the goal of achieving equity for communities that historically  
19 have been omitted or adversely impacted by past transportation  
20 policies and practices.

21        NEW SECTION.    **Sec. 28.**    CLIMATE INVESTMENT ACCOUNT. (1)(a) The  
22 climate investment account is created in the state treasury. Except  
23 as otherwise provided in this act, all receipts from the auction of  
24 allowances authorized in this chapter must be deposited into the  
25 account. Moneys in the account may be spent only after appropriation.

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

1 (2) Moneys in the account may be used only for projects and  
2 programs that achieve the purposes of the greenhouse gas emissions  
3 cap and invest program established under this chapter. Moneys in the  
4 account as described in this subsection must first be appropriated  
5 for the administration of the requirements of this chapter, in an  
6 amount not to exceed five percent of the total receipt of funds  
7 deposited in the account per biennium. Beginning July 1, 2024, and  
8 annually thereafter, the state treasurer shall distribute funds in  
9 the account as follows:

10 (a) Seventy-five percent of the moneys to the climate commitment  
11 account created in section 29 of this act; and

12 (b) Twenty-five percent of the moneys to the natural climate  
13 solutions account created in section 30 of this act.

14 (3) The allocations specified in subsection (2)(a) and (b) of  
15 this section must be reviewed by the legislature on a biennial basis  
16 based on the changing needs of the state in meeting its clean economy  
17 and greenhouse gas reduction goals in a timely, economically  
18 advantageous, and equitable manner.

19 NEW SECTION. **Sec. 29.** CLIMATE COMMITMENT ACCOUNT. (1) The  
20 climate commitment account is created in the state treasury. The  
21 account must receive moneys distributed to the account from the  
22 climate investment account created in section 28 of this act. Moneys  
23 in the account may be spent only after appropriation. Projects,  
24 activities, and programs eligible for funding from the account must  
25 be physically located in Washington state and include, but are not  
26 limited to, the following:

27 (a) Implementing the working families tax rebate in RCW  
28 82.08.0206;

29 (b) Supplementing the growth management planning and  
30 environmental review fund established in RCW 36.70A.490 for the  
31 purpose of making grants or loans to local governments for the  
32 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and  
33 36.70A.600, for costs associated with RCW 36.70A.610, and to cover  
34 costs associated with the adoption of optional elements of  
35 comprehensive plans consistent with RCW 43.21C.420;

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



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

3 (d) Programs, activities, or projects that deploy renewable  
4 energy resources, such as solar and wind power, and projects to  
5 deploy distributed generation, energy storage, demand-side  
6 technologies and strategies, and other grid modernization projects;

7 (e) Programs, activities, or projects that increase the energy  
8 efficiency or reduce greenhouse gas emissions of industrial  
9 facilities including, but not limited to, proposals to implement  
10 combined heat and power, district energy, or on-site renewables, such  
11 as solar and wind power, to upgrade the energy efficiency of existing  
12 equipment, to reduce process emissions, and to switch to less  
13 emissions intensive fuel sources;

14 (f) Programs, activities, or projects that achieve energy  
15 efficiency or emissions reductions in the agricultural sector  
16 including fertilizer management, soil management, eligible fund uses  
17 under RCW 89.08.615, bioenergy, and biofuels;

18 (g) Programs, activities, or projects that increase energy  
19 efficiency in new and existing buildings, or that promote low-carbon  
20 architecture, including use of newly emerging alternative building  
21 materials that result in a lower carbon footprint in the built  
22 environment over the life cycle of the building and component  
23 building materials;

24 (h) Programs, activities, or projects that promote the  
25 electrification and decarbonization of new and existing buildings,  
26 including residential, commercial, and industrial buildings;

27 (i) Programs, activities, or projects that improve energy  
28 efficiency, including district energy, and investments in market  
29 transformation of high efficiency electric appliances and equipment  
30 for space and water heating;

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

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

1 (ii) Community renewable energy projects that allow qualifying  
2 participants to own or receive the benefits of those projects at  
3 reduced or no cost;

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

19 (iv) Direct investment in workforce development, via technical  
20 education, community college, apprenticeships, and other programs;

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

26 (k) Programs, activities, or projects that reduce emissions from  
27 landfills and waste-to-energy facilities through diversion of organic  
28 materials, methane capture or conversion strategies, or other means;

29 (l) Carbon dioxide removal projects, programs, and activities;  
30 and

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

38 (2) Moneys in the account may not be used for projects or  
39 activities that would violate tribal treaty rights or result in  
40 significant long-term damage to critical habitat or ecological

1 functions. Investments from this account must result in long-term  
2 environmental benefits and increased resilience to the impacts of  
3 climate change.

4 NEW SECTION. **Sec. 30.** NATURAL CLIMATE SOLUTIONS ACCOUNT. (1)

5 The natural climate solutions account is created in the state  
6 treasury. All moneys directed to the account from the climate  
7 investment account created in section 28 of this act must be  
8 deposited in the account. Moneys in the account may be spent only  
9 after appropriation. Moneys in the account are intended to increase  
10 the resilience of the state's waters, forests, and other vital  
11 ecosystems to the impacts of climate change, conserve working  
12 forestlands at risk of conversion, and increase their carbon  
13 pollution reduction capacity through sequestration, storage, and  
14 overall system integrity. Moneys in the account must be spent in a  
15 manner that is consistent with existing and future assessments of  
16 climate risks and resilience from the scientific community and  
17 expressed concerns of and impacts to overburdened communities.

18 (2) Moneys in the account may be allocated for the following  
19 purposes:

20 (a) Clean water investments that improve resilience from climate  
21 impacts. Funding under this subsection (2)(a) must be used to:

22 (i) Restore and protect estuaries, fisheries, and marine  
23 shoreline habitats and prepare for sea level rise including, but not  
24 limited to, making fish passage correction investments such as those  
25 identified in the cost-share barrier removal program for small  
26 forestland owners created in RCW 76.13.150 and those that are  
27 considered by the fish passage barrier removal board created in RCW  
28 77.95.160;

29 (ii) Increase carbon storage in the ocean or aquatic and coastal  
30 ecosystems;

31 (iii) Increase the ability to remediate and adapt to the impacts  
32 of ocean acidification;

33 (iv) Reduce flood risk and restore natural floodplain ecological  
34 function;

35 (v) Increase the sustainable supply of water and improve aquatic  
36 habitat, including groundwater mapping and modeling;

37 (vi) Improve infrastructure treating stormwater from previously  
38 developed areas within an urban growth boundary designated under

1 chapter 36.70A RCW, with a preference given to projects that use  
2 green stormwater infrastructure;

3 (vii) Either preserve or increase, or both, carbon sequestration  
4 and storage benefits in forests, forested wetlands, agricultural  
5 soils, tidally influenced agricultural or grazing lands, or  
6 freshwater, saltwater, or brackish aquatic lands; or

7 (viii) Either preserve or establish, or both, carbon  
8 sequestration by protecting or planting trees in marine shorelines  
9 and freshwater riparian areas sufficient to promote climate  
10 resilience, protect cold water fisheries, and achieve water quality  
11 standards;

12 (b) Healthy forest investments to improve resilience from climate  
13 impacts. Funding under this subsection (2)(b) must be used for  
14 projects and activities that will:

15 (i) Increase forest and community resilience to wildfire in the  
16 face of increased seasonal temperatures and drought;

17 (ii) Improve forest health and reduce vulnerability to changes in  
18 hydrology, insect infestation, and other impacts of climate change;  
19 or

20 (iii) Prevent emissions by preserving natural and working lands  
21 from the threat of conversion to development or loss of critical  
22 habitat, through actions that include, but are not limited to, the  
23 creation of new conservation lands, community forests, or increased  
24 support to small forestland owners through assistance programs  
25 including, but not limited to, the forest riparian easement program  
26 and the family forest fish passage program. It is the intent of the  
27 legislature that not less than \$10,000,000 be expended each biennium  
28 for the forestry riparian easement program created in chapter 76.13  
29 RCW or for riparian easement projects funded under the agricultural  
30 conservation easements program established under RCW 89.08.530, or  
31 similar riparian enhancement programs.

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

37 NEW SECTION. **Sec. 31.** AIR QUALITY AND HEALTH DISPARITIES  
38 IMPROVEMENT ACCOUNT. (1) The air quality and health disparities  
39 improvement account is created in the state treasury. Moneys in the

1 account may be spent only after appropriation. Expenditures from the  
2 account are intended to:

3 (a) Improve air quality through the reduction of criteria  
4 pollutants, including through effective air quality monitoring and  
5 the establishment of adequate baseline emissions data; and

6 (b) Reduce health disparities in overburdened communities by  
7 improving health outcomes through the reduction or elimination of  
8 environmental harms and the promotion of environmental benefits.

9 (2) Moneys in the account may be used for either capital budget  
10 or transportation budget purposes, or both. Moneys in the account may  
11 not be used for projects that would violate tribal treaty rights or  
12 result in significant long-term damage to critical habitat or  
13 ecological functions. Investments from the account must result in  
14 long-term environmental benefits and increased resilience to the  
15 impacts of climate change.

16 (3) It is the intent of the legislature that not less than  
17 \$20,000,000 per biennium be dedicated to the account for the purposes  
18 of the account.

19 **Sec. 32.** RCW 70A.15.2200 and 2020 c 20 s 1090 are each amended  
20 to read as follows:

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

32 (2) Except as provided in subsection (3) of this section, any  
33 person operating or responsible for the operation of air contaminant  
34 sources of any class for which the ordinances, resolutions, rules or  
35 regulations of the department or board of the authority, require  
36 registration or reporting shall register therewith and make reports  
37 containing information as may be required by such department or board  
38 concerning location, size and height of contaminant outlets,  
39 processes employed, nature of the contaminant emission and such other

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

28 All registration program and reporting fees collected by the  
29 department shall be deposited in the air pollution control account.  
30 All registration program fees collected by the local air authorities  
31 shall be deposited in their respective treasuries.

32 (3) If a registration or report has been filed for a grain  
33 warehouse or grain elevator as required under this section,  
34 registration, reporting, or a registration program fee shall not,  
35 after January 1, 1997, again be required under this section for the  
36 warehouse or elevator unless the capacity of the warehouse or  
37 elevator as listed as part of the license issued for the facility has  
38 been increased since the date the registration or reporting was last  
39 made. If the capacity of the warehouse or elevator listed as part of  
40 the license is increased, any registration or reporting required for

1 the warehouse or elevator under this section must be made by the date  
2 the warehouse or elevator receives grain from the first harvest  
3 season that occurs after the increase in its capacity is listed in  
4 the license.

5 This subsection does not apply to a grain warehouse or grain  
6 elevator if the warehouse or elevator handles more than ten million  
7 bushels of grain annually.

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

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

14 (b) A "license" is a license issued by the department of  
15 agriculture licensing a facility as a grain warehouse or grain  
16 elevator under chapter 22.09 RCW or a license issued by the federal  
17 government licensing a facility as a grain warehouse or grain  
18 elevator for purposes similar to those of licensure for the facility  
19 under chapter 22.09 RCW; and

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

21 (5)(a) The department shall adopt rules requiring persons to  
22 report emissions of greenhouse gases as defined in RCW 70A.45.010  
23 where those emissions from a single facility, ~~((source, or site,))~~ or  
24 from electricity or fossil fuels sold in Washington by a single  
25 supplier or local distribution company, meet or exceed ten thousand  
26 metric tons of carbon dioxide equivalent annually. The ~~((department~~  
27 ~~may phase in the requirement to report greenhouse gas emissions until~~  
28 ~~the reporting threshold in this subsection is met, which must occur~~  
29 ~~by January 1, 2012))~~ rules adopted by the department must support  
30 implementation of the program created in section 8 of this act. In  
31 addition, the rules must require that:

32 (i) Emissions of greenhouse gases resulting from the combustion  
33 of fossil fuels be reported separately from emissions of greenhouse  
34 gases resulting from the combustion of biomass; and

35 ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each  
36 annual report must include emissions data for the preceding calendar  
37 year and must be submitted to the department by ~~((October))~~ March  
38 31st of the year in which the report is due. ~~((However, starting in~~  
39 ~~2011, a person who is required to report greenhouse gas emissions to~~  
40 ~~the United States environmental protection agency under 40 C.F.R.~~

1 ~~Part 98, as adopted on September 22, 2009, must submit the report~~  
2 ~~required under this section to the department concurrent with the~~  
3 ~~submission to the United States environmental protection agency.~~  
4 ~~Except as otherwise provided in this section, the data for emissions~~  
5 ~~in Washington and any corrections thereto that are reported to the~~  
6 ~~United States environmental protection agency must be the emissions~~  
7 ~~data reported to the department; and~~

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

30 ~~(b) (i) ((Except as otherwise provided in this subsection, the~~  
31 ~~rules adopted by the department under (a) of this subsection must be~~  
32 ~~consistent with the regulations adopted by the United States~~  
33 ~~environmental protection agency in 40 C.F.R. Part 98 on September 22,~~  
34 ~~2009.~~

35 ~~(ii))~~ The department may by rule include additional gases to the  
36 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has  
37 been designated as a greenhouse gas by the United States congress  
38 ~~((or)),~~ by the United States environmental protection agency, or  
39 included in external greenhouse gas emission trading programs with  
40 which Washington has pursuant to section 24 of this act. Prior to



1 including additional gases to the definition of "greenhouse gas" in  
2 RCW 70A.45.010, the department shall notify the appropriate  
3 committees of the legislature. (~~Decisions to amend the rule to~~  
4 ~~include additional gases must be made prior to December 1st of any~~  
5 ~~year and the amended rule may not take effect before the end of the~~  
6 ~~regular legislative session in the next year.~~

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

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

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

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

19 (B) Needed to ensure consistency with emissions reporting  
20 requirements for jurisdictions with which Washington has entered a  
21 linkage agreement. ((However, the))

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

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

27 (e) The fee provisions in subsection (2) of this section apply to  
28 reporting of emissions of greenhouse gases. Persons required to  
29 report under (a) of this subsection who fail to report or pay the fee  
30 required in subsection (2) of this section are subject to enforcement  
31 penalties under this chapter. The department shall enforce the  
32 reporting rule requirements ~~((unless it approves a local air~~  
33 ~~authority's request to enforce the requirements for persons operating~~  
34 ~~within the authority's jurisdiction. However, neither the department~~  
35 ~~nor a local air authority approved under this section are authorized~~  
36 ~~to assess enforcement penalties on persons required to report under~~  
37 ~~(a) of this subsection until six months after the department adopts~~  
38 ~~its reporting rule in 2010)). When a person that holds a compliance  
39 obligation under section 10 of this act fails to submit an emissions  
40 data report or fails to obtain a positive emissions data verification~~

1 statement in accordance with (g)(ii) of this subsection, the  
2 department may assign an emissions level for that person.

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

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

25 (ii) Verification requirements apply at a minimum to persons  
26 required to report under (a) of this subsection with emissions that  
27 equal or exceed 25,000 metric tons of carbon dioxide equivalent  
28 emissions, including carbon dioxide from biomass-derived fuels, or to  
29 persons who have a compliance obligation under section 10 of this act  
30 in any year of the current compliance period. The department may  
31 adopt rules to accept verification reports from another jurisdiction  
32 with a linkage agreement pursuant to section 20 of this act in cases  
33 where the department deems that the methods or procedures are  
34 substantively similar.

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

37 (ii) For the purpose of this subsection (5), the term "supplier"  
38 includes: (A) ~~((A motor vehicle fuel supplier or a motor vehicle fuel~~  
39 ~~importer, as those terms are defined in RCW 82.36.010; (B) a special~~  
40 ~~fuel supplier or a special fuel importer, as those terms are defined~~

1 ~~in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those~~  
2 ~~terms are defined in RCW 82.42.010)) Suppliers that produce, import,~~  
3 ~~or deliver, or any combination of producing, importing, or~~  
4 ~~delivering, a quantity of fuel products in Washington that, if~~  
5 ~~completely combusted, oxidized, or used in other processes, would~~  
6 ~~result in the release of greenhouse gases equivalent to or higher~~  
7 ~~than the threshold established under (a) of this subsection; and (B)~~  
8 ~~suppliers of carbon dioxide that produce, import, or deliver a~~  
9 ~~quantity of carbon dioxide in Washington that, if released, would~~  
10 ~~result in emissions equivalent to or higher than the threshold~~  
11 ~~established under (a) of this subsection.~~

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

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

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

33 NEW SECTION. Sec. 33. A new section is added to chapter 43.21C  
34 RCW to read as follows:

35 The review under this chapter of greenhouse gas emissions from a  
36 new or expanded facility subject to the greenhouse gas emission  
37 reduction requirements of chapter 70A.--- RCW (the new chapter  
38 created in section 37 of this act) must occur consistent with section  
39 10(9) of this act.

1        NEW SECTION.    **Sec. 34.**    A new section is added to chapter 70A.15  
2    RCW to read as follows:

3        The department or a local air authority must issue an enforceable  
4    order under this chapter to all permitted or registered sources  
5    operating in overburdened communities when, consistent with section  
6    3(2)(a) of this act, the department determines that criteria  
7    pollutants are not being reduced in an overburdened community and the  
8    department or local air authority adopts stricter air quality  
9    standards, emissions standards, or emissions limitations on criteria  
10   pollutants.

11       NEW SECTION.    **Sec. 35.**    A new section is added to chapter 70A.45  
12    RCW to read as follows:

13       The state, state agencies, and political subdivisions of the  
14    state, in implementing their duties and authorities established under  
15    other laws, may only consider the greenhouse gas limits established  
16    in RCW 70A.45.020 in a manner that recognizes, where applicable, that  
17    the siting and placement of new best-in-class facilities that  
18    facilitate decarbonization is in the economic and environmental  
19    interests of the state of Washington.

20       NEW SECTION.    **Sec. 36.**    This act may be known and cited as the  
21    Washington climate commitment act.

22       NEW SECTION.    **Sec. 37.**    Sections 1 through 31 and 36 of this act  
23    constitute a new chapter in Title 70A RCW.

24       NEW SECTION.    **Sec. 38.**    (1) Sections 8 through 24 of this act,  
25    and any rules adopted by the department of ecology to implement the  
26    program established under those sections, are suspended on December  
27    31, 2055, in the event that the department of ecology determines by  
28    December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020  
29    have been met for two or more consecutive years.

30       (2) Upon the occurrence of the events identified in subsection  
31    (1) of this section, the department of ecology must provide written  
32    notice of the suspension date of sections 8 through 24 of this act to  
33    affected parties, the chief clerk of the house of representatives,  
34    the secretary of the senate, the office of the code reviser, and  
35    others as deemed appropriate by the department.

1       **Sec. 39.** RCW 43.376.020 and 2012 c 122 s 2 are each amended to  
2 read as follows:

3       In establishing a government-to-government relationship with  
4 Indian tribes, state agencies must:

5       (1) Make reasonable efforts to collaborate with Indian tribes in  
6 the development of policies, agreements, and program implementation  
7 that directly affect Indian tribes and develop a consultation process  
8 that is used by the agency for issues involving specific Indian  
9 tribes. State agencies described in section 6 of this act must offer  
10 consultation with Indian tribes on the actions specified in section 6  
11 of this act;

12       (2) Designate a tribal liaison who reports directly to the head  
13 of the state agency;

14       (3) Ensure that tribal liaisons who interact with Indian tribes  
15 and the executive directors of state agencies receive training as  
16 described in RCW 43.376.040; and

17       (4) Submit an annual report to the governor on activities of the  
18 state agency involving Indian tribes and on implementation of this  
19 chapter.

20       **Sec. 40.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035  
21 are each reenacted and amended to read as follows:

22       (1) The hearings board shall only have jurisdiction to hear and  
23 decide appeals from the following decisions of the department, the  
24 director, local conservation districts, the air pollution control  
25 boards or authorities as established pursuant to chapter 70A.15 RCW,  
26 local health departments, the department of natural resources, the  
27 department of fish and wildlife, the parks and recreation commission,  
28 and authorized public entities described in chapter 79.100 RCW:

29       (a) Civil penalties imposed pursuant to RCW 18.104.155,  
30 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
31 70A.515.060, section 23 of this act, 76.09.170, 77.55.440, 78.44.250,  
32 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
33 90.64.102.

34       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
35 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
36 section 23 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
37 90.48.120, and 90.56.330.

38       (c) Except as provided in RCW 90.03.210(2), the issuance,  
39 modification, or termination of any permit, certificate, or license

1 by the department or any air authority in the exercise of its  
2 jurisdiction, including the issuance or termination of a waste  
3 disposal permit, the denial of an application for a waste disposal  
4 permit, the modification of the conditions or the terms of a waste  
5 disposal permit, or a decision to approve or deny an application for  
6 a solid waste permit exemption under RCW 70A.205.260.

7 (d) Decisions of local health departments regarding the grant or  
8 denial of solid waste permits pursuant to chapter 70A.205 RCW.

9 (e) Decisions of local health departments regarding the issuance  
10 and enforcement of permits to use or dispose of biosolids under RCW  
11 70A.226.090.

12 (f) Decisions of the department regarding waste-derived  
13 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
14 decisions of the department regarding waste-derived soil amendments  
15 under RCW 70A.205.145.

16 (g) Decisions of local conservation districts related to the  
17 denial of approval or denial of certification of a dairy nutrient  
18 management plan; conditions contained in a plan; application of any  
19 dairy nutrient management practices, standards, methods, and  
20 technologies to a particular dairy farm; and failure to adhere to the  
21 plan review and approval timelines in RCW 90.64.026.

22 (h) Any other decision by the department or an air authority  
23 which pursuant to law must be decided as an adjudicative proceeding  
24 under chapter 34.05 RCW.

25 (i) Decisions of the department of natural resources, the  
26 department of fish and wildlife, and the department that are  
27 reviewable under chapter 76.09 RCW, and the department of natural  
28 resources' appeals of county, city, or town objections under RCW  
29 76.09.050(7).

30 (j) Forest health hazard orders issued by the commissioner of  
31 public lands under RCW 76.06.180.

32 (k) Decisions of the department of fish and wildlife to issue,  
33 deny, condition, or modify a hydraulic project approval permit under  
34 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
35 comply, to issue a civil penalty, or to issue a notice of intent to  
36 disapprove applications.

37 (l) Decisions of the department of natural resources that are  
38 reviewable under RCW 78.44.270.

39 (m) Decisions of an authorized public entity under RCW 79.100.010  
40 to take temporary possession or custody of a vessel or to contest the

1 amount of reimbursement owed that are reviewable by the hearings  
2 board under RCW 79.100.120.

3 (2) The following hearings shall not be conducted by the hearings  
4 board:

5 (a) Hearings required by law to be conducted by the shorelines  
6 hearings board pursuant to chapter 90.58 RCW.

7 (b) Hearings conducted by the department pursuant to RCW  
8 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
9 70A.15.3110, and 90.44.180.

10 (c) Appeals of decisions by the department under RCW 90.03.110  
11 and 90.44.220.

12 (d) Hearings conducted by the department to adopt, modify, or  
13 repeal rules.

14 (3) Review of rules and regulations adopted by the hearings board  
15 shall be subject to review in accordance with the provisions of the  
16 administrative procedure act, chapter 34.05 RCW.

17 **Sec. 41.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to  
18 read as follows:

19 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
20 70A.205.280, 70A.300.090, 70A.20.050, section 23 of this act,  
21 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
22 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in  
23 writing, either by certified mail with return receipt requested or by  
24 personal service, to the person incurring the penalty from the  
25 department or the local air authority, describing the violation with  
26 reasonable particularity. For penalties issued by local air  
27 authorities, within thirty days after the notice is received, the  
28 person incurring the penalty may apply in writing to the authority  
29 for the remission or mitigation of the penalty. Upon receipt of the  
30 application, the authority may remit or mitigate the penalty upon  
31 whatever terms the authority in its discretion deems proper. The  
32 authority may ascertain the facts regarding all such applications in  
33 such reasonable manner and under such rules as it may deem proper and  
34 shall remit or mitigate the penalty only upon a demonstration of  
35 extraordinary circumstances such as the presence of information or  
36 factors not considered in setting the original penalty.

37 (2) Any penalty imposed under this section may be appealed to the  
38 pollution control hearings board in accordance with this chapter if  
39 the appeal is filed with the hearings board and served on the

1 department or authority thirty days after the date of receipt by the  
2 person penalized of the notice imposing the penalty or thirty days  
3 after the date of receipt of the notice of disposition by a local air  
4 authority of the application for relief from penalty.

5 (3) A penalty shall become due and payable on the later of:

6 (a) Thirty days after receipt of the notice imposing the penalty;

7 (b) Thirty days after receipt of the notice of disposition by a  
8 local air authority on application for relief from penalty, if such  
9 an application is made; or

10 (c) Thirty days after receipt of the notice of decision of the  
11 hearings board if the penalty is appealed.

12 (4) If the amount of any penalty is not paid to the department  
13 within thirty days after it becomes due and payable, the attorney  
14 general, upon request of the department, shall bring an action in the  
15 name of the state of Washington in the superior court of Thurston  
16 county, or of any county in which the violator does business, to  
17 recover the penalty. If the amount of the penalty is not paid to the  
18 authority within thirty days after it becomes due and payable, the  
19 authority may bring an action to recover the penalty in the superior  
20 court of the county of the authority's main office or of any county  
21 in which the violator does business. In these actions, the procedures  
22 and rules of evidence shall be the same as in an ordinary civil  
23 action.

24 (5) All penalties recovered shall be paid into the state treasury  
25 and credited to the general fund except those penalties imposed  
26 pursuant to RCW 18.104.155, which shall be credited to the  
27 reclamation account as provided in RCW 18.104.155(7), RCW  
28 70A.15.3160, the disposition of which shall be governed by that  
29 provision, RCW 70A.300.090, which shall be credited to the model  
30 toxics control operating account created in RCW 70A.305.180, section  
31 23 of this act, which shall be credited to the climate investment  
32 account created in section 28 of this act, RCW 90.56.330, which shall  
33 be credited to the coastal protection fund created by RCW 90.48.390,  
34 and RCW 70A.355.070, which shall be credited to the underground  
35 storage tank account created by RCW 70A.355.090.

36 NEW SECTION. **Sec. 42.** If any provision of this act or its  
37 application to any person or circumstance is held invalid, the



1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected."

3 Correct the title.

EFFECT: The striking amendment, as amended, does the following:

(1) Makes technical changes, including conforming amendments.  
(2) Adds imported electricity to the list of covered emissions sources under the first compliance period of the Cap and Invest Program.

(3) Exempts motor vehicle and special fuel used for agricultural purposes by a farm fuel user from the Cap and Invest Program.

(4) Aligns environmental justice provisions with those of the Washington HEAL Act, except for the definition of "overburdened community," which has a new definition.

(5) Replaces references to the Forward Flexible Account for transportation expenditures with the new Carbon Emissions Reduction Account.

(6) Creates two subaccounts within the Climate Investment Account: The Climate Commitment Account and the Natural Climate Solutions Account.

(7) Directs 75 percent of the funds deposited into the Climate Investment Account into the Climate Commitment Account and 25 percent into the Natural Climate Solutions Account.

(8) Creates a new Air Quality and Health Disparities Improvement Account.

(9) Creates a program for assistance to small forestland owners seeking to develop projects for carbon offset markets.

(10) States the intent of the Legislature to appropriate \$2 million per biennium for the purpose of assistance to small forestland owners.

(11) Specifies that it is the intent of the Legislature that \$10 million from revenues under the program be expended each biennium for the Forestry Riparian Easement program or for riparian easement projects funded under the Agricultural Conservation Easement Program, or similar riparian enhancement programs.

(12) Prohibits auction proceeds from being transferred to the carbon emissions reduction account after December 31, 2027, if a clean fuel standard with a carbon intensity reduction of greater than 10 percent is not enacted by that date.

(13) Requires that the environmental justice review of the Cap and Invest Program begin in 2023, rather than 2025. Requires the review to include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities.

(14) Requires that the Department of Ecology or local air authority, after adoption of stricter air quality standards, emission standards, or emissions limitations on criteria pollutants issue an enforceable order, as authorized under the Washington Clean Air Act, that applies to all permitted or registered sources operating in an overburdened community as necessary to comply with the stricter standards or limitations.

(15) Removes the requirement that, if a covered entity or opt-in entity is identified as a high priority emitter of criteria pollutants, and the emissions of greenhouse gases and the source of criteria pollutants are correlated, the Department of Ecology reduce the offset limits and the allocation of no cost allowances to that entity.

(16) Removes the requirement that the Department of Ecology revise a linkage agreement to ensure reductions of criteria pollutant emissions by a covered entity.

(17) Requires the Department of Ecology to consider the number of no cost allowances in the marketplace in setting the number of allowances offered at each auction.

(18) Specifies that the Department of Ecology must only offer such number of allowances at each auction as will enhance the likelihood of achieving the statewide emissions limits.

(19) Amends provisions addressing the siting of new or expanded facilities that require review under the State Environmental Policy Act (SEPA).

(20) Requires a facility constructed with new or revised permits to have included a conditional clause in the applicable permits that requires the facility adhere to a performance standard and perform mitigation consistent with statutory greenhouse gas emission limits, in the event that the requirements of the Cap and Invest Program should cease to apply to the facility.

(21) Authorizes an owner or operator of more than one facility receiving no cost allowances for emissions-intensive, trade-exposed (EITE) facilities to transfer allowances among the eligible facilities.

(22) Requires that rules adopted by the Department of Ecology for the allocation of allowances at no cost to EITE facilities include protocols for allocating allowances to an eligible facility built after the effective date of the section. Specifies that such protocols must include consideration of the products being produced by the facility, as well as the local environmental and health impacts associated with the facility.

(23) Requires the Department of Commerce to, in consultation with the Department of Ecology, submit a report to the appropriate committees of the Legislature by January 1, 2028, that includes a review of the Cap and Invest Program as it pertains to emissions-intensive, trade-exposed businesses.

(24) Prohibits any expenditures from being made from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities Improvement Account if, by April 1, 2023, the Legislature has not considered and enacted request legislation brought forth by the Department of Ecology that outlines a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

(25) Excludes landfills with gas capture systems that capture at least 75 percent of landfill gas and produce renewable natural gas or electricity from landfill gas from becoming covered under the Cap and Invest Program beginning January 1, 2031.

(26) Adds Legislative intent language specifying that it is the intent of the Legislature to adopt a greenhouse gas emissions reduction policy specific to landfills, and that if such a policy is not enacted by January 1, 2030, the requirements of the Cap and Invest Program relative to landfills take full effect.

(27) Identifies the individual retail electric cooperatives served by a multijurisdictional consumer-owned utility as the covered entities under the Cap and Invest Program.

(28) Adds a voluntary renewable reserve account maintained by the Department of Ecology from which allowances may be retired for voluntary renewable electricity generation.

(29) Requires that a project or activity funded in whole or in part from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities

Improvement Account be paused or ceased in the event that an affected federally recognized Indian tribe or the Department of Archaeology and Historic Preservation provides timely notice of a determination to the Department of Ecology that the project will adversely impact cultural resources, archaeological sites, or sacred sites.

(30) Adds a new section requiring the Governor to establish a governance structure to implement the state's climate commitment to provide accountability for achieving the state's greenhouse gas emissions reduction limits, establish a coordinated and strategic statewide approach to climate resilience, build an equitable and inclusive clean energy economy, and ensure that the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those limits.

(31) Requires the Department of Ecology to, during the 2022 regular legislative session, bring forth agency request legislation developed in consultation with emissions-intensive, trade-exposed businesses, covered entities, environmental advocates, and overburdened communities that outlines a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

(32) Requires consumer-owned and investor-owned electric utilities receiving allowances at no cost from the Department of Ecology to consign a portion of those allowances to auction for the benefit of ratepayers each compliance period.

(33) Requires that allowances consigned to auction for the benefit of ratepayers by electric utilities eliminate any additional cost burden to low-income customers from the implementation of the Cap and Invest Program.

(34) Requires that revenues from allowances sold at auction be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions such as weatherization, conservation and efficiency services, and bill assistance.

(35) Requires the Department of Ecology to, in adopting offset protocols, make use of aggregation or other mechanisms to increase the development of offset and carbon removal projects by landowners, including small forest landowners.

(36) Adds environmental justice expenditure targets for the total investments made through the Carbon Emissions Reduction Account, the Climate Commitment Account, the Natural Climate Solutions Account, and the Air Quality and Health Disparities Improvement Account.

(37) Removes the section requiring the Climate Investment Account to be included in the legislature's four-year balanced budget requirements.

(38) Specifies that the Cap and Invest Program preempts the Clean Air Rule.

--- END ---