

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126**

Chapter 316, Laws of 2021

(partial veto)

67th Legislature  
2021 Regular Session

GREENHOUSE GAS EMISSIONS—CAP AND INVEST PROGRAM

EFFECTIVE DATE: July 25, 2021

Passed by the Senate April 24, 2021  
Yeas 27 Nays 22

DENNY HECK

**President of the Senate**

Passed by the House April 23, 2021  
Yeas 54 Nays 43

Laurie Jinkins

**Speaker of the House of  
Representatives**

Approved May 17, 2021 2:51 PM with  
the exception of certain items that  
were vetoed (see veto message).

JAY INSLIEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

May 18, 2021

**Secretary of State  
State of Washington**

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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5126**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington**

**67th Legislature**

**2021 Regular Session**

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

READ FIRST TIME 03/24/21.

1 AN ACT Relating to the Washington climate commitment act;  
2 amending RCW 70A.15.2200, 43.376.020, 43.21B.300, and 43.52A.040;  
3 reenacting and amending RCW 43.21B.110 and 70A.45.005; adding a new  
4 section to chapter 43.21C RCW; adding a new section to chapter 70A.15  
5 RCW; adding a new section to chapter 70A.45 RCW; adding a new chapter  
6 to Title 70A RCW; creating new sections; prescribing penalties;  
7 providing a contingent effective date; and providing expiration  
8 dates.

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

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

1 (2) In 2020, the legislature updated the state's greenhouse gas  
2 emissions limits that are to be achieved by 2030, 2040, and 2050,  
3 based on current science and emissions trends, to support local and  
4 global efforts to avoid the most significant impacts from climate  
5 change. Meeting these limits will require coordinated, comprehensive,  
6 and multisectoral implementation of policies, programs, and laws, as  
7 other enacted policies are insufficient to meet the limits.

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

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

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

1 (6) The legislature further finds that by exercising a leadership  
2 role in addressing climate change, Washington will position its  
3 economy, technology centers, financial institutions, and  
4 manufacturers to benefit from national and international efforts that  
5 must occur to reduce greenhouse gases. The legislature intends to  
6 create climate policy that recognizes the special nature of  
7 emissions-intensive, trade-exposed industries by minimizing leakage  
8 and increased life-cycle emissions associated with product imports.  
9 The legislature further finds that climate policies must be  
10 appropriately designed, in order to avoid leakage that results in net  
11 increases in global greenhouse gas emissions and increased negative  
12 impacts to those communities most impacted by environmental harms  
13 from climate change. The legislature further intends to encourage  
14 these industries to continue to innovate, find new ways to be more  
15 energy efficient, use lower carbon products, and be positioned to be  
16 global leaders in a low carbon economy.

17 (7) Under the program, the legislature intends to identify  
18 overburdened communities where the highest concentrations of criteria  
19 pollutants occur, determine the sources of those emissions and  
20 pollutants, and pursue significant reductions of emissions and  
21 pollutants in those communities. The legislature further intends for  
22 the department of ecology to conduct environmental justice  
23 assessments to ensure that funds and programs created under this  
24 chapter provide direct and meaningful benefits to vulnerable  
25 populations and overburdened communities. Additionally, the  
26 legislature intends to prevent job loss and provide protective  
27 measures if workers are adversely impacted by the transition to a  
28 clean energy economy through transition and assistance programs,  
29 worker-support projects, and workforce development and other  
30 activities designed to grow and expand the clean manufacturing sector  
31 in communities across Washington state. The legislature further  
32 intends to empower the environmental justice council established  
33 under RCW 70A.---.--- (section 20, chapter . . ., Laws of 2021  
34 (Engrossed Second Substitute Senate Bill No. 5141)) to provide  
35 recommendations for the development and implementation of the  
36 program, the distribution of funds, and the establishment of  
37 programs, activities, and projects to achieve environmental justice  
38 and environmental health goals. The legislature further intends for  
39 the department of ecology to create and adopt community engagement  
40 plans and tribal consultation frameworks in the administration of the

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

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

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

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

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

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

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

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

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

37 (8) "Balancing authority" means the responsible entity that  
38 integrates resource plans ahead of time, maintains load-interchange-

1 generation balance within a balancing authority area, and supports  
2 interconnection frequency in real time.

3 (9) "Balancing authority area" means the collection of  
4 generation, transmission, and load within the metered boundaries of a  
5 balancing authority. A balancing authority maintains load-resource  
6 balance within this area.

7 (10) "Best available technology" means a technology or  
8 technologies that will achieve the greatest reduction in greenhouse  
9 gas emissions, taking into account the fuels, processes, and  
10 equipment used by facilities to produce goods of comparable type,  
11 quantity, and quality. Best available technology must be technically  
12 feasible, commercially available, economically viable, not create  
13 excessive environmental impacts, and be compliant with all applicable  
14 laws while not changing the characteristics of the good being  
15 manufactured.

16 (11) "Biomass" means nonfossilized and biodegradable organic  
17 material originating from plants, animals, and microorganisms,  
18 including products, by-products, residues, and waste from  
19 agriculture, forestry, and related industries as well as the  
20 nonfossilized and biodegradable organic fractions of industrial  
21 waste, including gases and liquids recovered from the decomposition  
22 of nonfossilized and biodegradable organic material.

23 (12) "Biomass-derived fuels," "biomass fuels," or "biofuels"  
24 means fuels derived from biomass that have at least 40 percent lower  
25 greenhouse gas emissions based on a full life-cycle analysis when  
26 compared to petroleum fuels for which biofuels are capable as serving  
27 as a substitute.

28 (13) "Carbon dioxide equivalents" means a measure used to compare  
29 the emissions from various greenhouse gases based on their global  
30 warming potential.

31 (14) "Carbon dioxide removal" means deliberate human activities  
32 removing carbon dioxide from the atmosphere and durably storing it in  
33 geological, terrestrial, or ocean reservoirs, or in products. "Carbon  
34 dioxide removal" includes existing and potential anthropogenic  
35 enhancement of biological or geochemical sinks and including, but not  
36 limited to, carbon mineralization and direct air capture and storage.

37 (15) "Climate commitment" means the process and mechanisms to  
38 ensure a coordinated and strategic approach to advancing climate  
39 resilience and environmental justice and achieving an equitable and  
40 inclusive transition to a carbon neutral economy.

1 (16) "Climate resilience" is the ongoing process of anticipating,  
2 preparing for, and adapting to changes in climate and minimizing  
3 negative impacts to our natural systems, infrastructure, and  
4 communities. For natural systems, increasing climate resilience  
5 involves restoring and increasing the health, function, and integrity  
6 of our ecosystems and improving their ability to absorb and recover  
7 from climate-affected disturbances. For communities, increasing  
8 climate resilience means enhancing their ability to understand,  
9 prevent, adapt, and recover from climate impacts to people and  
10 infrastructure.

11 (17) "Closed facility" means a facility at which the current  
12 owner or operator has elected to permanently stop production and will  
13 no longer be an emissions source.

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

19 (19) "Compliance obligation" means the requirement to submit to  
20 the department the number of compliance instruments equivalent to a  
21 covered or opt-in entity's covered emissions during the compliance  
22 period.

23 (20) "Compliance period" means the four-year period for which the  
24 compliance obligation is calculated for covered entities.

25 (21) "Cost burden" means the impact on rates or charges to  
26 customers of electric utilities in Washington state for the  
27 incremental cost of electricity service to serve load due to the  
28 compliance cost for greenhouse gas emissions caused by the program.  
29 Cost burden includes administrative costs from the utility's  
30 participation in the program.

31 (22) "Covered emissions" means the emissions for which a covered  
32 entity has a compliance obligation under section 10 of this act.

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

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

38 (25) "Curtailed facility" means a facility at which the owner or  
39 operator has temporarily suspended production but for which the owner

1 or operator maintains operating permits and retains the option to  
2 resume production if conditions become amenable.

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

4 (27) "Electricity importer" means:

5 (a) For electricity that is scheduled with a NERC e-tag to a  
6 final point of delivery into a balancing authority area located  
7 entirely within the state of Washington, the electricity importer is  
8 identified on the NERC e-tag as the purchasing-selling entity on the  
9 last segment of the tag's physical path with the point of receipt  
10 located outside the state of Washington and the point of delivery  
11 located inside the state of Washington;

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

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

20 (d) For electricity from facilities allocated to serve retail  
21 electricity customers of a multijurisdictional electric company, the  
22 electricity importer is the multijurisdictional electric company;

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

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

39 (g) If the importer identified under (f) of this subsection has  
40 not voluntarily elected to comply with the program, then the



1 electricity importer is the public body or cooperative customer or  
2 direct service industrial customer; or

3 (h) For electricity from facilities allocated to a consumer-owned  
4 utility inside the state of Washington from a multijurisdictional  
5 consumer-owned utility, the electricity importer is the consumer-  
6 owned utility inside the state of Washington.

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

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

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

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

21 (32) "Environmental harm" has the same meaning as defined in RCW  
22 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
23 Substitute Senate Bill No. 5141)).

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

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

30 (35) "Environmental justice assessment" has the same meaning as  
31 identified in RCW 70A.---.--- (section 14, chapter . . ., Laws of  
32 2021 (Engrossed Second Substitute Senate Bill No. 5141)).

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

37 (37) "Facility" means any physical property, plant, building,  
38 structure, source, or stationary equipment located on one or more  
39 contiguous or adjacent properties in actual physical contact or  
40 separated solely by a public roadway or other public right-of-way and

1 under common ownership or common control, that emits or may emit any  
2 greenhouse gas.

3 (38) "First jurisdictional deliverer" means the owner or operator  
4 of an electric generating facility in Washington or an electricity  
5 importer.

6 (39) "General market participant" means a registered entity that  
7 is not identified as a covered entity or an opt-in entity that is  
8 registered in the program registry and intends to purchase, hold,  
9 sell, or voluntarily retire compliance instruments.

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

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

13 (42) "Imported electricity" means electricity generated outside  
14 the state of Washington with a final point of delivery within the  
15 state.

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

18 (b) "Imported electricity" includes imports from linked  
19 jurisdictions, but such imports shall be construed as having no  
20 emissions.

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

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

28 (e) For a multijurisdictional electric company, "imported  
29 electricity" means electricity, other than from in-state facilities,  
30 that contributes to a common system power pool. Where a  
31 multijurisdictional electric company has a cost allocation  
32 methodology approved by the utilities and transportation commission,  
33 the allocation of specific facilities to Washington's retail load  
34 will be in accordance with that methodology.

35 (f) For a multijurisdictional consumer-owned utility, "imported  
36 electricity" includes electricity from facilities that contribute to  
37 a common system power pool that are allocated to a consumer-owned  
38 utility inside the state of Washington pursuant to a methodology  
39 approved by the governing board of the consumer-owned utility.

1 (43) "Leakage" means a reduction in emissions of greenhouse gases  
2 within the state that is offset by a directly attributable increase  
3 in greenhouse gas emissions outside the state and outside the  
4 geography of another jurisdiction with a linkage agreement with  
5 Washington.

6 (44) "Limits" means the greenhouse gas emissions reductions  
7 required by RCW 70A.45.020.

8 (45) "Linkage" means a bilateral or multilateral decision under a  
9 linkage agreement between greenhouse gas market programs to accept  
10 compliance instruments issued by a participating jurisdiction to meet  
11 the obligations of regulated entities in a partner jurisdiction and  
12 to otherwise coordinate activities to facilitate operation of a joint  
13 market.

14 (46) "Linkage agreement" means a nonbinding agreement that  
15 connects two or more greenhouse gas market programs and articulates a  
16 mutual understanding of how the participating jurisdictions will work  
17 together to facilitate a connected greenhouse gas market.

18 (47) "Linked jurisdiction" means a jurisdiction with which  
19 Washington has entered into a linkage agreement.

20 (48) "Multijurisdictional consumer-owned utility" means a  
21 consumer-owned utility that provides electricity to member owners in  
22 Washington and in one or more other states in a contiguous service  
23 territory or from a common power system.

24 (49) "Multijurisdictional electric company" means an investor-  
25 owned utility that provides electricity to customers in Washington  
26 and in one or more other states in a contiguous service territory or  
27 from a common power system.

28 (50) "NERC e-tag" means North American electric reliability  
29 corporation (NERC) energy tag representing transactions on the North  
30 American bulk electricity market scheduled to flow between or across  
31 balancing authority areas.

32 (51) "Offset credit" means a tradable compliance instrument that  
33 represents an emissions reduction or emissions removal of one metric  
34 ton of carbon dioxide equivalent.

35 (52) "Offset project" means a project that reduces or removes  
36 greenhouse gases that are not covered emissions under this chapter.

37 (53) "Offset protocols" means a set of procedures and standards  
38 to quantify greenhouse gas reductions or greenhouse gas removals  
39 achieved by an offset project.

1 (54) "Overburdened community" means a geographic area where  
2 vulnerable populations face combined, multiple environmental harms  
3 and health impacts or risks due to exposure to environmental  
4 pollutants or contaminants through multiple pathways, which may  
5 result in significant disparate adverse health outcomes or effects.

6 (a) "Overburdened community" includes, but is not limited to:

7 (i) Highly impacted communities as defined in RCW 19.405.020;

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

10 (iii) Populations, including Native Americans or immigrant  
11 populations, who may be exposed to environmental contaminants and  
12 pollutants outside of the geographic area in which they reside based  
13 on the populations' use of traditional or cultural foods and  
14 practices, such as the use of resources, access to which is protected  
15 under treaty rights in ceded areas, when those exposures in  
16 conjunction with other exposures may result in disproportionately  
17 greater risks, including risks of certain cancers or other adverse  
18 health effects and outcomes.

19 (b) Overburdened communities identified by the department may  
20 include the same communities as those identified by the department  
21 through its process for identifying overburdened communities under  
22 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
23 Second Substitute Senate Bill No. 5141)).

24 (55) "Person" has the same meaning as defined in RCW  
25 70A.15.2200(5)(h)(iii).

26 (56) "Point of delivery" means a point on the electricity  
27 transmission or distribution system where a deliverer makes  
28 electricity available to a receiver, or available to serve load. This  
29 point may be an interconnection with another system or a substation  
30 where the transmission provider's transmission and distribution  
31 systems are connected to another system, or a distribution substation  
32 where electricity is imported into the state over a  
33 multijurisdictional retail provider's distribution system.

34 (57) "Price ceiling unit" means the units issued at a fixed price  
35 by the department for the purpose of limiting price increases and  
36 funding further investments in greenhouse gas reductions.

37 (58) "Program" means the greenhouse gas emissions cap and invest  
38 program created by and implemented pursuant to this chapter.

39 (59) "Program registry" means the data system in which covered  
40 entities, opt-in entities, and general market participants are

1 registered and in which compliance instruments are recorded and  
2 tracked.

3 (60) "Registered entity" means a covered entity, opt-in entity,  
4 or general market participant that has completed the process for  
5 registration in the program registry.

6 (61) "Resilience" means the ability to prepare, mitigate and plan  
7 for, withstand, recover from, and more successfully adapt to adverse  
8 events and changing conditions, and reorganize in an equitable manner  
9 that results in a new and better condition.

10 (62) "Retire" means to permanently remove a compliance instrument  
11 such that the compliance instrument may never be sold, traded, or  
12 otherwise used again.

13 (63) "Specified source of electricity" or "specified source"  
14 means a facility, unit, or asset controlling supplier that is  
15 permitted to be claimed as the source of electricity delivered. The  
16 reporting entity must have either full or partial ownership in the  
17 facility or a written power contract to procure electricity generated  
18 by that facility or unit or from an asset controlling supplier at the  
19 time of entry into the transaction to procure electricity.

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

22 (65) "Tribal lands" has the same meaning as defined in RCW  
23 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed Second  
24 Substitute Senate Bill No. 5141)).

25 (66) "Unspecified source of electricity" or "unspecified source"  
26 means a source of electricity that is not a specified source at the  
27 time of entry into the transaction to procure electricity.

28 (67) "Voluntary renewable reserve account" means a holding  
29 account maintained by the department from which allowances may be  
30 retired for voluntary renewable electricity generation, which is  
31 directly delivered to the state and has not and will not be sold or  
32 used to meet any other mandatory requirements in the state or any  
33 other jurisdiction, on behalf of voluntary renewable energy  
34 purchasers or end users.

35 (68) "Vulnerable populations" has the same meaning as defined in  
36 RCW 70A.---.--- (section 2, chapter . . ., Laws of 2021 (Engrossed  
37 Second Substitute Senate Bill No. 5141)).

38 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE REVIEW. (1) To  
39 ensure that the program created in sections 8 through 24 of this act

1 achieves reductions in criteria pollutants as well as greenhouse gas  
2 emissions in overburdened communities highly impacted by air  
3 pollution, the department must:

4 (a) Identify overburdened communities, which may be accomplished  
5 through the department's process to identify overburdened communities  
6 under chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate  
7 Bill No. 5141);

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

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

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

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

29 (b) Once this review determines the levels of criteria pollutants  
30 in an identified overburdened community, then the department, in  
31 consultation with local air pollution control authorities, must:

32 (i) Establish air quality targets to achieve air quality  
33 consistent with whichever is more protective for human health:

34 (A) National ambient air quality standards established by the  
35 United States environmental protection agency; or

36 (B) The air quality experienced in neighboring communities that  
37 are not identified as overburdened;

38 (ii) Identify the stationary and mobile sources that are the  
39 greatest contributors of those emissions that are either increasing  
40 or not decreasing;

1 (iii) Achieve the reduction targets through adoption of emission  
2 control strategies or other methods;

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

9 (v) After adoption of the stricter air quality standards,  
10 emission standards, or emissions limitations on criteria pollutants  
11 under (b)(iv) of this subsection, issue an enforceable order or the  
12 local air authority must issue an enforceable order, as authorized  
13 under section 35 of this act, as necessary to comply with the  
14 stricter standards or limitations and the requirements of this  
15 section. The department or local air authority must initiate the  
16 process, including provision of notice to all relevant affected  
17 permittees or registered sources and to the public, to adopt and  
18 implement an enforceable order required under this subsection within  
19 six months of the adoption of standards or limitations under (b)(iv)  
20 of this subsection.

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

26 (3) An eligible facility sited after the effective date of this  
27 section that receives allowances under section 13 of this act must  
28 mitigate increases in its emissions of particulate matter in  
29 overburdened communities.

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

35 (i) Identifying emitters in overburdened communities; and

36 (ii) Monitoring and evaluating criteria pollutant emissions in  
37 those areas.

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

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

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



1 (3) State agencies allocating funds or administering grants or  
2 programs from the carbon emissions reduction account created in  
3 section 27 of this act, the climate investment account created in  
4 section 28 of this act, or the air quality and health disparities  
5 improvement account created in section 31 of this act, must:

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

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

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

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

22 NEW SECTION. **Sec. 5.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The  
23 environmental justice council created in RCW 70A.---.--- (section 20,  
24 chapter . . ., Laws of 2021 (Engrossed Second Substitute Senate Bill  
25 No. 5141)) must provide recommendations to the legislature, agencies,  
26 and the governor in the development and implementation of the program  
27 established in sections 8 through 24 of this act, and the programs  
28 funded from the carbon emissions reduction account created in section  
29 27 of this act and from the climate investment account created in  
30 section 28 of this act.

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

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

38 (i) The program established in sections 8 through 24 of this act  
39 including, but not limited to, linkage with other jurisdictions,

1 protocols for establishing offset projects and securing offset  
2 credits, designation of emissions-intensive and trade-exposed  
3 industries under section 13 of this act, and administration of  
4 allowances under the program; and

5 (ii) Investment plans and funding proposals for the programs  
6 funded from the climate investment account created in section 28 of  
7 this act for the purpose of providing environmental benefits and  
8 reducing environmental health disparities within overburdened  
9 communities;

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;

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

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

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

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

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

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

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

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

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

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

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

\*Sec. 6 was vetoed. See message at end of chapter.

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

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

8 (k) Providing for the allocation of allowances to emissions-  
9 intensive, trade-exposed industries pursuant to section 13 of this  
10 act.

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

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

29 (5) By December 1, 2027, and at least every four years thereafter  
30 and in compliance with RCW 43.01.036, the department must submit a  
31 report to the legislature that includes a comprehensive review of the  
32 implementation of the program to date, including but not limited to  
33 outcomes relative to the state's emissions reduction limits,  
34 overburdened communities, covered entities, and emissions-intensive,  
35 trade-exposed businesses. The department must transmit the report to  
36 the environmental justice council at the same time it is submitted to  
37 the legislature.

38 (6) The department must bring forth agency request legislation if  
39 the department finds that any provision of this chapter prevents

1 linking Washington's cap and invest program with that of any other  
2 jurisdiction.

**\*Sec. 8 is partially vetoed. See message at end of chapter.**

3 \*NEW SECTION. **Sec. 9. ANNUAL ALLOWANCE BUDGET AND TIMELINES.**

4 (1)(a) The department shall commence the program by January 1, 2023,  
5 by determining an emissions baseline establishing the proportionate  
6 share that the total greenhouse gas emissions of covered entities for  
7 the first compliance period bears to the total anthropogenic  
8 greenhouse gas emissions in the state during 2015 through 2019, based  
9 on data reported to the department under RCW 70A.15.2200 or provided  
10 as required by this chapter, as well as other relevant data. By  
11 October 1, 2022, the department shall adopt annual allowance budgets  
12 for the first compliance period of the program, calendar years 2023  
13 through 2026, to be distributed from January 1, 2023, through  
14 December 31, 2026. **If the first compliance period is delayed pursuant  
15 to section 22(7) of this act, the department shall adjust the annual  
16 allowance budgets to reflect a shorter first compliance period.**

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

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

30 (2) The annual allowance budgets must be set to achieve the share  
31 of reductions by covered entities necessary to achieve the 2030,  
32 2040, and 2050 statewide emissions limits established in RCW  
33 70A.45.020, based on data reported to the department under chapter  
34 70A.15 RCW or provided as required by this chapter. Annual allowance  
35 budgets must be set such that the use of offsets as compliance  
36 instruments, consistent with section 19 of this act, does not prevent  
37 the achievement of the emissions limits established in RCW  
38 70A.45.020. In so setting annual allowance budgets, the department

1 must reduce the annual allowance budget relative to the limits in an  
2 amount equivalent to offset use, or in accordance with a similar  
3 methodology adopted by the department. The department must adopt  
4 annual allowance budgets for the program on a calendar year basis  
5 that provide for progressively equivalent reductions year over year.  
6 An allowance distributed under the program, either directly by the  
7 department under sections 13 through 15 of this act or through  
8 auctions under section 12 of this act, does not expire and may be  
9 held or banked consistent with sections 12(6) and 17(1) of this act.

10 (3) The department must complete an evaluation by December 31,  
11 2027, and by December 31, 2035, of the performance of the program,  
12 including its performance in reducing greenhouse gases. If the  
13 evaluation shows that adjustments to the annual allowance budgets are  
14 necessary for covered entities to achieve their proportionate share  
15 of the 2030 and 2040 emission reduction limits identified in RCW  
16 70A.45.020, as applicable, the department shall adjust the annual  
17 allowance budgets accordingly. The department must complete  
18 additional evaluations of the performance of the program by December  
19 31, 2040, and by December 31, 2045, and make any necessary  
20 adjustments in the annual allowance budgets to ensure that covered  
21 entities achieve their proportionate share of the 2050 emission  
22 reduction limit identified in RCW 70A.45.020. Nothing in this  
23 subsection precludes the department from making additional  
24 adjustments to annual allowance budgets as necessary to ensure  
25 successful achievement of the proportionate emission reduction limits  
26 by covered entities. The department shall determine and make public  
27 the circumstances, metrics, and processes that would initiate the  
28 public consideration of additional allowance budget adjustments to  
29 ensure successful achievement of the proportionate emission reduction  
30 limits.

31 (4) Data reported to the department under RCW 70A.15.2200 or  
32 provided as required by this chapter for 2015 through 2019 is deemed  
33 sufficient for the purpose of adopting annual allowance budgets and  
34 serving as the baseline by which covered entities demonstrate  
35 compliance under the first compliance period of the program. Data  
36 reported to the department under RCW 70A.15.2200 or provided as  
37 required by this chapter for 2023 through 2025 is deemed sufficient  
38 for adopting annual allowance budgets and serving as the baseline by  
39 which covered entities demonstrate compliance under the second  
40 compliance period of the program.



1 (5) The legislature intends to promote a growing and sustainable  
2 economy and to avoid leakage of emissions from manufacturing to other  
3 jurisdictions. Therefore, the legislature finds that implementation  
4 of this section is contingent upon the enactment of section 13 of  
5 this act.

***\*Sec. 9 is partially vetoed. See message at end of chapter.***

6 NEW SECTION. **Sec. 10.** PROGRAM COVERAGE. (1) A person is a  
7 covered entity as of the beginning of the first compliance period and  
8 all subsequent compliance periods if the person reported emissions  
9 under RCW 70A.15.2200 for any calendar year from 2015 through 2019,  
10 or if additional data provided as required by this chapter indicates  
11 that emissions for any calendar year from 2015 through 2019 equaled  
12 or exceeded any of the following thresholds, or if the person is a  
13 first jurisdictional deliverer and imports electricity into the state  
14 during the compliance period:

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

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

22 (c) Where the person is a first jurisdictional deliverer  
23 importing electricity into the state and the cumulative annual total  
24 of emissions associated with the imported electricity, whether from  
25 specified or unspecified sources, exceeds 25,000 metric tons of  
26 carbon dioxide equivalent. In consultation with any linked  
27 jurisdiction to the program created by this chapter, by October 1,  
28 2026, the department, in consultation with the department of commerce  
29 and the utilities and transportation commission, shall adopt by rule  
30 a methodology for addressing imported electricity associated with a  
31 centralized electricity market;

32 (d) Where the person is a supplier of fossil fuel other than  
33 natural gas and from that fuel 25,000 metric tons or more of carbon  
34 dioxide equivalent emissions would result from the full combustion or  
35 oxidation, excluding the amounts for fuel products that are produced  
36 or imported with a documented final point of delivery outside of  
37 Washington and combusted outside of Washington; and

1 (e)(i) Where the person supplies natural gas in amounts that  
2 would result in exceeding 25,000 metric tons of carbon dioxide  
3 equivalent emissions if fully combusted or oxidized, excluding the  
4 amounts for fuel products that are produced or imported with a  
5 documented final point of delivery outside of Washington and  
6 combusted outside of Washington, and excluding the amounts: (A)  
7 Supplied to covered entities under (a) through (d) of this  
8 subsection; and (B) delivered to opt-in entities;

9 (ii) Where the person who is not a natural gas company and has a  
10 tariff with a natural gas company to deliver to an end-use customer  
11 in the state in amounts that would result in exceeding 25,000 metric  
12 tons of carbon dioxide equivalent emissions if fully combusted or  
13 oxidized, excluding the amounts: (A) Supplied to covered entities  
14 under (a) through (d) of this subsection; and (B) the amounts  
15 delivered to opt-in entities;

16 (iii) Where the person is an end-use customer in the state who  
17 directly purchases natural gas from a person that is not a natural  
18 gas company and has the natural gas delivered through an interstate  
19 pipeline to a distribution system owned by the purchaser in amounts  
20 that would result in exceeding 25,000 metric tons of carbon dioxide  
21 equivalent emissions if fully combusted or oxidized, excluding the  
22 amounts: (A) Supplied to covered entities under (a) through (d) of  
23 this subsection; and (B) delivered to opt-in entities.

24 (2) A person is a covered entity as of the beginning of the  
25 second compliance period and all subsequent compliance periods if the  
26 person reported emissions under RCW 70A.15.2200 or provided emissions  
27 data as required by this chapter for any calendar year from 2023  
28 through 2025, where the person owns or operates a waste to energy  
29 facility utilized by a county and city solid waste management program  
30 and the facility's emissions equal or exceed 25,000 metric tons of  
31 carbon dioxide equivalent.

32 (3)(a) A person is a covered entity beginning January 1, 2031,  
33 and all subsequent compliance periods if the person reported  
34 emissions under RCW 70A.15.2200 or provided emissions data as  
35 required by this chapter for any calendar year from 2027 through  
36 2029, where the person owns or operates a:

37 (i) Landfill utilized by a county and city solid waste management  
38 program and the facility's emissions equal or exceed 25,000 metric  
39 tons of carbon dioxide equivalent; or

1 (ii) Railroad company, as that term is defined in RCW 81.04.010,  
2 and the railroad company's emissions equal or exceed 25,000 metric  
3 tons of carbon dioxide equivalent.

4 (b) Subsection (a) of this subsection does not apply to owners or  
5 operators of landfills that:

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

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

13 (c) It is the intent of the legislature to adopt a greenhouse gas  
14 reduction policy specific to landfills. If such a policy is not  
15 enacted by January 1, 2030, the requirements of this subsection (3)  
16 take full effect.

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

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

1 source is expected to exceed the applicable emissions threshold,  
2 whichever happens first. Sources meeting these conditions are  
3 required to transfer their first allowances on the first transfer  
4 deadline of the year following the year in which their emissions were  
5 equal to or exceeded the emissions threshold.

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

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

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

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

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

31 (d) Carbon dioxide emissions from the combustion of biomass or  
32 biofuels;

33 (e) (i) Motor vehicle fuel or special fuel that is used  
34 exclusively for agricultural purposes by a farm fuel user. This  
35 exemption is available only if a buyer of motor vehicle fuel or  
36 special fuel provides the seller with an exemption certificate in a  
37 form and manner prescribed by the department. For the purposes of  
38 this subsection, "agricultural purposes" and "farm fuel user" have  
39 the same meanings as provided in RCW 82.08.865.

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

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

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

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

22 (b) Consistent with the intent of the legislature to avoid the  
23 leakage of emissions to other jurisdictions, in achieving the state's  
24 greenhouse gas limits in RCW 70A.45.020, the state, including lead  
25 agencies under chapter 43.21C RCW, shall pursue the limits in a  
26 manner that recognizes that the siting and placement of new or  
27 expanded best-in-class facilities with lower carbon emitting  
28 processes is in the economic and environmental interests of the state  
29 of Washington.

30 (c) In conducting a life-cycle analysis, if required, for new or  
31 expanded facilities that require review under chapter 43.21C RCW, a  
32 lead agency must evaluate and attribute any potential net cumulative  
33 greenhouse gas emissions resulting from the project as compared to  
34 other existing facilities or best available technology including  
35 best-in-class facilities and emerging lower carbon processes that  
36 supply the same product or end use. The department may adopt rules to  
37 determine the appropriate threshold for applying this analysis.

38 (d) Covered emissions from an entity that is or will be a covered  
39 entity under this chapter may not be the basis for denial of a permit  
40 for a new or expanded facility. Covered emissions must be included in

1 the analysis undertaken pursuant to (c) of this subsection. Nothing  
2 in this subsection requires a lead agency or a permitting agency to  
3 approve or issue a permit to a permit applicant, including to a new  
4 or expanded fossil fuel project.

5 (e) A lead agency under chapter 43.21C RCW or a permitting agency  
6 shall allow a new or expanded facility that is a covered entity or  
7 opt-in entity to satisfy a mitigation requirement for its covered  
8 emissions under this act and under any greenhouse gas emission  
9 mitigation requirements for covered emissions under chapter 43.21C  
10 RCW by submitting to the department the number of compliance  
11 instruments equivalent to its covered emissions during a compliance  
12 period.

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  
39 allowances from the annual allowance budgets from prior years that

1 remain to be distributed. The department must transmit to the  
2 environmental justice council an auction notice at least 60 days  
3 prior to each auction, as well as a summary results report and a  
4 postauction public proceeds report within 60 days after each auction.  
5 The department must communicate the results of the previous calendar  
6 year's auctions to the environmental justice council on an annual  
7 basis beginning in 2024.

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

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

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

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

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

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

38 (6) To protect the integrity of the auctions, a registered entity  
39 or group of registered entities with a direct corporate association  
40 are subject to auction purchase and holding limits. The department



1 may impose additional limits if it deems necessary to protect the  
2 integrity and functioning of the auctions:

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

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

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

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

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

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

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

1 (d) For fiscal years 2026 through 2037, upon completion and  
2 verification of the auction results, the financial services  
3 administrator shall notify winning bidders and transfer the auction  
4 proceeds to the state treasurer for deposit as follows: (i)  
5 \$359,117,000 per year must first be deposited into the carbon  
6 emissions reduction account created in section 27 of this act; and  
7 (ii) the remaining auction proceeds to the climate investment account  
8 created in section 28 of this act and the air quality and health  
9 disparities improvement account created in section 31 of this act.

10 (e) The deposits into the carbon emissions reduction account  
11 pursuant to (a) through (d) of this subsection must not exceed  
12 \$5,200,000,000 over the first 16 years and any remaining auction  
13 proceeds must be deposited into the climate investment account  
14 created in section 28 of this act and the air quality and health  
15 disparities improvement account created in section 31 of this act.

16 (f) For fiscal year 2038 and each year thereafter, upon  
17 completion and verification of the auction results, the financial  
18 services administrator shall notify winning bidders and transfer the  
19 auction proceeds to the state treasurer for deposit as follows: (i)  
20 50 percent of the auction proceeds to the carbon emissions reduction  
21 account created in section 27 of this act; and (ii) the remaining  
22 auction proceeds to the climate investment account created in section  
23 28 of this act and the air quality and health disparities improvement  
24 account created in section 31 of this act.

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

35 (a) Provided false or misleading facts;

36 (b) Withheld material information that could influence a decision  
37 by the department;

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

39 (d) Violated registration requirements; or

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

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

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

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

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

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

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 shingle 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. In developing the objective  
3 criteria under this subsection, the department must consider the  
4 locations of facilities potentially identified as emissions-  
5 intensive, trade-exposed manufacturing businesses relative to  
6 overburdened communities.

7 (3) (a) For the first compliance period beginning in January 1,  
8 2023, the annual allocation of no cost allowances for direct  
9 distribution to a facility identified as emissions-intensive and  
10 trade-exposed must be equal to the facility's baseline carbon  
11 intensity established using data from 2015 through 2019, or other  
12 data as allowed under this section, multiplied by the facility's  
13 actual production for each calendar year during the compliance  
14 period. For facilities using the mass-based approach, the allocation  
15 of no cost allowances shall be equal to the facility's mass-based  
16 baseline using data from 2015 through 2019, or other data as allowed  
17 under this section.

18 (b) For the second compliance period, beginning in January, 2027,  
19 and in each subsequent compliance period, the annual allocation of no  
20 cost allowances established in (a) of this subsection shall be  
21 adjusted according to the benchmark reduction schedules established  
22 in (b) (ii) and (iii) and (e) of this subsection multiplied by the  
23 facility's actual production during the period. The department shall  
24 adjust the no cost allocation of allowances and credits to an  
25 emissions-intensive and trade-exposed facility to avoid duplication  
26 with any no cost allowances transferred pursuant to sections 14 and  
27 15 of this act, if applicable.

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

33 (ii) If an emissions-intensive and trade-exposed facility is not  
34 able to feasibly determine a carbon intensity benchmark based on its  
35 unique circumstances, the entity may elect to use a mass-based  
36 baseline that does not vary based on changes in production volumes.  
37 The mass-based baseline must be based upon data from 2015 through  
38 2019, unless the emissions-intensive, trade-exposed facility can  
39 demonstrate that there have been abnormal periods of operation that  
40 materially impacted the facility and the baseline period should be

1 expanded to include years prior to 2015. For each year during the  
2 first four-year compliance period that begins January 1, 2023, these  
3 facilities must be awarded no cost allowances equal to 100 percent of  
4 the facility's mass-based baseline. For each year during the second  
5 four-year compliance period that begins January 1, 2027, these  
6 facilities must be awarded no cost allowances equal to 97 percent of  
7 the facility's mass-based baseline. For each year during the third  
8 compliance period that begins January 1, 2031, these facilities must  
9 be awarded no cost allowances equal to 94 percent of the facility's  
10 mass-based baseline. Except as provided in (b)(iii) of this  
11 subsection, if a facility elects to use a mass-based baseline, it may  
12 not later convert to a carbon intensity benchmark during the first  
13 three compliance periods.

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

29 (c)(i) By September 15, 2022, each emissions-intensive, trade-  
30 exposed facility shall submit its carbon intensity baseline for the  
31 first compliance period to the department. The carbon intensity  
32 baseline for the first compliance period must use data from  
33 2015-2019, unless the emissions-intensive, trade-exposed facility can  
34 demonstrate that there have been abnormal periods of operation that  
35 materially impacted the facility and the baseline period should be  
36 expanded to include years prior to 2015.

37 (ii) By November 15, 2022, the department shall review and  
38 approve each emissions-intensive, trade-exposed facility's baseline  
39 carbon intensity for the first compliance period.

1 (d) During the first four-year compliance period that begins  
2 January 1, 2023, each emissions-intensive, trade-exposed facility  
3 must record its facility-specific carbon intensity baseline based on  
4 its actual production.

5 (e) (i) For the second four-year compliance period that begins  
6 January 1, 2027, the second period benchmark for each emissions-  
7 intensive, trade-exposed facility is three percent below the first  
8 period baseline specified in (a), (b), and (c) of this subsection.

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

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

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

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

36 (iii) Abnormal operating periods when an emissions-intensive,  
37 trade-exposed facility's carbon intensity has been materially  
38 affected so that these abnormal operating periods are either excluded  
39 or otherwise considered in the establishment of the compliance period  
40 carbon intensity benchmarks.

1 (4) (a) By December 1, 2026, the department shall provide a report  
2 to the appropriate committees of the senate and house of  
3 representatives that describes alternative methods for determining  
4 the amount and a schedule of allowances to be provided to facilities  
5 owned or operated by each covered entity designated as an emissions-  
6 intensive, trade-exposed facility from January 1, 2035, through  
7 January 1, 2050. The report must include a review of global best  
8 practices in ensuring against emissions leakage and economic harm to  
9 businesses in carbon pricing programs and describe alternative  
10 methods of emissions performance benchmarking and mass-based  
11 allocation of no cost allowances. At a minimum, the department must  
12 evaluate benchmarks based on both carbon intensity and mass, as well  
13 as the use of best available technology as a method for compliance.  
14 In developing the report, the department shall form an advisory group  
15 that includes representatives of the manufacturers listed in  
16 subsection (1) of this section.

17 (b) If the legislature does not adopt a compliance obligation for  
18 emissions-intensive, trade-exposed facilities by December 1, 2027,  
19 those facilities must continue to receive allowances as provided in  
20 the third four-year compliance period that begins January 1, 2031.

21 (5) If the actual emissions of an emissions-intensive, trade-  
22 exposed facility exceed the facility's no cost allowances assigned  
23 for that compliance period, it must acquire additional compliance  
24 instruments such that the total compliance instruments transferred to  
25 its compliance account consistent with **section 22 of** this act equals  
26 emissions during the compliance period. An emissions-intensive,  
27 trade-exposed facility must be allowed to bank unused allowances,  
28 including for future sale and investment in best available technology  
29 when economically feasible. The department shall limit the use of  
30 offset credits for compliance by an emissions-intensive, trade-  
31 exposed facility, such that the quantity of no cost allowances plus  
32 the provision of offset credits does not exceed 100 percent of the  
33 facility's total compliance obligation over a compliance period.

34 (6) The department must withhold or withdraw the relevant share  
35 of allowances allocated to a covered entity under this section in the  
36 event that the covered entity ceases production in the state and  
37 becomes a closed facility. In the event an entity curtails all  
38 production and becomes a curtailed facility, the allowances are  
39 retained but cannot be traded, sold, or transferred and are still  
40 subject to the emission reduction requirements specified in this



1 section. An owner or operator of a curtailed facility may transfer  
2 the allowances to a new operator of the facility that will be  
3 operated under the same North American industry classification system  
4 codes. If the curtailed facility becomes a closed facility, then all  
5 unused allowances will be transferred to the emissions containment  
6 reserve. A curtailed facility is not eligible to receive free  
7 allowances during a period of curtailment. Any allowances withheld or  
8 withdrawn under this subsection must be transferred to the emissions  
9 containment reserve.

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

13 (8) Rules adopted by the department under this section must  
14 include protocols for allocating allowances at no cost to an eligible  
15 facility built after the effective date of this section. The  
16 protocols must include consideration of the products and criteria  
17 pollutants being produced by the facility, as well as the local  
18 environmental and health impacts associated with the facility. For a  
19 facility that is built on tribal lands or is determined by the  
20 department to impact tribal lands and resources, the protocols must  
21 be developed in consultation with the affected tribal nations.

***\*Sec. 13 is partially vetoed. See message at end of chapter.***

22 NEW SECTION. **Sec. 14.** ALLOCATION OF ALLOWANCES TO ELECTRIC  
23 UTILITIES. (1) The legislature intends by this section to allow all  
24 consumer-owned electric utilities and investor-owned electric  
25 utilities subject to the requirements of chapter 19.405 RCW, the  
26 Washington clean energy transformation act, to be eligible for  
27 allowance allocation as provided in this section in order to mitigate  
28 the cost burden of the program on electricity customers.

29 (2)(a) By October 1, 2022, the department shall adopt rules, in  
30 consultation with the department of commerce and the utilities and  
31 transportation commission, establishing the methods and procedures  
32 for allocating allowances for consumer-owned and investor-owned  
33 electric utilities. The rules must take into account the cost burden  
34 of the program on electricity customers.

35 (b) By October 1, 2022, the department shall adopt an allocation  
36 schedule by rule, in consultation with the department of commerce and  
37 the utilities and transportation commission, for the first compliance  
38 period for the provision of allowances at no cost to consumer-owned

1 and investor-owned electric utilities. This allocation must be  
2 consistent with a forecast, that is approved by the appropriate  
3 governing board or the utilities and transportation commission, of  
4 each utility's supply and demand, and the cost burden resulting from  
5 the inclusion of the covered entities in the first compliance period.

6 (c) By October 1, 2026, the department shall adopt an allocation  
7 schedule by rule, in consultation with the department of commerce and  
8 the utilities and transportation commission, for the provision of  
9 allowances for the second compliance period at no cost to consumer-  
10 owned and investor-owned electric utilities. This allocation must be  
11 consistent with a forecast, that is approved by the appropriate  
12 governing board or the utilities and transportation commission, of  
13 each utility's supply and demand, and the cost burden resulting from  
14 the inclusion of covered entities in the second compliance period.  
15 The allowances included in this schedule must reflect the increased  
16 scope of coverage in the electricity sector relative to the program  
17 budget of allowances established in 2022.

18 (d) By October 1, 2028, the department shall adopt an allocation  
19 schedule by rule, in consultation with the department of commerce and  
20 the utilities and transportation commission, for the provision of  
21 allowances at no cost to consumer-owned and investor-owned electric  
22 utilities for the compliance periods contained within calendar years  
23 2031 through 2045. This allocation must be consistent with a  
24 forecast, that is approved by the appropriate governing board or the  
25 utilities and transportation commission, of each utility's supply and  
26 demand, and the cost burden resulting from the inclusion of the  
27 covered entities in the compliance periods. The rule developed under  
28 this subsection (2)(d) may prescribe an amount of allowances  
29 allocated at no cost that must be consigned to auction by consumer-  
30 owned and investor-owned electric utilities. However, utilities may  
31 use allowances for compliance equal to their covered emissions in any  
32 calendar year they were not subject to potential penalty under RCW  
33 19.405.090. Under no circumstances may utilities receive any free  
34 allowances after 2045.

35 (3)(a) During the first compliance period, allowances allocated  
36 at no cost to consumer-owned and investor-owned electric utilities  
37 may be consigned to auction for the benefit of ratepayers, deposited  
38 for compliance, or a combination of both. The rules adopted by the  
39 department under subsection (2) of this section must include

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

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

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

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

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

26 (7) Rules establishing the allocation of allowances to consumer-  
27 owned utilities and investor-owned utilities must consider the impact  
28 of electrification of buildings, transportation, and industry on the  
29 electricity sector.

30 (8) Nothing in this section affects the requirements of chapter  
31 19.405 RCW.

32 (9) A consumer-owned utility that is party to a contract that  
33 meets the following conditions must be issued allowances under this  
34 section for emissions associated with imported electricity, in order  
35 to prevent impairment of the value of the contract to either party:

36 (a) The contract does not address compliance costs imposed upon  
37 the consumer-owned utility by the program created in this chapter;  
38 and

1 (b) The contract was in effect as of the effective date of this  
2 section and expires no later than the end of the first compliance  
3 period.

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

8 (a) By October 1, 2022, the department shall adopt rules, in  
9 consultation with the utilities and transportation commission,  
10 establishing the methods and procedures for allocating allowances to  
11 natural gas utilities. Rules adopted under this subsection must allow  
12 for a natural gas utility to be provided allowances at no cost to  
13 cover their emissions and decline proportionally with the cap,  
14 consistent with section 9 of this act. Allowances allocated at no  
15 cost to natural gas utilities must be consigned to auction for the  
16 benefit of ratepayers consistent with subsection (2) of this section,  
17 deposited for compliance, or a combination of both. The rules adopted  
18 by the department pursuant to this section must include provisions  
19 directing revenues generated under this subsection to the applicable  
20 utilities.

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

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

31 (2)(a) Beginning in 2023, 65 percent of the no cost allowances  
32 must be consigned to auction for the benefit of customers, including  
33 at a minimum eliminating any additional cost burden to low-income  
34 customers from the implementation of this chapter. Rules adopted  
35 under this subsection must increase the percentage of allowances  
36 consigned to auction by five percent each year until a total of 100  
37 percent is reached.

38 (b) Revenues from allowances sold at auction must be returned by  
39 providing nonvolumetric credits on ratepayer utility bills,

1 prioritizing low-income customers, or used to minimize cost impacts  
2 on low-income, residential, and small business customers through  
3 actions that include, but are not limited to, weatherization,  
4 decarbonization, conservation and efficiency services, and bill  
5 assistance. The customer benefits provided from allowances consigned  
6 to auction under this section must be in addition to existing  
7 requirements in statute, rule, or other legal requirements.

8 (c) Except for low-income customers, the customer bill credits  
9 under this subsection are reserved exclusively for customers at  
10 locations connected to a natural gas utility's system on the  
11 effective date of this section. Bill credits may not be provided to  
12 customers of the gas utility at a location connected to the system  
13 after the effective date of this section.

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

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

35 NEW SECTION. **Sec. 16.** EMISSIONS CONTAINMENT RESERVE  
36 WITHHOLDING. (1) To help ensure that the price of allowances remains  
37 sufficient to incentivize reductions in greenhouse gas emissions, the  
38 department must establish an emissions containment reserve and set an  
39 emissions containment reserve trigger price by rule. The price must

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

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

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

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

21 (a) No less than two percent of the total number of allowances  
22 available from the allowance budgets for calendar years 2023 through  
23 2026;

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

26 (c) When facilities curtail or close consistent with section  
27 13(6) of this act; or

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

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

35 (b) Allowances equal to the greenhouse gas emissions resulting  
36 from a new or expanded emissions-intensive, trade-exposed facility  
37 with emissions in excess of 25,000 metric tons per year during the  
38 first applicable compliance period will be provided to the facility  
39 from the reserve created in this section and must be retired by the  
40 facility. In subsequent compliance periods, the facility will be

1 subject to the regulatory cap and related requirements under this  
2 chapter.

3 NEW SECTION. **Sec. 17.** ALLOWANCE PRICE CONTAINMENT. (1) To help  
4 minimize allowance price volatility in the auction, the department  
5 shall adopt by rule an auction floor price and a schedule for the  
6 floor price to increase by a predetermined amount every year. The  
7 department may not sell allowances at bids lower than the auction  
8 floor price. The department's rules must specify holding limits that  
9 determine the maximum number of allowances that may be held for use  
10 or trade by a registered entity at any one time. The department shall  
11 also establish an auction ceiling price to limit extraordinary prices  
12 and to determine when to offer allowances through the allowance price  
13 containment reserve auctions authorized under this section.

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

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

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

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

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

35 (6) The department shall by rule:

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

1 (b) Establish the requirements and schedule for the allowance  
2 price containment reserve auctions; and

3 (c) Establish the amount of allowances to be placed in the  
4 allowance price containment reserve after the first compliance period  
5 ending in 2026.

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

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

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

32 \*NEW SECTION. **Sec. 19.** OFFSETS. (1) The department shall adopt  
33 by rule the protocols for establishing offset projects and securing  
34 offset credits that may be used to meet a portion of a covered or  
35 opt-in entity's compliance obligation under **section 22 of** this act.  
36 The protocols adopted by the department under this section must align  
37 with the policies of the state established under RCW 70A.45.090 and  
38 70A.45.100.



1 (2) Offset projects must:

2 (a) Provide direct environmental benefits to the state or be

3 located in a jurisdiction with which Washington has entered into a

4 linkage agreement;

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

6 (i) Are real, permanent, quantifiable, verifiable, and

7 enforceable; and

8 (ii) Are in addition to greenhouse gas emission reductions or

9 removals otherwise required by law and other greenhouse gas emission

10 reductions or removals that would otherwise occur; and

11 (c) Have been certified by a recognized registry after the

12 effective date of this section or within two years prior to the

13 effective date of this section.

14 (3) (a) A total of no more than five percent of a covered or opt-

15 in entity's compliance obligation during the first compliance period

16 may be met by transferring offset credits. During these years, at

17 least 50 percent of a covered or opt-in entity's compliance

18 obligation satisfied by offset credits must be sourced from offset

19 projects that provide direct environmental benefits in the state.

20 (b) A total of no more than four percent of a covered or opt-in

21 entity's compliance obligation during the second compliance period

22 may be met by transferring offset credits. During these years, at

23 least 75 percent of a covered or opt-in entity's compliance

24 obligation satisfied by offset credits must be sourced from offset

25 projects that provide direct environmental benefits in the state. The

26 department may reduce the 75 percent requirement if it determines

27 there is not sufficient offset supply in the state to meet offset

28 demand during the second compliance period.

29 (c) The limits in (a) and (b) of this subsection may be modified

30 by rule as adopted by the department when appropriate to ensure

31 achievement of the proportionate share of statewide emissions limits

32 established in RCW 70A.45.020 and to provide for alignment with other

33 jurisdictions to which the state has linked.

34 (d) The limits in (a) and (b) of this subsection may be reduced

35 for a specific covered or opt-in entity if the department determines,

36 in consultation with the environmental justice council, that the

37 covered or opt-in entity has or is likely to:

38 (i) Contribute substantively to cumulative air pollution burden

39 in an overburdened community as determined by criteria established by

1 the department, in consultation with the environmental justice  
2 council; or

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

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

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

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

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

27 (c) Adopt a process for monitoring and invalidating offset  
28 credits as necessary to ensure the credit reflects emission  
29 reductions or removals that continue to meet the standards required  
30 by subsection (1) of this section. If an offset credit is  
31 invalidated, the covered or opt-in entity must, within six months of  
32 the invalidation, transfer replacement credits or allowances to meet  
33 its compliance obligation. Failure to transfer the required credits  
34 or allowances is a violation subject to penalties as provided in  
35 section 23 of this act; and

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

1 (5) Any offset credits used may not be in addition to or allow  
2 for an increase in the emissions limits established under RCW  
3 70A.45.020, as reflected in the annual allowance budgets developed  
4 under section 9 of this act.

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

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

***\*Sec. 19 is partially vetoed. See message at end of chapter.***

10 NEW SECTION. **Sec. 20.** ASSISTANCE PROGRAM FOR OFFSETS ON TRIBAL  
11 LANDS. (1) In order to ensure that a sufficient number of high  
12 quality offset projects are available under the limits set in section  
13 19 of this act, the department must establish an assistance program  
14 for offset projects on federally recognized tribal lands in  
15 Washington. The assistance may include, but is not limited to,  
16 funding or consultation for federally recognized tribal governments  
17 to assess a project's technical feasibility, investment requirements,  
18 development and operational costs, expected returns, administrative  
19 and legal hurdles, and project risks and pitfalls. The department may  
20 provide funding or assistance upon request by a federally recognized  
21 tribe.

22 (2) It is the intent of the legislature that not less than  
23 \$5,000,000 be provided in the biennial omnibus operating  
24 appropriations act for the purposes of this section.

25 NEW SECTION. **Sec. 21.** SMALL FORESTLAND OWNER WORK GROUP. (1)  
26 The department of natural resources must contract with an eligible  
27 entity capable of providing public value to the state through the  
28 establishment and implementation of a small forestland owner work  
29 group. The purpose of the work group is to forward the goals and  
30 implementation of this chapter by identifying possible carbon market  
31 opportunities including, but not limited to, the provision of offset  
32 credits that qualify under section 19 of this act, and other  
33 incentive-based greenhouse gas reduction programs that Washington  
34 landowners may be able to access, including compliance markets  
35 operated by other jurisdictions, voluntary markets, and federal,  
36 state, and private programs for forestlands that can be leveraged to  
37 achieve carbon reductions.

1 (2) The work group established by the eligible entity under this  
2 section must:

3 (a) Provide recommendations for the implementation and funding of  
4 a pilot program to develop an aggregator account that will pursue  
5 carbon offset projects for small forestland owners in Washington  
6 state, including recommendations based on programs established in  
7 other jurisdictions;

8 (b) Coordinate with the department on the development of offset  
9 protocols related to landowners under section 19(4)(d) of this act;

10 (c) Develop a framework and funding proposals for establishing a  
11 program to link interested small forestland owners with incentive-  
12 based carbon reducing programs that facilitate adoption of forest  
13 practices that increase carbon storage and sequestration in forests  
14 and wood products. The framework may include:

15 (i) Identifying areas of coordination and layering among state,  
16 federal, and private landowner incentive programs and identifying  
17 roadblocks to better scalability;

18 (ii) Assisting landowners with access to feasibility analyses,  
19 market applications, stand inventories, pilot project support, and  
20 other services to reduce the transaction costs and barriers to entry  
21 to carbon markets or carbon incentive programs; and

22 (iii) Sharing information with private and other landowners about  
23 best practices employed to increase carbon storage and access to  
24 incentive programs; and

25 (d) Recommend policies to support the implementation of  
26 incentives for participation in carbon markets.

27 (3) The work group must transmit a final report to the department  
28 by December 1, 2022, that provides recommendations for incentives,  
29 the implementation of incentives, and payment structures necessary to  
30 support small forest landowners and any recommendations around  
31 extending the work group or making the work group permanent. The  
32 department must submit the final report to the legislature, in  
33 compliance with RCW 43.01.036, by December 31, 2022.

34 (4) For the purposes of this section, "eligible entity" means a  
35 nonprofit entity solely based in Washington that can demonstrate a  
36 membership of at least 1000 small forestland owners and that has, as  
37 part of its mission, the promotion of the sustainable stewardship of  
38 family forestlands.

39 (5) This section expires July 1, 2023.

1           ***\*NEW SECTION. Sec. 22. COMPLIANCE OBLIGATIONS. (1) A covered or***  
2 ***opt-in entity has a compliance obligation for its emissions during***  
3 ***each four-year compliance period, with the first compliance period***  
4 ***commencing January 1, 2023, except when the first compliance period***  
5 ***commences at a later date as provided in subsection (7) of this***  
6 ***section. A covered or opt-in entity shall transfer a number of***  
7 ***compliance instruments equal to the entity's covered emissions by***  
8 ***November 1st of each calendar year in which a covered or opt-in***  
9 ***entity has a compliance obligation. The department shall set by rule***  
10 ***a percentage of compliance instruments that must be transferred in***  
11 ***each year of the compliance period such that covered or opt-in***  
12 ***entities are allowed to smooth their compliance obligation within the***  
13 ***compliance period but must fully satisfy their compliance obligation***  
14 ***over the course of the compliance period, in a manner similar to***  
15 ***external greenhouse gas emissions trading programs in other***  
16 ***jurisdictions. In meeting a given compliance obligation, a covered or***  
17 ***opt-in entity may use allowances issued in that compliance year, or***  
18 ***allowances issued in any of the seven years immediately preceding***  
19 ***that compliance year.***

20           (2) Compliance occurs through the transfer of compliance  
21 instruments or price ceiling units, on or before the transfer date,  
22 from the holding account to the compliance account of the covered or  
23 opt-in entity as described in section 10 of this act.

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

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

30           (4) Older vintage allowances must be retired before newer vintage  
31 allowances.

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

35           (6) Upon receipt by the department of all compliance instruments  
36 transferred by a covered entity or opt-in entity to meet its  
37 compliance obligation, the department shall retire the allowances or  
38 offset credits.

39           (7) (a) In order to coordinate and synchronize the cap and invest  
40 program established under this chapter with other transportation-

1 *related investments, this section does not take effect until a*  
2 *separate additive transportation revenue act becomes law, at which*  
3 *time the department of licensing must provide written notice to the*  
4 *chief clerk of the house of representatives, the secretary of the*  
5 *senate, and the office of the code reviser.*

6 *(b) For the purposes of this subsection, "additive transportation*  
7 *revenue act" means an act, enacted after April 1, 2021, in which the*  
8 *state fuel tax under RCW 82.38.030 is increased by an additional and*  
9 *cumulative tax rate of at least five cents per gallon of fuel.*

*\*Sec. 22 was vetoed. See message at end of chapter.*

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

16 (2) If a covered or opt-in entity does not submit sufficient  
17 compliance instruments to meet its compliance obligation by the  
18 specified transfer dates, a penalty of four allowances for every one  
19 compliance instrument that is missing must be submitted to the  
20 department within six months. When a covered entity or opt-in entity  
21 reasonably believes that it will be unable to meet a compliance  
22 obligation, the entity shall immediately notify the department. Upon  
23 receiving notification, the department shall issue an order requiring  
24 the entity to submit the penalty allowances.

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

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

34 (5) Except as provided in subsections (3) and (4) of this  
35 section, any person that violates the terms of this chapter or an  
36 order issued under this chapter incurs a penalty of up to \$10,000 per  
37 day per violation for each day that the person does not comply. All  
38 penalties under subsections (3) and (4) of this section and this

1 subsection must be deposited into the climate investment account  
2 created in section 28 of this act.

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

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

9 (8) An electric utility or natural gas utility must notify its  
10 retail customers and the environmental justice council in published  
11 form within three months of paying a monetary penalty under this  
12 section.

13 (9)(a) No city, town, county, township, or other subdivision or  
14 municipal corporation of the state may implement a charge or tax  
15 based exclusively upon the quantity of greenhouse gas emissions.

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

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

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

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

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

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

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

31 (d) Enhance market security;

32 (e) Reduce program administration costs; and

33 (f) Provide consistent requirements for covered entities whose  
34 operations span jurisdictional boundaries.

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

1 (a) Provisions relating to regular, periodic auctions, including  
2 requirements for eligibility for auction participation, the use of a  
3 single auction provider to facilitate joint auctions, publication of  
4 auction-related information, processes for auction participation,  
5 purchase limits by auction participant type, bidding processes, dates  
6 of auctions, and financial requirements;

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

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

13 (d) Common program registry, electronic auction platform,  
14 tracking systems for compliance instruments, and monitoring of  
15 compliance instruments;

16 (e) Provisions to ensure coordinated administrative and technical  
17 support;

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

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

21 (3) Before entering into a linkage agreement under this section,  
22 the department must evaluate and make a finding regarding whether the  
23 aggregate number of unused allowances in a linked program would  
24 reduce the stringency of Washington's program and the state's ability  
25 to achieve its greenhouse gas emissions reduction limits. The  
26 department must include in its evaluation a consideration of pre-2020  
27 unused allowances that may exist in the program with which it is  
28 proposing to link. Before entering into a linkage agreement, the  
29 department must also establish a finding that the linking  
30 jurisdiction and the linkage agreement meet certain criteria  
31 identified under this subsection and conduct a public comment process  
32 to obtain input and a review of the linkage agreement by relevant  
33 stakeholders and other interested parties. The department must  
34 consider input received from the public comment process before  
35 finalizing a linkage agreement. In the event that the department  
36 determines that a full linkage agreement is unlikely to meet the  
37 criteria, it may enter into a linkage agreement with limitations,  
38 including limits on the share of compliance that may be met with  
39 allowances originating from linked jurisdictions and other



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

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

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

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

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

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

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

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

32 (a) A minimum of not less than 35 percent and a goal of 40  
33 percent of total investments that provide direct and meaningful  
34 benefits to vulnerable populations within the boundaries of  
35 overburdened communities identified under chapter . . ., Laws of 2021  
36 (Engrossed Second Substitute Senate Bill No. 5141); and

37 (b) In addition to the requirements of (a) of this subsection, a  
38 minimum of not less than 10 percent of total investments that are

1 used for programs, activities, or projects formally supported by a  
2 resolution of an Indian tribe, with priority given to otherwise  
3 qualifying projects directly administered or proposed by an Indian  
4 tribe. An investment that meets the requirements of both this  
5 subsection (1)(b) and (a) of this subsection may count toward the  
6 minimum percentage targets for both subsections.

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 27.** CARBON EMISSIONS REDUCTION ACCOUNT. The  
37 carbon emissions reduction account is created in the state treasury.  
38 Moneys in the account may be spent only after appropriation.  
39 Expenditures from the account are intended to affect reductions in

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

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

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

37 (2) Moneys in the account may be used only for projects and  
38 programs that achieve the purposes of the greenhouse gas emissions  
39 cap and invest program established under this chapter. Moneys in the

1 account as described in this subsection must first be appropriated  
2 for the administration of the requirements of this chapter, in an  
3 amount not to exceed five percent of the total receipt of funds from  
4 allowance auction proceeds under this chapter. Beginning July 1,  
5 2024, and annually thereafter, the state treasurer shall distribute  
6 funds in the account as follows:

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

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

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

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

24 (a) Implementing the working families tax rebate in RCW  
25 82.08.0206;

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

33 (c) Programs, activities, or projects that reduce and mitigate  
34 impacts from greenhouse gases and copollutants in overburdened  
35 communities, including strengthening the air quality monitoring  
36 network to measure, track, and better understand air pollution levels  
37 and trends and to inform the analysis, monitoring, and pollution  
38 reduction measures required in section 3 of this act;

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

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

12 (f) Programs, activities, or projects that achieve energy  
13 efficiency or emissions reductions in the agricultural sector  
14 including:

15 (i) Fertilizer management;

16 (ii) Soil management;

17 (iii) Bioenergy;

18 (iv) Biofuels;

19 (v) Grants, rebates, and other financial incentives for  
20 agricultural harvesting equipment, heavy-duty trucks, agricultural  
21 pump engines, tractors, and other equipment used in agricultural  
22 operations;

23 (vi) Grants, loans, or any financial incentives to food  
24 processors to implement projects that reduce greenhouse gas  
25 emissions;

26 (vii) Renewable energy projects;

27 (viii) Farmworker housing weatherization programs;

28 (ix) Dairy digester research and development;

29 (x) Alternative manure management; and

30 (xi) Eligible fund uses under RCW 89.08.615;

31 (g) Programs, activities, or projects that increase energy  
32 efficiency in new and existing buildings, or that promote low-carbon  
33 architecture, including use of newly emerging alternative building  
34 materials that result in a lower carbon footprint in the built  
35 environment over the life cycle of the building and component  
36 building materials;

37 (h) Programs, activities, or projects that promote the  
38 electrification and decarbonization of new and existing buildings,  
39 including residential, commercial, and industrial buildings;

1 (i) Programs, activities, or projects that improve energy  
2 efficiency, including district energy, and investments in market  
3 transformation of high efficiency electric appliances and equipment  
4 for space and water heating;

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

10 (i) Programs, activities, or projects that directly improve  
11 energy affordability and reduce the energy burden of people with  
12 lower incomes, as well as the higher transportation fuel burden of  
13 rural residents, such as bill assistance, energy efficiency, and  
14 weatherization programs;

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

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

33 (iv) Direct investment in workforce development, via technical  
34 education, community college, institutions of higher education,  
35 apprenticeships, and other programs including, but not limited to:

36 (A) Initiatives to develop a forest health workforce established  
37 under RCW 76.04.--- (section 5, chapter . . ., Laws of 2021 (Second  
38 Substitute House Bill No. 1168)); and

39 (B) Initiatives to develop new education programs, emerging  
40 fields, or jobs pertaining to the clean energy economy;

1 (v) Transportation, municipal service delivery, and technology  
2 investments that increase a community's capacity for clean  
3 manufacturing, with an emphasis on communities in greatest need of  
4 job creation and economic development and potential for commute  
5 reduction;

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

9 (l) Carbon dioxide removal projects, programs, and activities;  
10 and

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

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

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

25 The natural climate solutions account is created in the state  
26 treasury. All moneys directed to the account from the climate  
27 investment account created in section 28 of this act must be  
28 deposited in the account. Moneys in the account may be spent only  
29 after appropriation. Moneys in the account are intended to increase  
30 the resilience of the state's waters, forests, and other vital  
31 ecosystems to the impacts of climate change, conserve working  
32 forestlands at risk of conversion, and increase their carbon  
33 pollution reduction capacity through sequestration, storage, and  
34 overall system integrity. Moneys in the account must be spent in a  
35 manner that is consistent with existing and future assessments of  
36 climate risks and resilience from the scientific community and  
37 expressed concerns of and impacts to overburdened communities.

38 (2) Moneys in the account may be allocated for the following  
39 purposes:

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

3 (i) Restore and protect estuaries, fisheries, and marine  
4 shoreline habitats and prepare for sea level rise including, but not  
5 limited to, making fish passage correction investments such as those  
6 identified in the cost-share barrier removal program for small  
7 forestland owners created in RCW 76.13.150 and those that are  
8 considered by the fish passage barrier removal board created in RCW  
9 77.95.160;

10 (ii) Increase carbon storage in the ocean or aquatic and coastal  
11 ecosystems;

12 (iii) Increase the ability to remediate and adapt to the impacts  
13 of ocean acidification;

14 (iv) Reduce flood risk and restore natural floodplain ecological  
15 function;

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

18 (vi) Improve infrastructure treating stormwater from previously  
19 developed areas within an urban growth boundary designated under  
20 chapter 36.70A RCW, with a preference given to projects that use  
21 green stormwater infrastructure;

22 (vii) Either preserve or increase, or both, carbon sequestration  
23 and storage benefits in forests, forested wetlands, agricultural  
24 soils, tidally influenced agricultural or grazing lands, or  
25 freshwater, saltwater, or brackish aquatic lands; or

26 (viii) Either preserve or establish, or both, carbon  
27 sequestration by protecting or planting trees in marine shorelines  
28 and freshwater riparian areas sufficient to promote climate  
29 resilience, protect cold water fisheries, and achieve water quality  
30 standards;

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

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

36 (ii) Improve forest health and reduce vulnerability to changes in  
37 hydrology, insect infestation, and other impacts of climate change;  
38 or

39 (iii) Prevent emissions by preserving natural and working lands  
40 from the threat of conversion to development or loss of critical



1 habitat, through actions that include, but are not limited to, the  
2 creation of new conservation lands, community forests, or increased  
3 support to small forestland owners through assistance programs  
4 including, but not limited to, the forest riparian easement program  
5 and the family forest fish passage program. It is the intent of the  
6 legislature that not less than \$10,000,000 be expended each biennium  
7 for the forestry riparian easement program created in chapter 76.13  
8 RCW or for riparian easement projects funded under the agricultural  
9 conservation easements program established under RCW 89.08.530, or  
10 similar riparian enhancement programs.

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

16 NEW SECTION. **Sec. 31.** AIR QUALITY AND HEALTH DISPARITIES  
17 IMPROVEMENT ACCOUNT. (1) The air quality and health disparities  
18 improvement account is created in the state treasury. Moneys in the  
19 account may be spent only after appropriation. Expenditures from the  
20 account are intended to:

21 (a) Improve air quality through the reduction of criteria  
22 pollutants, including through effective air quality monitoring and  
23 the establishment of adequate baseline emissions data; and

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

27 (2) Moneys in the account may be used for either capital budget  
28 or transportation budget purposes, or both. Moneys in the account may  
29 not be used for projects that would violate tribal treaty rights or  
30 result in significant long-term damage to critical habitat or  
31 ecological functions. Investments from the account must result in  
32 long-term environmental benefits and increased resilience to the  
33 impacts of climate change.

34 (3) It is the intent of the legislature that not less than  
35 \$20,000,000 per biennium be dedicated to the account for the purposes  
36 of the account.

37 NEW SECTION. **Sec. 32.** (1) By December 1, 2029, the joint  
38 legislative audit and review committee must analyze the impacts of

1 the initial five years of program implementation and must submit a  
2 report summarizing the analysis to the legislature. The analysis must  
3 include, at minimum, the following components:

4 (a) Costs and benefits, including environmental and public health  
5 costs and benefits, associated with this chapter for categories of  
6 persons participating in the program or that are most impacted by air  
7 pollution, as defined in consultation with the departments of ecology  
8 and health and as measured on a census tract scale. This component of  
9 the analysis must, at a minimum, assess the costs and benefits of  
10 changes in the following metrics since the start of the program:

11 (i) Levels of greenhouse gas emissions and criteria air  
12 pollutants for which the United States environmental protection  
13 agency has established national ambient air quality standards;

14 (ii) Fuel prices; and

15 (iii) Total employment in categories of industries that are  
16 covered entities. The categories of industries assessed must include,  
17 but are not limited to, electric utilities, natural gas utilities,  
18 oil refineries, and other industries classified as emissions-  
19 intensive and trade-exposed;

20 (b) An evaluation of the information provided by the department  
21 in its 2027 program evaluation under section 9(3) of this act;

22 (c) A summary of the estimated total statewide costs and benefits  
23 attributable to the program, including state agency administrative  
24 costs and covered entity compliance costs. For purposes of  
25 calculating the benefits of the program, the summary may rely, in  
26 part, on a constant value of the social costs attributable to  
27 greenhouse gas emissions, as identified in contemporary  
28 internationally accepted estimates of such global social cost. This  
29 summary must include an estimate of the total statewide costs of the  
30 program per ton of greenhouse gas emissions reductions achieved by  
31 the program; and

32 (d) An evaluation of the impacts of the program on low-income  
33 households.

34 (2) This section expires June 30, 2030.

35 **Sec. 33.** RCW 70A.15.2200 and 2020 c 20 s 1090 are each amended  
36 to read as follows:

37 (1) The board of any activated authority or the department, may  
38 classify air contaminant sources, by ordinance, resolution, rule or  
39 regulation, which in its judgment may cause or contribute to air

1 pollution, according to levels and types of emissions and other  
2 characteristics which cause or contribute to air pollution, and may  
3 require registration or reporting or both for any such class or  
4 classes. Classifications made pursuant to this section may be for  
5 application to the area of jurisdiction of such authority, or the  
6 state as a whole or to any designated area within the jurisdiction,  
7 and shall be made with special reference to effects on health,  
8 economic and social factors, and physical effects on property.

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

1 except that emissions of greenhouse gases as defined in RCW  
2 70A.45.010 must be reported as required under subsection (5) of this  
3 section.

4 All registration program and reporting fees collected by the  
5 department shall be deposited in the air pollution control account.  
6 All registration program fees collected by the local air authorities  
7 shall be deposited in their respective treasuries.

8 (3) If a registration or report has been filed for a grain  
9 warehouse or grain elevator as required under this section,  
10 registration, reporting, or a registration program fee shall not,  
11 after January 1, 1997, again be required under this section for the  
12 warehouse or elevator unless the capacity of the warehouse or  
13 elevator as listed as part of the license issued for the facility has  
14 been increased since the date the registration or reporting was last  
15 made. If the capacity of the warehouse or elevator listed as part of  
16 the license is increased, any registration or reporting required for  
17 the warehouse or elevator under this section must be made by the date  
18 the warehouse or elevator receives grain from the first harvest  
19 season that occurs after the increase in its capacity is listed in  
20 the license.

21 This subsection does not apply to a grain warehouse or grain  
22 elevator if the warehouse or elevator handles more than ten million  
23 bushels of grain annually.

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

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

30 (b) A "license" is a license issued by the department of  
31 agriculture licensing a facility as a grain warehouse or grain  
32 elevator under chapter 22.09 RCW or a license issued by the federal  
33 government licensing a facility as a grain warehouse or grain  
34 elevator for purposes similar to those of licensure for the facility  
35 under chapter 22.09 RCW; and

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

37 (5)(a) The department shall adopt rules requiring persons to  
38 report emissions of greenhouse gases as defined in RCW 70A.45.010  
39 where those emissions from a single facility, (~~source, or site,~~) or  
40 from electricity or fossil fuels sold in Washington by a single

1 supplier or local distribution company, meet or exceed ten thousand  
2 metric tons of carbon dioxide equivalent annually. The ~~((department~~  
3 ~~may phase in the requirement to report greenhouse gas emissions until~~  
4 ~~the reporting threshold in this subsection is met, which must occur~~  
5 ~~by January 1, 2012))~~ rules adopted by the department must support  
6 implementation of the program created in section 8 of this act. In  
7 addition, the rules must require that:

8 (i) Emissions of greenhouse gases resulting from the combustion  
9 of fossil fuels be reported separately from emissions of greenhouse  
10 gases resulting from the combustion of biomass; and

11 ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each  
12 annual report must include emissions data for the preceding calendar  
13 year and must be submitted to the department by ~~((October))~~ March  
14 31st of the year in which the report is due. ~~((However, starting in~~  
15 ~~2011, a person who is required to report greenhouse gas emissions to~~  
16 ~~the United States environmental protection agency under 40 C.F.R.~~  
17 ~~Part 98, as adopted on September 22, 2009, must submit the report~~  
18 ~~required under this section to the department concurrent with the~~  
19 ~~submission to the United States environmental protection agency.~~  
20 ~~Except as otherwise provided in this section, the data for emissions~~  
21 ~~in Washington and any corrections thereto that are reported to the~~  
22 ~~United States environmental protection agency must be the emissions~~  
23 ~~data reported to the department; and~~

24 ~~(iii) Emissions of carbon dioxide associated with the complete~~  
25 ~~combustion or oxidation of liquid motor vehicle fuel, special fuel,~~  
26 ~~or aircraft fuel that is sold in Washington where the annual~~  
27 ~~emissions associated with that combustion or oxidation equal or~~  
28 ~~exceed ten thousand metric tons be reported to the department. Each~~  
29 ~~person who is required to file periodic tax reports of motor vehicle~~  
30 ~~fuel sales under RCW 82.36.031 or special fuel sales under RCW~~  
31 ~~82.38.150, or each distributor of aircraft fuel required to file~~  
32 ~~periodic tax reports under RCW 82.42.040 must report to the~~  
33 ~~department the annual emissions of carbon dioxide from the complete~~  
34 ~~combustion or oxidation of the fuels listed in those reports as sold~~  
35 ~~in the state of Washington. The department shall not require~~  
36 ~~suppliers to use additional data to calculate greenhouse gas~~  
37 ~~emissions other than the data the suppliers report to the department~~  
38 ~~of licensing. The rules may allow this information to be aggregated~~  
39 ~~when reported to the department. The department and the department of~~  
40 ~~licensing shall enter into an interagency agreement to ensure~~

1 proprietary and confidential information is protected if the  
2 departments share reported information. Any proprietary or  
3 confidential information exempt from disclosure when reported to the  
4 department of licensing is exempt from disclosure when shared by the  
5 department of licensing with the department under this provision.)

6 (b) (i) (~~Except as otherwise provided in this subsection, the~~  
7 ~~rules adopted by the department under (a) of this subsection must be~~  
8 ~~consistent with the regulations adopted by the United States~~  
9 ~~environmental protection agency in 40 C.F.R. Part 98 on September 22,~~  
10 ~~2009.~~

11 ~~(ii))~~ The department may by rule include additional gases to the  
12 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has  
13 been designated as a greenhouse gas by the United States congress  
14 ~~((~~or~~)),~~ by the United States environmental protection agency, or  
15 included in external greenhouse gas emission trading programs with  
16 which Washington has pursuant to section 24 of this act. Prior to  
17 including additional gases to the definition of "greenhouse gas" in  
18 RCW 70A.45.010, the department shall notify the appropriate  
19 committees of the legislature. (~~Decisions to amend the rule to~~  
20 ~~include additional gases must be made prior to December 1st of any~~  
21 ~~year and the amended rule may not take effect before the end of the~~  
22 ~~regular legislative session in the next year.~~

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

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

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

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

35 (B) Needed to ensure consistency with emissions reporting  
36 requirements for jurisdictions with which Washington has entered a  
37 linkage agreement. (~~However, the~~)

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

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

4 (e) The fee provisions in subsection (2) of this section apply to  
5 reporting of emissions of greenhouse gases. Persons required to  
6 report under (a) of this subsection who fail to report or pay the fee  
7 required in subsection (2) of this section are subject to enforcement  
8 penalties under this chapter. The department shall enforce the  
9 reporting rule requirements ~~((unless it approves a local air  
10 authority's request to enforce the requirements for persons operating  
11 within the authority's jurisdiction. However, neither the department  
12 nor a local air authority approved under this section are authorized  
13 to assess enforcement penalties on persons required to report under  
14 (a) of this subsection until six months after the department adopts  
15 its reporting rule in 2010))~~. When a person that holds a compliance  
16 obligation under section 10 of this act fails to submit an emissions  
17 data report or fails to obtain a positive emissions data verification  
18 statement in accordance with (g)(ii) of this subsection, the  
19 department may assign an emissions level for that person.

20 (f) The energy facility site evaluation council shall,  
21 simultaneously with the department, adopt rules that impose  
22 greenhouse gas reporting requirements in site certifications on  
23 owners or operators of a facility permitted by the energy facility  
24 site evaluation council. The greenhouse gas reporting requirements  
25 imposed by the energy facility site evaluation council must be the  
26 same as the greenhouse gas reporting requirements imposed by the  
27 department. The department shall share any information reported to it  
28 from facilities permitted by the energy facility site evaluation  
29 council with the council, including notice of a facility that has  
30 failed to report as required. The energy facility site evaluation  
31 council shall contract with the department to monitor the reporting  
32 requirements adopted under this section.

33 (g) (i) ~~The ((inclusion or failure to include any person, source,  
34 classes of persons or sources, or types of emissions of greenhouse  
35 gases into the department's rules for reporting under this section  
36 does not indicate whether such a person, source, or category is  
37 appropriate for inclusion in state, regional, or national greenhouse  
38 gas reduction programs or strategies. Furthermore, aircraft fuel  
39 purchased in the state may not be considered equivalent to aircraft~~

1 ~~fuel combusted in the state))~~ department must establish by rule the  
2 methods of verifying the accuracy of emissions reports.

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

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

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

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

36 (iv) For the purpose of this subsection (5), the term "facility"  
37 includes facilities that directly emit greenhouse gases in Washington  
38 equivalent to the threshold established under (a) of this subsection  
39 with at least one source category listed in the United States  
40 environmental protection agency's mandatory greenhouse gas reporting



1 regulation, 40 C.F.R. Part 98 Subparts C through II and RR through  
2 UU, as adopted on April 25, 2011.

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

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

13 The review under this chapter of greenhouse gas emissions from a  
14 new or expanded facility subject to the greenhouse gas emission  
15 reduction requirements of chapter 70A.--- RCW (the new chapter  
16 created in section 38 of this act) must occur consistent with section  
17 10(9) of this act.

18 NEW SECTION. Sec. 35. A new section is added to chapter 70A.15  
19 RCW to read as follows:

20 The department or a local air authority must issue an enforceable  
21 order under this chapter, consistent with section 3(2) (b) and (c) of  
22 this act, to all permitted or registered sources operating in  
23 overburdened communities when, consistent with section 3(2)(a) of  
24 this act, the department determines that criteria pollutants are not  
25 being reduced in an overburdened community and the department or  
26 local air authority adopts stricter air quality standards, emissions  
27 standards, or emissions limitations on criteria pollutants.

28 NEW SECTION. Sec. 36. A new section is added to chapter 70A.45  
29 RCW to read as follows:

30 The state, state agencies, and political subdivisions of the  
31 state, in implementing their duties and authorities established under  
32 other laws, may only consider the greenhouse gas limits established  
33 in RCW 70A.45.020 in a manner that recognizes, where applicable, that  
34 the siting and placement of new or expanded best-in-class facilities  
35 with lower carbon emitting processes is in the economic and  
36 environmental interests of the state of Washington.

1        NEW SECTION.    **Sec. 37.**    This act may be known and cited as the  
2 Washington climate commitment act.

3        NEW SECTION.    **Sec. 38.**    Sections 1 through 32 and 37 of this act  
4 constitute a new chapter in Title 70A RCW.

5        NEW SECTION.    **Sec. 39.**    (1) Sections 8 through 24 of this act,  
6 and any rules adopted by the department of ecology to implement the  
7 program established under those sections, are suspended on December  
8 31, 2055, in the event that the department of ecology determines by  
9 December 1, 2055, that the 2050 emissions limits of RCW 70A.45.020  
10 have been met for two or more consecutive years.

11        (2) Upon the occurrence of the events identified in subsection  
12 (1) of this section, the department of ecology must provide written  
13 notice of the suspension date of sections 8 through 24 of this act to  
14 affected parties, the chief clerk of the house of representatives,  
15 the secretary of the senate, the office of the code reviser, and  
16 others as deemed appropriate by the department.

17        **Sec. 40.**    RCW 43.376.020 and 2012 c 122 s 2 are each amended to  
18 read as follows:

19        In establishing a government-to-government relationship with  
20 Indian tribes, state agencies must:

21        (1) Make reasonable efforts to collaborate with Indian tribes in  
22 the development of policies, agreements, and program implementation  
23 that directly affect Indian tribes and develop a consultation process  
24 that is used by the agency for issues involving specific Indian  
25 tribes. State agencies described in section 6 of this act must offer  
26 consultation with Indian tribes on the actions specified in section 6  
27 of this act;

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

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

33        (4) Submit an annual report to the governor on activities of the  
34 state agency involving Indian tribes and on implementation of this  
35 chapter.

1       **Sec. 41.** RCW 43.21B.110 and 2020 c 138 s 11 and 2020 c 20 s 1035  
2 are each reenacted and amended to read as follows:

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

10       (a) Civil penalties imposed pursuant to RCW 18.104.155,  
11 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,  
12 70A.515.060, section 23 of this act, 76.09.170, 77.55.440, 78.44.250,  
13 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
14 90.64.102.

15       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
16 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,  
17 section 23 of this act, 86.16.020, 88.46.070, 90.14.130, 90.46.250,  
18 90.48.120, and 90.56.330.

19       (c) Except as provided in RCW 90.03.210(2), the issuance,  
20 modification, or termination of any permit, certificate, or license  
21 by the department or any air authority in the exercise of its  
22 jurisdiction, including the issuance or termination of a waste  
23 disposal permit, the denial of an application for a waste disposal  
24 permit, the modification of the conditions or the terms of a waste  
25 disposal permit, or a decision to approve or deny an application for  
26 a solid waste permit exemption under RCW 70A.205.260.

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

29       (e) Decisions of local health departments regarding the issuance  
30 and enforcement of permits to use or dispose of biosolids under RCW  
31 70A.226.090.

32       (f) Decisions of the department regarding waste-derived  
33 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
34 decisions of the department regarding waste-derived soil amendments  
35 under RCW 70A.205.145.

36       (g) Decisions of local conservation districts related to the  
37 denial of approval or denial of certification of a dairy nutrient  
38 management plan; conditions contained in a plan; application of any  
39 dairy nutrient management practices, standards, methods, and

1 technologies to a particular dairy farm; and failure to adhere to the  
2 plan review and approval timelines in RCW 90.64.026.

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

6 (i) Decisions of the department of natural resources, the  
7 department of fish and wildlife, and the department that are  
8 reviewable under chapter 76.09 RCW, and the department of natural  
9 resources' appeals of county, city, or town objections under RCW  
10 76.09.050(7).

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

13 (k) Decisions of the department of fish and wildlife to issue,  
14 deny, condition, or modify a hydraulic project approval permit under  
15 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
16 comply, to issue a civil penalty, or to issue a notice of intent to  
17 disapprove applications.

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

20 (m) Decisions of an authorized public entity under RCW 79.100.010  
21 to take temporary possession or custody of a vessel or to contest the  
22 amount of reimbursement owed that are reviewable by the hearings  
23 board under RCW 79.100.120.

24 (2) The following hearings shall not be conducted by the hearings  
25 board:

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

28 (b) Hearings conducted by the department pursuant to RCW  
29 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,  
30 70A.15.3110, and 90.44.180.

31 (c) Appeals of decisions by the department under RCW 90.03.110  
32 and 90.44.220.

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

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

38 **Sec. 42.** RCW 43.21B.300 and 2020 c 20 s 1038 are each amended to  
39 read as follows:

1 (1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160,  
2 70A.205.280, 70A.300.090, 70A.20.050, section 23 of this act,  
3 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and  
4 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in  
5 writing, either by certified mail with return receipt requested or by  
6 personal service, to the person incurring the penalty from the  
7 department or the local air authority, describing the violation with  
8 reasonable particularity. For penalties issued by local air  
9 authorities, within thirty days after the notice is received, the  
10 person incurring the penalty may apply in writing to the authority  
11 for the remission or mitigation of the penalty. Upon receipt of the  
12 application, the authority may remit or mitigate the penalty upon  
13 whatever terms the authority in its discretion deems proper. The  
14 authority may ascertain the facts regarding all such applications in  
15 such reasonable manner and under such rules as it may deem proper and  
16 shall remit or mitigate the penalty only upon a demonstration of  
17 extraordinary circumstances such as the presence of information or  
18 factors not considered in setting the original penalty.

19 (2) Any penalty imposed under this section may be appealed to the  
20 pollution control hearings board in accordance with this chapter if  
21 the appeal is filed with the hearings board and served on the  
22 department or authority thirty days after the date of receipt by the  
23 person penalized of the notice imposing the penalty or thirty days  
24 after the date of receipt of the notice of disposition by a local air  
25 authority of the application for relief from penalty.

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

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

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

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

33 (4) If the amount of any penalty is not paid to the department  
34 within thirty days after it becomes due and payable, the attorney  
35 general, upon request of the department, shall bring an action in the  
36 name of the state of Washington in the superior court of Thurston  
37 county, or of any county in which the violator does business, to  
38 recover the penalty. If the amount of the penalty is not paid to the  
39 authority within thirty days after it becomes due and payable, the  
40 authority may bring an action to recover the penalty in the superior

1 court of the county of the authority's main office or of any county  
2 in which the violator does business. In these actions, the procedures  
3 and rules of evidence shall be the same as in an ordinary civil  
4 action.

5 (5) All penalties recovered shall be paid into the state treasury  
6 and credited to the general fund except those penalties imposed  
7 pursuant to RCW 18.104.155, which shall be credited to the  
8 reclamation account as provided in RCW 18.104.155(7), RCW  
9 70A.15.3160, the disposition of which shall be governed by that  
10 provision, RCW 70A.300.090, which shall be credited to the model  
11 toxics control operating account created in RCW 70A.305.180, section  
12 23 of this act, which shall be credited to the climate investment  
13 account created in section 28 of this act, RCW 90.56.330, which shall  
14 be credited to the coastal protection fund created by RCW 90.48.390,  
15 and RCW 70A.355.070, which shall be credited to the underground  
16 storage tank account created by RCW 70A.355.090.

17 **Sec. 43.** RCW 43.52A.040 and 1984 c 223 s 1 are each amended to  
18 read as follows:

19 (1) Unless removed at the governor's pleasure, councilmembers  
20 shall serve a term ending January 15 of the third year following  
21 appointment except that, with respect to members initially appointed,  
22 the governor shall designate one member to serve a term ending  
23 January 15 of the second year following appointment. Initial  
24 appointments to the council shall be made within thirty days of March  
25 9, 1981.

26 (2) Each member shall serve until a successor is appointed, but  
27 if a successor is not appointed within sixty days of the beginning of  
28 a new term, the member shall be considered reappointed, subject to  
29 the consent of the senate.

30 (3) A vacancy on the council shall be filled for the unexpired  
31 term by the governor, with the consent of the senate.

32 (4) For the first available appointment and at all times  
33 thereafter, one member of Washington's delegation to the council  
34 shall reside east of the crest of the Cascade Mountains and one  
35 member shall reside west of the crest of the Cascade Mountains,  
36 except as follows: Both members may reside on the same side of the  
37 Cascade Mountains as long as this deviation does not exceed 12 months  
38 in any 10-year period.

1       **Sec. 44.** RCW 70A.45.005 and 2020 c 120 s 2 and 2020 c 20 s 1397  
2 are each reenacted and amended to read as follows:

3       (1) The legislature finds that Washington has long been a  
4 national and international leader on energy conservation and  
5 environmental stewardship, including air quality protection,  
6 renewable energy development and generation, emission standards for  
7 fossil-fuel based energy generation, energy efficiency programs,  
8 natural resource conservation, sustainable forestry and the  
9 production of forest products, vehicle emission standards, and the  
10 use of biofuels. Washington is also unique among most states in that  
11 in addition to its commitment to reduce emissions of greenhouse  
12 gases, it has established goals to grow the clean energy sector and  
13 reduce the state's expenditures on imported fuels.

14       (2) The legislature further finds that Washington should continue  
15 its leadership on climate change policy by creating accountability  
16 for achieving the emission reductions established in RCW 70A.45.020,  
17 participating in the design of a regional multisector market-based  
18 system to help achieve those emission reductions, assessing other  
19 market strategies to reduce emissions of greenhouse gases,  
20 maintaining and enhancing the state's ability to continue to  
21 sequester carbon through natural and working lands and forest  
22 products, and ensuring the state has a well trained workforce for our  
23 clean energy future.

24       (3) It is the intent of the legislature that the state will: (a)  
25 Limit and reduce emissions of greenhouse gas consistent with the  
26 emission reductions established in RCW 70A.45.020; (b) minimize the  
27 potential to export pollution, jobs, and economic opportunities; (c)  
28 support industry sectors that can act as sequesterers of carbon; and  
29 (d) reduce emissions at the lowest cost to Washington's economy,  
30 consumers, and businesses.

31       (4) In the event the state elects to participate in a regional  
32 multisector market-based system, it is the intent of the legislature  
33 that the system will become effective by January 1, 2012, after  
34 authority is provided to the department for its implementation. By  
35 acting now, Washington businesses and citizens will have adequate  
36 time and opportunities to be well positioned to take advantage of the  
37 low-carbon economy and to make necessary investments in low-carbon  
38 technology.

1 (5) It is also the intent of the legislature that the regional  
2 multisector market-based system recognize Washington's unique  
3 emissions and sequestration portfolio, including the:

4 (a) State's hydroelectric system;

5 (b) Opportunities presented by Washington's abundant forest  
6 resources and the associated forest products industry, along with  
7 aquatic and agriculture land and the associated industries; and

8 (c) State's leadership in energy efficiency and the actions it  
9 has already taken that have reduced its generation of greenhouse gas  
10 emissions and that entities receive appropriate credit for early  
11 actions to reduce greenhouse gases.

12 (6) If any revenues, excluding those from state trust lands, that  
13 accrue to the state are created by a market system, they must be used  
14 for the purposes established in chapter 70A.--- RCW (the new chapter  
15 created in section 38 of this act) and to further the state's efforts  
16 to achieve the goals established in RCW 70A.45.020, address the  
17 impacts of global warming on affected habitats, species, and  
18 communities, promote and invest in industry sectors that act as  
19 sequesterers of carbon, and increase investment in the clean energy  
20 economy particularly for communities and workers that have suffered  
21 from heavy job losses and chronic unemployment and underemployment.

22 NEW SECTION. **Sec. 45.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 46.** (1) The department shall prepare, post on  
27 the department website, and submit to the appropriate committees of  
28 the legislature an annual report that identifies all distributions of  
29 moneys from the accounts created in sections 27 through 31 of this  
30 act.

31 (2) The report must identify, at a minimum, the recipient of the  
32 funding, the amount of the funding, the purpose of the funding, the  
33 actual end result or use of the funding, whether the project that  
34 received the funding produced any verifiable reduction in greenhouse  
35 gas emissions or other long-term impact to emissions, and if so, the  
36 quantity of reduced greenhouse gas emissions, the cost per carbon  
37 dioxide equivalent metric ton of reduced greenhouse gas emissions,  
38 and a comparison to other greenhouse gas emissions reduction projects



1 in order to facilitate the development of cost-benefit ratios for  
2 greenhouse gas emissions reduction projects.

3 (3) The department shall require by rule that recipients of funds  
4 from the accounts created in sections 27 through 31 of this act  
5 report to the department, in a form and manner prescribed by the  
6 department, the information required for the department to carry out  
7 the department's duties established in this section.

8 (4) The department shall update its website with the information  
9 described in subsection (2) of this section as appropriate but no  
10 less frequently than once per calendar year.

11 (5) The department shall submit its report to the appropriate  
12 committees of the legislature with the information described in  
13 subsection (2) of this section no later than September 30 of each  
14 year.

15 NEW SECTION. **Sec. 47.** RESIDENTIAL HEATING ASSISTANCE PROGRAM.

16 (1) The legislature intends by this section to establish policies to  
17 mitigate the cost burden of the program established by this act on  
18 consumers who use home heating fuels that are not electricity or  
19 natural gas.

20 (2) The department, in collaboration with interested  
21 stakeholders, shall develop a proposal for assisting households that,  
22 for residential home heating, use fuels that are not electricity or  
23 natural gas. The proposal must give priority to assisting low-income  
24 households through weatherization, conservation and efficiency  
25 services, and bill assistance.

26 (3) In the event the department, in collaboration with interested  
27 stakeholders, determines that the proposal developed pursuant to  
28 subsection (2) of this section requires legislative action, the  
29 department shall submit its recommendations for proposed legislation  
30 to the appropriate committees of the legislature no later than  
31 September 15, 2022.

Passed by the Senate April 24, 2021.

Passed by the House April 23, 2021.

Approved by the Governor May 17, 2021, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State May 18, 2021.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 6; 22;  
and the four internal cross-references to Section 22 [Section 8, on  
page 20, line 32, after "in" veto "section 22 of"; Section 9, on page

22, beginning on line 14, after "2026.", veto the sentence beginning with "If" and ending with "period." on line 16; Section 13, on page 39, line 21, after "with" veto "section 22 of"; and Section 19, on page 47, line 30, after "under" veto "section 22 of"], Engrossed Second Substitute Senate Bill No. 5126 entitled:

"AN ACT Relating to the Washington climate commitment act."

Section 6 requires the development of an improved consultation framework for state agencies to communicate and collaborate with tribes on climate investments made under the act. I strongly support the need for this work, as there are multiple new programs authorized under this act that require the state and tribes to work together. However, this section also requires tribes to provide their consent for climate projects funded by the Climate Commitment Act that might impact tribal interests, which differs from our current government-to-government approach, and does not properly recognize the mutual, sovereign relationship between tribal governments and the state. Although I am vetoing this Section, I will be requesting formal consultation with Tribal leaders to develop improved consultation procedures that strengthen our ability to work together as both sovereign governments and committed partners to advance our many mutual interests.

Section 22 primarily provides a convenient summary of compliance obligations under the Act that is duplicative of the same key compliance obligations and authorizing provisions that are well established and defined in other sections of the Act, including but not limited to Sections 23, 8 and 2. For example, the rulemaking authority acknowledged in Section 22 is provided for and expanded upon in Section 25, which separately establishes comprehensive rulemaking authority that authorizes the Department of Ecology to adopt rules to implement all of the provisions of the Act. There are no substantive aspects of Section 22 that Ecology cannot adopt and implement through this rulemaking authority. By vetoing Section 22, I am also removing an internal inconsistency with regard to the expiration date of allowances, because the ability of covered entities to rely on the last seven years of allowances in Section 22(1) conflicts with the unlimited time period for use of allowances in Section 9(2). Because I am vetoing Section 22, I am also vetoing the four internal cross-references to Section 22. Finally, I want to express my deep appreciation for the Legislature's remarkable work on this critical piece of legislation; however, the delayed effective date established in subsection (7) unnecessarily hinders our state's ability to combat climate change, one of the greatest challenges facing our state and the world today.

For these reasons I have vetoed Sections 6; 22; and the four internal cross-references to Section 22 [Section 8, on page 20, line 32, after "in" veto "section 22 of"; Section 9, on page 22, beginning on line 14, after "2026.", veto the sentence beginning with "If" and ending with "period." on line 16; Section 13, on page 39, line 21, after "with" veto "section 22 of"; and Section 19, on page 47, line 30, after "under" veto "section 22 of"] of Engrossed Second Substitute Senate Bill No. 5126.

With the exception of Sections 6; 22; and the four internal cross-references to Section 22 [Section 8, on page 20, line 32, after "in" veto "section 22 of"; Section 9, on page 22, beginning on line 14, after "2026.", veto the sentence beginning with "If" and ending with "period." on line 16; Section 13, on page 39, line 21, after "with" veto "section 22 of"; and Section 19, on page 47, line 30, after

"under" veto "section 22 of"], Engrossed Second Substitute Senate Bill No. 5126 is approved."

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