
SENATE BILL 5126

State of Washington

67th Legislature

2021 Regular Session

By Senators Carlyle and Saldaña; by request of Office of the Governor
Prefiled 01/08/21.

1 AN ACT Relating to the Washington climate commitment act;
2 amending RCW 70A.15.1030, 70A.15.2200, and 70A.15.3000; adding a new
3 chapter to Title 70A RCW; creating a new section; prescribing
4 penalties; providing an expiration date; providing a contingent
5 expiration date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
8 finds that the 2020 legislature updated the state's greenhouse gas
9 emissions limits that are to be achieved by 2030, 2040, and 2050,
10 based on current science and emissions trends, but did not enact a
11 comprehensive program to ensure that the emissions limits would be
12 achieved. The greenhouse gas emissions limits established in RCW
13 70A.45.020 are not merely aspirational. Rather, they are intended to
14 guide the implementation of all other state laws and policies that
15 have an impact on greenhouse gas emissions in the state. Meeting the
16 state's science-based, greenhouse gas emissions limits set forth in
17 RCW 70A.45.020 will require coordinated, comprehensive, and
18 multisectoral implementation of policies, programs, and laws.
19 Furthermore, enacted state policies, programs, and laws are currently
20 insufficient for Washington to meet the greenhouse gas emissions
21 limits contained in RCW 70A.45.020. The 2021 state energy strategy

1 developed pursuant to RCW 43.21F.090 provides a road map for
2 decarbonizing the energy sectors of the economy, including
3 transportation, buildings, industry, and electricity. However, the
4 state lacks an effective regulatory, financial, and policy framework
5 to prioritize, implement, and hold programs accountable for meeting
6 the greenhouse gas emissions limits.

7 (2) The legislature further finds that Washington is already
8 experiencing environmental and community impacts due to climate
9 change through increasingly devastating wildfires, flooding,
10 droughts, rising temperatures and sea levels, and ocean
11 acidification. Greenhouse gas emissions already in the atmosphere
12 will increase impacts for some period of time. Actions to increase
13 resilience of our communities and ecosystems can prevent and reduce
14 impacts to communities and our environment and improve their ability
15 to recover. Despite the requirement of RCW 70A.05.010 to develop an
16 integrated climate change response strategy, implementing a
17 comprehensive climate resilience strategy will require greater cross-
18 agency coordination, strategic action, and investment.

19 (3) The legislature further finds that many natural disasters in
20 Washington, such as flooding, wildfires, and drought, are exacerbated
21 by climate change. In 2020, the office of the insurance
22 commissioner's disaster resiliency work group recommended creation of
23 a statewide disaster resilience office in the governor's office to
24 better prepare and mitigate impacts from natural disasters through
25 enhanced coordination. Duties suggested for the disaster resilience
26 office included developing and administering a state resiliency
27 strategy.

28 (4) The legislature further finds that climate change is an
29 environmental harm that threatens human health and access to clean
30 air, safe drinking water, nutritious food, and shelter; and that
31 vulnerable populations and overburdened communities experience a
32 disproportionate, cumulative risk from environmental burdens,
33 including climate change. Fossil fuel combustion is responsible for
34 pollutants in addition to greenhouse gases, such as nitrogen dioxide,
35 carbon monoxide, benzene, particulate matter, and others that
36 contribute to respiratory diseases like asthma and lung cancer, which
37 compromise public health and shorten life expectancy. This pollution
38 affects all Washingtonians, but falls disproportionately on low-
39 income communities, communities of color, and the most vulnerable of
40 our population. Reducing our reliance on fossil fuels will therefore

1 contribute to improved air quality and improved public health
2 outcomes.

3 (5) The legislature finds that communities experiencing
4 environmental health disparities and other burdens created by the
5 disproportionate impacts of pollution are less able to adapt to or
6 recover from climate change impacts. In 2020, the environmental
7 justice task force stated that environmental equity will be achieved
8 when no single group or community faces disadvantages in dealing with
9 the effects of the climate crisis, pollution, environmental hazards,
10 or environmental disasters. The environmental justice task force
11 recommended measurable goals and model policies to: Improve
12 government accountability to communities; incorporate environmental
13 justice into government structures, systems, and policies; invest
14 equitably; and improve environmental enforcement.

15 (6) The legislature finds that Washington state is home to some
16 of the world's most innovative companies, a highly skilled workforce,
17 and important industries. As our state transitions away from a fossil
18 fuel-based economy, we must do so in a way that protects these assets
19 and allows our businesses and workforce to thrive. By implementing a
20 comprehensive climate program that invests in clean and resilient
21 infrastructure, we can reduce our state's greenhouse gas emissions
22 while supporting good paying jobs. In doing so, we recognize that
23 some industries are emissions-intensive and trade-exposed, and thus
24 have the incentive to be energy efficient. These industries must be
25 given special consideration enabling them to innovate, remain
26 globally competitive, and ensure these industries and jobs remain in
27 Washington.

28 (7) In 2020, the legislature passed chapter 120, Laws of 2020
29 (Engrossed Second Substitute House Bill No. 2528), which requires
30 that any state carbon program must support the policies stated in
31 that act and must recognize the forest product industry's
32 contribution to the state's climate response. Therefore, the
33 legislature finds that a comprehensive climate program should include
34 investing in industry sectors that act as sequesterers of carbon. It
35 is stated as the policy of the state to support the complete forest
36 products sector, which includes landowners, mills, bioenergy, pulp
37 and paper, and the related harvesting and transportation
38 infrastructure; and to utilize carbon accounting land use, land use
39 change, and forestry reporting principles consistent with established
40 reporting guidelines, such as those used by the intergovernmental

1 panel on climate change and as used in the United States' national
2 greenhouse gas reporting inventories.

3 (8) The legislature finds that additional statutory authority is
4 needed in order to adopt certain emission standards to meet the
5 greenhouse gas limits and implement a comprehensive climate program.
6 In *Association of Washington Business v. Washington Department of*
7 *Ecology* (No. 12 95885-8, January 16, 2020), the Washington supreme
8 court held that certain regulations establishing emission standards
9 for producers and distributors of fossil fuels were invalid because
10 the department of ecology lacked sufficient statutory authority to
11 establish emission standards for indirect emissions associated with
12 the combustion of the fuel produced or distributed by those
13 particular entities.

14 (9) Therefore, the legislature intends to fully institutionalize
15 and operationalize the greenhouse gas limits by expressly providing
16 such authority under chapter 70A.15 RCW, the clean air act, to enact
17 emission standards, and create a cap on greenhouse gas emissions, as
18 part of a comprehensive state climate, energy, and resilience
19 program. The purpose of this program is to meet Washington state's
20 commitment to its present and future generations to fully address the
21 climate crisis by achieving the state's greenhouse gas limits in RCW
22 70A.45.020, improving our resilience to climate change impacts, and
23 ensuring an equitable and inclusive transition to a carbon-neutral
24 economy by 2050.

25 (10) It is the intent of the legislature that the programs
26 authorized by this act be implemented in a manner that is consistent
27 with the recommendations of the environmental justice task force, and
28 in consultation with tribal governments; be implemented alongside the
29 clean fuels standard program established in chapter . . . (House Bill
30 No. 1036), Laws of 2021, and other complementary policies and
31 programs that reduce greenhouse gas emissions associated with the
32 consumption of fossil fuels and electricity in the state; and support
33 investments in clean transportation, natural climate resilience
34 solutions, clean energy transition and assistance, and emissions
35 reduction projects that prioritize the equitable distribution of
36 benefits to vulnerable populations and overburdened communities.

37 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
38 section apply throughout this chapter unless the context clearly
39 requires otherwise.

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

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

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

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

15 (5) "Auction floor price" means a price for allowances below
16 which bids at auction would not be accepted.

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

21 (7) "Carbon dioxide equivalent" means a measure used to compare
22 the emissions from various greenhouse gases based on their global
23 warming potential.

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

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

37 (10) "Compliance instrument" means an allowance or offset credit
38 issued by the department or by an external greenhouse gas emissions
39 trading program to which Washington has linked its greenhouse gas

emissions cap and trade program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

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

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

(13) "Comprehensive program" means the governance structure established pursuant to this act to carry out the state's greenhouse gas limits in RCW 70A.45.020, ensure a coordinated and strategic approach to advancing climate resilience and environmental justice, and achieving an equitable and inclusive transition to a carbon-neutral economy.

(14) "Covered emissions" means the emissions for which a covered entity has a compliance obligation under section 7 of this act.

(15) "Covered entity" means a person that is designated by the department as subject to sections 5 through 18 of this act.

(16) "Cumulative impact" means the combined impact of multiple environmental health factors on a population.

(17) "Department" means the department of ecology.

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

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

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

(21) "Environmental benefits" are those that: (a) Prevent or reduce existing environmental burdens or associated risks that contribute significantly to the cumulative impact; (b) meaningfully protect highly impacted communities and vulnerable populations from, or support community response to, the impacts of environmental harm; or (c) meet a community need identified by a vulnerable population that is consistent with the intent of this act and endorsed by the environmental justice work group.

1 (22) "Environmental harm" means the individual or cumulative
2 risks to communities caused by: Historic, current, and projected
3 exposure to conventional and toxic hazards in the air, water, and
4 land; adverse environmental conditions caused or made worse by
5 contamination or pollution or that create vulnerabilities to climate
6 impacts; and impacts from climate change.

7 (23) "Environmental impacts" are those that create environmental
8 benefits or environmental burdens.

9 (24) "Environmental justice" means the fair treatment and
10 meaningful involvement of all people regardless of race, color,
11 national origin, or income with respect to the development,
12 implementation, and enforcement of environmental laws, regulations,
13 and policies.

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

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

24 (27) "Facility" has the same definition as in RCW
25 70A.15.2200(5)(h)(iv).

26 (28) "First jurisdictional deliverer" means the first person over
27 which the state of Washington has jurisdiction that generates or
28 procures electricity for use within the state and delivers the
29 electricity to the first point of delivery into the state.

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

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

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

37 (32) "Imported electricity" means electricity generated outside
38 the state of Washington and delivered for use within the state, but
39 which did not originate from any jurisdiction with which Washington
40 has a linkage agreement.

1 (33) "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.

4 (34) "Limits" means the greenhouse gas emissions reductions
5 required by RCW 70A.45.020.

6 (35) "Linkage agreement" means a formal agreement that connects
7 two or more greenhouse gas market programs to reciprocally recognize
8 each jurisdiction's compliance instruments.

9 (36) "Offset credit" means a tradable compliance instrument that
10 represents an emissions reduction or emissions removal of one metric
11 ton of carbon dioxide equivalent.

12 (37) "Offset project" means a project that reduces or removes
13 greenhouse gases that are not covered emissions under this chapter.

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

17 (39) "Overburdened communities" has the same meaning as "highly
18 impacted community" as defined in RCW 19.405.020.

19 (40) "Person" has the same meaning as defined in RCW
20 70A.15.2200(5)(h)(iii).

21 (41) "Point of delivery" means a point on the electricity
22 transmission or distribution system physically located in Washington
23 where a power supplier delivers electricity for use in the state.
24 This point may be an interconnection with another system or a
25 substation where the transmission provider's transmission and
26 distribution systems are connected to another system, or a
27 distribution substation where electricity is imported into the state
28 over a multijurisdictional retail provider's distribution system.

29 (42) "Program" means the greenhouse gas emissions cap and invest
30 program created by and implemented pursuant to this chapter.

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

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

38 (45) "Resilience" is the ability to prepare, mitigate and plan
39 for, withstand, recover from, and more successfully adapt to adverse

1 events and changing conditions, and reorganize in an equitable manner
2 that results in a new and better condition.

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

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

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

11 (49) "Vulnerable populations" has the same meaning as defined in
12 RCW 19.405.020.

13 NEW SECTION. **Sec. 3.** CLIMATE COMMITMENT. (1) The governor shall
14 establish a comprehensive program to implement the state's climate
15 commitment. The purpose of the comprehensive program is to provide
16 accountability and authority for achieving the state's greenhouse gas
17 limits in RCW 70A.45.020, to establish a coordinated and strategic
18 statewide approach to climate resilience, and to build an equitable
19 and inclusive clean energy economy.

20 (2) The comprehensive program for implementing the state's
21 climate commitment must be based on the state's following principles:

22 (a) The program must be holistic and address the needs,
23 challenges, and opportunities to meet the climate commitment.

24 (b) The program must address emission reductions from all
25 relevant sectors and sources by ensuring that emitters are
26 responsible for meeting targeted greenhouse gas reductions and that
27 the government provides clear policy and requirements, financial
28 tools, and other mechanisms to support achieving those reductions.

29 (c) The program must support an equitable transition for
30 vulnerable populations and overburdened communities, including
31 through early and meaningful engagement of overburdened communities
32 and workers to ensure the program achieves equitable and just
33 outcomes.

34 (d) The program must build increasing climate resilience for at-
35 risk communities and ecosystems through cross-sectoral coordination,
36 strategic planning, and cohesive policies.

37 (e) The program must apply the most current, accurate, and
38 complete scientific and technical information available to guide the
39 state's climate actions and strategies.

1 (f) The program must be developed and implemented in consultation
2 and collaboration with all levels of government and civil society.

3 (g) The program must be implemented with sustained leadership,
4 resources, clear governance, and prioritized investments at the scale
5 necessary to meet the statutory emissions limits.

6 (h) The program must achieve progress in meeting emissions limits
7 in the most effective and efficient manner possible and must include
8 periodic measurement and reporting of progress and changes to the
9 program as needed to meet the limits.

10 (3) The comprehensive program for implementing the state's
11 climate commitment must include, but not be limited to, the following
12 elements:

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

16 (b) Common state policies, standards, and procedures for
17 addressing greenhouse gas emissions and climate resilience, including
18 grant and funding programs, infrastructure investments, and planning
19 and siting decisions;

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

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

25 (e) A comprehensive community engagement plan that addresses and
26 mitigates barriers to engagement from vulnerable populations,
27 overburdened communities, and other historically or currently
28 marginalized groups;

29 (f) An analysis of gaps and conflicts in state law and programs,
30 with recommendations for improvements to state law;

31 (4) To ensure mutual respect for the rights, interests, and
32 obligations of each sovereign Indian tribe, the governor must develop
33 a framework for government-to-government consultation with Indian
34 tribes consistent with the centennial accord, chapter 43.376 RCW, and
35 applicable tribal policies. The consultation must ensure meaningful
36 tribal engagement on the implementation of this act, including rule
37 making, programmatic decisions, and investment decisions. Within this
38 framework, at least once each year the governor must invite all
39 federally recognized Indian tribes with reserved rights within the
40 geographical boundaries of the state to meet in government-to-

government consultation. The purpose of the meeting is to share information, views, tribal knowledge and science, and recommendations regarding the progress of implementing the state's carbon commitment and investing carbon-related revenues, to strengthen climate resilience in communities throughout the state, to strengthen climate resilience in the water and natural resources shared by all citizens in the state, and to ensure a just transition to a clean energy economy.

NEW SECTION. **Sec. 4.** CLIMATE COMMITMENT TASK FORCE. (1)(a) The governor's office shall convene a climate commitment task force with state agencies, other governments, and stakeholders by July 1, 2021. In making these appointments the governor shall seek diverse representation of stakeholders, including members of overburdened communities. The governor or the governor's designee must chair the climate commitment task force convened under this section and must appoint task force members. The governor or the governor's designee must convene the initial meeting of the task force. The task force is a class one group under RCW 43.03.220.

(b) The duties of the climate commitment task force are to develop recommendations to the legislature on the establishment of a state comprehensive climate, energy, and resilience program to implement the state's climate commitment in accordance with the purpose, principles, and elements in section 3 of this act.

(2)(a) The climate commitment task force must develop preliminary recommendations by November 1, 2021. By December 1, 2021, the governor's office must submit, in compliance with RCW 43.01.036, a report to the legislature with findings and recommendations of the climate commitment task force. The report must include recommendations for the following:

(i) A governance structure to achieve the desired outcomes described in section 3 of this act that considers both existing state capacity, resources, expertise, and authorities, and necessary enhancements to these governance features;

(ii) Reporting requirements and frequency, and other accountability measures, including mechanisms for legislative and executive oversight and any changes to existing statutory reporting requirements, such as RCW 70A.45.020;

(iii) A formal process for coordinating across state government, with other governments, including tribal and local governments, and

1 with key stakeholder groups, such as interagency councils, advisory
2 boards, or expert panels;

3 (iv) The funding authorities and structures necessary to
4 facilitate investments, including recommendations around public-
5 private partnerships;

6 (v) Suggested duties and roles related to resilience that
7 considers recommendations and 2020 reports on disaster resilience and
8 climate resilience from the office of the insurance commissioner and
9 office of financial management;

10 (vi) Necessary changes to statutory requirements and additional
11 authority needed to implement the state's climate commitment. This
12 includes proposed legislation, necessary funding, and a schedule to
13 implement the recommended comprehensive program in section 3 of this
14 act, including any reorganization or consolidation of existing state
15 programs or authorities.

16 (b) It is the intent of the legislature that the appropriate
17 committees of the legislature review the report submitted under (a)
18 of this subsection and take appropriate action during the 2022
19 legislative session.

20 (3) The definitions in section 2 of this act apply throughout
21 this section unless the context clearly requires otherwise.

22 (4) This section expires December 31, 2022.

23 NEW SECTION. **Sec. 5.** CAP ON GREENHOUSE GAS EMISSIONS. (1) In
24 order to ensure that greenhouse gas emissions are reduced consistent
25 with the limits established in RCW 70A.45.020, the department must
26 implement a cap on greenhouse gas emissions from covered entities and
27 a program to track, verify, and enforce compliance through the use of
28 compliance instruments.

29 (2) The program must consist of:

30 (a) Annual allowance budgets that limit emissions from covered
31 entities, as provided in sections 5 through 7 of this act;

32 (b) Defining those entities covered by the program, and those
33 entities that may voluntarily opt into coverage under the program, as
34 provided in sections 5 through 7 of this act;

35 (c) Distribution of emission allowances by auction, as provided
36 in section 9 of this act, and through the allowance price containment
37 provisions under sections 13 and 14 of this act;

38 (d) Providing for offset credits as a method for meeting a
39 compliance obligation, pursuant to section 15 of this act;

1 (e) Defining the compliance obligation for covered entities, as
2 provided in section 16 of this act;

3 (f) Establishing the authority of the department to enforce the
4 program requirements, as provided in section 17 of this act;

5 (g) Creating a climate investment account for the deposit of
6 receipts from the distribution of emission allowances, as provided in
7 section 20 of this act;

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

11 (i) Providing monitoring and oversight of the sale and transfer
12 of allowances; and

13 (j) Creating, in section 22 of this act, an environmental justice
14 and equity advisory panel to monitor for and advise on achieving
15 positive workforce and job outcomes and the equitable distribution of
16 benefits to overburdened communities.

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

26 NEW SECTION. **Sec. 6.** PROGRAM BUDGET AND TIMELINES. (1) The
27 department shall commence the program by January 1, 2023, by
28 determining the proportionate share that the total greenhouse gas
29 emissions of covered entities for the first compliance period bears
30 to the total anthropogenic greenhouse gas emissions in the state
31 during 2017 through 2021, based on data reported to the department
32 under RCW 70A.15.2200. The department may exclude a year from the
33 baseline determination if the department identifies that year to have
34 been an outlier due to a state of emergency. By October 1, 2022, the
35 department shall adopt a program budget of allowances for the first
36 compliance period of the program, calendar years 2023 through 2026,
37 for all covered entities to be distributed from January 1, 2023,
38 through December 31, 2026. By October 1, 2026, the department shall
39 adopt a program budget of allowances for the second compliance period

1 of the program, calendar years 2027 through 2030, for all covered
2 entities to be distributed from January 1, 2027, through December 31,
3 2030. By October 1, 2028, the department shall adopt by rule the
4 annual program budgets for the calendar years 2031 through 2040. The
5 program budgets must be set to achieve the share of reductions by
6 covered entities necessary to achieve the 2030, 2040, and 2050
7 statewide emissions limits established in RCW 70A.45.020, based on
8 data reported to the department under chapter 70A.15 RCW. The
9 department must adopt annual allowance budgets for the program on a
10 calendar year basis that provide for substantially equivalent
11 reductions on an absolute basis for each year.

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

26 (3) Data reported to the department under RCW 70A.15.2200 for
27 2017 through 2021 is deemed sufficient for the purpose of adopting
28 annual program budgets and demonstrating compliance under the first
29 compliance period of the program. Data reported to the department
30 under RCW 70A.15.2200 for 2023 through 2025 is deemed sufficient for
31 adopting annual program budgets and demonstrating compliance under
32 the second compliance period of the program.

33 NEW SECTION. **Sec. 7.** PROGRAM COVERAGE. (1) A person is a
34 covered entity as of the beginning of the first compliance period and
35 all subsequent compliance periods if the person reported emissions
36 under RCW 70A.15.2200 for any calendar year from 2017 through 2021
37 that equals or exceeds any of the following thresholds:

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

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

7 (c) Where the person is a supplier of fuel other than natural gas
8 and has reported 25,000 metric tons or more of carbon dioxide
9 equivalent emissions that would result from the full combustion or
10 oxidation of the supplied fuels and has a compliance obligation for
11 the emissions from the full combustion or oxidation of those supplied
12 fuels consistent with subsection (6) of this section.

13 (2) A person is a covered entity as of the beginning of the
14 second compliance period and all subsequent compliance periods if the
15 person reported emissions under RCW 70A.15.2200 for any calendar year
16 from 2023 through 2025 that equals or exceeds any of the following
17 thresholds:

18 (a) Where the person is a first jurisdictional deliverer bringing
19 electricity into the state and the cumulative annual total of
20 emissions associated with imported electricity into the state from
21 specified or unspecified sources equals or exceeds 25,000 metric tons
22 of carbon dioxide equivalent. For a specified source, the person must
23 have either full or partial ownership in the facility, or a written
24 power contract to procure electricity at the facility, at the time of
25 entry of the transaction to procure electricity;

26 (b) Where the person supplies natural gas in amounts that would
27 result in exceeding 25,000 metric tons of carbon dioxide equivalent
28 if fully combusted or oxidated, excluding the amounts supplied to
29 covered entities under subsection (1)(a) through (c) of this section
30 or (a) of this subsection;

31 (c) Where the person operates a facility and is a direct
32 purchaser of electricity from a federal power market agency or from a
33 joint operating entity and the associated emissions from both the
34 facility and purchased electricity equals or exceeds 25,000 metric
35 tons of carbon dioxide equivalent; and

36 (d) Where the person is a supplier of fuel other than natural gas
37 and has reported 25,000 metric tons or more of carbon dioxide
38 equivalent emissions that would result from the full combustion or
39 oxidation of the supplied fuels and has a compliance obligation for

1 the emissions from the full combustion or oxidation of those supplied
2 fuels consistent with subsection (6) of this section.

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

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

28 (5) For emission sources described in subsection (1) or (2) of
29 this section that are in operation or otherwise active between 2017
30 and 2021 but were not required to report emissions for those years
31 under RCW 70A.15.2200 as written for the reporting periods between
32 2017 and 2021, coverage under the program starts in the calendar year
33 following the year in which emissions from the source exceed the
34 applicable thresholds in subsection (1) or (2) of this section as
35 reported pursuant to RCW 70A.15.2200, or upon formal notice from the
36 department that the source is expected to exceed the applicable
37 emissions threshold for the first year that source is required to
38 report emissions, whichever happens first. Sources meeting these
39 conditions are required to transfer their first allowances on the
40 first transfer deadline of the year following the year in which their

emissions, as reported under RCW 70A.15.2200, were equal to or exceeded the emissions threshold.

(6) The following emissions are exempt from coverage in the program, regardless of the emissions reported under RCW 70A.15.2200:

(a) Emissions from the combustion of aviation fuels supplied in Washington that are combusted outside of Washington;

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

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

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

NEW SECTION. **Sec. 8.** REQUIREMENTS. (1) All covered entities must register to participate in the program, following procedures adopted by the department by rule.

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

(3) A person responsible for greenhouse gas emissions that is not a covered entity may voluntarily participate in the program by registering as an opt-in entity. An opt-in entity must satisfy the same registration requirements as covered entities. Once registered, an opt-in entity is allowed to participate as a covered entity in auctions and must assume the same compliance obligation to transfer compliance instruments equal to their emissions at the appointed transfer dates. An opt-in entity may opt out of the program at the end of any compliance period by providing written notice to the department at least six months prior to the end of the compliance period. The opt-in entity continues to have a compliance obligation through the current compliance period. An opt-in entity is not eligible to receive allowances directly distributed under section 10, 11, or 12 of this act.

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

1 (5) Tribal governments and federal agencies may elect to
2 participate in the program as opt-in entities or general
3 participants.

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

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

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

15 (b) A holding account that is used when a registered entity is
16 interested in trading allowances. Allowances in holding accounts may
17 be bought, sold, or traded. The amount of allowances a registered
18 entity may have in its holding account is constrained by the holding
19 limit.

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

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

24 NEW SECTION. **Sec. 9.** AUCTIONS OF ALLOWANCES. (1) Except as
25 provided in sections 10, 11, and 12 of this act, the department shall
26 distribute allowances through auctions as provided in this section
27 and in rules adopted by the department to implement these sections.
28 An allowance is not a property right.

29 (2) The department shall hold a maximum of four auctions
30 annually, plus any necessary reserve auctions. An auction may include
31 allowances from the annual allowance budget of the current year and
32 allowances from the annual allowance budgets from prior years that
33 remain to be distributed. The department must make future vintage
34 allowances available through parallel auctions at least twice
35 annually in addition to the auctions through which current vintage
36 allowances are exclusively offered.

37 (3) The department shall engage a qualified, independent
38 contractor to run the auctions. The department shall also engage a
39 qualified financial services administrator to hold the bid

1 guarantees, evaluate bid guarantees, and inform the department of the
2 value of bid guarantees once the bids are accepted.

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

7 (a) Registered entities intending to participate in an auction
8 must submit an application to participate at least 30 days prior to
9 the auction. The application must include the documentation required
10 for review and approval by the department. A registered entity is
11 eligible to participate only after receiving a notice of approval by
12 the department.

13 (b) Each registered entity that elects to participate in the
14 auction must have a different representative. Only a representative
15 with an approved auction account is authorized to access the auction
16 platform to submit an application or confirm the intent to bid for
17 the registered entity, submit bids on behalf of the registered entity
18 during the bidding window, or to download reports specific to the
19 auction.

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

24 (6) To protect the integrity of the auctions, a registered entity
25 or group of registered entities with a direct corporate association
26 are subject to the following auction purchase limits:

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

29 (b) A general market participant may not buy more than four
30 percent of the allowances offered during a single auction;

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

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

35 (7) Upon completion and verification of the auction results, the
36 financial services administrator shall notify winning bidders and
37 transfer the auction proceeds to the state treasurer for deposit in
38 the climate investment account created in section 20 of this act.

39 (8) The department shall adopt by rule provisions to guard
40 against bidder collusion and minimize the potential for market

manipulation. A registered entity may not release or disclose any bidding information including: Intent to participate or refrain from participation; auction approval status; intent to bid; bidding strategy; bid price or bid quantity; or information on the bid guarantee provided to the financial services administrator. The department may cancel or restrict a previously approved auction participation application or reject a new application if the department determines that a registered entity has:

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

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

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

NEW SECTION. **Sec. 10.** ALLOCATION OF ALLOWANCES TO EMISSIONS-INTENSIVE, TRADE-EXPOSED INDUSTRIES. (1) During the first compliance period of the program, a covered entity must receive an allocation under this subsection at no cost if the entity is classified as emissions-intensive and trade-exposed, as determined by being engaged in one or more of the processes described by the following industry descriptions and codes in the North American industry classification system:

- (a) Primary metal manufacturing, including iron and steel milling, ferroalloy, and primary metal manufacturing North American industry classification system codes beginning with 331;

1 (b) Secondary metals manufacturing, including smelting, refining,
2 and alloying of nonferrous metal, North American industry
3 classification code 331492;

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

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

10 (e) Wood products manufacturing, North American industry
11 classification system codes beginning with 322;

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

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

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

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

22 (j) Cement manufacturing, North American industry classification
23 system code 327310.

24 (2) The annual allocation of allowances for direct distribution
25 to an entity identified as emissions-intensive and trade-exposed
26 under subsection (1) of this section during the first compliance
27 period of the program must be equal to the covered entity's
28 proportional obligation of the program budget for phase one
29 established under section 6 of this act, multiplied by:

30 (a) During calendar year 2023, 90 percent;

31 (b) During calendar year 2024, 85 percent;

32 (c) During calendar year 2025, 80 percent; and

33 (d) During calendar year 2026, 75 percent.

34 (3)(a) By January 1, 2024, the department must adopt by rule
35 objective criteria for both emissions' intensity and trade exposure
36 for the purpose of identifying emissions-intensive, trade-exposed
37 manufacturing businesses during the second compliance period of the
38 program and subsequent compliance periods. A manufacturing business
39 that can demonstrate to the department that it meets this criteria,
40 whether or not it is listed in subsection (1)(a) through (j) of this

1 section, is eligible for treatment as an emissions-intensive, trade-
2 exposed industry and is eligible for free allocation of allowances as
3 described in this section, and by the department by rule.

4 (b) By July 1, 2024, the department must adopt rules for
5 allocating allowances that must be transferred by those covered
6 entities that the department determines are engaged in emissions-
7 intensive, trade-exposed processes during the second compliance
8 period of the program. The rules must establish a schedule for the
9 second compliance period of the program that provides for a declining
10 portion of the allocation to such covered entities that must be
11 provided at no cost. By December 31, 2029, the department must adopt
12 rules following the same process and requirements for 2031 through
13 2040. Both sets of rules may be amended to align with adjustments
14 made under section 5 of this act.

15 (4) Rules adopted under this section may utilize a combined
16 output-based and emissions intensity-based assessment benchmarking
17 methodology for determining the allocation of allowances to
18 emissions-intensive, trade-exposed industries. A covered entity or
19 process with a lower emissions intensity benchmark may receive a
20 larger allocation than other covered entities engaged in the same
21 industry with higher emissions intensities. The rules must provide a
22 means for attributing a covered entity's emissions to the manufacture
23 of goods and requirements for providing pertinent records to verify
24 the output data used to calculate the emissions intensity benchmark.

25 (5) The annual allocation of allowances for direct distribution
26 to an entity identified as emissions-intensive and trade-exposed in
27 the second compliance period of the program must be equal to the sum
28 of the annual goods-specific emissions calculation for the goods
29 manufactured by the covered entity, multiplied by a percentage that
30 is adjusted annually, as set forth in a schedule adopted by the
31 department by rule. The schedule must result in an amount of annual
32 allowances that a covered entity may receive under this section and
33 from the allowance price containment reserve that declines annually
34 by a constant amount proportionate to the decline in the amount of
35 allowances available in annual allowance budgets pursuant to section
36 6 of this act.

37 (6) The department shall by rule provide for covered entities to
38 apply to the department for an adjustment to the allocation for
39 direct distribution of allowances. The department may grant the
40 adjustment based on either:

1 (a) A significant change in the emissions attributable to the
2 manufacture of an individual good or goods in this state by a covered
3 entity based on a finding by the department that an adjustment is
4 necessary to accommodate for changes in the manufacturing process
5 that have a material impact on emissions; or

6 (b) Significant changes to a covered entity's external
7 competitive environment that result in a significant increase in
8 leakage risk.

9 (7) The department must withhold or withdraw the relevant share
10 of allowances allocated to a covered entity under this section in the
11 event that the covered entity curtails production in the state. Any
12 allowances withheld or withdrawn under this subsection must be
13 permanently retired.

14 NEW SECTION. **Sec. 11.** ALLOCATION OF ALLOWANCES TO ELECTRIC
15 UTILITIES. (1) The legislature intends by this section to allow first
16 jurisdictional deliverers of electricity that are also consumer-owned
17 electric utilities or investor-owned electric utilities subject to
18 the requirements of chapter 19.405 RCW, the Washington clean energy
19 transformation act, to be eligible for free allowance allocation as
20 provided in this section.

21 (2) In order to mitigate the impact on rates or charges on
22 citizens of the state for electricity services, by October 1, 2022,
23 the department shall adopt rules, in consultation with the department
24 of commerce, for allocating allowances at no cost to covered entities
25 that are electricity generators owned by or under contract with a
26 consumer-owned or investor-owned electric utility. By October 1,
27 2026, the department shall adopt rules for allocating allowances
28 during the second compliance period of the program at no cost to: (a)
29 First jurisdictional deliverers of electricity that are also
30 consumer-owned utilities with a clean energy implementation plan
31 approved under the requirements of chapter 19.405 RCW, consistent
32 with an emissions allowance budget based on their approved clean
33 energy implementation plan, or an allowance budget determined by the
34 department by rule consistent with the requirements in section 5 of
35 this act, whichever is less.

36 (3) Allowances allocated at no cost to consumer-owned or
37 investor-owned electric utilities must be consigned to auction for
38 the benefit of ratepayers.

(4) Nothing in this section affects the requirements of chapter 19.405 RCW.

NEW SECTION. **Sec. 12.** ALLOCATION OF ALLOWANCES TO NATURAL GAS COMPANIES. (1) Allowances must be allocated at no cost to covered entities that are natural gas utilities for the exclusive purpose of providing assistance to low-income residential natural gas customers. Rules adopted under this subsection must allow for a natural gas utility to be directly distributed allowances at no cost in an amount equal to the covered emissions attributable to the provision of natural gas service to the natural gas utility's low-income residential customers who receive any other form of rate or bill assistance from the utility. By January 1st of the first year of the second compliance period and each subsequent compliance period, the department shall determine by rule, after consultation with the utilities and transportation commission, the quantity of allowances to allocate directly at no cost to a natural gas utility over the course of the compliance period.

(2) Allowances allocated at no cost to natural gas companies must be consigned to auction for the benefit of low-income customers. The allowances must be used exclusively to minimize cost impacts on low-income residential customers through actions that include, but are not limited to, weatherization, electrification, conservation and efficiency services, and bill assistance.

NEW SECTION. **Sec. 13.** EMISSIONS CONTAINMENT RESERVE WITHHOLDING. (1) To help ensure that the price of allowances remains sufficient to incentivize reductions in greenhouse gas emissions, the department must establish an emissions containment reserve and set an emissions containment reserve trigger price by rule. The price must be set at a reasonable amount above the auction floor price. The purpose of withholding allowances in the emissions containment reserve is to secure additional emissions reductions consistent with the greenhouse gas emissions limits in RCW 70A.45.020 in the event auction prices fall below the emissions containment reserve trigger price.

(2) In the event that the emissions containment reserve trigger price is met during an auction, the department must automatically withhold allowances as needed. The department must convert and

1 transfer any allowances that have been withheld from auction into the
2 emissions containment reserve account.

3 (3) Emissions containment reserve allowances may only be withheld
4 from an auction if the demand for allowances would result in an
5 auction clearing price that is less than the emissions containment
6 reserve trigger price prior to the withholding from the auction of
7 any emissions containment reserve allowances.

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

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

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

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

33 (5) The process for reserve auctions is the same as the process
34 provided in section 9 of this act and the proceeds from reserve
35 auctions must be treated the same.

36 (6) The department shall by rule:

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

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

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

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

(2) Offset projects must:

(a) Be located in the United States or in a jurisdiction with which the department has entered into a linkage agreement;

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

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

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

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

(3)(a) A total of no more than eight percent of a covered or opt-in entity's compliance obligation during the first compliance period may be met by transferring offset credits. During these years, at least 75 percent of a covered entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state.

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

(c) The limits in (a) and (b) of this subsection may be modified by rules adopted by the department when appropriate to ensure achievement of the statewide emissions limits established in RCW

1 70A.45.020 and to provide for alignment with other jurisdictions to
2 which the state has entered or proposes to enter a linkage agreement.

3 (d) The limits in (a) and (b) of this subsection may be reduced
4 for a specific covered entity if the department determines that the
5 covered entity contributes substantively to cumulative air pollution
6 burden in an overburdened community.

7 (e) An offset project on tribal land does not count against the
8 offset credit limits described in (a) and (b) of this subsection. No
9 more than five percent of a covered or opt-in entity's compliance
10 obligation may be met by transferring offset credits from projects on
11 tribal land.

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

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

18 (b) Encourage opportunities for the development of offset
19 projects in this state by adopting offset protocols that may include,
20 but need not be limited to, protocols that make use of aggregation or
21 other mechanisms to reduce transaction costs related to the
22 development of offset projects;

23 (c) Adopt a process for monitoring and invalidating offset
24 credits as necessary to ensure the credit reflects emission
25 reductions or removals that continue to meet the standards required
26 by subsection (1) of this section. If an offset credit is
27 invalidated, the covered or opt-in entity must, within six months of
28 the invalidation, transfer replacement credits or allowances to meet
29 its compliance obligation. Failure to transfer the required credits
30 or allowances is a violation subject to penalties as provided in
31 section 17 of this act.

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

34 NEW SECTION. **Sec. 16.** COMPLIANCE OBLIGATIONS. (1) A covered or
35 opt-in entity has a compliance obligation for its emissions during
36 each four-year compliance period, with the first compliance period
37 commencing January 1, 2023. A covered or opt-in entity shall transfer
38 a number of compliance instruments equal to their allocated
39 allowances under section 5 of this act by November 1st of each

1 calendar year in which a covered or opt-in entity has a compliance
2 obligation.

3 (2) Submission of allowances occurs through the transfer of
4 compliance instruments, on or before the transfer date, from the
5 holding account to the compliance account of the covered or opt-in
6 entity as described in section 7 of this act.

7 (3) A covered or opt-in entity submitting insufficient compliance
8 instruments to meet its compliance obligation is subject to a penalty
9 as provided in section 17 of this act.

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

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

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

19 NEW SECTION. **Sec. 17.** ENFORCEMENT. (1) All covered and opt-in
20 entities are required to submit compliance instruments in a timely
21 manner to meet the entities' compliance obligations and shall comply
22 with all requirements for monitoring, reporting, holding, and
23 transferring emission allowances and other provisions of this
24 chapter.

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

34 (3) If a covered entity or opt-in entity fails to submit penalty
35 allowances as required by subsection (2) of this section, the
36 department may issue an order or issue a penalty of up to \$10,000 per
37 day per violation, or both, for failure to submit penalty allowances
38 as required by subsection (2) of the section. The order may include a
39 plan and schedule for coming into compliance. The department may

1 issue a penalty up to \$50,000 per day per violation for violations of
2 section 9(8) (a) through (e) of this act.

3 (4) Except as provided in subsection (3) of this section, any
4 person that violates the terms of this chapter or an order issued
5 under this chapter may incur a penalty of up to \$10,000 per day per
6 violation for each day that the person does not comply. All penalties
7 under subsections (3) and (4) of this section must be deposited into
8 the air pollution control account created in RCW 70A.15.1010.

9 (5) Appeals of orders and penalties issued under this chapter
10 must be to the pollution control hearings board under chapter 43.21B
11 RCW.

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

16 NEW SECTION. **Sec. 18.** LINKAGE WITH OTHER JURISDICTIONS. (1) The
17 department shall seek to link with other jurisdictions with
18 established allowance-based greenhouse gas emission reduction
19 programs in order to:

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

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

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

26 (d) Enhance market security;

27 (e) Reduce program administration costs; and

28 (f) Provide consistent requirements for covered entities whose
29 operations span jurisdictional boundaries.

30 (2) The director of the department is authorized to execute
31 linkage agreements with other jurisdictions with established
32 allowance-based greenhouse gas emission reduction programs consistent
33 with the requirements in this chapter. A linkage agreement must cover
34 the following:

35 (a) Provisions relating to quarterly auctions, including
36 requirements for eligibility for auction participation, the use of a
37 single auction provider to facilitate joint auctions, publication of
38 auction-related information, processes for auction participation,

1 purchase limits by auction participant type, bidding processes, dates
2 of auctions, and financial requirements;

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

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

9 (d) Common program registry, electronic auction platform,
10 tracking systems for compliance instruments, and monitoring of
11 compliance instruments;

12 (e) Provisions to ensure coordinated administrative and technical
13 support;

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

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

17 (3) Before entering into a linkage agreement under this section,
18 the department must establish a finding that the linking jurisdiction
19 and the linkage agreement meets certain criteria identified under
20 this subsection. In the event that the department determines that a
21 full linkage agreement is unlikely to meet the criteria, it may enter
22 into a linkage agreement with limitations, including limits on the
23 share of compliance that may be met with allowances originating from
24 linked jurisdictions and other limitations deemed necessary by the
25 department. A linkage agreement approved by the department must:

26 (a) Achieve the purposes identified in subsection (1) of this
27 section;

28 (b) Ensure that the linking jurisdiction has provisions to ensure
29 the distribution of benefits from the program to vulnerable
30 populations and overburdened communities;

31 (c) Include an agreement to not yield net adverse impacts to
32 either jurisdictions' highly impacted communities or analogous
33 communities in the aggregate, relative to the baseline level of
34 emissions; and

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

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

1 NEW SECTION. **Sec. 19.** RULES. The department shall adopt rules
2 to implement the provisions of the program established in sections 5
3 through 18 of this act. The department may adopt emergency rules
4 pursuant to RCW 34.05.350 for initial implementation of the program,
5 to implement the state omnibus appropriations act for the 2021-2023
6 fiscal biennium, and to ensure that reporting and other program
7 requirements are determined early for the purpose of program design
8 and early notice to registered entities with a compliance obligation
9 under the program.

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

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

30 (a) To cover the department's and other agencies' costs to
31 support and administer the program, including coordination of
32 allowance auctions, tracking of emissions and allowances, rule
33 making, evaluation, monitoring, and verification, and stakeholder
34 communication and outreach, as appropriated pursuant to enacted
35 biennial and supplemental operating budgets;

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

38 (c) Clean transportation programs, activities, or projects that
39 reduce transportation-related greenhouse gas emissions, including but

not limited to programs, activities, or projects that: (i) Accelerate the deployment of zero-emission fleets and vehicles, including off-road and maritime vehicles and vessels; (ii) create zero-emission vehicle refueling infrastructure or deploy grid infrastructure to integrate electric vehicles and electric vehicle supply equipment; (iii) reduce vehicle miles traveled or increase public transportation, including investing in public transit, transportation demand management, nonmotorized transportation, affordable transit-oriented housing, and high-speed rural broadband to facilitate telecommuting options such as telemedicine or online job training; or (iv) increase fuel efficiency in vehicles and vessels where options to convert to zero-emissions, low-carbon fuels, or public transportation are cost-prohibitive and inapplicable or unavailable;

(d) Natural climate resilience solutions that improve the resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change, and increase their carbon pollution reduction capacity through sequestration, storage, and overall ecosystem integrity. This includes programs, activities, or projects that: (i) Restore and protect estuaries, fisheries, and marine shoreline habitats, and prepare for sea level rise; (ii) increase the ability to remediate and adapt to the impacts of ocean acidification; (iii) reduce flood risk and restore natural floodplain ecological function; (iv) increase the sustainable supply of water and improve aquatic habitat, including groundwater mapping and modeling; (v) improve infrastructure treating stormwater from previously developed areas within an urban growth boundary designated under chapter 36.70A RCW, with a preference given to projects that use green stormwater infrastructure; (vi) either preserve or increase, or both, carbon sequestration and storage benefits in forests and agricultural soils; (vii) increase forest and community resilience to wildfire in the face of increased seasonal temperatures and drought; or (viii) improve forest health and reduce vulnerability to changes in hydrology, insect infestation, and other impacts of climate change;

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

(i) Programs, activities, or projects that directly improve energy affordability and reduce the energy burden of people with

1 lower incomes, as well as the higher transportation fuel burden of
2 rural residents, such as bill assistance programs and weatherization
3 programs;

4 (ii) Reductions in dependence on fossil fuels used for
5 transportation, including public and shared transportation for access
6 and mobility;

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

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

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

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

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

1 reduce greenhouse gas emissions of industrial facilities including,
2 but not limited to, proposals to implement combined heat and power,
3 district energy, or on-site renewables, such as solar and wind power,
4 to upgrade the energy efficiency of existing equipment, to reduce
5 process emissions, and to switch to less emission intensive fuel
6 sources; (iii) achieve energy efficiency or emission reductions in
7 the agricultural sector, including fertilizer management, soil
8 management, bioenergy, and biofuels; (iv) promote low-carbon
9 architecture, including use of newly emerging alternative building
10 materials that result in a lower carbon footprint in the built
11 environment over the life cycle of the building and component
12 building materials; (v) promote the electrification and
13 decarbonization of new and existing buildings, including residential,
14 commercial, and industrial buildings; and (vi) improve energy
15 efficiency, including district energy, and investments in market
16 transformation of high-efficiency electric appliances and equipment
17 for space and water heating.

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

23 NEW SECTION. **Sec. 21.** ENVIRONMENTAL JUSTICE ANALYSIS. (1) When
24 allocating funds from the climate investment account created in
25 section 20 of this act or administering grants funded by the account,
26 agencies shall conduct an environmental justice analysis and ensure
27 that a meaningful percentage of total investments authorized under
28 this chapter provide direct and meaningful benefits to vulnerable
29 populations within the boundaries of overburdened communities
30 through: (a) The direct reduction of environmental burdens in
31 overburdened communities; (b) the reduction of disproportionate,
32 cumulative risk from environmental burdens, including climate change;
33 (c) the support of community-led project development, planning, and
34 participation costs; or (d) meeting a community need identified by
35 vulnerable members of the community that is consistent with the
36 intent of this chapter.

37 (2) The environmental justice analysis must adhere to the
38 following principles: (a) Benefits should be directed to areas and
39 targeted to vulnerable populations and overburdened communities to

1 reduce statewide disparities; (b) investments should be made
2 proportional to the health disparities that a specific community
3 experiences to eliminate the disparities; (c) investments should
4 focus on creating environmental benefits, including eliminating
5 health burdens, creating community and population resilience, and
6 raising the quality of life of those in the community; (d) efforts
7 should be made to balance investments across the state and within
8 counties, local jurisdictions, and unincorporated areas as
9 appropriate to reduce disparities by location and to ensure efforts
10 contribute to a reduction in disparities that exist based on race or
11 ethnicity.

12 (3) Agencies allocating funds or administering grants from the
13 climate investment account must report annually to the environmental
14 justice and equity advisory panel and the office of equity regarding
15 progress toward meeting environmental justice and environmental
16 health goals.

17 NEW SECTION. **Sec. 22.** ENVIRONMENTAL JUSTICE AND EQUITY ADVISORY
18 PANEL. (1) The office of equity shall establish an environmental
19 justice and equity advisory panel to provide recommendations to the
20 legislature and the governor in the development and implementation of
21 the program established in sections 5 through 18 of this act, and the
22 programs funded from the climate investment account created in
23 section 20 of this act.

24 (2) The office of equity must convene the environmental justice
25 and equity advisory panel by January 1, 2023. The office equity may
26 seek nominations or recommendations from organizations across the
27 state representing the interests specified in this section. Members
28 of the panel must be selected for geographic and organizational
29 diversity and must include the following:

30 (a) Individuals representing the interests of vulnerable
31 populations residing in overburdened communities in different
32 geographic areas of the state with expertise in environmental justice
33 and equity issues;

34 (b) Individuals representing union labor with expertise in
35 economic dislocation, clean energy economy, or emissions-intensive,
36 trade-exposed facilities; and

37 (c) Two members representing tribal communities, one from eastern
38 Washington and one from western Washington.

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

1 (a) Provide recommendations to the legislature and the governor
2 in the development of investment plans and funding proposals for the
3 programs funded from the climate investment account;

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

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

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

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

17 (f) Provide recommendations to implementing agencies for
18 meaningful consultation with vulnerable populations.

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

23 (5) The environmental justice and equity advisory panel
24 constitutes a class one group under RCW 43.03.220. Expenses for this
25 group must be included in costs to support and administer the program
26 and are an allowable expense under section 20(2)(a) of this act.

27 NEW SECTION. **Sec. 23.** TRIBAL ENGAGEMENT. Before allocating
28 funding or administering grant programs appropriated from the climate
29 investment account, agencies must consult with Indian tribes on all
30 funding decisions that affect Indian tribes' rights and interests in
31 their tribal lands. The consultation must occur pursuant to chapter
32 43.376 RCW and must be independent of any public participation
33 process required by state law, or by a state agency, and regardless
34 of whether the agency receives a request for consultation from an
35 Indian tribe. Agencies must develop a consultation framework in
36 coordination with tribal governments that includes best practices,
37 protocols for communication, and collaboration with Indian tribes.

1 **Sec. 24.** RCW 70A.15.1030 and 2020 c 20 s 1081 are each amended
2 to read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Air contaminant" means dust, fumes, mist, smoke, other
6 particulate matter, vapor, gas, odorous substance, or any combination
7 thereof.

8 (2) "Air pollution" is presence in the outdoor atmosphere of one
9 or more air contaminants in sufficient quantities and of such
10 characteristics and duration as is, or is likely to be, injurious to
11 human health, plant or animal life, or property, or which
12 unreasonably interfere with enjoyment of life and property. For the
13 purpose of this chapter, air pollution shall not include air
14 contaminants emitted in compliance with chapter 17.21 RCW.

15 (3) "Air quality standard" means an established concentration,
16 exposure time, and frequency of occurrence of an air contaminant or
17 multiple contaminants in the ambient air which shall not be exceeded.

18 (4) "Ambient air" means the surrounding outside air.

19 (5) "Authority" means any air pollution control agency whose
20 jurisdictional boundaries are coextensive with the boundaries of one
21 or more counties.

22 (6) "Best available control technology" (BACT) means an emission
23 limitation based on the maximum degree of reduction for each air
24 pollutant subject to regulation under this chapter emitted from or
25 that results from any new or modified stationary source, that the
26 permitting authority, on a case-by-case basis, taking into account
27 energy, environmental, and economic impacts and other costs,
28 determines is achievable for such a source or modification through
29 application of production processes and available methods, systems,
30 and techniques, including fuel cleaning, clean fuels, or treatment or
31 innovative fuel combustion techniques for control of each such a
32 pollutant. In no event shall application of "best available control
33 technology" result in emissions of any pollutants that will exceed
34 the emissions allowed by any applicable standard under 40 C.F.R. Part
35 60 and Part 61, as they exist on July 25, 1993, or their later
36 enactments as adopted by reference by the director by rule. Emissions
37 from any source utilizing clean fuels, or any other means, to comply
38 with this subsection shall not be allowed to increase above levels
39 that would have been required under the definition of BACT as it

1 existed prior to enactment of the federal clean air act amendments of
2 1990.

3 (7) "Best available retrofit technology" (BART) means an emission
4 limitation based on the degree of reduction achievable through the
5 application of the best system of continuous emission reduction for
6 each pollutant that is emitted by an existing stationary facility.
7 The emission limitation must be established, on a case-by-case basis,
8 taking into consideration the technology available, the costs of
9 compliance, the energy and nonair quality environmental impacts of
10 compliance, any pollution control equipment in use or in existence at
11 the source, the remaining useful life of the source, and the degree
12 of improvement in visibility that might reasonably be anticipated to
13 result from the use of the technology.

14 (8) "Board" means the board of directors of an authority.

15 (9) "Control officer" means the air pollution control officer of
16 any authority.

17 (10) "Department" or "ecology" means the department of ecology.

18 (11) "Emission" means a release of air contaminants into the
19 ambient air.

20 (12) "Emission standard" and "emission limitation" mean a
21 requirement established under the federal clean air act or this
22 chapter that limits the quantity, rate, or concentration of emissions
23 of air contaminants on a continuous basis, including any requirement
24 relating to the operation or maintenance of a source to assure
25 continuous emission reduction, and any design, equipment, work
26 practice, or operational standard adopted under the federal clean air
27 act or this chapter.

28 (13) "Emission," "emission standard," and "emission limitation,"
29 as applied to greenhouse gases as defined in RCW 70A.45.010, include
30 indirect emissions of greenhouse gases resulting from production or
31 distribution of petroleum products, natural gas, or other products,
32 where the release of air contaminants into the ambient air occurs
33 during the consumption, use, combustion, or oxidation of the
34 products.

35 (14) "Fine particulate" means particulates with a diameter of two
36 and one-half microns and smaller.

37 ((+14)) (15) "Lowest achievable emission rate" (LAER) means for
38 any source that rate of emissions that reflects:

39 (a) The most stringent emission limitation that is contained in
40 the implementation plan of any state for such class or category of

1 source, unless the owner or operator of the proposed source
2 demonstrates that such limitations are not achievable; or

3 (b) The most stringent emission limitation that is achieved in
4 practice by such class or category of source, whichever is more
5 stringent.

6 In no event shall the application of this term permit a proposed
7 new or modified source to emit any pollutant in excess of the amount
8 allowable under applicable new source performance standards.

9 ~~((15))~~ (16) "Modification" means any physical change in, or
10 change in the method of operation of, a stationary source that
11 increases the amount of any air contaminant emitted by such source or
12 that results in the emission of any air contaminant not previously
13 emitted. The term modification shall be construed consistent with the
14 definition of modification in Section 7411, Title 42, United States
15 Code, and with rules implementing that section.

16 ~~((16))~~ (17) "Multicounty authority" means an authority which
17 consists of two or more counties.

18 ~~((17))~~ (18) "New source" means (a) the construction or
19 modification of a stationary source that increases the amount of any
20 air contaminant emitted by such source or that results in the
21 emission of any air contaminant not previously emitted, and (b) any
22 other project that constitutes a new source under the federal clean
23 air act.

24 ~~((18))~~ (19) "Permit program source" means a source required to
25 apply for or to maintain an operating permit under RCW 70A.15.2260.

26 ~~((19))~~ (20) "Person" means an individual, firm, public or
27 private corporation, association, partnership, political subdivision
28 of the state, municipality, or governmental agency.

29 ~~((20))~~ (21) "Reasonably available control technology" (RACT)
30 means the lowest emission limit that a particular source or source
31 category is capable of meeting by the application of control
32 technology that is reasonably available considering technological and
33 economic feasibility. RACT is determined on a case-by-case basis for
34 an individual source or source category taking into account the
35 impact of the source upon air quality, the availability of additional
36 controls, the emission reduction to be achieved by additional
37 controls, the impact of additional controls on air quality, and the
38 capital and operating costs of the additional controls. RACT
39 requirements for a source or source category shall be adopted only
40 after notice and opportunity for comment are afforded.

1 ~~((21))~~ (22) "Silvicultural burning" means burning of wood fiber
2 on forestland consistent with the provisions of RCW 70A.15.5120.

3 ~~((22))~~ (23) "Source" means all of the emissions units including
4 quantifiable fugitive emissions, that are located on one or more
5 contiguous or adjacent properties, and are under the control of the
6 same person, or persons under common control, whose activities are
7 ancillary to the production of a single product or functionally
8 related group of products.

9 ~~((23))~~ (24) "Stationary source" means any building, structure,
10 facility, or installation that emits or may emit any air contaminant.

11 ~~((24))~~ (25) "Trigger level" means the ambient level of fine
12 particulates, measured in micrograms per cubic meter, that must be
13 detected prior to initiating a first or second stage of impaired air
14 quality under RCW 70A.15.3580.

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

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

28 (2) Except as provided in subsection (3) of this section, any
29 person operating or responsible for the operation of air contaminant
30 sources of any class for which the ordinances, resolutions, rules or
31 regulations of the department or board of the authority, require
32 registration or reporting shall register therewith and make reports
33 containing information as may be required by such department or board
34 concerning location, size and height of contaminant outlets,
35 processes employed, nature of the contaminant emission and such other
36 information as is relevant to air pollution and available or
37 reasonably capable of being assembled. In the case of emissions of
38 greenhouse gases as defined in RCW 70A.45.010 the department shall
39 adopt rules requiring reporting of those emissions. The department or

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

24 All registration program and reporting fees collected by the
25 department shall be deposited in the air pollution control account.
26 All registration program fees collected by the local air authorities
27 shall be deposited in their respective treasuries.

28 (3) If a registration or report has been filed for a grain
29 warehouse or grain elevator as required under this section,
30 registration, reporting, or a registration program fee shall not,
31 after January 1, 1997, again be required under this section for the
32 warehouse or elevator unless the capacity of the warehouse or
33 elevator as listed as part of the license issued for the facility has
34 been increased since the date the registration or reporting was last
35 made. If the capacity of the warehouse or elevator listed as part of
36 the license is increased, any registration or reporting required for
37 the warehouse or elevator under this section must be made by the date
38 the warehouse or elevator receives grain from the first harvest
39 season that occurs after the increase in its capacity is listed in
40 the license.

1 This subsection does not apply to a grain warehouse or grain
2 elevator if the warehouse or elevator handles more than ten million
3 bushels of grain annually.

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

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

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

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

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

28 (i) Emissions of greenhouse gases resulting from the combustion
29 of fossil fuels be reported separately from emissions of greenhouse
30 gases resulting from the combustion of biomass; and

31 ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each
32 annual report must include emissions data for the preceding calendar
33 year and must be submitted to the department by ~~((October))~~ March
34 31st of the year in which the report is due. ~~((However, starting in~~
35 ~~2011, a person who is required to report greenhouse gas emissions to~~
36 ~~the United States environmental protection agency under 40 C.F.R.~~
37 ~~Part 98, as adopted on September 22, 2009, must submit the report~~
38 ~~required under this section to the department concurrent with the~~
39 ~~submission to the United States environmental protection agency.~~
40 ~~Except as otherwise provided in this section, the data for emissions~~

1 in Washington and any corrections thereto that are reported to the
2 United States environmental protection agency must be the emissions
3 data reported to the department; and

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

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

31 ~~((ii))~~) The department may by rule include additional gases to the
32 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
33 been designated as a greenhouse gas by the United States congress
34 ~~((or)),~~ by the United States environmental protection agency, or
35 included in external greenhouse gas emission trading programs where
36 Washington has a linkage agreement in effect pursuant to section 18
37 of this act. Prior to including additional gases to the definition of
38 "greenhouse gas" in RCW 70A.45.010, the department shall notify the
39 appropriate committees of the legislature. ~~((Decisions to amend the~~
40 ~~rule to include additional gases must be made prior to December 1st~~

1 ~~of any year and the amended rule may not take effect before the end~~
2 ~~of the regular legislative session in the next year.~~

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

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

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

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

15 ((B)) Needed to ensure consistency with emissions reporting
16 requirements for jurisdictions with a linkage agreement pursuant to
17 section 18 of this act. ~~((However, the))~~

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

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

23 (e) The fee provisions in subsection (2) of this section apply to
24 reporting of emissions of greenhouse gases. Persons required to
25 report under (a) of this subsection who fail to report or pay the fee
26 required in subsection (2) of this section are subject to enforcement
27 penalties under this chapter. The department shall enforce the
28 reporting rule requirements ~~((unless it approves a local air~~
29 ~~authority's request to enforce the requirements for persons operating~~
30 ~~within the authority's jurisdiction. However, neither the department~~
31 ~~nor a local air authority approved under this section are authorized~~
32 ~~to assess enforcement penalties on persons required to report under~~
33 ~~(a) of this subsection until six months after the department adopts~~
34 ~~its reporting rule in 2010)).~~ When a person that holds a compliance
35 obligation under section 8 of this act fails to submit an emissions
36 data report or fails to obtain a positive emissions data verification
37 statement in accordance with (g)(ii) of this subsection, the
38 department may assign an emissions level for that person.

39 (f) The energy facility site evaluation council shall,
40 simultaneously with the department, adopt rules that impose

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

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

21 (ii) Verification requirements apply at a minimum to persons
22 required to report under (a) of this subsection with emissions that
23 equal or exceed 25,000 metric tons of carbon dioxide equivalent
24 emissions, including carbon dioxide from biomass-derived fuels, or to
25 persons who have a compliance obligation under section 7 of this act
26 in any year of the current compliance period.

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

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

1 quantity of carbon dioxide in Washington that, if released, would
2 result in emissions equivalent to or higher than the threshold
3 established under (a) of this subsection.

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

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

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

26 **Sec. 26.** RCW 70A.15.3000 and 2020 c 20 s 1103 are each amended
27 to read as follows:

28 (1) The department shall have all the powers as provided in RCW
29 70A.15.2040.

30 (2) The department, in addition to any other powers vested in it
31 by law after consideration at a public hearing held in accordance
32 with chapters 42.30 and 34.05 RCW shall:

33 (a) Adopt rules establishing air quality objectives and air
34 quality standards;

35 (b) Adopt emission standards which shall constitute minimum
36 emission standards throughout the state. An authority may enact more
37 stringent emission standards, except for emission performance
38 standards for new woodstoves and opacity levels for residential solid
39 fuel burning devices which shall be statewide, but in no event may

1 less stringent standards be enacted by an authority without the prior
2 approval of the department after public hearing and due notice to
3 interested parties;

4 (c) Adopt by rule air quality standards and emission standards
5 for the control or prohibition of emissions to the outdoor atmosphere
6 of radionuclides, dust, fumes, mist, smoke, other particulate matter,
7 vapor, gas, odorous substances, or any combination thereof. Such
8 requirements may be based upon a system of classification by types of
9 emissions or types of sources of emissions, or combinations thereof,
10 which it determines most feasible for the purposes of this chapter.
11 The department may require persons who produce or distribute fossil
12 fuels or other products that emit greenhouse gases in Washington to
13 comply with air quality standards, emission standards, or emission
14 limitations on emissions of greenhouse gases. If the program review
15 in section 6(2) of this act finds that greenhouse gases and criteria
16 pollutants are not being reduced in communities identified as highly
17 impacted by the department of health's environmental health
18 disparities map, then, as a means of ensuring that the program
19 created in sections 5 through 18 of this act achieves reductions in
20 greenhouse gas emissions and other criteria pollutants in
21 overburdened communities highly impacted by pollution, the department
22 shall prioritize the adoption of air quality standards, emission
23 standards, or emission limitations on fuel suppliers or covered
24 entities located in those areas. However, an industry, or the air
25 pollution control authority having jurisdiction, can choose, subject
26 to the submittal of appropriate data that the industry has
27 quantified, to have any limit on the opacity of emissions from a
28 source whose emission standard is stated in terms of a weight of
29 particulate per unit volume of air (e.g., grains per dry standard
30 cubic foot) be based on the applicable particulate emission standard
31 for that source, such that any violation of the opacity limit
32 accurately indicates a violation of the applicable particulate
33 emission standard. Any alternative opacity limit provided by this
34 section that would result in increasing air contaminants emissions in
35 any nonattainment area shall only be granted if equal or greater
36 emission reductions are provided for by the same source obtaining the
37 revised opacity limit. A reasonable fee may be assessed to the
38 industry to which the alternate opacity standard would apply. The fee
39 shall cover only those costs to the air pollution control authority
40 which are directly related to the determination on the acceptability

1 of the alternate opacity standard, including testing, oversight and
2 review of data.

3 (3) The air quality standards and emission standards may be for
4 the state as a whole or may vary from area to area or source to
5 source, except that emission performance standards for new woodstoves
6 and opacity levels for residential solid fuel burning devices shall
7 be statewide, as may be appropriate to facilitate the accomplishment
8 of the objectives of this chapter and to take necessary or desirable
9 account of varying local conditions of population concentration, the
10 existence of actual or reasonably foreseeable air pollution,
11 topographic and meteorologic conditions and other pertinent
12 variables.

13 (4) The department is directed to cooperate with the appropriate
14 agencies of the United States or other states or any interstate
15 agencies or international agencies with respect to the control of air
16 pollution and air contamination, or for the formulation for the
17 submission to the legislature of interstate air pollution control
18 compacts or agreements.

19 (5) The department is directed to conduct or cause to be
20 conducted a continuous surveillance program to monitor the quality of
21 the ambient atmosphere as to concentrations and movements of air
22 contaminants and conduct or cause to be conducted a program to
23 determine the quantity of emissions to the atmosphere.

24 (6) The department shall enforce the air quality standards and
25 emission standards throughout the state except where a local
26 authority is enforcing the state regulations or its own regulations
27 which are more stringent than those of the state.

28 (7) The department shall encourage local units of government to
29 handle air pollution problems within their respective jurisdictions;
30 and, on a cooperative basis provide technical and consultative
31 assistance therefor.

32 (8) The department shall have the power to require the addition
33 to or deletion of a county or counties from an existing authority in
34 order to carry out the purposes of this chapter. No such addition or
35 deletion shall be made without the concurrence of any existing
36 authority involved. Such action shall only be taken after a public
37 hearing held pursuant to the provisions of chapter 34.05 RCW.

38 (9) The department shall establish rules requiring sources or
39 source categories to apply reasonable and available control methods.
40 Such rules shall apply to those sources or source categories that

1 individually or collectively contribute the majority of statewide air
2 emissions of each regulated pollutant. The department shall review,
3 and if necessary, update its rules every five years to ensure
4 consistency with current reasonable and available control methods.
5 The department shall have adopted rules required under this
6 subsection for all sources by July 1, 1996.

7 For the purposes of this section, "reasonable and available
8 control methods" shall include but not be limited to, changes in
9 technology, processes, or other control strategies.

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

12 NEW SECTION. **Sec. 28.** Sections 1, 2, 3, 5 through 23, and 27 of
13 this act constitute a new chapter in Title 70A RCW.

14 NEW SECTION. **Sec. 29.** (1) Sections 5 through 18 of this act,
15 and any rules adopted by the department of ecology to implement the
16 program established under those sections, expire December 31, 2055,
17 in the event that the department of ecology determines by December 1,
18 2055, that the 2050 emissions limits of RCW 70A.45.020 have been met
19 for two or more consecutive years.

20 (2) Upon the occurrence of the events identified in subsection
21 (1) of this section, the department of ecology must provide written
22 notice of the expiration date of sections 5 through 18 of this act to
23 affected parties, the chief clerk of the house of representatives,
24 the secretary of the senate, the office of the code reviser, and
25 others as deemed appropriate by the department.

26 NEW SECTION. **Sec. 30.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of
28 the state government and its existing public institutions, and takes
29 effect immediately.

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

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