
SENATE BILL 5735

State of Washington

61st Legislature

2009 Regular Session

By Senators Rockefeller, Hargrove, Jacobsen, Ranker, Fraser, Keiser, Jarrett, Franklin, Shin, Kohl-Welles, Regala, McAuliffe, and Kline; by request of Governor Gregoire

Read first time 01/29/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to reducing greenhouse gas emissions; amending RCW
2 70.235.005, 70.235.010, 70.235.030, 70.94.151, and 43.21B.110; adding
3 new sections to chapter 70.235 RCW; creating a new section; prescribing
4 penalties; and providing expiration dates.

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

6 **Sec. 1.** RCW 70.235.005 and 2008 c 14 s 1 are each amended to read
7 as follows:

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

18 ~~((2) The legislature further finds that Washington should continue
19 its leadership on climate change policy by creating accountability for~~

1 ~~achieving the emission reductions established in RCW 70.235.020,~~
2 ~~participating in the design of a regional multisector market-based~~
3 ~~system to help achieve those emission reductions, assessing other~~
4 ~~market strategies to reduce emissions of greenhouse gases, and ensuring~~
5 ~~the state has a well trained workforce for our clean energy future.~~

6 ~~(3))~~ (b) It is the intent of the legislature that the state will:

7 ~~((a))~~ (i) Limit and reduce emissions of greenhouse gases
8 consistent with the emission reductions established in RCW 70.235.020;

9 ~~((b))~~ (ii) Minimize the potential to export pollution, jobs, and
10 economic opportunities; and

11 ~~((c))~~ (iii) Reduce emissions at the lowest cost to Washington's
12 economy, consumers, and businesses.

13 ~~((4) In the event the state elects to participate in a regional~~
14 ~~multisector market-based system, it is the intent of the legislature~~
15 ~~that the system will become effective by January 1, 2012, after~~
16 ~~authority is provided to the department for its implementation.))~~ (2)

17 The legislature finds that acting now provides Washington businesses
18 with predictability, drives investment in the new clean energy economy,
19 creates jobs, positions Washington business to receive credit for early
20 reductions of greenhouse gases, and ensures that Washington citizens'
21 interests in the development of any federal cap-and-trade program. By
22 acting now, Washington businesses and citizens will have adequate time
23 and opportunities to be well positioned to take advantage of the low-
24 carbon economy by developing a well-trained workforce and to make
25 necessary investments in low-carbon technology.

26 (3) The legislature also finds that acting now will unleash the
27 creativity of Washingtonians in developing the technologies to reduce
28 greenhouse gas emissions, technologies that will be needed throughout
29 the world as all nations seek to combat climate change, which will
30 provide Washington with a competitive advantage over states that choose
31 to not act to reduce greenhouse gas emissions.

32 (4) The legislature recognizes that the same actions and
33 technologies that will reduce greenhouse gas emissions will also reduce
34 our use of fossil fuels, keeping some of the nine billion six hundred
35 million dollars the state spends each year on importing these fuels in
36 our state for local investments and job creation.

37 (5) The legislature finds that in order to meet the job creation
38 goals established in this section and the greenhouse gas emission

1 reductions established in RCW 70.235.020, a firm limit on greenhouse
2 gas emissions is necessary. It is therefore the intent of the
3 legislature that Washington participate in the regional cap-and-trade
4 program.

5 (6)(a) The legislature also recognizes the importance of linking to
6 or participating in a federal cap-and-trade program when one is
7 implemented.

8 (b) It is also the intent of the legislature that the ((regional
9 multisector—market based—system)) federal cap-and-trade program
10 recognize Washington's unique emissions portfolio, including the
11 state's hydroelectric system, the opportunities presented by
12 Washington's abundant forest resources and agriculture land, ((and))
13 the state's leadership in energy efficiency and the actions it has
14 already taken that have reduced its generation of greenhouse gas
15 emissions, and that entities receive appropriate credit for early
16 actions to reduce greenhouse gases.

17 ((+6) If)) (7) Any revenues that accrue to the state ((are created
18 by a market system, they)) by the regional cap-and-trade program must
19 be used to further the state's efforts to achieve the ((goals))
20 emission reduction requirements established in RCW 70.235.020, protect
21 low and moderate income consumers, address the impacts of global
22 warming on affected habitats, species, and communities, and increase
23 investment in the clean energy economy in a way that ensures the new,
24 clean energy economy is one with widely shared prosperity particularly
25 for communities and workers that have ((suffered from heavy job losses
26 and chronic unemployment and underemployment)) been disproportionately
27 affected by economic downturns.

28 (8) The legislature finds that a well-functioning market is the
29 least-costly path to achieving the state's statutory greenhouse gas
30 reductions and that the market must be designed to prevent manipulation
31 and avoid excessive speculation.

32 (9) The legislature further finds that climate change impacts are
33 visible and the economic effects are becoming apparent with longer fire
34 seasons, shrinking glaciers, decreased snow pack, extreme precipitation
35 events, and more frequent droughts.

36 **Sec. 2.** RCW 70.235.010 and 2008 c 14 s 2 are each amended to read
37 as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Allowance" means a limited authorization, issued by a
4 jurisdiction participating in the regional cap-and-trade program or
5 otherwise recognized by the department as having as rigorous a
6 greenhouse gas cap-and-trade program, to emit up to one metric ton of
7 a greenhouse gas as measured in carbon dioxide equivalents. An
8 "allowance" is not a property right.

9 (2) "Allowance cap" means Washington's share of allowances from the
10 total number of allowances available to the jurisdictions participating
11 in the regional cap-and-trade program.

12 (3) "Banking" means the carryover of unused allowances or offsets
13 from one compliance period to another.

14 (4) "Borrowing" means using allowances from a future compliance
15 period to meet a current compliance obligation.

16 (5) "Capped region" means a jurisdiction, including Washington,
17 that is participating in the regional cap-and-trade program, and
18 jurisdictions in other governmental-approved cap-and-trade programs,
19 that link to the regional cap-and-trade program.

20 (6) "Carbon dioxide equivalents" means a (~~metric~~) measure used to
21 compare the emissions from various greenhouse gases based upon their
22 global warming potential.

23 ~~((+2))~~ (7) "Climate advisory team" means the stakeholder group
24 formed in response to executive order 07-02.

25 ~~((+3))~~ (8) "Climate impacts group" means the University of
26 Washington's climate impacts group.

27 ~~((+4))~~ (9) "Compliance obligation" means the requirement to turn
28 in to the department the number of allowances or offset credits equal
29 to the person's covered emissions during the compliance period.

30 (10) "Compliance period" means the time period during which
31 emissions subject to the compliance obligation are covered under the
32 program.

33 (11) "Covered emissions" includes (a) direct emissions; (b) for
34 transportation fuels and for residential, commercial, and industrial
35 fuel combustion at facilities below the emission threshold for
36 coverage, emissions from the combustion of those fuels that are sold in
37 Washington for use in Washington; and (c) for electricity imported into

1 Washington, emissions associated with the out-of-state production of
2 electricity that is sold or furnished to end-use customers in
3 Washington.

4 (12) "Department" means the department of ecology.

5 ~~((+5))~~ (13) "Direct emissions" means emissions of greenhouse gases
6 from sources of emissions, including stationary combustion sources,
7 mobile combustion emissions, process emissions, and fugitive emissions.

8 ~~((+6))~~ (14) "Director" means the director of the department.

9 ~~((+7))~~ (15) "Early reduction allowance" means an allowance for
10 reductions in greenhouse gas emissions that occur after January 1,
11 2008, and before January 1, 2012, and that are approved by the
12 department.

13 (16) "Emission threshold" means the greenhouse gas emission level
14 at or above which a person has a compliance obligation.

15 (17) "Forest carbon working group" means the stakeholder group
16 formed by the departments of ecology and community, trade, and economic
17 development to develop the recommendations required under RCW
18 70.235.030(3)(g);

19 (18) "Greenhouse gas" and "greenhouse gases" includes carbon
20 dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,
21 and sulfur hexafluoride.

22 ~~((+8))~~ (19) "Indirect emissions" means emissions of greenhouse
23 gases associated with the purchase of electricity, heating, cooling, or
24 steam.

25 ~~((+9))~~ (20) "Offset project" means a project that reduces or
26 removes greenhouse gases that meets the criteria established by the
27 department and where the greenhouse gases would not otherwise be
28 subject to coverage under the program.

29 (21) "Offset credit" means a credit that verifies and confirms the
30 reduction or removal of greenhouse gases by an offset project that can
31 be used to meet a compliance obligation.

32 (22) "Person" means an individual, partnership, franchise holder,
33 association, corporation, a state, a city, a county, or any subdivision
34 or instrumentality of the state.

35 ~~((+10))~~ (23) "Point of regulation" means the person with the
36 compliance obligation.

37 (24) "Program" means the ~~((department's climate change program.~~

1 ~~(11))~~ cap-and-trade program developed and implemented under this
2 chapter.

3 (25) "Regional cap-and-trade program" means the cap-and-trade
4 program designed by the western climate initiative.

5 (26) "Retire" means to invalidate an allowance or offset credit
6 such that the allowance or offset credit may never be sold or otherwise
7 used again.

8 (27) "Terminal operator" means a person who owns, operates, or
9 otherwise controls a terminal, as that term "terminal" is defined in
10 RCW 82.36.010.

11 (28) "Total emissions of greenhouse gases" means all direct
12 emissions and all indirect emissions.

13 ~~((12))~~ (29) "Transportation fuel" means any carbon based fossil
14 fuel including combustible gas or liquid used for the propulsion of
15 equipment and vehicles.

16 (30) "Western climate initiative" means the collaboration of
17 states, Canadian provinces, Mexican states, and tribes to design a
18 multisector market-based mechanism as directed under the western
19 regional climate action initiative signed by the governor on February
20 22, 2007.

21 NEW SECTION. Sec. 3. REGIONAL CAP-AND-TRADE PROGRAM. The
22 department is authorized to meet the state's emission reductions
23 established in RCW 70.235.020 through the creation of an allowance
24 trading program for covered emissions with allowances that are fungible
25 and tradable regionally, nationally, or internationally. The
26 department may not implement a cap-and-trade program that covers only
27 Washington state.

28 NEW SECTION. Sec. 4. THRESHOLD FOR PARTICIPATION. The department
29 may not implement a cap-and-trade program unless it either includes a
30 majority of the covered emissions of the states and provinces
31 participating in the western climate initiative as of January 2009, or
32 is linked to other regional programs or a national program that cover
33 the equivalent amount of emissions.

34 NEW SECTION. Sec. 5. LEGISLATIVE CONSULTATION. (1) A work group

1 on cap-and-trade is established. The work group consists of eleven
2 members as follows:

3 (a) The director of the department of ecology, who represents the
4 governor and is chair of the work group;

5 (b) One member from each of the two largest caucuses of the senate,
6 appointed by the leader of their respective caucuses;

7 (c) One member from each of the two largest caucuses of the house
8 of representatives, appointed by the leader of their respective
9 caucuses;

10 (d) Six members from the public who must be selected by the members
11 designated in (a) through (c) of this subsection by September 1, 2009.

12 (2) The work group shall meet periodically to review the
13 development of the regional cap-and-trade program and the department's
14 rule making as authorized under section 19 of this act, including the
15 recommendation regarding the distribution of allowances under section
16 8 of this act.

17 (3) The work group shall develop and provide a recommendation to
18 the governor by May 1, 2011, on the timing and terms of Washington's
19 participation in the regional cap-and-trade program.

20 (4) This section expires June 30, 2011.

21 NEW SECTION. **Sec. 6.** ANNUAL ALLOWANCE CAPS. (1) The program must
22 include annual allowance caps that together with other complementary
23 policies ensure that Washington will meet the emission reduction
24 requirements in RCW 70.235.020.

25 (2) The allowance caps for each year from 2012 to 2020 must be set
26 in advance of the program start in 2012. Allowance caps for each year
27 after 2020 must be set at least three years in advance of the start of
28 the next compliance period.

29 (3) The allowance caps shall decline an equal amount each year
30 until Washington's greenhouse gas emissions are reduced as required by
31 RCW 70.235.020.

32 (4) The allowance cap for 2012 must be set based on the
33 department's best estimate of the expected actual emissions covered by
34 the program in that year as adjusted by the reallocation provided for
35 in subsection (7) of this section.

36 (5) The allowance cap for 2015 will be increased by the

1 department's best estimate of expected new emissions to be included in
2 the program in that year, after the annual reduction is made to the
3 cap.

4 (6) The allowance caps may not take into account the early
5 reduction allowances authorized in section 7(6)(b) of this act.

6 (7) Washington shall contribute one percent of its 2012 allowance
7 cap into a pool. Washington's contribution together with the one
8 percent contributions of the other jurisdictions participating in the
9 regional cap-and-trade program must be reallocated among the
10 participating jurisdictions based on a formula that takes into account
11 the following factors:

12 (a) Production and consumption of electricity megawatt hours within
13 each jurisdiction participating in the regional cap-and-trade program;

14 (b) Population growth within the jurisdictions participating in the
15 regional cap-and-trade program; and

16 (c) Washington's share of the total covered emissions from 2001
17 through 2005 from jurisdictions participating in the regional cap-and-
18 trade program.

19 (8) The allowance cap may also be adjusted as necessary to account
20 for expansion of the capped region through linkage to other
21 governmentally approved cap-and-trade programs, changes in coverage
22 under the regional cap-and-trade program, or discovery of incorrect or
23 inaccurate data used to determine the allowance cap.

24 NEW SECTION. **Sec. 7.** ISSUING AND RETIRING ALLOWANCES. (1) The
25 department shall issue allowances that can be used to meet a compliance
26 obligation under this chapter. Except for early reduction allowances,
27 the number of allowances issued by the department may not exceed the
28 allowance cap for any given year or compliance period. The department
29 may retire allowances if it determines that its allowance cap exceeds
30 the state's emissions that are covered by the program. The rules
31 adopted by the department must include the process, including the data
32 that will be used, by which this determination is made.

33 (2) Upon receipt by the department of an allowance to meet a
34 compliance obligation, the department shall retire the allowance.

35 (3) The department shall ensure that all allowances that it issues
36 are tracked so that the department knows who holds a given allowance
37 and when it is retired.

1 (4) The department shall identify allowances it issues that are
2 based upon emissions from electricity generation within the state and
3 separately identify allowances issued for emissions from electricity
4 generation located outside the state.

5 (5) The department may accept any allowance to satisfy a compliance
6 obligation as long as the allowances that are issued by a jurisdiction
7 other than the state meet criteria established by the department by
8 rule. However, the total number of allowances accepted from
9 jurisdictions other than those participating in the regional cap-and-
10 trade program may be limited as set forth by the department by rule.

11 (6) The department shall adopt rules to implement the program that
12 include:

13 (a) A schedule for distributing Washington's allowances;

14 (b) Criteria that are consistent with the regional cap-and-trade
15 program for qualifying for an early reduction allowance;

16 (c) A process for allowances to be banked, which may include
17 limitations on the number of allowances any one party may hold or
18 control; and

19 (d) Prohibitions on borrowing allowances.

20 NEW SECTION. **Sec. 8.** DISTRIBUTION OF ALLOWANCES. (1) The

21 director shall convene a stakeholder group with equal representation of
22 business and public interests to develop recommendations on how to
23 distribute the state's allowances. The director shall ensure that
24 statewide labor organizations are also represented. The stakeholders
25 shall recommend to the director:

26 (a) Methodologies and processes by which to distribute Washington's
27 allowances, including the percentage of allowances that should be
28 auctioned;

29 (b) Actions the state should take to guard against manipulation of
30 the market;

31 (c) The amount of allowances from within the state's allowance cap
32 that should be set aside for specific purposes, such as for use in low
33 water years, if any; and

34 (d) How to address any disparities in the distributional effects
35 upon individual households, especially low and moderate income
36 populations.

1 (2) When developing the recommendations in subsection (1) of this
2 section, the work group shall consider the eventual transition to full
3 auctioning of allowances, and shall take into account the following
4 factors when considering the level of auctions to recommend, including
5 the potential timing of a transition to full auction:

6 (a) Competition faced by Washington industries that will be covered
7 by the program where the competitors are not covered by a similar
8 program, such as those who operate in international markets;

9 (b) The potential for emission leakage, including through shifts in
10 production;

11 (c) The effect on Washington businesses that will be covered under
12 the program as compared to those that will not;

13 (d) The effect on Washington citizens;

14 (e) The impact on enhancing the transition to a clean energy
15 economy; and

16 (f) The strategic use of auction revenues.

17 (3) The department must consider the recommendations of the
18 stakeholder group formed under subsection (1) of this section when
19 adopting rules for the distribution of allowances.

20 NEW SECTION. **Sec. 9.** PROGRAM COVERAGE. (1) In 2012, the program
21 must cover emissions that meet or exceed twenty-five thousand metric
22 tons of carbon dioxide equivalents annually from:

23 (a) Electricity that is generated or consumed within the state.
24 Consumption of electricity must be included only if it is required to
25 participate in the regional cap-and-trade program and must be included
26 consistent with the regional cap-and-trade program;

27 (b) Combustion at industrial and commercial facilities; and

28 (c) Industrial processes.

29 (2) In addition to the emissions covered in subsection (1) of this
30 section, in 2015 the program must cover emissions that meet or exceed
31 twenty-five thousand metric tons of carbon dioxide equivalents annually
32 from:

33 (a) Transportation fuel combustion within the state;

34 (b) Residential fuel combustion within the state; and

35 (c) Fuel delivered or sold for industrial and commercial combustion
36 within the state where the fuel is used by persons not otherwise
37 covered by the program in 2012.

1 (3) Except for purposes of reporting, the following carbon dioxide
2 emissions are not covered by the program:

3 (a) Emissions from industrial combustion of biomass in the form of
4 fuel wood, wood waste, wood by-products, and wood residuals as long as
5 the region's silvicultural sequestration capacity is maintained or
6 increased; and

7 (b) Emissions from the combustion of biofuels or the biofuel
8 component of blended fuels as the term "biofuel" is defined in RCW
9 43.325.010.

10 (4) By rule, the department:

11 (a) Shall determine the person who has the compliance obligation
12 for covered emissions. For emissions associated with the combustion of
13 fuels that are included in the program for the first time in 2015, the
14 person with the compliance obligation is either the terminal operator
15 or the person who imports fuel into the state for delivery to a person
16 other than a terminal operator for use in the state;

17 (b) May expand the program to include emissions below the twenty-
18 five thousand metric ton threshold or beyond the scope identified
19 within subsections (1) and (2) of this section as necessary to ensure
20 that the emissions covered by the program are consistent with the
21 regional cap-and-trade program;

22 (c) Shall include measures so that persons do not inappropriately
23 avoid the emissions threshold for coverage.

24 (5) With respect to energy facilities covered under chapter 80.50
25 RCW and notwithstanding RCW 80.50.120, this chapter applies to all
26 energy facilities as that term is defined in RCW 80.50.020. Nothing in
27 this chapter may be construed as conflicting with chapter 80.50 RCW.

28 NEW SECTION. **Sec. 10.** ENSURING A FUNCTIONAL AND EFFICIENT MARKET.

29 (1) The department shall consult with other jurisdictions in the
30 western climate initiative, Washington state agencies with expertise on
31 markets, and other states and federal agencies that have designed or
32 implemented a market for regulating air pollutants to design a trading
33 market that includes provisions to prevent market manipulation and
34 ensure a functional and efficient market. The design provisions must
35 include:

36 (a) Requiring or conducting audits, investigations, and
37 surveillance of the market;

- 1 (b) Actions to prohibit conflicts of interest between emitters,
2 verifiers, monitors, auditors, investigators, or surveillance persons;
3 (c) Establishment of measures to address market emergencies;
4 (d) Prevention of fraud to the greatest extent possible;
5 (e) Prevention of speculators from unfairly affecting the price of
6 allowances in the program to the greatest extent possible;
7 (f) Issuance of orders, and penalties established by rule,
8 sufficient to address market manipulation; and
9 (g) Other conditions or provisions necessary to prevent market
10 manipulation.

11 (2) The department shall provide a report to the legislature by
12 December 31, 2010, on the design of the market that includes an
13 explanation of how manipulation and excessive speculation will be
14 avoided.

15 (3) The department shall refer the most egregious violations to the
16 attorney general or the county prosecutor for consideration for
17 criminal prosecution or to federal authorities for federal prosecution.

18 NEW SECTION. **Sec. 11.** AUCTION DESIGN. (1) The department shall
19 by rule develop the design for the auctioning of the state's
20 allowances, including the establishment of a minimum or reserve bid
21 price to facilitate price discovery. In developing the design, the
22 department shall consult with other jurisdictions in the western
23 climate initiative and other states and federal agencies that have been
24 engaged in auctioning of allowances to regulate air pollutants.

25 (2) The auction design must be consistent with the regional cap-
26 and-trade program and include the following:

27 (a) Elements that minimize allowance price volatility, guard
28 against bidder collusion, and minimize the potential for market
29 manipulation;

30 (b) Provisions to ensure that bidders are financially able to
31 purchase allowances if they are the successful bidder;

32 (c) Provisions to limit the number of allowances any one party may
33 purchase as necessary to help ensure that available allowances go to
34 persons with a compliance obligation; and

35 (d) A flexible process that allows for ongoing modification of the
36 auction design and procedures in response to allowance market

1 conditions and allowance market monitoring data, provided that the
2 process allows for public review and comment.

3 NEW SECTION. **Sec. 12.** OFFSETS. (1) The department shall by rule
4 set criteria for issuing and accepting offset credits for offset
5 projects to meet a person's compliance obligation and shall include a
6 limitation on their use that is consistent with the limitation
7 established by the regional cap-and-trade program. In developing the
8 criteria for offset projects, priority must be given to investigating
9 and developing criteria for offset projects within the forestry,
10 agriculture, and waste management sectors. The department shall
11 present the state's policy on forestry offset projects established
12 under section 14 of this act as the state's position when developing
13 the criteria for forestry offset projects within the regional cap-and-
14 trade program.

15 (2) The department may issue offset credits for offset projects
16 located in Washington. The department may also issue offset credits
17 for offset projects that are located in any jurisdiction in the United
18 States, Mexico, and Canada that is outside the capped region. One
19 offset credit must be issued for up to each metric ton of emissions as
20 measured in carbon dioxide equivalent associated with an offset
21 project.

22 (3) Except as provided in this section, the department may accept
23 offset credits for compliance purposes from other jurisdictions in the
24 capped region as well as annex 1 countries from the United Nations
25 framework convention on climate change. The department may not accept
26 offset credits for an offset project that reduces, removes, or avoids
27 emissions that, had they occurred within the capped region, would have
28 been covered by the program.

29 (4) The department may also accept for compliance purposes offset
30 credits from developing countries in accordance with the clean
31 development mechanism of the Kyoto protocol or if the clean development
32 mechanism is replaced, a protocol developed by the department. The
33 department may develop criteria for these offset projects to ensure
34 similar rigor to offset projects within the state.

35 (5) Any offset credit that is used to meet a compliance obligation
36 must conform to the rules adopted by the department, which must be
37 consistent with the regional cap-and-trade program.

1 (6) Upon receipt by the department of an offset credit to meet a
2 compliance obligation, the department shall retire the offset credit.

3 (7) The department shall ensure that all offset credits that it
4 issues are tracked to ensure that the department knows who holds a
5 given offset credit and when it is retired.

6 NEW SECTION. **Sec. 13.** FINANCIAL INCENTIVES FOR FORESTRY. The
7 department of ecology, in consultation with the forest practices board,
8 the department of natural resources, and the forest carbon working
9 group, shall develop and deliver to the legislature by December 31,
10 2010, legislation to implement a financial incentives program for
11 forestry and forest products that will recognize activities such as:

12 (1) Forest landowners maintaining and actively managing their
13 forestland using management activities such as thinning, lengthening of
14 rotations, increased retention of trees at harvest, fertilization,
15 genetics, timber stand improvement, and fire management;

16 (2) Forest landowners continuing the production of wood products
17 while maintaining or increasing their carbon stocks on the ground;

18 (3) Retention by forest landowners of high carbon stocks where
19 there is no obligation to retain such stocks; and

20 (4) The use by developers and builders of wood building materials
21 instead of more intensive fossil fuel products such as concrete and
22 steel.

23 NEW SECTION. **Sec. 14.** FORESTRY OFFSET POLICY. The department of
24 ecology, in consultation with the forest practices board, the
25 department of natural resources, and the forest carbon working group,
26 shall develop the state's policy for forestry offset projects within
27 Washington. The agencies and the working group shall use the 2008
28 report of the forest carbon working group as the starting point in
29 developing the policy. A report on the progress of the development of
30 this policy, including any preliminary drafts of the policy, must be
31 submitted to the legislature for review by December 31, 2010. The
32 final policy must be completed by December 31, 2011, unless the
33 department notifies the agencies and working group that the policy is
34 needed sooner in order to present it to the western climate initiative
35 as required in section 12(1) of this act. The public must be provided

1 with the opportunity to review and comment on the policy as it is
2 developed. The policy must include:

3 (1) Specific standards and guidelines that will support carbon
4 accounting in managed forests participating in an offset program;

5 (2) How to ensure that any carbon that is reduced or sequestered by
6 a forestry offset project will be eligible for an offset credit within
7 the regional cap-and-trade program;

8 (3) Recognition of management activities that increase carbon
9 stocks, including but not limited to, thinning, lengthening rotations,
10 increased retention of trees after harvest, fertilization, genetics,
11 timber stand improvement, fire management, and specific site class and
12 productivity of a managed forest;

13 (4) Specific standards and guidelines to support wood products
14 accounting, recognizing that carbon is stored in products after trees
15 are harvested including the use of the one hundred year method which
16 estimates the amount of carbon stored in the wood products that are
17 projected to remain in use after one hundred years;

18 (5) Guidelines on how forestry offset projects and forestry
19 financial incentive programs can work together so that Washington's
20 forest landowners will not be disadvantaged in comparison to other
21 jurisdictions participating in the regional cap-and-trade program; and

22 (6) Recommendations for how to verify or certify carbon stocks that
23 will not be administratively burdensome.

24 NEW SECTION. **Sec. 15.** COMPLIANCE AND ENFORCEMENT. (1) Persons
25 with emissions covered under section 9 of this act who have a
26 compliance obligation shall submit to the department allowances, offset
27 credits, or a combination thereof equal to their total covered
28 emissions of greenhouse gases during the compliance period.

29 (2) Compliance periods are a maximum of three years in length. The
30 department shall by rule establish the date by which all allowances and
31 offset credits must be turned in to the agency to meet the compliance
32 obligation, which must be after the compliance period ends. The
33 department may by rule allow for turning in allowances prior to the end
34 of a compliance period.

35 (3) For purposes of meeting a compliance obligation, the department
36 shall limit by rule the number of offset credits that may be submitted.
37 The limitation on the use of offsets must be consistent with the

1 limitation on offsets established by the regional cap-and-trade
2 program. The department may limit by rule the number of allowances
3 from other jurisdictions outside of those participating in the program
4 in order to ensure that a majority of emission reductions come from
5 within the jurisdictions participating in the regional cap-and-trade
6 program.

7 (4) If sufficient allowances are not turned in to meet the
8 compliance obligation, a penalty of three allowances must be submitted
9 for every one allowance that is due. When a person covered under the
10 program reasonably believes that it will be unable to meet a compliance
11 obligation, the person shall immediately notify the department. The
12 department shall issue an order requiring the person to submit the
13 penalty allowances. Failure to submit penalty allowances as required
14 by this subsection results in a penalty of up to five thousand dollars
15 for each penalty allowance that is not submitted.

16 (5) The department may issue penalties for failure to comply, and
17 orders to require compliance, with the provisions of this chapter
18 including requiring compliance plans. Except as provided in subsection
19 (4) of this section, any person who violates the terms of this chapter
20 or an order issued under this section incurs a penalty of up to ten
21 thousand dollars per day per violation for each day that the person has
22 not complied.

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

25 (7) The department may exercise its discretion to waive or issue
26 reduced penalties based upon criteria it establishes if the department
27 finds that the violation was inadvertent. Penalties issued under this
28 section or under RCW 70.94.151 are not paperwork violations as defined
29 in chapter . . . (Senate Bill No. 5042), Laws of 2009 nor are they
30 subject to the requirements of chapter 43.05 RCW.

31 NEW SECTION. **Sec. 16.** DEDICATED FUND. The climate protection
32 account is created in the state treasury. All receipts from auction of
33 allowances, penalties paid under section 15 of this act, and other
34 moneys directed to the account by the legislature must be deposited
35 into the account. Moneys in the account may be spent only after
36 appropriation. Expenditures from the account may be used only for
37 reasonable administrative costs to develop, implement, and enforce the

1 program, including Washington's share of any necessary and reasonable
2 costs of the regional organization described in section 17 of this act.
3 Additionally, moneys from the account may only be expended for the
4 following purposes, which are listed in order of priority:

5 (1) Reducing price impacts for consumers with incomes within two
6 hundred fifty percent of the federal poverty level;

7 (2) Strategies to create jobs and provide for worker transition,
8 especially in and for those communities and workers that have been
9 disproportionately affected by economic downturns, through efforts to
10 reduce emissions, reduce energy use, and develop clean energy supplies;

11 (3) Supporting transit and transportation projects that will reduce
12 greenhouse gas emissions;

13 (4) Energy efficiency and renewable energy incentives including
14 matching electric utility sponsored programs that support customer
15 energy efficiency investment, new renewable energy resource
16 development, including related transmission, energy storage, and
17 integration technologies;

18 (5) Promoting emission reductions and carbon sequestration in
19 agriculture, forestry, waste management, and other uncapped sectors;

20 (6) Efforts funded by local governments to reduce community
21 greenhouse gas emissions except for reductions to covered emissions
22 where the local government is the person with the compliance
23 obligation;

24 (7) Recognizing early actions to reduce greenhouse gas emissions
25 where those actions do not qualify for early reduction allowances;

26 (8) Adaptation to climate change impacts, including impacts on
27 affected species, habitats, and communities; and

28 (9) Research, development, demonstrations, and deployment of
29 technology to reduce greenhouse gas emissions.

30 NEW SECTION. **Sec. 17.** REGIONAL ORGANIZATION. (1) The director is
31 authorized to enter into an agreement with representatives of other
32 jurisdictions within the capped region for the formation of an
33 organization, including a nonprofit corporation that may carry out the
34 following administrative functions:

35 (a) Coordination of a regional auction of allowances;

36 (b) Tracking of emissions and providing of public information about
37 progress towards the regional greenhouse gas reduction goals;

1 (c) Monitoring and reporting on market activity, including
2 potential market manipulation;

3 (d) Serving as a forum for jurisdictions within the capped region
4 to update one another on program progress;

5 (e) Coordination of review and adoption of protocols for offsets;

6 (f) Coordination of review and adoption of updated reporting
7 protocols for greenhouse gas emissions;

8 (g) Coordination of review and issuance of offset credits; and

9 (h) Suggesting criteria and means to accredit service providers to
10 deliver validation and verification services.

11 (2) Any agreement entered into under this section must include
12 provisions for Washington to exercise oversight of the organization,
13 including authority to audit the organization's finances and records.
14 The agreement must also authorize Washington to withdraw from the
15 agreement without penalty if the organization fails to meet its
16 obligations under the agreement.

17 (3) An organization formed under this section is not a state agency
18 and has no regulatory or enforcement authority.

19 (4) Nothing in this chapter may be deemed to constitute a waiver of
20 Washington's sovereign immunity. By entering into any agreement or
21 arrangement authorized under this section, neither the director nor the
22 director's designees nor Washington consents to suit outside of
23 Washington or consents to the governance of such suit under any law
24 other than that of Washington.

25 NEW SECTION. **Sec. 18.** COORDINATED RELEASE OF INFORMATION. The
26 department shall compile and post for public information annual
27 summaries of greenhouse gas emissions covered by the program. In order
28 to limit price volatility and prevent manipulation of the market,
29 public posting of the summaries and underlying data may be subject to
30 a temporary embargo by the department prior to a common posting
31 schedule developed in coordination with other jurisdictions
32 participating in the regional cap-and-trade program. Prior to the
33 common posting date, the summaries and underlying data are exempt from
34 public disclosure under chapter 42.56 RCW.

35 NEW SECTION. **Sec. 19.** RULE-MAKING AUTHORITY. (1) The department
36 shall adopt rules to implement this chapter. The rules must include

1 all requirements of this chapter and require that Washington's
2 participation in the regional cap-and-trade program begin January 1,
3 2012. The rules must be developed in coordination with other
4 jurisdictions participating in the western climate initiative and be
5 consistent with the regional cap-and-trade program.

6 (2) The department's rules must be adopted December 31, 2010. The
7 rules may not go into effect until June 1, 2011, and after approval of
8 the governor.

9 NEW SECTION. **Sec. 20.** FEDERAL CAP-AND-TRADE PROGRAM. The
10 department may modify or repeal the rules developed under this chapter
11 as necessary to link to, avoid duplication with, or participate in a
12 federal cap-and-trade program. The department may use the process for
13 expedited rule making under RCW 34.05.353. If the federal program
14 establishes the percentage of allowance that are auctioned and if the
15 federal program allows regional programs to continue to operate, the
16 state must be consistent with the federal auction percentage.

17 NEW SECTION. **Sec. 21.** ECONOMIC EMERGENCIES. (1) The governor is
18 authorized to issue an order to delay the start of the program
19 authorized under this act, delay the inclusion of additional sectors as
20 currently authorized under section 9 of this act, or otherwise suspend
21 the program to address economic emergencies for up to one year for each
22 order issued. The governor shall, within ten days of invoking this
23 section, provide written notification to the legislature of the action
24 undertaken. The director shall provide a similar notice to the head of
25 the environmental agencies in each jurisdiction participating in the
26 regional cap-and-trade program.

27 (2) Nothing in this section affects the powers and duties
28 established in Article III of the state Constitution or chapters 38.52
29 and 43.06 RCW.

30 NEW SECTION. **Sec. 22.** TRIBAL GOVERNMENTS. (1) The department
31 must consult with tribal governments upon request on any elements of
32 the program that may impact tribal governments such as their voluntary
33 development of offset projects.

34 (2) Nothing in this act is intended to expand state authority over
35 Indian country as that term is defined in 18 U.S.C. Sec. 1151.

1 **Sec. 23.** RCW 70.235.030 and 2008 c 14 s 4 are each amended to read
2 as follows:

3 (1)(a) The director shall develop, in coordination with the western
4 climate initiative, a design for a regional multisector market-based
5 system to limit and reduce emissions of greenhouse gas consistent with
6 the emission reductions established in RCW 70.235.020(1).

7 (b) By December 1, 2008, the director and the director of the
8 department of community, trade, and economic development shall deliver
9 to the legislature specific recommendations for approval and request
10 for authority to implement the preferred design of a regional
11 multisector market-based system in (a) of this subsection. These
12 recommendations must include:

13 (i) Proposed legislation, necessary funding, and the schedule
14 necessary to implement the preferred design by January 1, 2012;

15 (ii) Any changes determined necessary to the reporting requirements
16 established under RCW 70.94.151; and

17 (iii) Actions that the state should take to prevent manipulation of
18 the multisector market-based system designed under this section.

19 (2) In developing the design for the regional multisector market-
20 based system under subsection (1) of this section, the department shall
21 consult with the affected state agencies, and provide opportunity for
22 public review and comment.

23 (3) In addition to the information required under subsection (1)(b)
24 of this section, the director and the director of the department of
25 community, trade, and economic development shall submit the following
26 to the legislature by December 1, 2008:

27 (a) Information on progress to date in achieving the requirements
28 of chapter 14, Laws of 2008;

29 (b) The final recommendations of the climate advisory team,
30 including recommended most promising actions to reduce emissions of
31 greenhouse gases or otherwise respond to climate change. These
32 recommendations must include strategies to reduce the quantity of
33 emissions of greenhouse gases per distance traveled in the
34 transportation sector;

35 (c) A request for additional resources and statutory authority
36 needed to limit and reduce emissions of greenhouse gas consistent with
37 chapter 14, Laws of 2008 including implementation of the most promising
38 recommendations of the climate advisory team;

1 (d) Recommendations on how projects funded by the green energy
2 incentive account in RCW 43.325.040 may be used to expand the
3 electrical transmission infrastructure into urban and rural areas of
4 the state for purposes of allowing the recharging of plug-in hybrid
5 electric vehicles;

6 (e) Recommendations on how local governments could participate in
7 the multisector market-based system designed under subsection (1) of
8 this section;

9 (f) Recommendations regarding the circumstances under which
10 generation of electricity or alternative fuel from landfill gas and gas
11 from anaerobic digesters may receive an offset or credit in the
12 regional multisector market-based system or other strategies developed
13 by the department; and

14 (g) Recommendations developed in consultation with the department
15 of natural resources and the department of agriculture with the climate
16 advisory team, the college of forest resources at the University of
17 Washington, and the Washington State University, and a nonprofit
18 consortium involved in research on renewable industrial materials,
19 regarding how forestry and agricultural lands and practices may
20 participate voluntarily as an offset or other credit program in the
21 regional multisector market-based system. The recommendations must
22 ensure that the baseline for this offset or credit program does not
23 disadvantage this state in relation to another state or states. These
24 recommendations shall address:

25 (i) Commercial and other working forests, including accounting for
26 site-class specific forest management practices;

27 (ii) Agricultural and forest products, including accounting for
28 substitution of wood for fossil intensive substitutes;

29 (iii) Agricultural land and practices;

30 (iv) Forest and agricultural lands set aside or managed for
31 conservation as of, or after, June 12, 2008; and

32 (v) Reforestation and afforestation projects.

33 (4) This section expires May 1, 2012.

34 **Sec. 24.** RCW 70.94.151 and 2008 c 14 s 5 are each amended to read
35 as follows:

36 (1) The board of any activated authority or the department, may
37 classify air contaminant sources, by ordinance, resolution, rule or

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

10 (2) Except as provided in subsection (3) of this section, any
11 person operating or responsible for the operation of air contaminant
12 sources of any class for which the ordinances, resolutions, rules or
13 regulations of the department or board of the authority, require
14 registration or reporting shall register therewith and make reports
15 containing information as may be required by such department or board
16 concerning location, size and height of contaminant outlets, processes
17 employed, nature of the contaminant emission and such other information
18 as is relevant to air pollution and available or reasonably capable of
19 being assembled. In the case of emissions of greenhouse gases as
20 defined in RCW 70.235.010 the department shall adopt rules requiring
21 reporting of those emissions. The department or board may require that
22 such registration or reporting be accompanied by a fee, and may
23 determine the amount of such fee for such class or classes: PROVIDED,
24 That the amount of the fee shall only be to compensate for the costs of
25 administering such registration or reporting program which shall be
26 defined as initial registration and annual or other periodic reports
27 from the source owner providing information directly related to air
28 pollution registration, on-site inspections necessary to verify
29 compliance with registration requirements, data storage and retrieval
30 systems necessary for support of the registration program, emission
31 inventory reports and emission reduction credits computed from
32 information provided by sources pursuant to registration program
33 requirements, staff review, including engineering or other reliable
34 analysis for accuracy and currentness, of information provided by
35 sources pursuant to registration program requirements, clerical and
36 other office support provided in direct furtherance of the registration
37 program, and administrative support provided in directly carrying out
38 the registration program: PROVIDED FURTHER, That any such registration

1 made with either the board or the department shall preclude a further
2 registration and reporting with any other board or the department,
3 except that emissions of greenhouse gases as defined in RCW 70.235.010
4 must be reported as required under subsection (5) of this section.

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

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

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

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

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

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

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

37 (5)(a) The department shall adopt rules requiring the reporting of
38 emissions of greenhouse gases as defined in RCW 70.235.010. The rules

1 must include a de minimis amount of emissions below which reporting
2 will not be required for both indirect and direct emissions. The rules
3 must require that emissions of greenhouse gases resulting from the
4 burning of fossil fuels be reported separately from emissions of
5 greenhouse gases resulting from the burning of biomass.

6 (b) Except as provided in ~~((b))~~ (f) of this subsection, the
7 department shall, under the authority granted in subsection (1) of this
8 section, adopt rules requiring: (i) Any owner or operator~~((+—(i)))~~ of
9 a fleet of on-road motor vehicles that as a fleet emit at least twenty-
10 five hundred metric tons of greenhouse gas annually in the state to
11 report the emissions of greenhouse gases generated from or emitted by
12 that fleet; ~~((or))~~ and (ii) any owner or operator of a source or
13 combination of sources that emit at least ten thousand metric tons of
14 greenhouse gas annually in the state to report their total annual
15 emissions of greenhouse gases; (iii) the importer, seller, deliverer,
16 or distributor of fuels for use in Washington where the annual
17 emissions in the state associated with the combustion of the fuel
18 delivered equal or exceed ten thousand metric tons of greenhouse gas to
19 report the emissions of greenhouse gases associated with the combustion
20 of those fuels; and (iv) the importer, seller, deliverer, or
21 distributor of electricity from outside Washington for consumption in
22 Washington to report the emissions of greenhouse gases associated with
23 the generation of the electricity delivered into the state where the
24 annual emissions associated with electricity equal or exceed ten
25 thousand metric tons of greenhouse gas. Reporting required in (b)(i)
26 and (ii) of this subsection must begin in 2010 for emissions in 2009.
27 Reporting required in (b)(iii) and (iv) of this subsection must begin
28 in 2011 for emissions in 2010. The department must adopt a rule to
29 require that the person in (b)(iii) and (iv) of this subsection who
30 must report is consistent with the person with the compliance
31 obligation under the cap-and-trade program established under chapter
32 70.235 RCW. The rules must also require that emissions from
33 electricity generation within the state be reported separately from
34 emissions from electricity generation located outside the state.

35 (c) In calculating emissions of greenhouse gases for purposes of
36 determining whether or not reporting is required, only direct emissions
37 shall be included. For purposes of reporting emissions of greenhouse
38 gases in chapter 14, Laws of 2008, "source" means any stationary source

1 as defined in RCW 70.94.030, or mobile source used for transportation
2 of people or cargo. The emissions of greenhouse gases must be reported
3 as carbon dioxide equivalents.

4 (d) The rules must require that persons report 2009 emissions
5 starting in 2010. The rules must establish an annual reporting
6 schedule that takes into account the time needed to allow the owner or
7 operator reporting emissions of greenhouse gases to gather the
8 information needed and to verify the emissions being reported.
9 However, in no event may reports be submitted later than October 31st
10 of the year in which the report is due.

11 (e) The department may phase in the reporting requirements for
12 sources or combinations of sources under ~~((a))~~ (b)(ii) of this
13 subsection until the reporting threshold is met, which must be met by
14 January 1, 2012. The department may from time to time amend the rules
15 to include other persons that emit less than the annual greenhouse gas
16 emissions levels set out in this subsection if necessary to comply with
17 any federal reporting requirements for emissions of greenhouse gases.

18 ~~((b))~~ (f) In its rules, the department may defer the reporting
19 requirement under (a) of this subsection for emissions associated with
20 interstate and international commercial aircraft, rail, truck, or
21 marine vessels until (i) there is a federal requirement to report these
22 emissions; or (ii) the department finds that there is a generally
23 accepted reporting protocol for determining interstate emissions from
24 these sources.

25 ~~((e))~~ (g) The department shall share any reporting information
26 reported to it with the local air authority in which the owner or
27 operator reporting under the rules adopted by the department operates.

28 ~~((d))~~ (h) The fee provisions in subsection (2) of this section
29 apply to reporting of emissions of greenhouse gases. Owners and
30 operators required to report under (a) of this subsection who fail to
31 report or pay the fee required in subsection (2) of this section are
32 subject to enforcement penalties under this chapter. The department
33 shall enforce the reporting rule requirements unless it approves a
34 local air authority's request to enforce the requirements for sources
35 operating within the authority's jurisdiction.

36 ~~((e))~~ (i) The energy facility site evaluation council shall,
37 simultaneously with the department, adopt rules that impose greenhouse
38 gas reporting requirements in site certifications on owners or

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

11 ~~((f))~~ (j) In developing its rules, the department shall, with the
12 assistance of the department of transportation, identify a mechanism to
13 report an aggregate estimate of the annual emissions of greenhouse
14 gases generated from or emitted by otherwise unreported on-road motor
15 vehicles.

16 ~~((g))~~ (k) The inclusion or failure to include any person, source,
17 classes of persons or sources, or types of emissions of greenhouse
18 gases into the department's rules for reporting under this section does
19 not indicate whether such a person, source, or category is appropriate
20 for inclusion in the multisector market-based system designed under RCW
21 70.235.020.

22 ~~((h))~~ (l) Should the federal government adopt rules sufficient to
23 track progress toward the emissions reductions required by chapter 14,
24 Laws of 2008 governing the reporting of greenhouse gases, the
25 department shall amend its rules, as necessary, to seek consistency
26 with the federal rules to ensure duplicate reporting is not required.
27 Nothing in this section requires the department to increase the
28 reporting threshold established in (a) of this subsection or otherwise
29 require the department's rules be identical to the federal rules in
30 scope.

31 ~~((i))~~ (m) The definitions in RCW 70.235.010 apply throughout this
32 subsection (5) unless the context clearly requires otherwise. However,
33 for the purposes of this subsection (5), the term "person" has the same
34 meaning as defined in RCW 70.94.030.

35 (n) For violations of this subsection (5), in addition to other
36 enforcement authority under this chapter, the department may issue
37 penalties of up to ten thousand dollars per day per violation for each

1 day that emissions are not reported beyond the deadline to report
2 established by rule.

3 **Sec. 25.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
4 read as follows:

5 (1) The hearings board shall only have jurisdiction to hear and
6 decide appeals from the following decisions of the department, the
7 director, local conservation districts, and the air pollution control
8 boards or authorities as established pursuant to chapter 70.94 RCW, or
9 local health departments:

10 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
11 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310,
12 (~~and~~) 90.56.330, and chapter 70.235 RCW.

13 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
14 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
15 90.14.130, 90.48.120, (~~and~~) 90.56.330, and chapter 70.235 RCW.

16 (c) Except as provided in RCW 90.03.210(2), the issuance,
17 modification, or termination of any permit, certificate, or license by
18 the department or any air authority in the exercise of its
19 jurisdiction, including the issuance or termination of a waste disposal
20 permit, the denial of an application for a waste disposal permit, the
21 modification of the conditions or the terms of a waste disposal permit,
22 or a decision to approve or deny an application for a solid waste
23 permit exemption under RCW 70.95.300.

24 (d) Decisions of local health departments regarding the grant or
25 denial of solid waste permits pursuant to chapter 70.95 RCW.

26 (e) Decisions of local health departments regarding the issuance
27 and enforcement of permits to use or dispose of biosolids under RCW
28 70.95J.080.

29 (f) Decisions of the department regarding waste-derived fertilizer
30 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
31 department regarding waste-derived soil amendments under RCW 70.95.205.

32 (g) Decisions of local conservation districts related to the denial
33 of approval or denial of certification of a dairy nutrient management
34 plan; conditions contained in a plan; application of any dairy nutrient
35 management practices, standards, methods, and technologies to a
36 particular dairy farm; and failure to adhere to the plan review and
37 approval timelines in RCW 90.64.026.

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

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

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

8 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
9 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

10 (c) Proceedings conducted by the department, or the department's
11 designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.

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

14 (e) Appeals of decisions by the department as provided in chapter
15 43.21L RCW.

16 (3) Review of rules and regulations adopted by the hearings board
17 shall be subject to review in accordance with the provisions of the
18 Administrative Procedure Act, chapter 34.05 RCW.

19 NEW SECTION. **Sec. 26.** Sections 3, 4, 6 through 12 and 15 through
20 22 this act are each added to chapter 70.235 RCW.

21 NEW SECTION. **Sec. 27.** Captions used in this act are not any part
22 of the law.

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