
SENATE BILL 6629

State of Washington

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By Senators Ericksen and Baumgartner

1 AN ACT Relating to reducing pollution by investing in clean air,
2 clean energy, clean water, healthy forests, and healthy communities
3 by imposing a fee on large emitters based on their pollution; and
4 adding a new chapter to Title 70 RCW.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Alternative carbon reduction unit" means a credit for one
10 metric ton reduction in pollution that substitutes for an equivalent
11 emission reduction in a qualifying gas distribution business's
12 operations and is real, permanent, enforceable, verifiable, and
13 additional to business as usual. The unit must derive from an action
14 that reduces pollution.

15 (2) "Board" or "oversight board" means the public oversight board
16 created in section 9 of this act.

17 (3) "Carbon content" means the carbon dioxide equivalent that is
18 released through the combustion or oxidation of a fossil fuel or that
19 is associated with the combustion or oxidation of a fossil fuel used
20 to generate electricity.

1 (4) "Carbon dioxide equivalent" has the same meaning as "carbon
2 dioxide equivalents" as defined in RCW 70.235.010.

3 (5) "Consumer-owned utility" has the same meaning as defined in
4 RCW 19.29A.010.

5 (6) "Eligible renewable energy resource" has the same meaning as
6 "eligible renewable resource" as defined in RCW 19.285.030.

7 (7) "Energy burden" is the percentage of household income spent
8 on road transportation and home energy bills.

9 (8) "Energy-intensive and trade-exposed sectors" and "EITE
10 sectors" mean:

11 (a) Those sectors identified under "EITE covered party" in WAC
12 173-442-020(1)(m) as of April 22, 2017; and

13 (b) Other sectors the department of commerce designates that
14 have, on average across all facilities belonging to the sector in the
15 state, both a greater energy intensity of production and a greater
16 trade share of goods than the corresponding averages for any other
17 EITE sector.

18 (9) "Environmental burdens" refers to the cumulative risks to
19 communities caused by historic and current:

20 (a) Exposure to conventional and toxic hazards in the air, water,
21 and land; and

22 (b) Adverse environmental effects, which are environmental
23 conditions caused or made worse by contamination or pollution or that
24 create vulnerabilities to climate impacts.

25 (10) "Fossil fuel" means petroleum products that are intended for
26 combustion, natural gas, coal or coke of any kind, or any form of
27 solid, liquid, or gaseous fuel derived from these products including
28 but not limited to motor vehicle fuel, special fuel, aircraft fuel,
29 marine fuel, still gas, propane, and petroleum residuals such as
30 bunker fuel. For purposes of imposing the pollution fee on the carbon
31 content of fossil fuels consumed by a refinery facility during the
32 process of refining fossil fuels, "fossil fuel" also means crude oil
33 and petroleum.

34 (11) "Fund" means the clean up pollution fund created in section
35 2 of this act.

36 (12) "Gas distribution business" has the same meaning as defined
37 in RCW 82.16.010.

38 (13) "Greenhouse gas" and "greenhouse gases" have the same
39 meaning as defined in RCW 70.235.010.

1 (14) "Imported electricity" means electricity generated outside
2 of the state of Washington and delivered for end use within the
3 state.

4 (15) "Indian tribe" includes an Indian nation, tribe, band,
5 community, or other entity:

6 (a) Recognized as an Indian tribe by the federal department of
7 the interior; and

8 (b) With its principal governmental office located within the
9 geographical boundaries of the state of Washington or with treaty-
10 reserved rights retained within the geographical boundaries of the
11 state of Washington.

12 (16) "Inflation" means the percentage change in the consumer
13 price index for all urban wage earners and clerical workers for the
14 United States as published for the most recent twelve-month period by
15 the bureau of labor statistics of the federal department of labor by
16 September 30th of the year before the fees are payable.

17 (17) "Investor-owned utility" has the same meaning as defined in
18 RCW 19.29A.010.

19 (18) "Large emitter" means:

20 (a) For electricity:

21 (i) An importer of electricity that was generated using fossil
22 fuels; or

23 (ii) A power plant located in the state of Washington that
24 generates electricity using fossil fuels;

25 (b) For motor vehicle fuel and special fuel, entities required to
26 pay the tax specified in RCW 82.38.030(9);

27 (c) For natural gas, entities required to pay the tax specified
28 in chapter 82.16 RCW, or, if the fee is not paid by a gas
29 distribution business under chapter 82.16 RCW, by the person required
30 to pay tax as provided in RCW 82.12.022 (1), (2), (3), (8), (9), and
31 (10);

32 (d) For other petroleum products, persons as designated by rule
33 by the department of revenue;

34 (e) A seller of fossil fuels to end users or consumers;

35 (f) A seller of fossil fuels sold for combined heat and power as
36 defined in RCW 19.280.020;

37 (g) A refinery facility for crude oil, crude oil derivatives, and
38 other fossil fuels consumed by or in a refinery facility.

1 (19) "Light and power business" has the same meaning as defined
2 in RCW 82.16.010, and includes a light and power business owned or
3 operated by a municipality.

4 (20) "Maritime fuels" means diesel, gasoline, and biofuel-blend
5 fuels sold from fuel docks for use in vessels and bunker and other
6 fuels sold for use in ships for interstate and international
7 transportation.

8 (21) "Motor vehicle fuel" has the same meaning as defined in RCW
9 82.38.020.

10 (22) "Panel" or "panels" means any or all of the panels
11 established in section 10 of this act.

12 (23) "People with lower incomes" means:

13 (a) All Washington residents with an annual income, adjusted for
14 household size, that is at or below the greater of:

15 (i) Eighty percent of the area median income as reported by the
16 federal department of housing and urban development; or

17 (ii) Two hundred percent of the federal poverty line; or

18 (b) Members of an Indian tribe who meet the income-based criteria
19 for existing other means-tested benefits through formal resolution by
20 the governing council of an Indian tribe.

21 (24) "Person" means the state of Washington, political
22 subdivision of the state of Washington, municipal corporation, the
23 United States, and any individual, receiver, administrator, executor,
24 assignee, trustee in bankruptcy, trust, estate, firm, partnership,
25 joint venture, club, company, joint stock company, business trust,
26 corporation, limited liability company, association, society, or any
27 group of individuals acting as a unit, whether mutual, cooperative,
28 fraternal, nonprofit, or otherwise.

29 (25) "Petroleum product" means hydrocarbons that are the product
30 of the fractionation, distillation, or other refining or processing
31 of crude oil that are used as, usable as, or may be refined as a fuel
32 or fuel blend stock.

33 (26) "Pollution" means the presence of or introduction into the
34 environment of greenhouse gases.

35 (27) "Pollution and health action areas" are those communities
36 designated by the department of health based on the cumulative impact
37 analysis required by section 11(2) of this act and census tracts that
38 are fully or partially on Indian country as defined in 18 U.S.C. Sec.
39 1151.

1 (28) "Power plant" has the same meaning as defined in RCW
2 80.80.010.

3 (29) "Special fuel" has the same meaning as defined in RCW
4 82.38.020 and includes fuel that is sold or used to propel vessels.

5 (30) "Supplier" means a person that produces, refines, imports,
6 sells, or delivers fossil fuels in or into the state for use or
7 processing within the state.

8 (31) "Tribal lands" means "Indian country" as defined in 18
9 U.S.C. Sec. 1151, lands owned by or held in trust for an Indian
10 tribe, and sensitive tribal areas. For the purposes of this chapter,
11 "sensitive tribal areas" are areas in which an Indian tribe has a
12 significant interest, such as sacred sites, traditional cultural
13 properties, and burial grounds protected under chapter 27.44 RCW.

14 (32) "Tribal leaders" means persons identified by Indian tribes
15 under RCW 43.376.050 or other designee formally appointed by the
16 Indian tribe.

17 (33) "Usual and accustomed fishing area" is any area adjudicated
18 to have been reserved for fishing by one or more Indian tribes
19 through treaties as recognized by *United States v. Washington*, 20 F.
20 Supp. 3d 899 (2008). For purposes of this chapter only, "usual and
21 accustomed fishing area" refers to waterways only and not nearby
22 uplands.

23 (34) "Vulnerable populations" are communities that experience
24 high cumulative risk from environmental burdens due to:

25 (a) Adverse socioeconomic factors, such as unemployment, high
26 housing and transportation costs relative to income, and linguistic
27 isolation; and

28 (b) Sensitivity factors, such as low birth weight and higher
29 rates of hospitalization.

30 NEW SECTION. **Sec. 2.** (1) The clean up pollution fund is created
31 in the state treasury. All receipts collected from the pollution fee
32 imposed by this chapter must be deposited in the fund. The department
33 of revenue is authorized to create subfunds or subaccounts as may be
34 necessary or appropriate to implement the purposes of this chapter.
35 Moneys in the fund may only be spent after appropriation.

36 (2) Upon appropriation and after reasonable administrative costs,
37 moneys in the fund may be spent only as follows:

1 (a) Seventy percent of the moneys in the fund must be spent on
2 the clean air and clean energy investments authorized under section 3
3 of this act;

4 (b) Twenty-five percent of the moneys in the fund must be spent
5 on the clean water and healthy forests investments authorized under
6 section 4 of this act; and

7 (c) Five percent of the moneys in the fund must be spent on the
8 healthy communities investments authorized under section 5 of this
9 act.

10 (3) The board may authorize deviation from the allocations in
11 subsection (2) of this section if there are an insufficient number of
12 interested or eligible programs, activities, or projects seeking
13 funding or if the board otherwise determines that variance from the
14 prescribed allocation is critically important to achieve the purposes
15 of this chapter.

16 (4) Compliance with the allocations required in subsection (2) of
17 this section may be calculated based upon the average expenditures
18 from the fund over any four-year period.

19 (5) In addition to the requirements of subsection (2) of this
20 section, each year the total investments made under this chapter must
21 meet the following requirements:

22 (a) A minimum of thirty-five percent of total investments
23 authorized under this chapter must provide direct and meaningful
24 benefits to pollution and health action areas. For the purposes of
25 this subsection (5), "benefits" means investments or activities that:

26 (i) Reduce vulnerable population characteristics, environmental
27 burdens, or associated risks that contribute significantly to the
28 cumulative impact designation of the pollution and health action
29 area;

30 (ii) Meaningfully protect the pollution and health action area
31 from, or support community response to, the impacts of climate
32 change; or

33 (iii) Meet a community need identified by vulnerable members of
34 the community that is consistent with the intent of this chapter and
35 which is endorsed by the environmental and economic justice panel.

36 (b) A minimum of ten percent of the total investments authorized
37 under this chapter must fund programs, activities, or projects that
38 are located within the boundaries of and provide direct and
39 meaningful benefits to pollution and health action areas. An
40 investment that meets the requirements of both (a) and (b) of this

1 subsection may count towards the requisite minimum percentage for
2 both (a) and (b) of this subsection.

3 (c) Except for programs, activities, or projects for which
4 credits are authorized pursuant to section 3(6) of this act, a
5 minimum of ten percent of the total investments under this chapter
6 must be used for programs, activities, or projects formally supported
7 by a resolution of an Indian tribe, with priority given to otherwise
8 qualifying projects directly administered or proposed by an Indian
9 tribe. An investment that meets the requirements of both this
10 subsection (5)(c) and of (a) of this subsection may count towards the
11 requisite minimum percentage for both subsections. However,
12 investments under this subsection (5)(c) are in addition to, and may
13 not count towards, the requisite minimum percentage for (b) of this
14 subsection.

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

19 (7) Public entities, including but not limited to state agencies,
20 municipal corporations, and federally recognized tribes, and not-for-
21 profit and for-profit private entities are eligible to receive
22 investment funds authorized under this chapter.

23 (8) Funding under this chapter and credits authorized under
24 section 3(6) of this act may be invested in pilot tests and other
25 market and technology development projects that are designed to test
26 the effectiveness of the proposed project, program, or technology.

27 NEW SECTION. **Sec. 3.** (1) The clean air and clean energy account
28 is created in the state treasury. All moneys directed to the account
29 from the clean up pollution fund created in section 2 of this act
30 must be deposited in the account. Moneys in the account may only be
31 spent after appropriation. Money in the account must be used for
32 programs, activities, or projects that yield or facilitate verifiable
33 reductions in pollution or assist affected workers or people with
34 lower incomes during the transition to a clean energy economy,
35 including but not limited to:

36 (a) Programs, activities, or projects that deploy eligible
37 renewable energy resources, such as solar and wind power;

38 (b) Programs, activities, or projects, including self-directed
39 investments, that increase the energy efficiency or reduce carbon

1 emissions of industrial facilities, including but not limited to
2 proposals to implement combined heat and power, district energy, or
3 on-site renewables, such as solar and wind power, to upgrade existing
4 equipment to more efficient models, to reduce process emissions, and
5 to switch to less carbon-intensive fuel sources, especially
6 converting fossil fuel sources of energy to nonfossil fuel sources;

7 (c) Programs, activities, or projects, including self-directed
8 investments, that increase energy efficiency in new and existing
9 buildings, with a goal of creating carbon neutral buildings across
10 the state;

11 (d) Programs, activities, or projects that reduce transportation-
12 related carbon emissions, including but not limited to programs,
13 activities, or projects that:

14 (i) Accelerate the deployment of zero-emission fleets and
15 vehicles, including off-road and maritime vehicles, create zero-
16 emission vehicle refueling infrastructure, or deploy grid
17 infrastructure to integrate electric vehicles and charging equipment;

18 (ii) Reduce vehicle miles traveled or increase public
19 transportation, including investing in public transit, transportation
20 demand management, nonmotorized transportation, affordable transit-
21 oriented housing, and high-speed rural broadband to facilitate
22 telecommuting options such as telemedicine or online job training; or

23 (iii) Increase fuel efficiency in vehicles and vessels where
24 options to convert to zero-emissions, low-carbon fuels, or public
25 transportation are cost-prohibitive and inapplicable or unavailable;

26 (e) Programs, activities, or projects that improve energy
27 efficiency, including programs, activities, or projects related to
28 developing the demand side management of electricity, district
29 energy, or heating and cooling, and investments in market
30 transformation of energy efficiency products;

31 (f) Programs, activities, or projects that replace the use of
32 natural gas with gas not derived from fossil fuels, including but not
33 limited to biomethane and synthetic gas. Programs, activities, or
34 projects may include investments that address the incremental cost of
35 nonfossil fuel gas or investments that expand the manufacture or
36 delivery of nonfossil fuel gas;

37 (g) Programs, activities, or projects that deploy distributed
38 generation, energy storage, demand side management technologies, and
39 other grid modernization projects; or

1 (h) Programs, activities, or projects that result in
2 sequestration of carbon, including but not limited to sequestration
3 in aquatic marine and freshwater natural resources, agricultural
4 lands and soils, terrestrial, riparian, and aquatic habitats, and
5 working forests. Funding under this subsection may not fund legally
6 required land management responsibilities, such as resource
7 management requirements under the forest practices act or other
8 pertinent land use regulations.

9 (2)(a) The department of commerce, working with the panels, the
10 Washington State University extension energy program, the department
11 of transportation, and in consultation with the utilities and
12 transportation commission, investor-owned and consumer-owned
13 utilities, and other experts and agencies, and after review of other
14 states' plans to reduce carbon pollution or investment strategies for
15 greenhouse gas reduction, shall develop pollution reduction
16 investment plans and proposed rules that describe the process and
17 criteria to disburse funds from the clean air and clean energy
18 account in compliance with this section. All investment plans and
19 proposed rules required by this subsection must follow this same
20 process.

21 (i) The department of commerce shall propose and submit to the
22 board for approval an initial investment plan, processes, and
23 procedures for investments made under this section, which the board
24 shall review and approve by January 1, 2020. The investment plan,
25 processes, and procedures govern investments made under this section
26 until the permanent investment plan required by (a)(ii) of this
27 subsection is adopted by rule.

28 (ii) By January 1, 2022, the department of commerce shall draft
29 and submit to the board a permanent investment plan and proposed
30 rules for the board to review and approve through the rule-making
31 process. Upon adoption of the final rules by the board, the adopted
32 investment plan supersedes the initial investment plan authorized
33 under (a)(i) of this subsection.

34 (iii) The department of commerce shall propose updates to the
35 permanent investment plan and proposed rules every four years for
36 review and approval by the board through the rule-making process.

37 (b) The investment plans must prescribe a competitive project
38 selection process that results in a balanced portfolio of investments
39 containing a wide range of technology, sequestration, and emission
40 reduction solutions that efficiently and effectively reduce the

1 state's carbon emissions from 2018 levels by a minimum of twenty
2 million metric tons by 2035 and a minimum of fifty million metric
3 tons by 2050 while creating economic, environmental, and health
4 benefits. The emission reductions to be achieved under the plan
5 should, in combination with reductions achieved under other state
6 policies, achieve emissions reductions that are consistent with the
7 state's proportional share of global carbon reductions that will
8 limit global temperature increases to two degrees centigrade and
9 preferably below one and one-half degrees centigrade.

10 (3)(a) For investments authorized under subsection (1)(h) of this
11 section:

12 (i) The department of natural resources shall develop proposed
13 procedures, criteria, and rules for a program to sequester carbon
14 through blue carbon projects.

15 (ii) The department of agriculture shall develop proposed
16 procedures, criteria, and rules for a program to increase soil
17 sequestration and reduce emissions from the loss and disturbance of
18 soils, including the conversion of grassland and cropland soils to
19 urban development.

20 (iii) The recreation and conservation office shall develop
21 proposed procedures, criteria, and rules for a grant program that:
22 Funds projects to prevent the conversion and fragmentation of working
23 forests, farmland, and natural habitats of all types; expands habitat
24 and working forest connectivity; promotes reforestation; funds the
25 acquisition of permanent conservation easements or fee simple title
26 with deed restrictions that result in increased forest carbon
27 sequestration through the implementation of improved forest
28 management practices that safeguard ecological benefits, protect
29 habitat, and provide sustainable jobs in rural communities; and
30 supports management activities that improve landscape-scale
31 ecological functions to protect water, soils, and habitat for fish,
32 wildlife, and plants and reduce potential for emissions of greenhouse
33 gases. The program must prioritize and rank projects that effectively
34 capture and store carbon and provide a diversity of additional
35 ecological benefits.

36 (b) Procedures and criteria for the programs, activities, or
37 projects created under (a)(ii) and (iii) of this subsection must
38 retain sufficient flexibility to serve as a source of matching funds
39 from other sources and to allow for a portion of the funds awarded to

1 provide for the long-term costs of stewardship obligations on lands
2 protected under those programs, activities, or projects.

3 (c) The proposed procedures, criteria, and rules for the
4 programs, activities, or projects created under (a)(ii) and (iii) of
5 this subsection must be developed in consultation with the panels and
6 must be submitted to the board for final review and approval by
7 January 1, 2020.

8 (4)(a) There must be sufficient investments made from the clean
9 air and clean energy account to prevent or eliminate the increased
10 energy burden of people with lower incomes as a result of actions to
11 reduce pollution, including the pollution fees collected from large
12 emitters under this chapter. At a minimum, fifteen percent of the
13 clean air and clean energy account is dedicated to investments that
14 directly reduce the energy burden of people with lower incomes.
15 Additional funds from the clean air and clean energy account must be
16 allocated for program development, recruitment, enrollment, and
17 administration to achieve the intent of this subsection. Investments
18 are in addition to programs, activities, or projects funded through
19 credits authorized under subsection (6) of this section. After the
20 first effectiveness report is issued, the environmental and economic
21 justice panel may make recommendations to the board on measures to
22 better achieve the intent of this subsection.

23 (b) The department of commerce or, for credits authorized
24 pursuant to subsection (6) of this section, a light and power
25 business or gas distribution business shall:

26 (i) In meaningful consultation with people with lower incomes and
27 with the environmental and economic justice panel, develop a draft
28 plan that identifies programs, activities, or projects that achieve
29 the intent of this subsection and maximize the number of people with
30 lower incomes benefiting at levels appropriate to need. The draft
31 plan must be submitted to the board for final review and approval.

32 (ii) Prioritize programs, activities, and projects that create
33 the following sustained energy burden reductions:

34 (A) Energy affordability through bill assistance programs and
35 other similar programs;

36 (B) Reductions in dependence on fossil fuels used for
37 transportation, including public and shared transportation for access
38 and mobility;

39 (C) Reductions in household energy consumption, such as
40 weatherization; and

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

4 (iii) In consultation with community-based nonprofit
5 organizations and Indian tribes as appropriate, design and implement
6 comprehensive enrollment campaigns that are language and culturally
7 appropriate to inform and enroll people with lower incomes in the
8 assistance programs authorized under this subsection. The campaign
9 must also inform people with lower incomes of other energy cost
10 reduction programs for which they may be eligible. The campaign
11 should strive to achieve enrollment of one hundred percent of people
12 with lower incomes. The department of commerce may contract with
13 third parties to carry out the requirements of this subsection.

14 (c) Programs, activities, or projects that count toward the
15 expenditures required by section 2(5)(a) of this act may not be
16 counted toward the minimum expenditures required by this subsection.

17 (5) Within four years of the effective date of this section, a
18 minimum balance of fifty million dollars of the clean air and clean
19 energy account must be set aside, replenished annually, and
20 maintained for a worker-support program for bargaining unit and
21 nonsupervisory fossil fuel workers who are affected by the transition
22 away from fossil fuels to a clean energy economy. The department of
23 commerce, in consultation with the environmental and economic justice
24 panel, may allocate additional moneys from the fund if necessary to
25 meet the needs of eligible workers in the event of unforeseen or
26 extraordinary amounts of dislocation.

27 (a) Worker support may include but is not limited to: Full wage
28 replacement, health benefits, and pension contributions for every
29 worker within five years of retirement; full wage replacement, health
30 benefits, and pension contributions for every worker with at least
31 one year of service for each year of service up to five years of
32 service; wage insurance for up to five years for workers reemployed
33 who have more than five years of service; up to two years of
34 retraining costs including tuition and related costs, based on in-
35 state community and technical college costs; peer counseling services
36 during transition; employment placement services, prioritizing
37 employment in the clean energy sector; relocation expenses; and any
38 other services deemed necessary by the environmental and economic
39 justice panel.

1 (b) The department of commerce, in consultation with the
2 environmental and economic justice panel, shall develop draft rules,
3 procedures, and criteria, to identify affected workers and administer
4 this program. These draft rules, procedures, and criteria must be
5 submitted to the board for final review and approval through the
6 rule-making process.

7 (6)(a) A qualifying light and power business or gas distribution
8 business may claim credits for up to one hundred percent of the
9 pollution fees for which it is liable under this chapter. Credits may
10 be authorized for, and in advance of, investment in programs,
11 activities, or projects consistent with a clean energy investment
12 plan that has been approved by the utilities and transportation
13 commission, for investor-owned utilities and gas distribution
14 businesses, or the department of commerce, for consumer-owned
15 utilities.

16 (b) Clean energy investment plans must be developed by a
17 qualifying light and power business or gas distribution business in
18 meaningful collaboration with stakeholders, including the board and
19 the panels. The qualifying light and power business or gas
20 distribution business shall solicit public input and submit the clean
21 energy investment plan for review and approval by the commission, for
22 investor-owned utilities and gas distribution businesses, or the
23 department, for consumer-owned utilities.

24 (c) To receive approval, the clean energy investment plan must:

25 (i) Identify investments aligned with the pollution reduction
26 investment plan, targets, and goals authorized under and identified
27 in subsection (2) of this section. Eligible investments include:

28 (A) Those categories listed in subsection (1)(a) through (g) of
29 this section;

30 (B) A customer education and outreach program to promote
31 widespread participation by consumers and businesses;

32 (C) The accelerated depreciation of a fossil fuel-fired generator
33 owned by a light and power business, limited to thirty percent of
34 credits authorized under a clean energy investment plan, if:

35 (I) The accelerated depreciation schedule includes recovery of
36 all plant-in-service costs of the light and power business that owns
37 or controls the plant associated with the fossil fuel-fired
38 generator;

39 (II) The plant is replaced with renewable resources or demand
40 side resources that emit no greenhouse gases; and

1 (III) The accelerated depreciation schedule and replacement power
2 plan is included in a clean energy investment plan approved by the
3 commission;

4 (D) Replacing all or a part of the debt financing portion of a
5 capital investment made in the development of eligible renewable
6 energy resources if doing so lowers the cost of financing. This
7 subsection applies only to capital investments for which construction
8 commenced after the effective date of this section;

9 (E) For a qualifying gas distribution business, purchasing
10 alternative carbon reduction units. Alternative carbon reduction
11 units are available only if a gas distribution business demonstrates
12 in its clean energy investment plan that it has pursued all other
13 available investment opportunities. No more than ten percent of the
14 pollution fee owed in a given year may be reduced by purchasing
15 alternative carbon reduction units. A qualifying light and power
16 business or gas distribution business must demonstrate that any
17 carbon reduction unit it purchased verifiably reduced carbon
18 emissions within the state. Alternative carbon reduction units are
19 available only during the ten years immediately following the
20 effective date of this section;

21 (ii) Identify sufficient investments to eliminate net increase in
22 energy burden of customers that are people with lower incomes as a
23 result of actions to reduce pollution, including the requirements of
24 this subsection. At a minimum, fifteen percent of credits must be
25 dedicated to investments that directly reduce energy burden on people
26 with lower incomes. Additional funds must be allocated for program
27 development, recruitment, enrollment, and administration to achieve
28 the intent of this subsection. These investments must be consistent
29 with subsection (4) of this section;

30 (iii) A demonstration of how the requirements of section 2(5)(a)
31 of this act have been met and the criteria in section 6(1) (a)
32 through (c) of this act have been given priority in the development
33 of the plan;

34 (iv) A long-term strategy to eliminate any fee obligation imposed
35 by this chapter on electricity and minimize any fee obligation on
36 natural gas;

37 (v) Performance metrics, including performance metrics designed
38 to measure pollution reduction achieved, energy burden reduction
39 benefits supplied, and other indicators of progress in achieving the

1 purposes of this chapter. Performance metrics must cover the life of
2 the plan;

3 (vi) A demonstration that expenditures in the plan are in
4 addition to existing programs and expenditures necessary to meet
5 other emissions reduction, energy conservation, low income, or
6 renewable energy requirements in the absence of this chapter and
7 incremental to investments or expenditures that the light and power
8 business or gas distribution business would have pursued in the
9 absence of the plan and the requirements of this chapter; and

10 (vii) Methods of addressing shortfalls of previous plans in
11 achieving the requirements set forth in this subsection (6)(c).

12 (d) The department and the commission may choose to approve the
13 entire plan or only parts of a plan and authorize credits only for
14 the approved segments. The department, the commission, and the board
15 may confer with and provide recommendations to one another prior to
16 the approval of a clean energy investment plan. The department and
17 the commission may make determinations based on the efficacy of the
18 plan, including appropriate comparison to carbon reduction and other
19 outcomes that are projected to be achieved under the state's
20 pollution reduction investment plan developed under subsection (2) of
21 this section, results of the effectiveness report developed under
22 section 11 of this act, and other criteria they adopt.

23 (e) A light and power business or gas distribution business
24 authorized to receive credits under this subsection must establish
25 and maintain a separate clean energy investment account into which it
26 must deposit amounts equal to the credits authorized under this
27 section. Funds deposited into this account must be expended during
28 the year in which the funds were collected from customers, the
29 preceding year, or any of the three subsequent years, after which
30 they must be remitted to the clean air and clean energy account.

31 (f) Upon approval of a clean energy investment plan, a qualifying
32 light and power business or gas distribution business must expend
33 moneys from its clean energy investment account in accordance with
34 the approved clean energy investment plan, with the oversight of the
35 commission or department. A light and power business or gas
36 distribution business must submit annual reports to the commission or
37 department that include, at a minimum, the status of the plan and an
38 evaluation of whether its investments have achieved the performance
39 metrics identified in the clean energy investment plan.

1 (g) If the commission or the department determines that a plan
2 did not meet a performance metric, the commission or department may
3 require the light and power business or gas distribution business to
4 remit remaining credits dedicated for the nonperforming plan or
5 components to the clean air and clean energy account and may deny
6 future plans unless they meet the requirements of this subsection.

7 (h) To maintain eligibility to receive a credit for fees, a
8 qualifying light and power business or gas distribution business must
9 submit and receive approval of an updated clean energy investment
10 plan every two years.

11 (i) An investor-owned light and power business or gas
12 distribution business may not earn a rate of return from the portion
13 of investments paid for with credits under this section.

14 (j) Credits may not support programs, activities, or projects
15 that are otherwise legally required by federal, state, or local laws,
16 or that are required as a result of a legal settlement or other
17 action binding on the potential recipient of the funds. Credits may
18 not be used to supplant existing funding for related programs.

19 (k) A qualifying light and power business or gas distribution
20 business is authorized to use a reasonable portion of credits for
21 necessary administrative costs related to the requirements of this
22 subsection, including the development and implementation of an
23 approved clean energy investment plan.

24 (l) For the purposes of this subsection, a qualifying light and
25 power business or gas distribution business may request that within
26 one hundred twenty days the department of health designate additional
27 pollution and health action areas located in the service area of the
28 qualifying light and power business or gas distribution business.

29 (m) Credited fees in the clean energy investment account are
30 considered gross operating revenue for the purpose of RCW 80.24.010,
31 and may not be considered gross income for the purposes of chapters
32 82.04 and 82.16 RCW. In addition to fees paid pursuant to RCW
33 80.24.010 on credited fees in the clean energy investment account,
34 each investor-owned utility must pay an annual fee set by the
35 commission annually through order of up to one percent of credited
36 fees deposited in the clean energy investment account to pay for the
37 commission's reasonable cost of administering this subsection.

38 (n) The commission and department must adopt rules concerning the
39 process, timelines, reporting, committees, standards, and
40 documentation required to ensure proper implementation of this

1 subsection. These rules must allow for stakeholder contribution to
2 the clean energy investment plans and establish requirements for
3 review, approval, performance metrics, and independent monitoring and
4 evaluation of a clean energy investment plan of a light and power
5 business or gas distribution business.

6 (o) The amount of credits authorized and spent under this
7 subsection counts towards the minimum percentage of investments
8 required by section 2(2)(a) of this act.

9 (p) The definitions in this subsection (6)(p) apply throughout
10 this subsection unless the context clearly requires otherwise.

11 (i) "Commission" means the utilities and transportation
12 commission.

13 (ii) "Department" means the department of commerce.

14 (7) Funding made available for programs, activities, or projects
15 under this section must be additive to existing funding and may not
16 supplant funding otherwise available.

17 (8) The expenditures of funds under this section may not support
18 programs, activities, or projects that are otherwise legally required
19 by federal, state, or local laws, or that are required as a result of
20 a legal settlement or other legal action or court order binding on
21 the potential recipient of the funds.

22 NEW SECTION. **Sec. 4.** (1) The clean water and healthy forests
23 account is created in the state treasury. All moneys directed to the
24 account from the clean up pollution fund created in section 2 of this
25 act must be deposited in the account. Moneys in the account may only
26 be spent after appropriation. Moneys in the account are intended to
27 increase the resiliency of the state's waters and forests to the
28 impacts of climate change. Moneys in the account must be spent in a
29 manner that is consistent with existing and future assessment of
30 climate risks and resilience from the scientific community and
31 expressed concerns of and impacts to pollution and health action
32 areas.

33 (2) Moneys in the account may be allocated for the following
34 purposes:

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

38 (A) Restore and protect estuaries, fisheries, and marine
39 shoreline habitats, and prepare for sea level rise;

1 (B) Increase the ability to remediate and adapt to the impacts of
2 ocean acidification;

3 (C) Reduce flood risk and restore natural floodplain ecological
4 function;

5 (D) Increase the sustainable supply of water and improve aquatic
6 habitat, including groundwater mapping and modeling; or

7 (E) Improve infrastructure treating stormwater from previously
8 developed areas within an urban growth boundary designated under
9 chapter 36.70A RCW, with a preference given to projects that use
10 green stormwater infrastructure.

11 (ii) Funding under this subsection (2)(a) proposed for projects
12 in the Puget Sound basin must be reviewed by the Puget Sound
13 partnership for consistency with the Puget Sound action agenda
14 authorized under chapter 90.71 RCW. This review must be conducted in
15 a manner that does not delay the approval of programs, activities, or
16 projects under this subsection.

17 (iii) The departments of ecology, natural resources, fish and
18 wildlife, the Puget Sound partnership, and the recreation and
19 conservation office must jointly develop draft procedures, criteria,
20 and rules for the program authorized under this subsection (2)(a).

21 (b)(i) Healthy forests investments to improve resilience from
22 climate impacts. Funding under this subsection (2)(b) must be used
23 for projects and activities that will:

24 (A) Increase resilience to wildfire in the face of increased
25 temperature and drought; or

26 (B) Improve forest health and reduce vulnerability to changes in
27 hydrology, insect infestation, and other impacts of climate change.

28 (ii) The department of natural resources may consider supporting
29 cross laminated timber and other mass timber technologies in support
30 of this work.

31 (iii) The department of natural resources must develop draft
32 procedures, criteria, and rules for the program authorized under this
33 subsection (2)(b). Funding priority must be given to programs,
34 activities, or projects prioritized pursuant to RCW 76.06.200 and
35 79.10.530 across any combination of local, state, federal, tribal,
36 and private ownerships.

37 (iv) The department of natural resources must adopt rigorous
38 performance-based criteria and objectives for funding decisions under
39 this subsection (2)(b), such as the number of acres burned or thinned
40 or otherwise treated to improve forest health, acres of forest for

1 which wildland fire prevention measures have been implemented, and
2 the number of communities in the wildland urban interface for which
3 wildfire resilience and defense measures have been implemented.

4 (3) Draft procedures, criteria, and rules required under this
5 section must be developed in consultation with the clean water and
6 healthy forests panel and must be submitted to the board for final
7 review and approval subject to the rule-making process.

8 (4) Moneys in the account may not be used for projects that would
9 violate tribal treaty rights or result in significant long-term
10 damage to critical habitat or ecological functions. Investments from
11 this account must result in long-term environmental benefit and
12 increased resiliency to the impacts of climate change.

13 (5) Funding made available for projects under this section should
14 be considered additive to existing funding and is not intended to
15 supplant funding otherwise available for such projects.

16 NEW SECTION. **Sec. 5.** (1) The healthy communities account is
17 created in the state treasury. All moneys directed to the account
18 from the clean up pollution fund created in section 2 of this act
19 must be deposited in the account. Moneys in the account may only be
20 spent after appropriation. Moneys in the account must be used for
21 programs, activities, or projects to prepare communities for
22 challenges caused by climate change and to ensure that the impacts of
23 climate change are not disproportionately borne by certain
24 populations. Disbursements from this account may be used for the
25 following purposes, with first priority given to programs,
26 activities, or projects eligible for funding under (a), (b), and (c)
27 of this subsection:

28 (a) Enhancing community preparedness and awareness before,
29 during, and after wildfires;

30 (b) Developing and implementing resources to support fire
31 suppression, prevention, and recovery for tribal communities impacted
32 or potentially impacted by wildfires;

33 (c) Relocating communities on tribal lands that are impacted by
34 flooding and sea level rise; and

35 (d) Developing and implementing education programs and teacher
36 professional development opportunities at public schools to expand
37 awareness of and increase preparedness for the environmental, social,
38 and economic impacts of climate change and strategies to reduce
39 pollution.

1 (2) Funding under this subsection may not supplant federal
2 funding or federal obligations otherwise required by law or treaty.

3 (3) The department of natural resources, in consultation with the
4 environmental and economic justice panel, shall develop draft
5 procedures, criteria, and rules for the programs authorized in
6 subsection (1)(a) through (c) of this section. The procedures,
7 criteria, and rules for the program authorized in subsection (1)(a)
8 of this section must prioritize programs, activities, or projects
9 that benefit communities with limited English proficiency and other
10 vulnerable populations in communities at risk from wildfires.

11 (4) The superintendent of public instruction shall develop draft
12 procedures, criteria, and rules for the program authorized in
13 subsection (1)(d) of this section.

14 (5) Twenty percent of the healthy communities account must be
15 reserved for developing community capacity to participate in the
16 implementation of this chapter, including the preparation of funding
17 proposals. Funds for this community capacity program must be
18 allocated through a competitive process with a preference for
19 projects proposed by vulnerable populations in pollution and health
20 action areas and rural communities. Any Indian tribe that applies
21 must receive up to two hundred thousand dollars per year to build
22 tribal capacity to participate in the implementation of this chapter.
23 The department of commerce shall work with the environmental and
24 economic justice panel to develop draft procedures, criteria, and
25 rules for this program.

26 (6) Proposed procedures, criteria, and rules prepared under this
27 section must be sent to the board for final adoption, including
28 through the rule-making process as appropriate.

29 NEW SECTION. **Sec. 6.** (1) After applying the account-specific
30 criteria in sections 3, 4, and 5 of this act, preference must be
31 given to investments authorized under section 2 of this act and
32 credits authorized under section 3(6) of this act that meet one or
33 more of the following investment criteria:

34 (a) Procurement and use of materials and content that have lower
35 carbon emissions associated with their transportation and
36 manufacturing, as determined through the best available reporting and
37 assessment tools;

38 (b) Support of high quality labor standards, prevailing wage
39 rates determined by local collective bargaining, apprenticeship and

1 preapprenticeship utilization and preferred entry standards,
2 community workforce agreements with priority local hire, procurement
3 from women, veteran, and minority-owned businesses, procurement from
4 and contracts with entities that have a history of complying with
5 federal and state wage and hour laws and regulations, and other
6 related labor standards;

7 (c) Reduction of worker and public exposure to emissions of air
8 pollutants regulated under chapter 70.94 RCW, discharges of
9 pollutants regulated under chapter 90.48 RCW, or releases of
10 hazardous substances under chapter 70.105D RCW; and

11 (d) Reduction of pollution through strategies that reduce vehicle
12 miles traveled, including by reducing travel distances for people
13 with lower incomes.

14 (2) Projects that satisfy multiple criteria in subsection (1) of
15 this section receive first preference under this section.

16 NEW SECTION. **Sec. 7.** (1) A pollution fee is imposed on and must
17 be collected from large emitters based on the carbon content of:

18 (a) Fossil fuels sold or used within this state; and

19 (b) Electricity generated within or imported for consumption in
20 the state.

21 (2) The fee must be levied only once on a particular unit of
22 fossil fuels or electricity.

23 (3) Beginning January 1, 2020, the pollution fee on large
24 emitters is equal to fifteen dollars per metric ton of carbon
25 content. Beginning January 1, 2021, the pollution fee on large
26 emitters increases by two dollars per metric ton of carbon content
27 plus inflation each January 1st. The pollution fee is fixed and no
28 longer increases, except for annual increases for inflation, when the
29 state's 2035 greenhouse gas reduction goal, as it exists or as it is
30 subsequently amended, is met and the state's emissions are on a
31 trajectory that indicates that compliance with the state's 2050 goal
32 is likely, as determined by the board.

33 (4) In order to calculate the pollution fee on large emitters
34 imposed by this chapter, by November 1, 2019, the department of
35 ecology must, in consultation with the department of revenue, adopt
36 emergency rules specifying the basis for the carbon content inherent
37 in or associated with covered fossil fuels and electricity. In
38 developing these rules, the department of ecology may consider, among
39 other resources, the carbon dioxide content measurements for fossil

1 fuels from the federal energy information administration and the
2 federal environmental protection agency. The department of ecology
3 may periodically update the rules specifying the carbon content of
4 fossil fuels and electricity.

5 (5) For the generation or import of electricity from an
6 unspecified source, the department of ecology, in consultation with
7 the department of commerce, must select a default emission factor
8 that maximizes the incentive for light and power businesses to
9 specify power sources without also unduly burdening the ability to
10 purchase electricity from the market.

11 (6) A credit for the fee owed may be authorized as provided in
12 section 3(6) of this act. The utilities and transportation commission
13 and the department of commerce shall ensure that resources are not
14 reallocated between customers, customer classes, or geographies for
15 the purposes of artificially reducing the application of this fee
16 without reducing actual pollution emissions and, in doing so, must
17 also not unduly burden the ability of a light and power business or
18 gas distribution business to transact with the market.

19 (7) The department of revenue is directed to collect the fee and
20 is authorized to take actions it deems necessary to collect the
21 pollution fee.

22 (8) To carry out the purposes of this chapter, the state is
23 authorized to issue general obligation or revenue bonds within the
24 limitations now or hereafter prescribed by the laws of this state,
25 and may use, and is authorized to pledge, the moneys collected under
26 this section for repayment of those bonds.

27 (9) The pollution fee owed by a large emitter may be assumed by a
28 light and power business when it purchases electricity from that
29 large emitter.

30 NEW SECTION. **Sec. 8.** (1) To ensure consistency with existing
31 state and federal law and to facilitate the timely, feasible, and
32 effective reduction of pollution under this chapter, the pollution
33 fee imposed on large emitters does not apply to and may not be
34 collected for:

35 (a) Fossil fuels brought into this state in the fuel supply tank
36 of a motor vehicle, vessel, locomotive, or aircraft;

37 (b) Fossil fuels that are exported or sold for export outside of
38 Washington. Export to a federally recognized Indian tribal

1 reservation located within this state is not considered export
2 outside of Washington;

3 (c) Fossil fuels directly or eventually supplied to a light and
4 power business for purposes of generating electricity;

5 (d) Motor vehicle and special fuel currently exempt from taxation
6 under RCW 82.38.080;

7 (e) Fossil fuels and electricity sold to and used onsite by
8 facilities with a primary activity that falls into an EITE sector,
9 including any facility primarily supporting one or more facilities
10 falling into one or more EITE sectors such as administrative,
11 engineering, or other office facilities, after the department of
12 commerce has validated a facility's designation within such sector or
13 its supporting facility status in an EITE sector;

14 (f) Aircraft fuels as defined in RCW 82.42.010 and maritime
15 fuels;

16 (g) Activities or property of Indian tribes and individual
17 Indians that are exempt from state taxation as a matter of federal
18 law and state law, whether by statute, rule, or compact, including
19 but not limited to the exemptions listed in WAC 458-20-192. For motor
20 vehicle fuel or special fuel sold on tribal lands, the fee may be
21 included in any agreements under RCW 82.38.310;

22 (h) Diesel fuel, biodiesel fuel, or aircraft fuel when these
23 fuels are used solely for agricultural purposes by a farm fuel user,
24 as those terms are defined in RCW 82.08.865;

25 (i) Pollution emissions from a coal closure facility. For the
26 purpose of this chapter, a "coal closure facility" is any facility
27 that generates electricity through the combustion of coal as of the
28 effective date of this section and:

29 (i) Is legally bound to comply with emissions performance
30 standards as set forth in RCW 80.80.040 by December 31, 2025; or

31 (ii) Is legally bound to cease operation by December 31, 2025.

32 (2) For any electricity or fossil fuels subject to the fee
33 imposed by this chapter that are also subject to a similar fee on
34 carbon content imposed by another jurisdiction, the payer may take a
35 credit against the fee imposed by this chapter up to the amount of
36 the similar fee paid to the other jurisdiction if the payer petitions
37 to and receives approval for the credit from the department of
38 commerce.

39 (3) For electricity generated in Washington that is sold out of
40 state to a jurisdiction that has a similar fee on carbon content, a

1 large emitter may receive a credit equal to the amount of the fee in
2 the receiving jurisdiction up to the amount of the fee owed under
3 this chapter if the payer petitions to and receives approval for the
4 credit from the department of commerce.

5 NEW SECTION. **Sec. 9.** (1) The public oversight board is
6 established within the executive office of the governor. The purpose
7 of the board is to ensure timely, effective, and efficient
8 implementation of this chapter. The board must ensure robust public
9 involvement, accountability, and transparency in the implementation
10 of this chapter.

11 (2) The board has fifteen voting members, including the chair,
12 the six cochairs of the panels, four at-large positions, the
13 commissioner of public lands, and the directors of the department of
14 commerce, the department of ecology, and the recreation and
15 conservation office. The governor shall appoint the chair and the
16 four at-large positions, one of which must be a tribal representative
17 and one of which must represent vulnerable populations in pollution
18 and health action areas, to achieve an overall board membership with
19 appropriate expertise in pollution reduction. The at-large positions
20 must serve staggered four-year terms. The department of health, the
21 department of transportation, and the superintendent of public
22 instruction are nonvoting members of the board.

23 (3) The board has the following powers and duties:

24 (a) Develop budget recommendations pursuant to the process set
25 forth in chapter 43.88 RCW;

26 (b) Work with appropriate state agencies to utilize, where
27 feasible, existing programs to deliver funding made available under
28 this chapter;

29 (c) Evaluate the funding proposals developed by the state
30 agencies and the panels and provide final approval of funding for
31 programs and projects under this chapter at a public hearing;

32 (d) Adopt rules under chapter 34.05 RCW as necessary to carry out
33 the purposes of this chapter;

34 (e) Review and approve procedures, criteria, and rules developed
35 under the provisions of this chapter, the pollution reduction
36 investment plan developed under section 3 of this act, and the
37 effectiveness report required by section 11 of this act;

1 (f) Develop a tribal consultation process for programs,
2 activities, or projects proposed for funding under this chapter
3 consistent with subsection (9) of this section;

4 (g) Confer with the governor and the legislature regarding
5 implementation of this chapter; and

6 (h) Carry out such other duties that are delegated to the board.

7 (4) The board must be led by the chair of the board. The chair is
8 a full-time staff person appointed by the governor and should be
9 housed in the office of the governor. The chair should have
10 experience in management and administration and expertise in and a
11 demonstrated commitment to reducing pollution and transitioning to a
12 clean energy economy.

13 (5) In addition to leading the board, the chair has, without
14 limitation, the following duties and authorities:

15 (a) Drive implementation of programs, activities, or projects in
16 a manner that achieves timely and effective pollution reduction and
17 the other purposes of this chapter;

18 (b) Solicit analysis from any state agency or office on matters
19 related to implementation of this chapter;

20 (c) Convene and preside over a climate subcabinet, consisting of
21 representatives of the agencies with responsibility to implement
22 portions of this chapter and the cochairs of the panels;

23 (d) Periodically brief the governor and legislative leaders
24 regarding progress, challenges, and obstacles in implementing this
25 chapter; and

26 (e) Hire staff as necessary to support the work of the chair and
27 the board.

28 (6) Members of the board who are not state employees must be
29 compensated in accordance with RCW 43.03.240 and are entitled to
30 reimbursement individually for travel expenses incurred in the
31 performance of their duties as members of the board in accordance
32 with RCW 43.03.050 and 43.03.060.

33 (7) All state agencies shall cooperate with and support the board
34 as it implements this chapter. All state agencies shall complete
35 their duties under this chapter and otherwise drive its
36 implementation with a sense of urgency.

37 (8) To ensure timeliness, efficiency, and effectiveness, the
38 board and the joint legislative audit and review committee shall
39 jointly develop a schedule for periodic review and reporting
40 regarding the implementation of this chapter.

1 (9) In furtherance of strengthening partnerships between the
2 state and Indian tribes, achieving the goals set forth in this
3 chapter, and to ensure mutual respect for the rights, interests, and
4 obligations of each sovereign, this chapter must be construed to
5 recognize and affirm the inherent sovereignty of Indian tribes, and
6 to further the government-to-government relationships between Indian
7 tribes and the state as follows:

8 (a) Any state agency acting under the authority of this chapter
9 or receiving funding under this chapter must consult with Indian
10 tribes on all decisions that may directly affect Indian tribes and
11 tribal lands including but not limited to activities such as rule
12 making. That consultation must follow the agency's protocol for
13 consultation with Indian tribes developed pursuant to the centennial
14 accord and must occur independent of any public participation process
15 required by state law or by the agency, regardless of whether the
16 agency receives a request for consultation from an Indian tribe.

17 (b) Any project proposed for funding under this chapter that
18 directly impacts tribal lands or usual and accustomed fishing areas
19 must be subject to meaningful formal consultation with Indian tribes
20 before the board approves disbursement of investment moneys for the
21 project. Consultation must include all consultation required under
22 state or federal law and the provisions of this section. The goal of
23 consultation is to share information regarding the project to ensure
24 a complete understanding of the project and to identify and address
25 tribal concerns. The process for consultation must be as follows:

26 (i) Consultation with Indian tribes must be initiated when a
27 project is being evaluated for funding by a panel.

28 (ii) Consultation is initiated upon receipt of a letter from the
29 board or panel to the person identified by Indian tribes under RCW
30 43.376.050. If an Indian tribe does not respond within forty-five
31 days of receipt of the letter, the board may conclude that the Indian
32 tribe has declined consultation on the project. The board shall
33 provide notice in a manner that ensures actual receipt by the tribe
34 and provides clarity as to the commencement of the forty-five day
35 period outlined herein.

36 (iii) Where an Indian tribe responds to the letter, the board
37 must utilize the consultation process established by the board,
38 including a mutually agreed timeline for completion of consultation.
39 The consultation process runs concurrently with the panels' and

1 board's evaluation of the project and must be completed prior to the
2 date determined by the board to complete final funding decisions.

3 (iv) The board and the Indian tribe must work in good faith
4 during the consultation process to reach consensus on whether the
5 project should be funded.

6 (c) For programs, activities, or projects that directly impact
7 tribal lands, the goal of the consultation process is to obtain free,
8 prior, and informed consent for the project. For these programs,
9 activities, or projects, consultation is complete when the Indian
10 tribe's government provides the board with a written resolution
11 providing consent or withholding consent by the deadline set for
12 completion of the consultation process.

13 (d) If any project that directly impacts tribal lands is funded
14 under this chapter without complying with (b) and (c) of this
15 subsection, upon a request by an Indian tribe, all further action on
16 the project must cease until consultation with the Indian tribe is
17 complete.

18 (e) Nothing in this subsection precludes a panel or the board
19 from evaluating similar programs, activities, or projects as a group
20 or using existing programs, activities, or projects to provide
21 preliminary funding recommendations.

22 (f) Informal and early consultation between an Indian tribe and a
23 project proponent is encouraged.

24 (g) The utilities and transportation commission shall comply with
25 this subsection in exercising its authority under section 3 of this
26 act.

27 NEW SECTION. **Sec. 10.** (1) Three panels are created to provide
28 detailed recommendations to the board and state agencies regarding
29 implementation of this chapter, including the development of proposed
30 rules, criteria, procedures, and other program elements. The governor
31 shall appoint members of each panel for four-year, staggered terms.
32 At least one-third of the membership of each panel must be
33 representatives of the interests of vulnerable populations in
34 pollution and health action areas.

35 (2) The clean air and clean energy panel must be cochaired by one
36 business interest and a stakeholder that represents a statewide labor
37 organization that represents a broad cross-section of workers. The
38 panel may have no more than nine members, representing tribal,
39 environmental, business, and labor communities and pollution and

1 health action areas additional to tribal lands. The panel's
2 membership must have expertise in carbon reduction programs,
3 activities, and technologies. The panel shall work with appropriate
4 state agencies to identify existing state programs that can be
5 utilized to provide preliminary evaluations of grant applications,
6 develop criteria and processes for evaluating programs, activities,
7 or projects proposed that cannot be evaluated under existing
8 programs, and prepare funding and other recommendations to the board
9 for expenditures from the clean air and clean energy account, created
10 in section 3 of this act. The clean air and clean energy panel may
11 also develop, as needed, and recommend rules for the board's
12 consideration.

13 (3) The clean water and healthy forests panel must be cochaired
14 by one tribal leader and one stakeholder that represents statewide
15 environmental interests. The panel may have no more than nine
16 members, representing tribal, environmental, business, and labor
17 communities and pollution and health action areas additional to
18 tribes. The panel shall work with appropriate state agencies to
19 identify existing state programs that can be utilized to provide
20 initial evaluations of grant applications, develop funding criteria
21 and processes for programs, activities, or projects that cannot be
22 evaluated under existing programs, and prepare funding and other
23 recommendations to the board for expenditures from the clean water
24 and healthy forests account, created in section 4 of this act. The
25 panel may also recommend rules for the board's consideration.

26 (4) The environmental and economic justice panel must be
27 cochaired by one tribal leader and one person that is a
28 representative of the interests of vulnerable populations in
29 pollution and health action areas that are not tribal lands. In
30 addition to the cochairs, the panel consists of two members
31 representing union labor with expertise in economic dislocation,
32 clean energy economy, or energy-intensive and trade-exposed
33 industries and five members, including at least one tribal leader and
34 at least two nontribal leaders representing the interest of
35 vulnerable populations in pollution and health action areas. The
36 purpose of the panel is to:

37 (a) Prepare funding recommendations to the board for expenditures
38 from the healthy communities account, created in section 5 of this
39 act;

1 (b) Develop draft procedures, criteria, and rules for evaluating
2 programs, activities, or projects for review and approval by the
3 board and make funding recommendations regarding people with lower
4 incomes, affected workers, vulnerable populations, and pollution and
5 health action areas;

6 (c) Make recommendations regarding preventing or eliminating any
7 increased energy burden of people with lower incomes as a result of
8 actions to reduce pollution, including the pollution fees collected
9 from large emitters under this chapter;

10 (d) Define meaningful consultation with pollution and health
11 action areas and provide opportunities for vulnerable populations to
12 consult on the implementation of this chapter;

13 (e) Evaluate compliance with the investment criteria in section 6
14 of this act;

15 (f) Define qualifying events and workers for the allocation of
16 funds authorized under section 3(5) of this act;

17 (g) Review and comment on the analyses required under section 11
18 of this act and identify and recommend opportunities and measures to
19 reduce burdens identified in the cumulative impact designation of
20 pollution and health action areas pursuant to section 11(2) of this
21 act, to increase economic opportunities, and to decrease risks, such
22 as displacement; and

23 (h) Administer, in cooperation with the department of commerce,
24 the community capacity grants authorized under section 5(5) of this
25 act.

26 (5) Relevant state agencies shall cooperate with and support the
27 panels as they implement this chapter.

28 (6) Any single individual may serve on more than one
29 panel. Members of the panels who are not state employees must be
30 compensated in accordance with RCW 43.03.240 and are entitled to
31 reimbursement individually for travel expenses incurred in the
32 performance of their duties as members of the panel in accordance
33 with RCW 43.03.050 and 43.03.060. Members of the environmental and
34 economic justice panel may receive financial support from
35 organizations and the governments of Indian tribes through approved
36 community capacity grants awarded under section 5(5) of this act.

37 NEW SECTION. **Sec. 11.** (1)(a) By December 10, 2022, and every
38 four years thereafter, the department of commerce, with support from
39 relevant agencies and in consultation with the panels, the board,

1 academic institutions, and other experts as appropriate, and taking
2 into account scientific and community assessments of climate impacts,
3 risks, and resilience needs, must develop and submit to the board a
4 draft effectiveness report for final review and approval by the
5 board.

6 (b) The effectiveness report must describe progress in achieving
7 the purposes of this chapter, including progress made in achieving
8 the carbon reduction goals established in section 3(2)(b) of this act
9 and in developing and implementing the clean energy investment plans
10 under section 3 of this act. In addition, the effectiveness report
11 must also include information regarding the impact of the
12 implementation of this chapter upon employment and jobs, including
13 the number and nature of jobs created, worker hours, job quality, job
14 access and demographics, cobenefits secured, and other employment and
15 economic information as deemed appropriate. The effectiveness report
16 must also identify and evaluate outcomes, risks, and recommendations
17 for vulnerable populations, pollution and health action areas, people
18 with lower incomes, Indian tribes, and affected workers. The
19 effectiveness report must recommend improvements to the
20 implementation of this chapter.

21 (2) By July 31, 2019, the department of health shall designate
22 pollution and health action areas. This designation must be at a
23 minimum resolution of census tract scale and must be based on the
24 cumulative impact analysis of vulnerable populations and
25 environmental burdens conducted by the University of Washington's
26 department of environmental and occupational health sciences. The
27 designation and ranking of census tracts in the cumulative impacts
28 analysis and underlying data must be available for public review and
29 may be integrated with or build upon other population tracking
30 resources. The designation of pollution and health action areas and
31 the cumulative impact analysis of vulnerable populations and
32 environmental burdens must be periodically evaluated and updated by
33 the department of health after meaningful consultation with
34 vulnerable populations, the environmental and economic justice panel,
35 and the University of Washington's department of environmental and
36 occupational health sciences.

37 NEW SECTION. **Sec. 12.** All departments and agencies named in
38 this chapter may adopt rules, develop guidance, and create forms and

1 other documents necessary to effectuate the provisions and purposes
2 of this chapter.

3 NEW SECTION. **Sec. 13.** As of the effective date of this section,
4 chapter 173-442 WAC and associated amendments to chapter 173-441 WAC
5 previously adopted by the department of ecology may not be enforced
6 by the department of ecology. If this chapter is invalidated, the
7 department of ecology is directed to enforce chapter 173-442 WAC and
8 associated amendments to chapter 173-441 WAC.

9 NEW SECTION. **Sec. 14.** If any provision of this chapter or its
10 application to any person or circumstance is held invalid, the
11 remainder of the chapter or the application of the provision to other
12 persons or circumstances is not affected. If any provision of this
13 chapter or its application to any person or circumstance is held
14 unconstitutional or unlawful, this chapter shall be construed to
15 provide for the maximum application of the pollution fee and
16 investments authorized in this chapter. Each exemption in section 8
17 of this act is severable and, if any exemption is held
18 unconstitutional or unlawful, the remainder of the chapter is not
19 affected.

20 NEW SECTION. **Sec. 15.** The legislature finds and determines that
21 the pollution fee imposed in this chapter is not a tax in light of
22 the purposes, benefits, and use of the fee. Nevertheless, if a court
23 of final jurisdiction determines that the pollution fee imposed in
24 this chapter is a tax, then that tax shall be deemed authorized,
25 imposed, and exempt from the provisions of RCW 82.32.805 and
26 82.32.808.

27 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
28 constitute a new chapter in Title 70 RCW.

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