

HOUSE BILL REPORT

E2SSB 5126

As Passed House - Amended:

April 23, 2021

Title: An act relating to the Washington climate commitment act.

Brief Description: Concerning the Washington climate commitment act.

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

Brief History:

Committee Activity:

Environment & Energy: 4/14/21, 4/16/21 [DPA];
Appropriations: 4/19/21, 4/20/21 [DPA(APP w/o ENVI)].

Floor Activity:

Passed House: 4/23/21, 54-43.

Brief Summary of Engrossed Second Substitute Bill (As Amended By House)

- Establishes a program for capping emissions from certain covered entities and investing emission allowance auction proceeds in certain programs, projects, and activities, beginning January 1, 2023.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris-Talley.

Staff: Nikkole Hughes (786-7156).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Environment & Energy. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Dan Jones (786-7118).

Background:

Greenhouse Gas Emissions Reporting.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO₂e).

Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of CO₂e report their emissions to the EPA. At the state level, GHG reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of CO₂e each year to report their annual emissions to Ecology. Distributors of gasoline, diesel, and aircraft fuel whose GHG emissions exceed 10,000 metric tons and who pay fuel taxes to the Department of Licensing (DOL) must use the fuel sale information submitted for the DOL fuel tax purposes to report to the state the GHG emissions associated with the fuel.

Ecology and the Department of Commerce must report to the Governor and Legislature by December 31 of even-numbered years regarding total GHG emissions and GHG emissions by source sector in Washington. According to the most recent Ecology data, as of 2017 the total annual GHG emissions in Washington were estimated at 97.5 million metric tons (MMT) of CO₂e. Of these emissions, a total of 43.26 MMT CO₂e were attributable to transportation sources, of which on-road gasoline accounted for 21.53 MMT CO₂e and on-road diesel accounted for 8.36 MMT CO₂e.

Statewide Emissions Limits.

In 2008 Washington enacted legislation that sets a series of limits on the emission of GHGs within the state. Ecology is responsible for monitoring and tracking the state's progress toward the emission limits. In 2020 additional legislation was enacted to update the state limits to the following:

- By 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 MMT.
- By 2030, reduce overall emissions of GHGs in the state to 45 percent below 1990 levels, or 50 MMT.
- By 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990 levels, or 27 MMT.
- By 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT, and achieve net-zero GHG emissions.

Clean Energy Transformation Act.

Under the Clean Energy Transformation Act, electric utilities in Washington must:

- eliminate coal-fired resources from their allocation of electricity by December 31, 2025;
- ensure that all retail sales of electricity to Washington customers are GHG neutral by January 1, 2030; and
- supply 100 percent of all retail sales to Washington customers with nonemitting and renewable resources by January 1, 2045.

Environmental Justice.

A proviso in the 2019-2021 Biennial Operating Budget directed the Governor's Interagency Council on Health Disparities to convene and staff an Environmental Justice Task Force (Task Force). The Task Force was directed to recommend strategies for incorporating environmental justice principles into future state agency actions across Washington. The Task Force published a report with its recommendations in the fall of 2020.

In 2018 a collaborative group began making available to the public an interactive mapping tool that compares communities across Washington for environmental health disparities, known as the Washington Environmental Health Disparities Map (Map). The Map was

developed by the University of Washington's Department of Environmental and Occupational Health Sciences, Front and Centered, the departments of Health and Ecology, and the Puget Sound Clean Air Agency. The Map includes 19 specific indicators of health disparities, which are divided into four themes: environmental exposures; environmental effects; sensitive populations; and socioeconomic factors.

Washington Healthy Environment for All Act.

The Washington Healthy Environment for All Act (HEAL Act) of 2021 (Engrossed Second Substitute Senate Bill 5141) requires certain state agencies, including Ecology, to apply and comply with specified environmental justice requirements with respect to agency activities.

The HEAL Act establishes the Environmental Justice Council to advise covered agencies on incorporating environmental justice into agency activities.

Summary of Amended Bill:

Cap and Invest Program.

In order to ensure that greenhouse gas (GHG) emissions are reduced consistent with the state's 2030, 2040, and 2050 emissions limits, the Department of Ecology (Ecology) must implement a cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments (Cap and Invest Program, or Program), with the Program commencing by January 1, 2023.

The Program must consist of:

- annual allowance budgets that limit emissions from covered entities;
- defining those entities covered by the Cap and Invest Program, and those entities that may voluntarily opt into coverage under the Program;
- distribution of emission allowances;
- providing for offset credits as a method for meeting a compliance obligation;
- defining the compliance obligation for covered entities;
- establishing the authority of Ecology to enforce the program requirements;
- creating a Climate Investment Account for the deposit of receipts from the distribution of emission allowances;
- providing for the transfer of allowances and recognition of compliance instruments, including those issued by jurisdictions that may be linked with the state;
- providing monitoring and oversight of the sale and transfer of allowances;
- creating a price ceiling and associated mechanisms; and
- providing for the allocation of allowances to emissions-intensive, trade-exposed (EITE) industries.

Ecology must consider opportunities to implement the Cap and Invest Program in a manner that allows linking the Program with those of other jurisdictions. Ecology must evaluate

whether such linkage will provide for a most cost-effective means for covered entities to meet their compliance obligations in Washington while recognizing the special characteristics of the state's economy, communities, and industries. Ecology is authorized to enter into a linkage agreement with another jurisdiction after conducting an environmental justice assessment and after formal notice and the opportunity for a public hearing.

During the 2022 Regular Legislative Session, Ecology must bring forth agency request legislation developed in consultation with EITE businesses, covered entities, environmental advocates, and overburdened communities that outlines a compliance pathway specific to EITE businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

By December 1, 2027, and at least every four years thereafter, Ecology must submit a report to the Legislature that includes a comprehensive review of the implementation of the Cap and Invest Program to date, including but not limited to outcomes relative to the state's emissions reduction limits, overburdened communities, covered entities, and EITE businesses. Ecology must transmit the report to the Environmental Justice Council at the same time it is submitted to the Legislature.

Ecology must bring forth agency request legislation if the agency finds that any provision of the Cap and Invest Program prevents linking the state's program with that of any other jurisdiction.

Environmental Justice.

Cap and Invest Program Review.

To ensure that the Cap and Invest Program achieves reductions in criteria pollutants as well as GHG emissions in overburdened communities highly impacted by air pollution, Ecology must:

- identify overburdened communities, which may be accomplished through Ecology's process to identify overburdened communities under the Washington Healthy Environment for All Act (HEAL Act);
- deploy an air monitoring network in overburdened communities to collect sufficient air quality data for the 2023 review and subsequent reviews of criteria pollutant reductions; and
- within the identified communities, analyze and determine which sources are the greatest contributors of criteria pollutants and develop a high-priority list of significant emitters.

Prior to listing any entity as a high-priority emitter, Ecology must notify that entity and share the data used to rank that entity as a high-priority emitter, and provide a period of not less than 60 days for the covered entity to submit more recent data or other information

relevant to the designation of that entity as a high-priority emitter.

Beginning in 2023, and every two years thereafter, Ecology must conduct a review to determine levels of criteria pollutants, as well as GHG emissions, in identified overburdened communities. This review must also include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities. Ecology may conduct this evaluation jointly with the Department of Health.

Once this review determines the levels of criteria pollutants in an identified overburdened community, Ecology, in consultation with local air pollution control authorities, must:

- establish air quality targets to achieve air quality consistent with whichever is more protective for human health:
 - national ambient air quality standards established by the United States Environmental Protection Agency; or
 - the air quality experienced in neighboring communities that are not identified as overburdened;
- identify the stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing;
- achieve reduction targets through the adoption of emission control strategies or other methods;
- adopt, along with local air pollution control authorities, stricter air quality standards, emission standards, or emissions limitations on criteria pollutants, consistent with the authority of Ecology provided under the Clean Air Act, and may consider alternative mitigation actions that would reduce criteria pollution by similar amounts; and
- after the adoption of the stricter air quality standards, emission standards, or emissions limitations on criteria pollutants, issue an enforceable order or the local air authority must issue an enforceable order, as necessary to comply with the stricter standards or limitations.

Ecology or the local air authority must initiate the process, including provision of notice to all relevant affected permittees or registered sources and to the public, to adopt and implement an enforceable order within 6 months of the adoption of standards or limitations.

Ecology or the local air authority may not impose requirements on a permitted stationary source that are disproportionate to the permitted stationary source's contribution to air pollution compared to other permitted stationary sources and other sources of criteria pollutants in the overburdened community.

An eligible facility sited after the effective date of the act that receives allowances must mitigate increases in its emissions of particulate matter in overburdened communities.

Ecology must create and adopt a supplement to its community engagement plan developed pursuant to the HEAL Act. The supplement must describe how Ecology will engage with overburdened communities and vulnerable populations in:

- identifying emitters in overburdened communities; and
- monitoring and evaluating criteria pollutant emissions in those areas.

The community engagement plan must include methods for outreach and communication with those who face barriers, language or otherwise, to participation.

Environmental Justice Assessment.

When allocating funds from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities Improvement Account, or administering grants or programs funded by these accounts, state agencies must conduct an environmental justice assessment consistent with the requirements of the HEAL Act and establish a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities.

Agencies allocating funds or administering grants or programs from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities Account must:

- report annually to the Environmental Justice Council regarding progress toward meeting environmental justice and environmental health goals;
- consider recommendations by the Environmental Justice Council; and
- create and adopt a community engagement plan if the agency is not a covered agency subject to the requirements of the HEAL Act.

Environmental Justice Council.

The Environmental Justice Council created in the HEAL Act must provide recommendations to the Legislature, agencies, and the Governor in the development and implementation of the Cap and Invest Program and the programs funded from the Carbon Emissions Reduction Account and the Climate Investment Account.

In addition to the duties and authorities granted in the HEAL Act, the Environmental Justice Council must:

- provide a forum to analyze policies adopted under or in conjunction with the Cap and Invest Program to determine if the policies lead to improvements within overburdened communities;
- recommend procedures and criteria for evaluating programs, activities, or projects for review;
- recommend copollutant emissions reduction goals in overburdened communities;
- evaluate the level of funding provided to assist vulnerable populations, low-income individuals, and impacted workers and the funding of projects and activities located within or benefitting overburdened communities;
- recommend environmental justice and environmental health goals for programs,

- activities, and projects funded from the Climate Investment Account, and review annual agency reports on outcomes and progress toward meeting the goals;
- provide recommendations to implementing agencies for meaningful consultation with vulnerable populations; and
 - recommend how to support public participation through capacity grants.

For the purpose of performing the duties under the Cap and Invest Program, two additional tribal members are added to the membership of the Environmental Justice Council.

Tribal Consultation.

Agencies that allocate funding or administer grant programs appropriated from the Climate Investment Account must develop a consultation framework in coordination with tribal governments that includes best practices, protocols for communication, and collaboration with federally recognized tribes. Under this consultation framework, before allocating funding or administering grant programs agencies must offer consultation with federally recognized tribes on all funding decisions and programs that may impact, infringe upon, or impair the governmental efforts of federally recognized tribes to adopt or enforce their own standards governing or protecting the tribe's resources or other rights and interests in their tribal lands and lands within which a tribe or tribes possess rights reserved by treaty.

If any funding decision, project, activity, or program that impacts land within which a tribe or tribes possess rights reserved by federal treaty, statute, or executive order is undertaken or funded under the Cap and Invest Program without consultation with a federally recognized tribe, an affected tribe may request that all further action on the decision, project, activity, or program cease until meaningful consultation with any directly impacted federally recognized tribe is completed.

A project or activity funded in whole or in part from the Climate Investment Account must be paused or ceased in the event that an affected federally recognized Indian tribe or the Department of Archaeology and Historic Preservation provides timely notice of a determination to Ecology that the project will adversely impact cultural resources, archaeological sites, or sacred sites. A project or activity paused at the direction of Ecology may not be resumed or completed unless the potentially impacted tribe provides consent to Ecology and the proponent of the project or activity.

Definitions.

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

- highly impacted communities, as defined under the Clean Energy Transformation

Act;

- communities located in census tracts that are fully or partially on "Indian country," as defined under federal law; and
- populations, including Native Americans or immigrant populations, who may be exposed to environmental contaminants and pollutants outside of the geographic area in which they reside based on the populations' use of traditional or cultural foods and practices.

Overburdened communities identified by Ecology may include the same communities as those identified by the agency through its process for identifying overburdened communities under the HEAL Act.

Climate Commitment Governance Structure.

The Governor shall establish a governance structure to implement the state's climate commitment under the authority provided under the Cap and Invest Program and other statutory authority to provide accountability for achieving the state's GHG emissions limits, to establish a coordinated and strategic statewide approach to climate resilience, to build an equitable and inclusive clean energy economy, and to ensure that the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those limits.

The governance structure for implementing the state's climate commitment must include, but not be limited to, the following elements:

- a strategic plan for aligning existing law, rules, policies, programs, and plans with the state's GHG emissions limits, to the full extent allowed under existing authority;
- common state policies, standards, and procedures for addressing GHG emissions and climate resilience, including grant and funding programs, infrastructure investments, and planning and siting decisions;
- a process for prioritizing and coordinating funding consistent with strategic needs for GHG emissions reductions, equity and environmental justice, and climate resilience actions;
- an updated statewide strategy for addressing climate risks and improving resilience of communities and ecosystems;
- a comprehensive community engagement plan that addresses and mitigates barriers to engagement from vulnerable populations, overburdened communities, and other historically or currently marginalized groups; and
- an analysis of gaps and conflicts in state law and programs, with recommendations for improvements to state law.

The Office of the Governor must develop policy and budget recommendations to the Legislature necessary to implement the state's climate commitment by December 31, 2021.

Cap and Invest Program Budget and Timelines.

The annual allowances budgets established under the Cap and Invest Program must be set to achieve the share of reductions by covered entities necessary to achieve the state's 2030, 2040, and 2050 emissions limits. Annual allowance budgets must be set such that the use of offsets as compliance instruments does not prevent the achievement of the emissions limits. In so setting annual allowance budgets, Ecology must reduce the annual allowance budget relative to the limits in an amount equivalent to offset use, or in accordance with a similar methodology. Ecology must adopt annual allowance budgets for the Program on a calendar year basis that provide for progressively equivalent reductions year over year.

An allowance distributed under the Program, either directly by Ecology or through auctions, does not expire and may be held or banked.

Ecology must complete an evaluation by December 31, 2027, and by December 31, 2035, of the performance of the Program, including its performance in reducing GHG emissions. If the evaluation shows that adjustments to the annual allowance budgets are necessary to ensure achievement of the 2030 and 2040 emission reduction limits, Ecology must adjust the annual budgets accordingly. Ecology must complete additional evaluations by December 31, 2040, and by December 31, 2045, and make adjustments in the annual allowance budgets to ensure achievement of the 2050 emission reduction limit. Ecology must determine and make public the circumstances, metrics, and processes that would initiate the public consideration of additional allowance budget adjustments to ensure successful achievement of the emission reduction limits.

First Compliance Period, 2023-2026.

By October 1, 2022, Ecology must adopt annual allowance budgets for the first compliance period of the Cap and Invest Program to be distributed from January 1, 2023, through December 31, 2026. The annual allowance budgets for the first compliance period must be based on an emissions baseline establishing the proportionate share that the total GHG emissions of covered entities for the first compliance period bears to the total anthropogenic GHG emissions in the state during 2015 through 2019, based on data reported to Ecology under the state's GHG Emissions Reporting Program.

Second Compliance Period, 2027-2030.

By October 1, 2026, Ecology must add to its emissions baseline by incorporating the proportionate share that the total GHG emissions of new covered entities in the second compliance period bear to the total anthropogenic GHG emissions in the state during 2023 through 2025. Ecology must adopt annual allowance budgets for the second compliance period to be distributed from January 1, 2027, through December 31, 2030.

Compliance Periods Beginning in 2031.

By October 1, 2028, Ecology must adopt by rule the annual allowances budgets for the calendar years 2031 through 2040.

Entities Covered Under the Cap and Invest Program.

First Compliance Period, 2023-2026.

A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions for any calendar year from 2015 through 2019 under the GHG Emissions Reporting Program, or if additional data reported to Ecology indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds:

- where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent (MTCO_{2e});
- where the person is a first jurisdictional deliverer of electricity and generates electricity in the state and emissions associated with this generation equals or exceeds 25,000 MTCO_{2e};
- where the person is a first jurisdictional deliverer importing electricity into the state and the cumulative annual total of emissions associated with the imported electricity, whether from specified or unspecified sources, equals or exceeds 25,000 MTCO_{2e} or from an unspecified source;
- where the person is a supplier of fossil fuel other than natural gas, and from that fuel 25,000 MTCO_{2e} or more would result from the full combustion or oxidation, excluding the amounts for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;
- where the person supplies natural gas in amounts that would result in exceeding 25,000 MTCO_{2e} if fully combusted or oxidized, excluding amounts supplied to other covered entities and amounts delivered to opt-in entities, and excluding the amounts for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington;
- where the person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state in amounts that would result in exceeding 25,000 MTCO_{2e} if fully combusted or oxidized, excluding amounts supplied to other covered entities and amounts delivered to opt-in entities; and
- where the person is an end-use customer in the state who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that would result in exceeding 25,000 MTCO_{2e} if fully combusted or oxidized, excluding amounts supplied to other covered entities and amounts delivered to opt-in entities.

Second Compliance Period, 2027-2030.

A person is a covered entity as of the beginning of the second compliance period and all subsequent compliance periods if the person reported emissions for any calendar year from 2023 through 2025 where the person owns or operates a waste-to-energy facility utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 MTCO_{2e}.

Compliance Periods Beginning in 2031.

A person is a covered entity beginning January 1, 2031, and all subsequent compliance periods if the person reported emissions for any calendar year from 2027 through 2029, where the person owns or operates a:

- landfill utilized by a county or city solid waste management program and the facility's emissions equal or exceed 25,000 MTCO_{2e}; or
- railroad company, and the railroad company's emissions equal or exceed 25,000 MTCO_{2e}.

Owners or operators of landfills that meet the following conditions are exempt from coverage under the compliance periods beginning in 2031:

- where the landfill captures at least 75 percent of the landfill gas generated by the decomposition of waste; and
- where the landfill operates a program, individually or through partnership with another entity, that results in the production of renewable natural gas or electricity from landfill gas generated by the facility.

It is the intent of the Legislature to adopt a GHG reduction policy specific to landfills. If such a policy is not enacted by January 1, 2030, the compliance requirements for landfills under the Cap and Invest Program take full effect.

Exempt Emissions.

The following emissions are exempt from coverage under the Cap and Invest Program, regardless of emissions levels:

- emissions from the combustion of aviation fuels;
- emissions from watercraft fuels supplied in Washington that are combusted outside of Washington;
- emissions from the TransAlta coal-fired electric generation facility;
- carbon dioxide emissions from the combustion of biomass or biofuels, including motor vehicle fuel or special fuel that is used exclusively for agricultural purposes; and
- emissions from national security facilities.

Facility Siting.

The Legislature intends to promote a growing and sustainable economy and to avoid

leakage of emissions from manufacturing to other locations. The Legislature further intends to see innovative new businesses locate and grow in Washington that contribute to the state's prosperity and environmental objectives.

In achieving the state's GHG emissions reduction limits, the state, including lead agencies designated under the State Environmental Policy Act (SEPA), must pursue the limits in a manner that recognizes the siting and placement of new or expanded best-in-class facilities with lower carbon emitting processes is in the economic and environmental interests of the state.

In conducting a life-cycle analysis, if required, for new or expanded facilities that require review under the SEPA, a lead agency must evaluate and attribute any potential net cumulative GHG emissions resulting from the project as compared to other existing facilities or best available technology, including best-in-class facilities and emerging lower carbon processes that supply the same product or end use. Ecology may adopt rules to determine the appropriate threshold for applying this analysis.

Covered emissions from an entity that is or will be a covered entity under the Cap and Invest Program may not be the basis for denial of a permit for a new or expanded facility. Covered emissions must be included in a life-cycle analysis, if required under the SEPA. Nothing in this requirement requires a lead agency or a permitting agency to approve or issue a permit to a permit applicant, including to a new or expanded fossil fuel project.

A lead agency designated under the SEPA or a permitting agency must allow a new or expanded facility that is a covered entity or opt-in entity to satisfy a mitigation requirement for its covered emissions under the Cap and Invest Program, and under any GHG emission mitigation requirements for covered emissions under the SEPA, by submitting to Ecology the number of compliance instruments equivalent to its covered emissions during a compliance period.

Registration Requirements.

All covered entities must register to participate in the Cap and Invest Program, following procedures adopted by Ecology by rule. Entities registering to participate in the Program must describe any direct or indirect affiliation with other registered entities.

A person responsible for GHG emissions that is not a covered entity may voluntarily participate in the Program by registering as an opt-in entity. An opt-in entity must satisfy the same registration requirements as covered entities. Once registered, an opt-in entity is allowed to participate as a covered entity in auctions and must assume the same compliance obligation to transfer compliance instruments equal to their emissions at the appointed transfer dates. An opt-in entity may opt out of the Program at the end of any compliance period by providing written notice to Ecology at least six months prior to the end of the compliance period. The opt-in entity continues to have a compliance obligation through the

current compliance period. An opt-in entity is not eligible to receive directly distributed, no-cost allowances.

A person that is not covered by the Program and is neither a covered entity nor an opt-in entity may voluntarily participate in the Program as a general market participant. General market participants must meet all applicable registration requirements specified by rule. Federally recognized tribes and federal agencies may elect to participate in the Program as opt-in entities or general market participants.

Ecology must maintain a public roster of all covered entities, opt-in entities, and general market participants on its public website.

Auctions of Allowances.

Except for directly distributed, no-cost allowances allocated to certain entities, allowances under the Cap and Invest Program must be distributed through auctions. Ecology must hold a maximum of four auctions each year, plus any necessary reserve auctions. An auction may include allowances from the annual allowance budget of the current year and allowances from the annual allowances budgets of prior years that remain to be distributed. Ecology must make future vintage allowances available through parallel auctions at least twice annually in addition to the auctions through which current vintage allowances are exclusively offered. Ecology must transmit to the Environmental Justice Council an auction notice at least 60 days prior to each auction, as well as a summary results report and a post-auction public proceeds report within 60 days after each auction. Ecology must communicate the results of the previous calendar year's auctions to the Environmental Justice Council on an annual basis beginning in 2024.

Ecology must engage a qualified, independent contractor to run the auctions. Ecology must also engage a qualified financial services administrator to hold the bid guarantees, evaluate bid guarantees, and inform Ecology of the value of bid guarantees once the bids are accepted.

Auctions are open to covered entities, opt-in entities, and general market participants that are registered entities in good standing. Ecology must adopt by rule the requirements for a registered entity to register and participate in a given auction.

To protect the integrity of the auctions, a registered entity or group of registered entities with a direct corporate association are subject to auction purchase and holding limits. Ecology may limit these if the agency deems it necessary to protect the integrity and functioning of the auctions. A covered entity or an opt-in entity may not buy more than 10 percent of the allowances offered during a single auction. A general market participant may not buy more than 4 percent of the allowances offered during a single auction and may not in aggregate own more than 10 percent of total allowances to be issued in a calendar year. No registered entity may buy more than the entity's bid guarantee. No registered entity may

buy allowances that would exceed the entity's holding limit at the time of the auction.

Ecology must adopt by rule provisions to guard against bidder collusion and minimize the potential for market manipulation. A registered entity may not release or disclose any bidding information. Ecology may cancel or restrict a previously approved auction participation application or reject a new application if the agency determines that a registered entity has:

- provided false or misleading facts;
- withheld material information that could influence a decision by Ecology;
- violated any part of the auction rules;
- violated registration requirements; or
- violated any of the rules regarding the conduct of the auction.

Ecology must design allowance auctions so as to allow, to the maximum extent practicable, linking with external GHG emissions trading programs in other jurisdictions and to facilitate the transfer of allowances when the state's program is linked with other external GHG emissions trading programs. Ecology may conduct auctions jointly with other linked jurisdictions.

In setting the number of allowances offered at each auction, Ecology must consider the allowances in the marketplace due to the marketing of no-cost allowances issued under the Cap and Invest Program. Ecology may offer only such number of allowances at each auction as will enhance the likelihood of achieving the state's GHG emissions limits.

An allowance is not a property right.

Auction Proceeds.

Upon completion and verification of auction results, the financial services administrator must notify winning bidders and transfer the auction proceeds to the State Treasurer for deposit each fiscal year, as follows:

- For fiscal year 2023, \$127,341,000 must first be deposited into the Carbon Emissions Reduction Account, and the remaining proceeds into the Climate Investment Account and the Air Quality and Health Disparities Improvement Account.
- For fiscal year 2024, \$356,697,000 must first be deposited into the Carbon Emissions Reduction Account, and the remaining proceeds into the Climate Investment Account and the Air Quality and Health Disparities Improvement Account.
- For fiscal year 2025, \$366,558,000 must first be deposited into the Carbon Emissions Reduction Account, and the remaining proceeds into the Climate Investment Account and the Air Quality and Health Disparities Improvement Account.
- For fiscal years 2026 through 2037, \$359,117,000 per year must first be deposited into the Carbon Emissions Reduction Account, and the remaining proceeds into the Climate Investment Account and the Air Quality and Health Disparities Improvement Account.

The deposits into the Carbon Emissions Reduction Account made in fiscal years 2023 through 2037 must not exceed \$5.2 billion over the first 16 years of the Cap and Invest Program, and any remaining auction proceeds must be deposited into the Climate Investment Account and Air Quality and Health Disparities Improvement Account. The deposits into the Carbon Emissions Reduction Account must be prorated equally from the proceeds of each of the auctions occurring during each fiscal year.

For fiscal year 2038 and each year thereafter, upon completion and verification of the auction results, the financial services administrator must notify the winning bidders and transfer the auction proceeds to the State Treasurer for deposit, such that 50 percent of the auction proceeds are deposited into the Carbon Emissions Reduction Account and the remaining auction proceeds are deposited into the Climate Investment Account and Air Quality and Health Disparities Improvement Account.

Allocations of Allowances to Emissions-Intensive, Trade-Exposed Industries.

Facilities owned or operated by a covered entity must receive an allocation of allowances for the covered emissions at those facilities at no cost if the operations of the facility are classified as emissions-intensive and trade-exposed (EITE), as determined by being engaged in one or more of the following industry processes:

- metals manufacturing;
- paper manufacturing;
- aerospace product and parts manufacturing;
- wood products manufacturing;
- nonmetallic mineral manufacturing, including glass container manufacturing;
- chemical manufacturing;
- computer and electronic product manufacturing, including semiconductor and related device manufacturing;
- food manufacturing;
- cement manufacturing;
- petroleum refining;
- asphalt refining;
- asphalt paving mixtures and block manufacturing from refined petroleum;
- asphalt shingle and coating manufacturing from refined petroleum; and
- all other petroleum and coal products manufacturing from refined petroleum.

By July 1, 2022, Ecology must adopt by rule objective criteria for both emissions intensity and trade exposure for the purpose of identifying EITE manufacturing businesses during the second compliance period of the Cap and Invest Program and subsequent compliance periods. A facility covered for the first compliance period is considered an EITE facility and is eligible for allocation of no-cost allowances for the second compliance period. In addition, any covered entity that is a manufacturing business that can demonstrate to Ecology that it meets this criteria is also eligible for treatment as an EITE business and is

eligible for allocation of no-cost allowances. In developing the objective criteria for emissions intensity and trade exposure, Ecology must consider the locations of facilities potentially identified as EITE businesses relative to overburdened communities.

For the first compliance period beginning January 1, 2023, the annual allocation of no cost allowances for direct distribution to an EITE facility must be equal to the facility's baseline carbon intensity established using data from 2015 through 2019, or other data reported to Ecology, multiplied by the facility's actual production for each calendar year during the compliance period. For facilities using a mass-based approach, the allocation of no cost allowances shall be equal to the facility's mass-based baseline using data from 2015 through 2019, or other data as allowed under this section.

For the second compliance period, beginning in January, 2027, and in each subsequent compliance period, the annual allocation of no cost allowances established for the first compliance period shall be adjusted according to certain benchmark reduction schedules multiplied by the facility's actual production during the period. Ecology shall adjust the no cost allocation of allowances and credits to an EITE facility to avoid duplication with any no cost allowances transferred to electric or natural gas utilities.

"Carbon intensity" means the amount of carbon dioxide equivalent emissions from a facility in metric tons divided by the facility specific measure of production including, but not limited to, units of product manufactured or sold, over the same time interval.

If an EITE facility is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances, the entity may elect to use a mass-based baseline that does not vary based on changes in production volumes. The mass-based baseline must be based upon data from 2015 through 2019, unless the EITE can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015. For each year during the first four-year compliance period that begins January 1, 2023, these facilities must be awarded no cost allowances equal to 100 percent of the facility's mass-based baseline. For each year during the second four-year compliance period that begins January 1, 2027, these facilities must be awarded no cost allowances equal to 97 percent of the facility's mass-based baseline. For each year during the third compliance period that begins January 1, 2031, these facilities must be awarded no cost allowances equal to 94 percent of the facility's mass-based baseline. Except for aerospace products and components manufacturers, if a facility elects to use a mass-based baseline, it may not later convert to a carbon intensity benchmark during the first three compliance periods.

By December 1, 2026, Ecology shall provide a report to the appropriate committees of the Legislature that describes alternative methods for determining the amount and a schedule of allowances to be provided to facilities owned or operated by each covered entity designated as an emissions-intensive, trade-exposed facility from January 1, 2035 through January 1, 2050. The report must include a review of global best practices in ensuring against

emissions leakage and economic harm to businesses in carbon pricing programs and describe alternative methods of emissions performance benchmarking and mass-based allocation of no cost allowances.

If the Legislature does not adopt a compliance obligation for EITE facilities by December 1, 2027, those facilities must continue to receive allowances as provided in the third four-year compliance period that begins January 1, 2031.

Rules adopted by Ecology for the allocation of no cost allowances to EITE facilities must include protocols for allocating allowances to an eligible facility built after the effective date of the act. The protocols must include consideration of the products and criteria pollutants being produced by the facility, as well as the local environmental and health impacts associated with the facility. For a facility that is built on tribal lands or is determined by Ecology to impact tribal lands and resources, the protocols must be developed in consultation with the affected tribal nations.

Allocation of Allowances to Electric Utilities.

Ecology must adopt an allocation schedule by rule, in consultation with the Department of Commerce and the Utilities and Transportation Commission, for the provision of allowances at no cost to electric utilities, consistent with a forecast of each utility's supply and demand and the cost burden resulting from the inclusion of the covered entities in each sequential compliance period, as follows:

- by October 1, 2022, for the first compliance period;
- by October 1, 2026, for the second compliance period; and
- by October 1, 2028, for the compliance periods between 2031 and 2045.

Under no circumstances may utilities receive any free allowances after 2045.

During the first compliance period, allowances allocated at no cost to consumer-owned and investor-owned electric utilities may be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both. The rules adopted by Ecology must include provisions for directing revenues generated through the allocation of no cost allowances to the applicable utilities.

By October 1, 2026, Ecology, in consultation with the Department of Commerce and the Utilities and Transportation Commission, must adopt rules governing the amount of allowances allocated at no cost to electric utilities that must be consigned to auction. For calendar year 2030, electric utilities may use allowances for compliance equal to their covered emissions if not subject to a potential penalty under the Clean Energy Transformation Act.

The benefits of all allowances consigned to auction by electric utilities must be used for the benefit of ratepayers, with the first priority being the mitigation of any rate impacts to low-

income customers.

Allocation of Allowances to Natural Gas Utilities.

By October 1, 2022, Ecology must adopt rules, in consultation with the Utilities and Transportation Commission, establishing the methods and procedures for allocating allowances to natural gas utilities at no cost during the first two compliance periods. The rules must allow for a natural gas utility to be provided allowances to cover their emissions and decline proportionally with the cap. Allowances allocated at no cost to natural gas utilities must be consigned to auction for the benefit of ratepayers, deposited for compliance, or a combination of both.

By October 1, 2028, Ecology must adopt an allocation schedule for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities for the compliance periods between 2031 and 2040.

Beginning in 2023, 65 percent of the no-cost allowances allocated to natural gas utilities must be consigned to auction for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of the Cap and Invest Program. Rules adopted must increase the percentage of allowances consigned to auction by 5 percent each year until a total of 100 percent is reached.

In order to qualify for no-cost allowances, covered entities that are natural gas utilities must provide copies of their GHG emissions reports filed with the United States Environmental Protection Agency under 40 C.F.R. Part 98 subpart NN - Supplier of Natural Gas and Natural Gas Liquids for calendar years 2015 through 2021 to Ecology on or before March 31, 2022. To continue receiving no-cost allowances, these reports must be provided to Ecology for each reporting year in the manner and by the dates provided under the state GHG Emissions Reporting Program as part of the GHG reporting requirements of the Cap and Invest Program.

Emissions Containment Reserve Withholding.

To help ensure that the price of allowances remains sufficient to incentivize reductions in GHG emissions, Ecology must establish an emissions containment reserve and set an emissions containment reserve trigger price by rule. The trigger price must be set at a reasonable amount above the auction floor price and equal to the level established in jurisdictions with which Ecology has entered into a linkage agreement. In the event that the trigger price is met during an auction, Ecology must automatically withhold allowances as needed. Ecology must convert and transfer any allowances that have been withheld from auction into the Emissions Containment Reserve Account.

Allowance Price Containment and Price Ceiling.

To help minimize allowance price volatility in the auction, Ecology must adopt by rule an auction floor price and a schedule for the floor price to increase by a predetermined amount every year. Ecology may not sell allowances at bids lower than the auction floor price. Ecology's rules must specify holding limits that determine the maximum number of allowances that may be held for use or traded by a registered entity at any one time. Ecology must also establish an auction ceiling price to limit extraordinary prices and to determine when to offer allowances through the allowance price containment reserve.

Offsets.

Ecology must adopt by rule the protocols for establishing offset projects and securing offset credits that may be used to meet a portion of a covered or opt-in entity's compliance obligation under the Cap and Invest Program.

A total of no more than 5 percent of a covered or opt-in entity's compliance obligation during the first compliance period may be met by transferring offset credits. During these years, at least 50 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state.

No more than 4 percent of a covered or opt-in entity's compliance obligation during the second compliance period may be met by transferring offset credits. During these years, at least 75 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state. Ecology may reduce the 75 percent requirement if it determines there is not sufficient offset supply in the state to meet offset demand during the second compliance period.

The offset limits for the first and second compliance periods may be modified by rule when appropriate to ensure the achievement of the statewide emissions limits and to provide for alignment with other jurisdictions to which the state has linked. The limits may also be reduced for a specific covered or opt-in entity if Ecology determines that the entity has or is likely to:

- contribute substantively to cumulative air pollution burden in an overburdened community as determined by criteria established by Ecology; or
- violate any permits required by any federal, state, or local air pollution control agency where the violation may result in an increase in emissions.

An offset project on federally recognized tribal land does not count against the offset credit limits established for the first and second compliance periods. No more than 3 percent of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land during the first compliance period. No more than 2 percent of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land during the

second compliance period.

Any offset credits used may not be additional to or allow for an increase in the statewide emissions limits, as reflected in the annual allowance budgets. The offset credit must be registered and tracked as a compliance instrument.

Beginning in 2031, the limits on offset credits established for the second compliance period apply unless modified by rule as adopted by Ecology after a public consultation process.

Assistance Program for Offsets on Tribal Lands.

In order to ensure that a sufficient number of high-quality offset projects are available, Ecology must establish an assistance program for offset projects on federally recognized tribal lands in the state. The assistance may include, but is not limited to, funding or consultation for federally recognized tribal governments to assess a project's technical feasibility, investment requirements, development and operational costs, expected returns, administrative and legal hurdles, and project risks and pitfalls. Funding or assistance may be provided upon request by a federally recognized tribe.

It is the intent of the Legislature that not less than \$5 million be provided in the biennial omnibus operating appropriations act for the purposes of an assistance program for offsets on tribal lands.

Small Forestland Owner Work Group.

The Department of Natural Resources must contract with an eligible entity capable of providing public value to the state through the establishment and implementation of a Small Forestland Owner Work Group (Work Group). The purpose of the Work Group is to forward the goals and implementation of the Cap and Invest Program by identifying possible carbon market opportunities, including, but not limited to, the provision of offset credits that qualify under the Program, and other incentive-based GHG reduction programs that Washington landowners may be able to access, including compliance markets operated by other jurisdictions, voluntary markets, and federal, state, and private programs for forestlands that can be leveraged to achieve carbon reductions.

The Work Group must transmit a final report to Ecology by December 1, 2022, that provides recommendations for incentives, the implementation of incentives, and payment structures necessary to support small forestland owners and any recommendations around extending the Work Group or making the Work Group permanent. Ecology must submit the final report to the Legislature by December 31, 2022.

Compliance Obligations.

A covered or opt-in entity has a compliance obligation for its emissions during each four-

year compliance period beginning January 1, 2023. A covered or opt-in entity must transfer a number of compliance instruments, including eligible offset credits, equal to their covered emissions by November 1 of each calendar year in which the entity has a compliance obligation. Ecology must set by rule a percentage of compliance instruments that must be transferred in each year of the compliance period such that covered and opt-in entities are allowed to smooth their compliance obligation within the compliance period, but must fully satisfy their compliance obligation over the course of the compliance period, in a manner similar to external GHG emissions trading programs in other jurisdictions.

A covered or opt-in entity submitting insufficient compliance instruments to meet its compliance obligation is subject to a penalty.

Older vintage allowances must be retired before newer vintage allowances. A covered or opt-in entity may not borrow an allowance from a future allowance year to meet a current or part compliance obligation. Upon receipt by Ecology of all compliance instruments transferred by a covered entity or opt-in entity to meet its compliance obligation, Ecology shall retire the allowances or offset credits.

Contingent Effective Date for Compliance Obligations.

In order to coordinate and synchronize the Cap and Invest Program with other transportation-related investments, compliance obligations under the Program do not take effect until a separate additive transportation revenue act becomes law, at which time the Department of Licensing must provide written notice to the Chief Clerk of the House of Representatives, the Secretary of the Senate, and the Office of the Code Reviser.

"Additive transportation revenue act" means an act, enacted after April 1, 2021, in which the State Fuel Tax is increased by an additional and cumulative tax rate of at least 5 cents per gallon of fuel

Enforcement.

All covered and opt-in entities are required to submit compliance instruments in a timely manner to meet their compliance obligations and must comply with all requirements for monitoring, reporting, holding, and transferring emission allowances and other provisions of the Cap and Invest Program.

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

If a covered or opt-in entity fails to submit penalty allowances as required, Ecology must issue an order or issue a new penalty of up to \$10,000 per day per violation, or both, for failure to submit penalty allowances. The order may include a plan and schedule for coming into compliance.

Ecology may issue a penalty up to \$50,000 per day per violation for violations of the provisions protecting against bidder collusion and market manipulation. For the first compliance period, Ecology may reduce the amount of the penalty by adjusting the monetary amount or the number of penalty allowances.

All penalties must be deposited into the Climate Investment Account.

Appeals of order and penalties must be made to the Pollution Control Hearings Board.

Preemption Provisions.

No city, town, county, township, or other subdivision or municipal corporation of the state may implement a charge or tax based exclusively upon the quantity of GHG emissions.

No state agency may adopt or enforce a program that regulates GHG emissions from a stationary source except as provided under the Cap and Invest Program.

The Cap and Invest Program preempts the provisions of Ecology's Clean Air Rule.

Linkage with Other Jurisdictions.

Ecology must seek to link the Cap and Invest Program with those of other jurisdictions in order to:

- allow for the mutual use and recognition of compliance instruments issued by Washington and other linked jurisdictions;
- broaden the GHG emission reduction opportunities to reduce the costs of compliance on covered entities and consumers;
- enable allowance auctions to be held jointly and provide for the use of a unified tracking system for compliance instruments;
- enhance market security;
- reduce program administration costs; and
- provide consistent requirements for covered entities whose operations span jurisdictional boundaries.

The Director of Ecology is authorized to execute linkage agreements with other jurisdictions with established external GHG emissions trading programs. A linkage agreement must cover the following:

- provisions relating to quarterly auctions;

- provisions related to holding limits to ensure no entities in any of the linked programs are disadvantaged relative to their counterparts in the participating jurisdictions;
- other requirements, such as GHG reporting and verification, offset protocols, criteria, and process, and supervision and enforcement to prevent fraud, abuse, and market manipulation;
- common program registry, electronic auction platform, tracking systems for compliance instruments, and monitoring of compliance instruments;
- provisions to ensure coordinated administrative and technical support;
- provisions for public notice and participation; and
- provisions to collectively resolve differences, amend the agreements, and delink or otherwise withdraw from the agreements.

Before entering into a linkage agreement, Ecology must evaluate and make a finding regarding whether the aggregate number of unused allowances in a linked program would reduce the stringency of Washington's Program and the state's ability to achieve its GHG emissions reduction limits. Ecology must include in its evaluation a consideration of pre-2020 unused allowances that may exist in the program with which it is proposing to link. Before entering into a linkage agreement, Ecology must also establish a finding that the linking jurisdiction and the linkage agreement meets certain criteria and conduct a public comment process to obtain input and a review of the linkage agreement by relevant stakeholders and other interested parties. The input received from the public comment process must be considered before finalizing a linkage agreement.

In the event that Ecology determines that a full linkage agreement is unlikely to meet the required criteria, it may enter into a linkage agreement with limitations, including limits on the share of compliance that may be met with allowances originating from linked jurisdictions.

A linkage agreement approved by Ecology must:

- ensure that the linking jurisdiction has provisions to ensure the distribution of benefits from the linked program to vulnerable populations and overburdened communities;
- be determined by Ecology to not yield net adverse impacts to either jurisdictions' highly impacted communities or analogous communities in the aggregate, relative to the baseline level of emissions; and
- not adversely impact Washington's ability to achieve its statewide emission reduction limits.

The state retains all legal and policymaking authority over the design and enforcement of its Cap and Invest Program.

Rulemaking.

Ecology must adopt rules to implement the provisions of the Cap and Invest Program. Ecology may adopt emergency rules for initial implementation of the program, to

implement the state omnibus appropriations act for the 2021-2023 fiscal biennium, and to ensure that reporting and other program requirements are determined early for the purpose of program design and early notice to covered entities.

Expenditure Targets.

It is the intent of the Legislature that each year the total investments made through the Carbon Emissions Reduction Account, the Climate Commitment Account, the Natural Climate Solutions Account, and the Air Quality and Health Disparities Improvement Account achieve the following:

- a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified under the HEAL Act; and
- in addition, a minimum of not less than 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe.

The state must develop a process by which to evaluate the impacts of the investments made under the Cap and Invest Program, work across state agencies to develop and track priorities across the different eligible funding categories, and work with the Environmental Justice Council.

No expenditures may be made from the Carbon Emissions Reduction Account, the Climate Investment Account, or the Air Quality and Health Disparities Improvement Account if, by April 1, 2023, the Legislature has not considered and enacted request legislation brought forth by Ecology that outlines a compliance pathway specific to EITE businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

Carbon Emissions Reduction Account.

The Carbon Emissions Reduction Account is created in the State Treasury. Moneys in the account may be spent only after appropriation. Expenditures in the account are intended to affect reductions in transportation sector carbon emissions through a variety of carbon reducing investments. These can include, but are not limited to:

- transportation alternatives to single occupancy passenger vehicles;
- reductions in single occupancy passenger vehicle miles traveled;
- reductions in per mile emissions in vehicles; and
- emission reduction programs for freight transportation, including motor vehicles and rail, as well as for ferries and other maritime and port activities.

Expenditures from the account may only be made for transportation carbon emission reducing purposes and may not be made for highway purposes, except as otherwise specified.

It is the Legislature's intent that expenditures from the account used to reduce carbon emissions be made with the goal of achieving equity for communities that historically have been omitted or adversely impacted by past transportation policies and practices.

Climate Investment Account.

The Climate Investment Account is created in the State Treasury. Except as otherwise noted, all receipts from the auction of allowances under the Cap and Invest Program must be deposited into the account.

Projects or activities funded from the account must:

- meet high labor standards, including family sustaining wages, providing benefits including health care and employer-contributed retirement plans, career development opportunities; and
- maximize access to economic benefits from such projects for local workers and diverse businesses.

Each contracting entity's proposal for projects and activities funded from the account must be reviewed for equity and opportunity improvements efforts.

Moneys in the account may be used only for projects and programs that achieve the purposes of the Cap and Invest Program. Moneys in the account must first be appropriated for the administration of the requirements of the Cap and Invest Program, in an amount not to exceed 5 percent of the total receipt of funds from allowance auction proceeds.

Beginning July 1, 2024, and annually thereafter, the State Treasurer shall distribute funds in the account as follows:

- 75 percent of the moneys to the Climate Commitment Account; and
- 25 percent of the moneys to the Natural Climate Solutions Account.

These allocations must be reviewed by the Legislature on a biennial basis based on the changing needs of the state in meeting its clean economy and GHG reduction goals in a timely, economically advantageous, and equitable manner.

Climate Commitment Account.

The Climate Commitment Account is created in the State Treasury. The account must receive moneys distributed to it from the Climate Investment Account. Moneys in the account may be spent only after appropriation. Projects, activities, and programs eligible for funding from the account must be physically located in Washington and include, but are not limited to, the following:

- implementing the Working Families Tax Rebate;
- supplementing the Growth Management Planning and Environmental Review Fund

for the purpose of making grants or loans to local governments for the purposes of the Growth Management Act;

- programs, activities, or projects that reduce and mitigate impacts from GHGs and copollutants in overburdened communities;
- programs, activities, or projects that deploy renewable energy resources;
- programs, activities, or projects that increase the energy efficiency or reduce GHG emissions of industrial facilities;
- programs, activities, or projects that achieve energy efficiency or emissions reductions in the agricultural sector;
- programs, activities, or projects that increase energy efficiency in new or existing buildings or that promote low-carbon architecture;
- programs, activities, or projects that promote the electrification and decarbonization of new and existing buildings;
- programs, activities, or projects that improve energy efficiency, including district energy, and investments in market transformation of high efficiency electric appliances and equipment for space and water heating;
- clean energy transition and assistance programs, activities, or projects that assist affected workers or people with lower incomes during the transition to a clean energy economy;
- programs, activities, or projects that reduce emissions from landfills and waste-to-energy facilities through diversion of organic materials, methane capture or conversion strategies, or other means;
- carbon dioxide removal projects, programs, and activities; and
- activities to support efforts to mitigate and adapt to the effect of climate change affecting Indian tribes, including capital investments in support of the relocation of Indian tribes located in areas at heightened risk due to anticipated sea level rise, flooding, or other disturbances caused by climate change. The Legislature intends to dedicate at least \$50 million per biennium from the account for this purpose.

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

Natural Climate Solutions Account.

The Natural Climate Solutions Account is created in the State Treasury. All moneys directed to the account from the Climate Investment Account must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys in the account are intended to increase the resilience of the state's waters, forests, and other vital ecosystems to the impacts of climate change, conserve working forestlands at risk of conversion, and increase their carbon pollution reduction capacity through sequestration, storage, and overall system integrity. Moneys in the account must be spent in a manner that is consistent with existing and future assessments of climate risks and resilience from the

scientific community and expressed concerns of and impacts to overburdened communities.

Moneys in the account may be allocated for the following purposes:

- clean water investments that improve resilience from climate impacts; and
- healthy forest investments to improve resilience from climate impacts.

Moneys in the account may not be used for projects that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions.

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

Air Quality and Health Disparities Improvement Account.

The Air Quality and Health Disparities Improvement Account is created in the State Treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account are intended to:

- improve air quality through the reduction of criteria pollutants, including through effective air quality monitoring and the establishment of adequate baseline emissions data; and
- reduce health disparities in overburdened communities by improving health outcomes through the reduction or elimination of environmental harms and the promotion of environmental benefits.

Moneys in the account may be used for either capital budget or transportation budget purposes, or both.

It is the intent of the Legislature that not less than \$20 million per biennium be dedicated to the account.

Joint Legislative Audit and Review Committee.

By December 1, 2029, the Joint Legislative Audit and Review Committee (JLARC) must analyze the impacts of the initial five years of program implementation and must submit a report summarizing the analysis to the Legislature. The analysis must include certain minimum components, including:

- costs and benefits, including environmental and public health costs and benefits, associated with the Cap and Invest Program;
- an evaluation of the information provided by the Department of Ecology in its 2027 program evaluation;
- a summary of the estimated total statewide costs and benefits attributable to the Program, including state agency administrative costs and covered entity compliance costs; and
- an evaluation of the impacts of the program on low-income households.

Greenhouse Gas Reporting and Verification.

Ecology must adopt rules requiring persons to report emissions of GHGs where those emissions from a single facility, or from electricity or fossil fuels sold in Washington by a single supplier or local distribution company, meet or exceed 10,000 MTCO_{2e} annually. Annual reports must include emissions data for the preceding calendar year and be submitted to Ecology by March 31 of the year in which the report is due. The reporting rules must support implementation of the Cap and Invest Program.

Ecology must establish by rule the methods of verifying the accuracy of emissions reports. Verification requirements apply at a minimum to:

- persons that are required to report GHGs, if those emissions equal or exceed 25,000 MTCO_{2e} emissions, including carbon dioxide from biomass-derived fuels; or
- persons who have a compliance obligation under the Cap and Invest Program in any year of the current compliance period.

Ecology may adopt rules to accept verification reports from a linked jurisdiction where Ecology deems the methods or procedures are substantively similar.

When a person that holds a compliance obligation under the Cap and Invest Program fails to submit an emissions data report, or fails to obtain a positive emissions data verification statement, Ecology may assign an emissions level for that person.

Ecology may by rule include additional gases to the definition of GHG if that gas has been included in external GHG emission trading programs where Washington has a linkage agreement in effect. Ecology must update its rules whenever needed to ensure consistency with emissions reporting requirements for linked jurisdictions.

Contingent Expiration Date.

The Cap and Invest Program, and any rules adopted by Ecology to implement the Program, are suspended on December 31, 2055, in the event that the statewide 2050 emission limits have been met for two or more consecutive years.

Pacific Northwest Electric Power and Conservation Planning Council.

Both of Washington's delegates to the Pacific Northwest Electric Power and Conservation Planning Council may reside on the same side of the Cascade Mountains as long as this deviation from the requirement that the members otherwise reside on either side of the crest of the Cascade Mountains does not exceed 12 months in any 10-year period.

Expenditure Reports.

Ecology must prepare, post on the agency's website, and submit to the appropriate

committees of the Legislature an annual report that identifies all distributions of moneys from the Carbon Emissions Reduction Account, the Climate Investment Account, and the Air Quality and Health Disparities Improvement Account. The report must identify, at a minimum, the recipient of the funding, the amount of the funding, the purpose of the funding, the actual end result or use of the funding, whether the project that received funding produced any verifiable reduction in GHG emissions or reduced GHG emissions, the cost per carbon dioxide equivalent metric ton of reduced GHG emissions, and a comparison to other GHG emissions reduction projects in order to facilitate the development of cost-benefit ratios for GHG emissions reduction projects.

Ecology must require by rule that recipients of funds report the information required for the agency to carry out its duties.

Residential Heating Assistance Program.

Ecology, in collaboration with interested stakeholders, must develop a proposal for assisting households that, for residential home heating, use fuels that are not electricity or natural gas. The proposal must give priority to assisting low-income households through weatherization, conservation and efficiency services, and bill assistance.

In the event that Ecology, in collaboration with interested stakeholders, determines that the proposal requires legislative action, the agency must submit its recommendations for proposed legislation to the appropriate committees of the Legislature no later than September 15, 2022.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Tribal communities are already climate refugees. Tribal nations urge that the state take significant action against climate change. Climate change represents an existential threat to tribal nations and tribal cultural and ecological resources. The tribal consultation provisions in this bill are important. This bill advances climate action by capping and reducing emissions and investing in climate resilience. This bill commits to tracking and reducing other sources of pollution in overburdened communities. Air quality improvements reduce hospitalizations and death. The negative impacts of air quality are borne disproportionately by minority communities. This bill utilizes the Environmental Health Disparities Map hosted by the Department of Health. This bill limits offsets and reduces access to offsets by entities that are not meeting their emissions and air quality

targets. Cap and trade is a tried-and-true framework for addressing pollution in the United States. This bill gives a platform that starts to make a future for the next generations. Black Washingtonians will have a seat at the table in the implementation of this bill through the Environmental Justice and Equity Advisory Panel. This bill accommodates the unique operational concerns of natural gas utilities.

(Opposed) Washington has one of the cleanest grids on the nation, and the state should be encouraging manufacturers to site in the state to take advantage of our clean, green power. This program will add 18 cents to a gallon of gas and 21 cents to a gallon of diesel in the first year of implementation, which will exert cost burdens on businesses and consumers in the state. Most of the businesses in this state employ 19 or fewer employees and face razor-thin margins. Ninety-seven percent of trucking companies are small. Alternative fuel trucks are not yet feasible, which will necessitate the trucking industry to bear significant cost increases. Businesses in Washington need to know that their competitors in other jurisdictions will not be given an unfair advantage. Farmers are concerned about fuel cost increases. All farms rely on fossil fuels. Higher fuel costs increase the cost to grow crops and make Washington farmers less competitive. The benefits of this bill do not flow back to farmers because of the labor requirements embedded in the expenditure provisions. Farm workers are very vulnerable to the impacts of climate change and environmental degradation. Farm workers in California have given testimony about the damage of cap and trade programs. Farm workers are finding that it is imperative to continue to fight against policy schemes that give more power to the rich and to corporations. There are too many loopholes for companies to abuse the program. Cap and trade is trickle-down environmentalism. Cap and trade programs do not lower emissions. This bill does not change the policies and corporate practices that impose harms on communities of color.

(Others) There are concerns for easing the burden on EITE businesses. Criteria pollutants and carbon emissions are two distinct policy targets. The bill gets significantly more expensive for EITEs beginning in 2035.

Staff Summary of Public Testimony (Appropriations):

(In support) Climate change is a big issue for tribal communities. Tribal governments are committed to climate resilience, wildlife preservation, and ecological restoration. The bill needs to be strengthened so that the state does not subsidize major new polluters. The state would be granting free allowances to a new silicon smelter located in Northeast Washington. Incentives need to be tied to positive outcomes for overburdened communities. This bill would meaningfully and comprehensively confront Washington's impacts from climate change. This bill is projected to reduce greenhouse gas (GHG) emissions significantly by 2030, as well as criteria pollution in overburdened communities. This program is projected to generate billions of dollars of revenue over the next 14 years. This bill has gotten increasingly stronger during the legislative process, particularly as it pertains to transportation expenditures and investments for tribal nations and frontline and overburdened communities. This bill offers the opportunity for generational investments in

our communities, our environment, and our people. The bill builds on a history of success with other environmental issues in the United States, similar to how acid rain and other types of pollution were dealt with. This bill is inseparable from the transportation funding package. Aligning with similar programs in other jurisdictions is efficient. The bill would create family wage jobs.

(Opposed) This bill would increase gas prices. All farms rely on fossil fuels, and higher fuel costs increase the cost of growing crops. Increased gas prices would put price pressure on products from small and medium-sized businesses. Cap and trade is a harmful policy made worse in this specific bill. Washington should not join California's failures. Washington's bill is only going to cover one-fourth of the state's emitters. It is impossible for this bill to meet the state's GHG emissions reductions goals. There remains a considerable amount of work to be done on this bill. One missing element in the bill is stronger preemption language. The amendment made in the Environment and Energy Committee created uncertainty around the treatment of electricity marketed by the Bonneville Power Administration. Due to the changes made by the Environment and Energy Committee, emissions-intensive, trade-exposed (EITE) facilities are no longer optimistic that they can comply with the requirements of this bill. This bill should continue to be focused on GHG emissions. This bill will cause GHG leakage to higher-emitting jurisdictions and places rural, union jobs at risk. There are concerns about the treatment of EITE facilities after 2035. Cap and trade systems allow carbon emitters to continue emitting whenever it is expedient for them, and the state Environmental Health Disparities Map shows that it occurs overwhelmingly in overburdened communities. The bill's definition of allowable transportation expenditures is too narrow. When cap and trade is too complex, as in Europe, the policy cannot achieve its goals. The bill ignores the will of the people, as similar policies have already been rejected by voters. Propane is not a GHG and should not be regulated under this bill.

(Other) The Cap and Invest Program must be appropriately harmonized with the Clean Energy Transformation Act (CETA). Washington is likely to be a net taker of credits, which means the fiscal note could be significantly underestimating the economic impacts of this bill. There is potential double regulation between this program and the requirements of the CETA. A greater percentage of auction proceeds should go to benefit low-income individuals.

Persons Testifying (Environment & Energy): (In support) Vlad Gutman-Britten, Climate Solutions; David Mendoza, The Nature Conservancy; Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; Isaac Kastama, Washington Business Alliance and Low Carbon Prosperity Institute; Becky Kelley, Office of the Governor; Paula Sardinias, Washington Build Back Black Alliance; Leonard Forsman, Suquamish Tribe and Affiliated Tribes of Northwest Indians; Ron Allen, Jamestown S'klallam Tribe; Curt Holmes, Kalispel; Fawn Sharp, Quinault; Bob DeLosAngeles, Snoqualmie Tribe; Glen Gobin, Tulalip Tribes; Jeremy Takala, Yakama Nation; Devon Connor-Green, The Washington Black Lives Matter Alliance; Stu Clark, Department of

Ecology; Rad Cunningham, Department of Health; Katelyn Roedner Sutter, Environmental Defense Fund; Dan Kirschner, Northwest Gas Association; and Jeff Gombosky, Renewable Northwest.

(Opposed) Jeanne Poirier; Craig Smith, Food Northwest; Laurie Layne; Val Mullen; Katherine Woolverton, 350 Seattle; Grace Hope, 350 Washington; Yolanda Matthews, Puget Sound Sage; Peter Godlewski, Association of Washington Business; Rosalinda Guillen, Community to Community; Jill Mangaliman, Got Green; Tom Davis, Washington Farm Bureau; Andy Juris, Washington Association of Wheat Growers; and Jeff DeVere, Washington Trucking Associations.

(Other) Todd Myers, Washington Policy Center; Jessica Spiegel, Western States Petroleum Association; and Brandon Houskeeper, Alliance of Western Energy Consumers.

Persons Testifying (Appropriations): (In support) Martin Gibbins, League of Women Voters of Washington; David Mendoza, The Nature Conservancy; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; Vlad Gutman, Climate Solutions; Ron Allen, Jamestown S'Klallam Tribe; Jeremy Takala, Yakama Nation; Curt Holmes, Kalispel Tribe of Indians; Gerry O'Keefe, Washington Public Ports Association; Fawn Sharp, Quinault Indian Nation and National Congress of American Indians; Kris Peters, Squaxin Island Tribe; Isaac Kastama, Washington Business Alliance and Low Carbon Prosperity Institute; Ryan Miller, Tulalip Tribes; Sandra Toussaint, American Federation of State, County and Municipal Employees-Council 28 and Washington Federation of State Employees; Becky Kelley, Office of the Governor; Janet Kelly, Puget Sound Energy; Matthew Hepner, International Brotherhood of Electrical Workers and Certified Electrical Workers of Washington; and Devon Connor-Green, The Washington Black Lives Matter Alliance.

(Opposed) Joshua Rubenstein; Peter Godlewski, Association of Washington Business; Nicolas Garcia, Washington Public Utility Districts Association; Laura McAnany, Ash Grove Cement Company; Patrick Jablonski, Nucor Steel; Chris McCabe, Northwest Pulp & Paper Association; Brandon Houskeeper, Alliance of Western Energy Consumers; Edgar Scott, Kaiser Aluminum; Dan Wilson, United Steelworkers; Jerry VanderWood, Associated General Contractors of Washington; Mark Riker, Washington State Building and Construction Trades Council; Billy Wallace, Washington and Northern Idaho District Council of Laborers; Katherine Woolverton, 350 Seattle; Jill Mangaliman, Got Green; Kent Lopez, Washington Rural Electric Cooperative Association; Jeff Pack, Washington Citizens Against Unfair Taxes; Greg Pallesen, Association of Western Pulp and Paper Workers Union; Tim Eyman, PermanentOffense.com; Mel Sorensen, Pacific Propane Gas Association; Ed Hawthorne, City of Enumclaw; and Tom Davis, Washington Farm Bureau.

(Other) Logan Bahr, Tacoma Public Utilities; John Rothlin, Avista; Todd Myers, Washington Policy Center; Jessica Spiegel, Western States Petroleum Association; Tashiana Wangler, Public Generating Pool; Kathleen Collins, PacifiCorp; and Jeff DeLuca, Washington State Community Action Partnership.

Persons Signed In To Testify But Not Testifying (Environment & Energy): Tom Wolf, bp America; Gerald O'Keefe, Washington Public Ports Association; Joe Kunzler; Jeremy Smithson, Puget Sound Solar; Edwin Wanji, Sphere Solar Energy; Zac Pinard; Ash Awad, McKinstry; Kerry Meade, Northwest Energy Efficiency Council; Bonnie Frye Hemphill, UMC Inc; Janet Kelly, Puget Sound Energy; John Rothlin, Avista; Julie Gilling, Department of Natural Resources; Erling Skaar, FV North American; Julia Buck; Jeff Pack, Washington Citizens Against Unfair Taxes; Mel Sorensen, Pacific Propane Gas Association; Tim Eyman, PermanentOffense.com; Kristina Soman-Faulkner, Washington Physicians for Social Responsibility; Joshua Rubenstein; Steve Simmons; Logan Bahr, Tacoma Public Utilities; Craig Kenworthy, Puget Sound Clean Air Agency; Vicki Christophersen, Washington Refuse and Recycling Association; Becky Bogard, Republic Services; Therese Hampton, Public Generating Pool; Laura McAnany, Ash Grove Cement Company, Seattle; Patrick Jablonski, Nucor Steel Seattle, Inc.; Chris McCabe, Northwest Pulp and Paper Association; Paul Jewell, Washington State Association of Counties; Spencer Gray, Northwest and Intermountain Power Producers Coalition; and Sean O'Sullivan, Association of Western Pulp and Paperworkers.

Persons Signed In To Testify But Not Testifying (Appropriations): None.