

# HOUSE BILL REPORT

## E2SSB 5126

---

---

**As Reported by House Committee On:**

Environment & Energy  
Appropriations

**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)].

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

- 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.

**Minority Report:** Without recommendation. Signed by 1 member: Representative

---

*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.*

Harris-Talley.

**Staff:** Nikkole Hughes (786-7156).

**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 CO<sub>2</sub>e).

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 CO<sub>2</sub>e 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 CO<sub>2</sub>e 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 CO<sub>2</sub>e. Of these emissions, a total of 43.26 MMT CO<sub>2</sub>e were attributable to transportation sources, of which on-road gasoline accounted for 21.53 MMT CO<sub>2</sub>e and on-road diesel accounted for 8.36 MMT CO<sub>2</sub>e.

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; and
- creating a price ceiling and associated mechanisms.

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

### 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, consistent with the requirements of 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.

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 neighboring communities that are not identified as overburdened;
- identify the sources that are the contributors of those emissions that are either increasing or not decreasing; and
- achieve reduction targets through the adoption of emission control strategies or other methods.

Ecology must also 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 under the state Clean Air Act, and may consider alternative mitigation actions that would reduce criteria pollution by similar amounts. After adoption of the stricter air quality standards, emission standards, or emissions limitations on criteria pollutants, Ecology must require that all permitted or registered sources operating in an overburdened community obtain an enforceable order from Ecology or the appropriate local air authority as necessary to comply with the stricter standards or limitations.

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 and the Climate Investment 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 Climate Investment 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 Accounts 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.

#### Climate Commitment Governance Structure.

The Governor shall establish a governance structure to implement the state's climate commitment 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 program budget of allowances 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. Ecology must adopt annual allowance budgets for the Program on a calendar year basis that provide for substantially equivalent reductions on an absolute basis for each year.

An allowance distributed under the Program, either directly by Ecology or through auctions, expires eight years after issuance 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 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 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 program adjustments to ensure successful achievement of the emission reduction limits.

#### *First Compliance Period, 2023-2026.*

By October 1, 2022, Ecology must adopt a budget of allowances for the first compliance period of the Cap and Invest Program to be distributed from January 1, 2023, through December 31, 2026. The program budget of allowances 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 a program budget of allowances 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 program budgets of allowances 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 operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent (MTCO<sub>2e</sub>);
- 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<sub>2e</sub>;
- where the person is a first jurisdictional deliverer importing electricity into the state from a specified source whose total annual emissions equals or exceeds 25,000 MTCO<sub>2e</sub> 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<sub>2e</sub> or more would result from the full combustion or oxidation;
- where the person supplies natural gas in amounts that would result in exceeding 25,000 MTCO<sub>2e</sub> if fully combusted or oxidized, excluding amounts supplied to other covered entities and amounts delivered to opt-in entities;
- 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<sub>2e</sub> 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<sub>2e</sub> 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 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<sub>2e</sub>.

*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 operates a landfill utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 MTCO<sub>2e</sub>.

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; 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 state must pursue the state's GHG emissions limits in a manner that recognizes that the siting and placement of new best-in-class facilities that provide for the displacement of more carbon intensive processes is in the economic and environmental interests of the state.

For new or expanded facilities that require review under the State Environmental Policy Act (SEPA) and which would result in annual GHG emissions in excess of 25,000 MTCO<sub>2e</sub>, a lead agency must evaluate the life-cycle GHG emissions of the facility, including any potential net cumulative emissions resulting from the project. Ecology may adopt rules to determine how to evaluate net cumulative emissions.

A lead agency may determine that compliance with the requirements of the Cap and Invest Program constitutes mitigation for covered GHGs from the facilities that have a compliance

obligation under the Cap and Invest Program. A lead agency may also determine that inclusion as a covered entity constitutes mitigation of significant adverse impacts with respect to covered GHGs that have a compliance obligation under the Cap and Invest Program for a low carbon-intensive facility subject to the requirements of the SEPA.

A facility constructed with a new or revised permit must have included in applicable permits a conditional clause, should the Cap and Invest Program cease to apply to the facility, to require adherence to a GHG emissions performance standard and perform GHG mitigation consistent with the state's emissions reduction limits, as those requirements existed when the permit was granted.

#### 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 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.

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

No auction proceeds may be transferred to the Carbon Emissions Reduction Account after December 31, 2027, if a clean fuel standard with a carbon intensity reduction of greater than 10 percent is not enacted by that date.

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

##### *First Compliance Period, 2023-2026.*

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.

*Second Compliance Period, 2027-2030.*

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.

For all compliance periods prior to December 31, 2034, the annual allocation of allowances for direct distribution to a facility identified as EITE must be equal to the facility's proportional obligation of the program budget, multiplied by 100 percent.

Beginning January 1, 2035, and each year thereafter, the annual allocation of no-cost allowances for direct distribution to EITE facilities must be reduced by an equal amount each year between 2035 and 2050 such that in 2050 the facility's proportionate share of the allowance budget is equal to the proportionate share in 2035. The annual allocation beginning in 2035 must decline from the average of the facility's annual allocation of no-cost allowances from 2031 through 2034. If the EITE facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility, then the baseline period must be expanded to include years prior to 2031.

*Facility-Specific Carbon Intensity Benchmarks.*

Ecology must by rule provide for owners or operators of EITE facilities to apply for and receive from the agency an adjustment to the allocation for direct distribution of allowances based on a facility-specific carbon intensity benchmark. If Ecology determines that the net quantity of no-cost allowances awarded according to the facility's proportional obligation of the program budget, multiplied by 100 percent, is lower than when using the facility-specific carbon intensity benchmark, Ecology must award additional no-cost allowances up

to the quantity of allowances resulting from using the facility-specific carbon intensity benchmark. Ecology must adjust the no cost allocation of allowances and credits to an EITE facility to avoid duplication with any other no-cost allowances transferred under the Cap and Invest Program.

"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.

*Mass-Based Baseline.*

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.

For each year during the first compliance period, 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 compliance period, these facilities must be awarded no-cost allowances equal to 97 percent of the facility's mass-based baseline. For each year during the compliance period beginning 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 product and parts manufacturing EITE facilities, 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 of the Cap and Invest Program.

An aerospace product and parts manufacturing EITE facility that is utilizing a mass-based baseline must receive an additional no-cost allowance allocation in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent, in principle, to those awarded to entities utilizing a carbon intensity benchmark. Ecology must establish methods to award, for any annual period, additional no-cost allowance allocations to such an aerospace product and parts manufacturing EITE facility and, if appropriate based on projected production, to achieve a similar ongoing result through the adjustment of the facility's mass-based baseline. An eligible facility that has elected to use a mass-based baseline may not convert to a carbon intensity benchmark until the next compliance period.

*Emissions-Intensive, Trade-Exposed Facility Work Group.*

By April 1, 2022, Ecology must convene a work group of EITE facilities and their affiliated trade associations, and independent experts in emissions regulation, industrial practices, or other related fields (Work Group).

By July 31, 2022, the Work Group must establish procedures for calculating carbon

intensity benchmarks. The carbon intensity benchmark must be based on data from 2015 through 2019, unless the EITE facility 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.

By September 15, 2022, each EITE facility must submit its carbon intensity benchmark for the first compliance period to Ecology. The calculation must be consistent with the procedures established by the Work Group.

By November 15, 2022, Ecology must review and approve each EITE facility baseline carbon intensity benchmark.

*Report to the Legislature.*

By December 1, 2030, Ecology must 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 EITE manufacturing business. 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. In developing the report, Ecology must form an advisory group that includes representatives of the manufacturers designated as EITE manufacturing businesses for the first compliance period.

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, 25 percent of the allowances allocated at no cost to consumer-owned and investor-owned electric utilities must be consigned to auction for the benefit of ratepayers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of the Cap and Invest Program. Rules adopted by Ecology must increase the percentage of allowances consigned to auction by 25 percent each subsequent compliance period until a total of 100 percent is reached.



Revenues from allowances sold at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions that include, but are not limited to, weatherization, conservation and efficiency services, and bill assistance.

#### 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.

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 program 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.

#### Assistance Program for Small Forestland Owners.

Ecology, in cooperation with the Department of Natural Resources, must establish an assistance program for small forestland owners that seeks to benefit from carbon sequestration markets, including the provision of offset credits that qualify under the Cap and Invest Program. The assistance may include, but is not limited to, funding or consultation to assess a project's technical feasibility, investment requirements, development and operational costs, expected returns, administrative and legal hurdles, and project risks and pitfalls. Ecology may assist multiple landowners to develop projects that aggregate sufficient acreage to provide the scale necessary to offer offset credits at a competitive price in either or both voluntary and regulatory carbon markets. Funding or assistance may be provided upon request by a small forestland owner.

It is the intent of the Legislature that not less than \$2 million be provided in the biennial omnibus operating appropriations act each biennium for the purposes of this section.

#### 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.

Allowances must be transferred in the order in which they were purchased. 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.

Compliance obligations for covered entities and opt-in entities do not take effect until separate, additive transportation funding is received by the state, 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 funding" means receipt of funding by the state in which the combined total of new revenues deposited into the Motor Vehicle Fund and Multimodal Transportation Account exceed \$500 million in any biennium attributable solely to separate additive transportation funding.

#### 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.

#### 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 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, and the Natural Climate Solutions 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
- at least 10 percent of the total investments authorized must be 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.

#### 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.

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 pensions, 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 deposited into the account per biennium.

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.

#### 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<sub>2e</sub> 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<sub>2</sub>e 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.

#### **Amended Bill Compared to Engrossed Second Substitute Bill:**

The amended bill does the following:

- makes technical changes, including conforming amendments;
- adds imported electricity to the list of covered emissions sources under the first compliance period of the Cap and Invest Program;
- exempts motor vehicle and special fuel used for agricultural purposes by a farm fuel user from the Cap and Invest Program;
- aligns environmental justice provisions with those of the Washington Healthy Environment for All Act (HEAL Act);
- replaces references to the Forward Flexible Account for transportation expenditures with the new Carbon Emissions Reduction Account;
- creates two subaccounts within the Climate Investment Account: the Climate Commitment Account and the Natural Climate Solutions Account;
- directs 75 percent of the funds deposited into the Climate Investment Account into the Climate Commitment Account and 25 percent into the Natural Climate Solutions Account;
- creates a program for assistance to small forestland owners seeking to develop

- projects for carbon offset markets;
- states the intent of the Legislature to appropriate \$2 million per biennium for the purpose of assistance to small forestland owners;
  - directs that \$10 million from revenues under the Cap and Invest Program be expended each biennium for the Forestry Riparian Easement Program;
  - prohibits auction proceeds from being transferred to the Carbon Emissions Reduction Account after December 31, 2027, if a clean fuel standard with a carbon intensity reduction of greater than 10 percent is not enacted by that date;
  - requires that the environmental justice review of the Cap and Invest Program begin in 2023, rather than 2025, and requires the review to include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities;
  - requires that the Department of Ecology (Ecology), after adoption of stricter air quality standards, emission standards, or emissions limitations on criteria pollutants require that all permitted or registered sources operating in an overburdened community obtain an enforceable order, as authorized under the Washington Clean Air Act, from Ecology or the appropriate local air authority as necessary to comply with the stricter standards or limitations;
  - requires Ecology to consider the number of no cost allowances in the marketplace in setting the number of allowances offered at each auction;
  - specifies that Ecology must only offer such number of allowances at each auction as will enhance the likelihood of achieving the statewide emissions limits;
  - amends provisions addressing the siting of new or expanded facilities that require review under the State Environmental Policy Act (SEPA);
  - requires a facility constructed with new or revised permits to have included a conditional clause in the applicable permits that requires the facility adhere to a performance standard and perform mitigation consistent with statutory greenhouse gas emission limits, in the event that the requirements of the Cap and Invest Program should cease to apply to the facility;
  - prohibits allowances allocated at no cost to emissions-intensive, trade-exposed (EITE) facilities from being sold or traded;
  - authorizes an owner or operator of more than one facility receiving no cost allowances for EITE facilities to transfer allowances among the eligible facilities;
  - requires that rules adopted by Ecology for the allocation of allowances at no cost to EITE facilities include protocols for allocating allowances to an eligible facility built or expanded after the effective date of the act, and specifies that such protocols must include consideration of the products being produced by the facility, as well as the local environmental and health impacts associated with the facility;
  - prohibits Ecology from granting any free or discounted allowances to EITE facilities that: (1) are built or modified after the effective date of the act; and (2) would increase detectable criteria pollutants, or other pollutants harmful to human health, in overburdened communities;
  - excludes landfills with gas capture systems that capture at least 75 percent of landfill gas and produce renewable natural gas or electricity from landfill gas from becoming covered under the Cap and Invest Program beginning January 1, 2031;

- adds legislative intent language specifying that it is the intent of the Legislature to adopt a greenhouse gas emissions reduction policy specific to landfills, and that if such a policy is not enacted by January 1, 2030, the requirements of the Cap and Invest Program relative to landfills take full effect;
- identifies the individual retail electric cooperatives served by a multijurisdictional consumer-owned utility as the covered entities under the Cap and Invest Program;
- adds a voluntary renewable reserve account maintained by Ecology from which allowances may be retired for voluntary renewable electricity generation;
- requires that a project or activity funded in whole or in part from the Climate Investment Account 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;
- adds a new section requiring the Governor to establish a governance structure to implement the state's climate commitment to provide accountability for achieving the state's greenhouse gas emissions reduction limits, establish a coordinated and strategic statewide approach to climate resilience, build an equitable and inclusive clean energy economy, and ensure that the government provides clear policy and requirements, financial tools, and other mechanisms to support achieving those limits;
- requires consumer-owned and investor-owned electric utilities receiving allowances at no cost from Ecology to consign a portion of those allowances to auction for the benefit of ratepayers each compliance period;
- requires that allowances consigned to auction for the benefit of ratepayers by electric utilities eliminate any additional cost burden to low-income customers from the implementation of the Cap and Invest Program;
- requires that revenues from allowances sold at auction be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts on low-income, residential, and small business customers through actions such as weatherization, conservation and efficiency services, and bill assistance;
- requires Ecology to, in adopting offset protocols, make use of aggregation or other mechanisms to increase the development of offset and carbon removal projects by landowners, including small forest landowners;
- adds environmental justice expenditure targets for the total investments made through the Carbon Emissions Reduction Account, the Climate Commitment Account, and the Natural Climate Solutions Account; and
- removes the section requiring the Climate Investment Account to be included in the Legislature's four-year balanced budget requirements.

---

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Staff Summary of Public Testimony:**

(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.

**Persons Testifying:** (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 Sardinas, 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, Quinai; 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 Signed In To Testify But Not Testifying:** 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.

---

## 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).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:**

The Appropriations Committee striking amendment makes the following changes compared to the Environment and Energy Committee striking amendment:

- requires the Department of Ecology (Ecology) to conduct an environmental justice assessment before entering into a linkage agreement with other jurisdictions;
- specifies that actions imposed by Ecology under the air quality provisions 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;
- removes a requirement for a facility constructed with new or revised permits to have included a conditional clause in the applicable permits that requires the facility adhere to a performance standard and perform mitigation consistent with statutory greenhouse gas emission limits, in the event that the requirements of the Cap and Invest Program should cease to apply to the facility;
- requires that Ecology, in adopting by rule objective criteria for both emissions intensity and trade exposure for the purpose of identifying emissions-intensive and trade-exposed (EITE) businesses during the second compliance period, consider the locations of facilities potentially identified as EITE businesses relative to overburdened communities;
- requires an electric utility or natural gas utility to notify its retail customers and the Environmental Justice Council in published form within three months of paying a monetary penalty for failure to comply with the requirements of the Cap and Invest Program;
- requires Ecology to transmit an auction notice to the Environmental Justice Council at least 60 days prior to each auction, and a summary results report and post-auction proceeds report within 60 days after each auction;
- requires Ecology to communicate the results of the previous calendar year's auctions to the Environmental Justice Council on an annual basis beginning in 2024;
- requires Ecology by December 1, 2027, and at least every four years thereafter, to 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 emissions-intensive, trade-exposed businesses;
- requires Ecology to transmit the report to the Environmental Justice Council at the same time it is submitted to the Legislature; and
  - amends the contingent effective date for compliance obligations under the Cap and Invest Program.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(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:** (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:** None.