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

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** FINDINGS AND DETERMINATIONS. The people of the state of Washington make the following findings and determinations:

(1) The intent of this chapter is to protect Washington for our children, our grandchildren, and future generations by quickly and effectively reducing pollution and addressing its negative impacts.

(2) Fossil fuel consumption and related pollution contribute directly to climate change and regional effects of global warming, which harm Washington's health, economy, natural resources, environment, and communities. This harm includes, but is not limited to, intensified storms, droughts, sea level rise, increased flooding, more frequent and severe wildfires, and other adverse impacts to forests, agriculture, wildlife, fisheries, rivers, and the marine environment.

(3) Investments in clean air, clean energy, clean water, healthy forests, and healthy community projects will facilitate

the transition away from fossil fuels, reduce pollution, and create an environment that protects our children, families, and neighbors from the adverse impacts of pollution. Funding these investments through a fee on large emitters of pollution based on the amount of pollution they contribute is fair and makes sense. A pollution fee offsets and alleviates burdens to which those emitters directly contribute.

(4) The transition to the clean energy economy will have tremendous economic and job growth benefits. Washington's tradition of innovation and technology development combined with the funding available under this chapter will increase economic opportunity, enhance economic and environmental sustainability, and create and support family-sustaining jobs across the state. The business community will play a critical role in leading this transition and in reducing pollution.

(5) Both pollution itself and transitioning to a society that prioritizes clean air, clean energy, clean water, healthy forests, and healthy communities disproportionately impact some people, workers, and communities more than others, including communities within pollution and health action areas. The use of a pollution fee to offset and alleviate those impacts is appropriate to ensure a successful and just transition.

(6) The investments authorized in this legislation constitute the purchase of pollution reduction and the protection of

Washington's clean air, clean water, healthy forests, and healthy communities.

NEW SECTION. **Sec. 2.** SHORT TITLE. This act may be known and cited as the protect Washington act.

NEW SECTION. **Sec. 3.** CLEAN UP POLLUTION FUND. (1) The clean up pollution fund is established in the state treasury. All monies collected from the pollution fee imposed by this chapter shall be deposited in the fund. The department of revenue (or any successor(s) thereof) is authorized to create sub-funds or accounts as may be necessary or appropriate to implement the purposes of this chapter. Moneys in the fund may only be spent after appropriation.

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

(a) Seventy percent of the fund shall be spent on the clean air and clean energy investments authorized under section 4 of this chapter;

(b) Twenty-five percent of the fund shall be spent on the clean water and healthy forests investments authorized under section 5 of this chapter; and

(c) Five percent of the fund shall be spent on the healthy communities investments authorized under section 6 of this chapter.

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

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

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

(a) A minimum of thirty-five percent of total investments authorized under this chapter must provide direct and meaningful benefits to pollution and health action areas. For the purposes of this subsection (4), "benefits" means investments or activities that:

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

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

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

(b) A minimum of ten percent of the total investments authorized under this chapter must fund programs, activities, or projects that are located within the boundaries of and provide direct and meaningful benefits to pollution and health action areas. An investment that meets the requirements of both this subsection and of subsection (4)(a) of this section may count towards the requisite minimum percentage for both subsections.

(c) Except for programs, activities, or projects for which credits are authorized pursuant to section 4(6) of this chapter, a minimum of ten percent of the total investments under this chapter shall 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. An investment that meets the requirements of both this subsection and of subsection

(4)(a) of this section may count towards the requisite minimum percentage for both subsections, however investments under this subsection are in addition to, and may not count towards, the requisite minimum percentage for subsection (4)(b) of this section.

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

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

(8) Funding under this chapter and credits authorized under section (4)(6) of this chapter may be invested in pilot tests and other market and technology development projects that are designed to test the effectiveness of the proposed project, program, or technology.

NEW SECTION. **Sec 4.** CLEAN AIR AND CLEAN ENERGY INVESTMENTS. (1) The clean air and clean energy account is created in the state treasury. Money in the account shall be used for programs, activities, or projects that yield or facilitate verifiable reductions in pollution or assist affected workers or people with lower incomes during the transition to a clean energy economy, including but not limited to:

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

(b) Programs, activities, or projects, including self-directed investments, that increase the energy efficiency or reduce carbon emissions of industrial facilities, including but not limited to proposals to implement combined heat and power, district energy, or on-site renewables, such as solar and wind power, to upgrade existing equipment to more efficient models, to reduce process emissions, and to switch to less carbon-intensive fuel sources, especially converting fossil fuel sources of energy to non-fossil fuel sources;

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

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

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

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

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

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

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

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

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

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

(i) The department of commerce shall propose and submit to the board for approval an initial investment plan, processes, and procedures for investments made under this section, which the board shall review and approve by January 1, 2020. The investment plan, processes, and procedures shall govern investments made under this section until the permanent investment plan required by subsection (2)(a)(ii) of this section is adopted by rule.

(ii) By January 1, 2022, the department of commerce shall draft and submit to the board a permanent investment plan and proposed rules for the board to review and approve through the rulemaking process. Upon adoption of the final rules by the board, the adopted investment plan shall supersede the initial investment plan authorized under subsection (2)(a)(i) of this section.

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

(b) The investment plans shall prescribe a competitive project selection process that results in a balanced portfolio of investments containing a wide range of technology, sequestration, and emission reduction solutions that efficiently and effectively reduce the state's carbon emissions from 2018 levels by a minimum of twenty million metric tons by 2035 and a minimum of fifty million metric tons by 2050 while creating economic, environmental, and health benefits. The emission reductions to be achieved under the plan should, in combination with reductions achieved under other state policies, achieve emissions reductions that are consistent with the state's proportional share of global carbon reductions that will limit global temperature increases to two degrees centigrade and preferably below one and one-half degrees centigrade.

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

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

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

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

(b) Procedures and criteria for the programs, activities, or projects created under subsections (3)(a)(ii) and (3)(a)(iii) of this section must retain sufficient flexibility to serve as a source of matching funds from other sources and to allow for a portion of the funds awarded to provide for the long-term costs of stewardship obligations on lands protected under those programs, activities, or projects.

(c) The proposed procedures, criteria, and rules for the programs, activities, or projects created under subsections (3)(a)(i) through (3)(a)(iii) of this section shall be developed in consultation with the panels and shall be submitted to the board for final review and approval by January 1, 2020.

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

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

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

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

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

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

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

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

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

(c) Programs, activities, or projects that count toward the expenditures required by section 3(4)(a) of this chapter may not be counted toward the minimum expenditures required by this subsection.

(5) Within four years of setting up the clean air and clean energy account, a minimum balance of fifty million dollars of the account shall be set aside, replenished annually, and maintained for a worker-support program for bargaining unit and non-supervisory fossil fuel workers who are affected by the transition away from fossil fuels to a clean energy economy. The department of commerce, in consultation with the economic and environmental justice panel, may allocate additional moneys from the fund if necessary to meet the needs of eligible workers in the event of unforeseen or extraordinary amounts of dislocation.

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

(b) The department of commerce, in consultation with the economic and environmental justice panel, shall develop draft rules, procedures, and criteria, to identify affected workers and administer this program. These draft rules, procedures, and criteria shall be submitted to the board for final review and approval through the rulemaking process.

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

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

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

(i) Identify investments aligned with the pollution reduction investment plan, targets, and goals authorized under and identified in section 4(2) of this section. Eligible investments include:

(A) Those categories listed in subsections 4(1)(a) through (g) of this section;

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

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

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

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

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

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

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

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

(iii) A demonstration of how the requirements of section 3(4)(a) of this chapter have been met and the criteria in section 7(a) through (c) of this chapter have been given priority in the development of the plan;

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

(v) Performance metrics, including performance metrics designed to measure pollution reduction achieved, energy burden reduction benefits supplied, and other indicators of progress in achieving the purposes of this chapter. Performance metrics shall cover the life of the plan;

(vi) A demonstration that expenditures in the plan will be additional to existing programs and expenditures necessary to meet other emissions reduction, energy conservation, low-income, or renewable energy requirements in the absence of this chapter and incremental to investments or expenditures that the light and power business or gas distribution business would have pursued in the absence of the plan and the requirements of this chapter; and

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

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

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

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

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

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

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

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

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

(l) For the purposes of this subsection (6), a qualifying light and power business or gas distribution business may request that within one hundred twenty days the department of health designate additional pollution and health action areas located in the service area of the qualifying light and power business or gas distribution business.

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

(n) The commission and department must adopt rules concerning the process, timelines, reporting, committees, standards, and documentation required to ensure proper implementation of this subsection (6). These rules must allow for stakeholder contribution to the clean energy investment plans and establish requirements for review, approval, performance metrics, and independent monitoring and evaluation of a clean energy investment plan of a light and power business or gas distribution business.

(o) The amount of credits authorized and spent under this subsection counts towards the minimum percentage of investments required by subsection 3(2)(a) of this chapter.

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

(8) The expenditures of funds under this section may not support programs, activities, or projects that are otherwise legally required by federal, state, or local laws, or that are

required as a result of a legal settlement or other legal action or court order binding on the potential recipient of the funds.

NEW SECTION. **Sec. 5.** CLEAN WATER AND HEALTHY FORESTS INVESTMENTS. (1) The clean water and healthy forests account is created in the state treasury. Funds in the account are intended to increase the resiliency of the state's waters and forests to the impacts of climate change. Funds in this account shall be spent in a manner that is consistent with existing and future assessment of climate risks and resilience from the scientific community and expressed concerns of and impacts to pollution and health action areas.

(2) Funds in the account may be allocated for the following purposes:

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The department of natural resources must adopt rigorous performance-based criteria and objectives for funding decisions under this subsection (2)(b), such as the number of acres burned or thinned or otherwise treated to improve forest health, acres of forest for which wildland fire prevention measures have been implemented, and the number of communities in the wildland urban interface for which wildfire resilience and defense measures have been implemented.

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

(4) 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 benefit and increased resiliency to the impacts of climate change.

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

NEW SECTION. **Sec. 6.** HEALTHY COMMUNITIES INVESTMENTS. (1) The healthy communities account is created in the state treasury. Moneys in the account shall be used for programs, activities, or projects to prepare communities for challenges caused by climate change and to ensure that the impacts of climate change are not disproportionately borne by certain populations. Investments from this account may be used for the following purposes, with first priority given to programs, activities, or projects eligible for funding under subsections (a), (b), and (c) of this subsection:

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

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

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

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

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

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

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

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

(6) Proposed procedures, criteria, and rules prepared under this section shall be sent to the board for final adoption, including through the rulemaking process as appropriate.

NEW SECTION. **Sec. 7.** INVESTMENT CRITERIA. (1) After applying the account-specific criteria in sections 4, 5, and 6 of this chapter, preference shall be given to investments authorized under section 3 and credits authorized under subsection 4(6) of this section that meet one or more of the following investment criteria:

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

(b) Support of high quality labor standards, prevailing wage rates determined by local collective bargaining, apprenticeship and pre-apprenticeship utilization and preferred entry standards, community workforce agreements with priority local hire, procurement from women, veteran, and minority-owned businesses, procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations, and other related labor standards;

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

(d) Reduction of pollution through strategies that reduce vehicle miles travelled, including by reducing travel distances for people with lower income.

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

NEW SECTION. **Sec. 8.** POLLUTION FEE. (1) A pollution fee is imposed on and must be collected from large emitters based on the carbon content of:

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

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

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

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

(4) In order to calculate the pollution fee on large emitters imposed by this chapter, by November 1, 2019 the department of ecology must, in consultation with the department of revenue, adopt emergency rules specifying the basis for the carbon content inherent in or associated with covered fossil fuels and electricity. In developing these rules, the department of ecology

may consider, among other resources, the carbon dioxide content measurements for fossil fuels from the federal energy information administration and the federal environmental protection agency. The department of ecology may periodically update the rules specifying the carbon content of fossil fuels and electricity.

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

(6) A credit for the fee owed may be authorized as provided in section 4(6) of this chapter. The utilities and transportation commission and the department of commerce shall ensure that resources are not reallocated between customers, customer classes, or geographies for the purposes of artificially reducing the application of this fee without reducing actual pollution emissions and, in doing so, must also not unduly burden the ability of a light and power business or gas distribution business to transact with the market.

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

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

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

NEW SECTION. **Sec. 9.** EXEMPTIONS. (1) To ensure consistency with existing state and federal law and to facilitate the timely, feasible, and effective reduction of pollution under this chapter, the pollution fee imposed on large emitters does not apply to and shall not be collected for:

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

(b) Fossil fuels that are exported or sold for export outside of Washington. Export to a federally recognized Indian tribal reservation located within this state is not considered export outside of Washington;

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

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

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

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

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

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

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

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

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

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

(3) For electricity generated in Washington that is sold out of state to a jurisdiction that has a similar fee on carbon content, a large emitter may receive a credit equal to the amount of the fee in the receiving jurisdiction up to the amount of the fee owed under this chapter if the payer petitions to and receives approval for the credit from the department of commerce.

NEW SECTION. **Sec. 10.** PUBLIC OVERSIGHT BOARD AND CONSULTATION. (1) The public oversight board is established within the executive office of the governor. The purpose of the board is to ensure timely, effective, and efficient implementation of this chapter. The board must ensure robust public involvement, accountability, and transparency in the implementation of this chapter.

(2) The board shall have fifteen voting members, including the chairperson, the six co-chairs of the panels, four at-large

positions, the commissioner of public lands, and the directors of the department of commerce, the department of ecology, and the recreation and conservation office. The governor shall appoint the chairperson and the four at-large positions, one of which will be a tribal representative and one of which will represent vulnerable populations in pollution and health action areas, to achieve an overall board membership with appropriate expertise in pollution reduction. The at-large positions shall serve staggered four-year terms. The departments of health, the department of transportation, and the superintendent of public instruction shall be non-voting members of the board.

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

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

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

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

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

(e) Review and approve procedures, criteria, and rules developed under the provisions of this chapter, the pollution reduction investment plan developed under section 4 of this chapter, and the effectiveness report required by section 12 of this chapter;

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

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

(h) Carry out such other duties that are delegated herein.

(4) The board will be led by the chairperson of the board. The chairperson is a full-time staff person appointed by the governor and should be housed in the office of the governor. The chairperson should have experience in management and administration and expertise in and a demonstrated commitment to reducing pollution and transitioning to a clean energy economy.

(5) In addition to leading the board, the chairperson shall have, without limitation, the following duties and authorities:

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

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

(c) Convene and preside over a climate sub-cabinet, consisting of representatives of the agencies with responsibility to implement portions of this chapter and the co-chairs of the panels;

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

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

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

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

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

(9) In furtherance of strengthening partnerships between the state and Indian tribes, achieving the goals set forth in this chapter, and to ensure mutual respect for the rights, interests, and obligations of each sovereign, this chapter shall be construed

to recognize and affirm the inherent sovereignty of Indian tribes, and to further the government-to-government relationships between Indian tribes and the state as follows:

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

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

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

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

(iii) Where an Indian tribe responds to the letter, the board must utilize the consultation process established by the board, including a mutually agreed timeline for completion of consultation. The consultation process will run concurrently with the panels' and board's evaluation of the project and will be completed prior to the date determined by the board to complete final funding decisions.

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

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

(d) If any project that directly impacts tribal lands is funded under this chapter without complying with subsection (9)(b) and (c) of this subsection, upon a request by an Indian tribe, all further action on the project will cease until consultation with the Indian tribe is complete.

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

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

(g) The utilities and transportation commission shall comply with this subsection in exercising its authority under section 4 of this chapter.

NEW SECTION. **Sec. 11.** INVESTMENT ADVISORY PANELS. (1) Three panels are created to provide detailed recommendations to the board and state agencies regarding implementation of this chapter, including the development of proposed rules, criteria, procedures and other program elements. The governor shall appoint members of each panel for four-year, staggered terms. At least one-third of the membership of each panel must be representatives of the interests of vulnerable populations in pollution and health action areas.

(2) The clean air and clean energy panel must be co-chaired by one business interest and a stakeholder that represents a statewide labor organization that represents a broad cross-section of workers. The panel may have no more than nine members, representing tribal, environmental, business, and labor communities and pollution and health action areas additional to tribal lands. The panel's membership shall have expertise in carbon reduction programs, activities, and technologies. The panel shall work with appropriate state agencies to identify existing state programs that can be utilized to provide preliminary evaluations of grant applications, develop criteria and processes for evaluating programs, activities, or projects proposed that cannot be evaluated under existing programs, and prepare funding and other recommendations to the board for expenditures from the clean air and clean energy account. The clean air and energy panel may also develop, as needed, recommend rules for the board's consideration.

(3) The clean water and healthy forests panel must be co-chaired by one tribal leader and one stakeholder that represents statewide environmental interests. The panel may have no more than nine members, representing tribal, environmental, business, and

labor communities and pollution and health action areas additional to tribes. The panel shall work with appropriate state agencies to identify existing state programs that can be utilized to provide initial evaluations of grant applications, develop funding criteria and processes for programs, activities, or projects that cannot be evaluated under existing programs, and prepare funding and other recommendations to the board for expenditures from the clean water and healthy forests account. The panel may also recommend rules for the board's consideration.

(4) The environmental and economic justice panel must be co-chaired by one tribal leader and one person that is a representative of the interests of vulnerable populations in pollution and health action areas that are not tribal lands. In addition to the co-chairs, the panel shall consist of two members representing union labor with expertise in economic dislocation, clean energy economy, or energy-intensive trade-exposed industries and five members, including at least one tribal leader and at least two non-tribal leaders representing the interest of vulnerable populations in pollution and health action areas. The purpose of the panel is to:

(i) Prepare funding recommendations to the board for expenditures from the healthy communities account;

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

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

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

(v) Evaluate compliance with the investment criteria in section 7 of this chapter;

(vi) Define qualifying events and workers for the allocation of funds authorized under section 4(5) of this chapter;

(vii) Review and comment on the analyses required under section 12 of this chapter and identify and recommend opportunities and measures to reduce burdens identified in the cumulative impact designation of pollution and health action areas pursuant to section 12(2) of this chapter, to increase economic opportunities, and to decrease risks, such as displacement; and

(viii) Administer, in cooperation with the department of commerce, the community capacity grants authorized under section 6(2) of this chapter.

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

(6) Any single individual may serve on more than one panel. Members of the panels who are not state employees must be compensated in accordance with RCW 43.03.240 and are entitled to reimbursement individually for travel expenses incurred in the performance of their duties as members of the panel in accordance with RCW 43.03.050 and 43.03.060. Members of the environmental and economic justice panel may receive financial support from organizations and the governments of Indian tribes through approved community capacity grants awarded under section 6(2) of this chapter.

NEW SECTION. **Sec. 12.** EFFECTIVENESS REVIEW AND POLLUTION MAPPING. (1)(a) By December 10, 2022, and every four years thereafter, the department of commerce, with support from relevant agencies and in consultation with the panels, the board, academic institutions, and other experts as appropriate, and taking into account scientific and community assessments of climate impacts, risks, and resilience needs, must develop and submit to the board a draft effectiveness report for final review and approval by the board.

(b) The effectiveness report shall describe progress in achieving the purposes of this chapter, including progress made in achieving the carbon reduction goals established in section 4(2)(b) of this chapter and in developing and implementing the clean energy investment plans under section 4 of this chapter. In addition, the effectiveness report shall also include information regarding the impact of the implementation of this chapter upon employment and jobs, including the number and nature of jobs created, worker hours, job quality, job access and demographics, co-benefits secured, and other employment and economic information as deemed appropriate. The effectiveness report shall also identify and evaluate outcomes, risks, and recommendations for vulnerable populations, pollution and health action areas, people with lower incomes, Indian tribes, and affected workers. The effectiveness report shall recommend improvements to the implementation of this chapter.

(2) By July 31, 2019, the department of health shall designate pollution and health action areas. This designation shall be at a minimum resolution of census tract scale and shall be based on the cumulative impact analysis of vulnerable populations and environmental burdens conducted by the University of Washington's department of environmental and occupational health sciences. The designation and ranking of census tracts in the cumulative impacts analysis and underlying data shall be available for public review and may be integrated with or build upon other population tracking resources. The designation of pollution and health action areas

and the cumulative impact analysis of vulnerable populations and environmental burdens shall be periodically evaluated and updated by the department of health after meaningful consultation with vulnerable populations, the environmental and economic justice panel, and the University of Washington's department of environmental and occupational health sciences.

NEW SECTION. **Sec. 13.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" or "oversight board" means the public oversight board created in section 10 of this chapter.

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

(4) "Carbon dioxide equivalent" has the same meaning as provided in RCW 70.235.010.

(5) “Consumer-owned utility” has the same meaning as in RCW 19.29A.010.

(6) “Eligible renewable energy resource” has the same meaning as in RCW 19.285.030.

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

(8) “Energy-intensive and trade-exposed sectors” and “EITE sectors” mean:

(a) those sectors identified under “EITE covered party” in WAC 173-442-020(1)(m) as of April 22, 2017; and

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

(9) “Environmental burdens” refers to the cumulative risks to communities caused by historic and current:

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

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

(10) “Fossil fuel” means petroleum products that are intended for combustion, natural gas, coal or coke of any kind, or any form

of solid, liquid, or gaseous fuel derived from these products including but not limited to motor vehicle fuel, special fuel, aircraft fuel, marine fuel, still gas, propane, and petroleum residuals such as bunker fuel. For purposes of imposing the pollution fee on the carbon content of fossil fuels consumed by a refinery facility during the process of refining fossil fuels, "fossil fuel" also means crude oil and petroleum.

(11) "Fund" means the clean up pollution fund established under section 3 of this chapter.

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

(13) "Greenhouse gas" and "greenhouse gases" have the same meaning as provided in RCW 70.235.010(6).

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

(15) An "Indian tribe" is an Indian nation, tribe, band, community, or other entity:

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

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

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

(17) “Investor-owned utility” has the same meaning as in RCW 19.29A.010.

(18) "Large emitter" means:

(a) For electricity:

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

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

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

(c) For natural gas, entities required to pay the tax specified in chapter 82.16 RCW, or, if the fee is not paid by a gas distribution business under chapter 82.16 RCW, by the person required to pay tax as provided in RCW 82.12.022 (1) through (3) and (8) through (10).

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

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

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

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

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

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

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

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

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

(24) "People with lower incomes" means:

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

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

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

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

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

(26) “Pollution” means, for purposes of this chapter only, the presence of or introduction into the environment of greenhouse gases.

(27) “Pollution and health action areas” are those communities designated by the department of health based on the cumulative impacts analysis required by section 12(2) of this chapter and census tracts that are fully or partially on “Indian Country” as defined in 18 U.S.C. Sec. 1151.

(28) “Power plant” has the same meaning as in RCW 80.80.010.

(29) “Special fuel” has the same meaning as provided in RCW 82.38.020 and includes fuel that is sold or used to propel vessels.

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

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

(2) “Tribal leaders” means persons identified by Indian tribes under RCW 43.376.050 or other designee formally appointed by the Indian tribe.

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

(3) “Vulnerable populations” are communities that experience high cumulative risk from environmental burdens due to:

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

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

NEW SECTION. **Sec. 16.** All departments and agencies named in this chapter may enact rules, develop guidance, and create forms and other documents necessary to effectuate the provisions and purposes of this chapter.

NEW SECTION. **Sec. 17.** As of the effective date of this chapter, chapter 173-442 WAC and associated amendments to chapter 173-441 WAC previously adopted by the department of ecology may not be enforced by the department of ecology. If this chapter is invalidated, the department of ecology is directed to enforce chapter 173-442 WAC and associated amendments to chapter 173-441 WAC.

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

NEW SECTION. **Sec. 19.** The findings and determinations in section 1 of this chapter are an integral part of this legislation. The provisions of this chapter are to be liberally construed to effectuate the policies and purposes of this chapter.

NEW SECTION. **Sec. 20.** The people find and determine that the pollution fee imposed in this chapter is not a tax in light of the purposes, benefits, and use of the fee. Nevertheless, if a court of final jurisdiction determines that the pollution fee imposed in this chapter is a tax, then that tax shall be deemed authorized, imposed, and exempt from the provisions of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec. 21.** This act constitutes a new chapter in Title 70 RCW.