

SUMMARY OF INITIATIVE 2117 TO THE LEGISLATURE

As of September 3, 2024

This document has been prepared by Senate Committee Services in response to requests for a summary of Initiative 2117 to the Legislature and is provided for legislative purposes only. It is not provided as an expression of support of or opposition to the ballot measure. This document is intended to provide general information and is not intended to be an exhaustive analysis of all issues presented by the measure or be considered legislative history for interpreting Initiative 2117. It is inappropriate to use public resources to support or oppose a ballot measure. Refer to the Legislative Ethics Manual or contact Senate Counsel for further guidance.

Brief Summary

- Prohibits state agencies from implementing any carbon tax credit trading.
- Repeals chapter 70A.65 RCW, which contains the majority of the provisions of the Climate Commitment Act.

Background: Initiative Process. Article II, Section 1, of the Washington State Constitution authorizes the initiative process, allowing the people to place a proposition on the ballot or to submit the proposed law to the Legislature. If an initiative to the Legislature is certified, the Legislature must take one of the following three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the measure; in either case the measure will automatically appear on the ballot in the next state general election; or
- propose an alternative measure, in which case the initiative and alternative will both appear on the ballot as competing measures in the next state general election.

In January of 2024, the Secretary of State certified Initiative 2117 relating to carbon tax credit trading. The Legislature took no action on the measure during the 2024 legislative session. Therefore, it will appear on the November 2024 general election ballot.

Ballot Title and Measure Prepared by the Attorney General. The ballot title and ballot measure summary are prepared by the Washington State Office of the Attorney General and will read as follows:

Ballot Title.

Initiative Measure No. 2117 concerns carbon tax credit trading. This measure would prohibit state agencies from imposing any type of carbon tax credit trading, and repeal legislation establishing a cap and invest program to reduce greenhouse gas emissions. This measure would decrease funding for investments in transportation, clean air, renewable energy, conservation, and emissions-reduction.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary.

This measure would prohibit state agencies from imposing any type of carbon tax credit trading, including “cap and trade” or “cap and tax” programs, regardless of whether the resulting increased costs are imposed on fuel recipients or fuel suppliers. It would repeal sections of the 2021 Washington Climate Commitment Act as amended, including repealing the creation and modification of a “cap and invest” program to reduce greenhouse gas emissions by specific entities.

Climate Commitment Act. Cap and Invest Program. In 2021, the Legislature passed the Climate Commitment Act (CCA). The CCA established a Cap and Invest Program (Program) to reduce greenhouse gas (GHG) emissions consistent with statewide statutory emissions limits.

The CCA has since been amended by several bills. In 2024, the Legislature specifically amended the Program to facilitate the linkage of Washington's carbon market with the California-Quebec carbon market, and the amendments include authorizing the Department of Ecology (Ecology) to change the length of compliance periods and establish new GHG reporting methodologies. These new provisions take effect on January 1, 2025, only if I- 2117 is not approved by a vote of the people. If I-2117 is approved by a vote of the people in the 2024 general election, the linkage bill is null and void.

Covered Entities and Compliance Instruments. The Program started on January 1, 2023, and sets a limit, or a cap, on overall GHG emissions in the state and requires certain entities to obtain allowances equal to their covered GHG emissions. These covered entities are industrial facilities, certain fuel suppliers, in-state electricity generators, electricity importers, and natural gas distributors with annual GHGs above 25,000 metric tons of carbon dioxide equivalent (CO₂e).

Covered entities must either reduce their emissions, or obtain allowances to cover any remaining emissions. Allowances can be obtained through quarterly auctions or bought and sold on a secondary market. The total number of allowances will decrease over time to meet statutory limits.

Under the Program, free allowances are provided to some utilities and industries, such as natural gas and electric utilities and certain emissions-intensive, trade exposed industries. These entities can consign these allowances as part of the regular CCA auctions, but the revenue is returned to them rather than being deposited into state funds.

An opt-in entity is a person responsible for GHG emissions that is not a covered entity but may voluntarily participate and register in the Program. An opt-in entity must meet the same requirements for registration and compliance obligations as a covered entity.

A portion of a covered or opt-in entity's compliance obligation may be met through offset credits from projects that result in GHG reductions or removals that are real, permanent, quantifiable,

verifiable, and enforceable. Offset projects must be in addition to emissions reductions required by law and a certain percentage must provide direct environmental benefits to Washington State.

The Program must track, verify, and enforce compliance through the use of compliance instruments. A compliance instrument is an allowance or offset credit issued by Ecology or a trading program linked with Washington's Program. One compliance instrument is equal to one metric ton of CO₂e.

If a covered or opt-in entity fails to submit sufficient compliance instruments to meet its compliance obligations by the specified transfer dates, it must submit a penalty of four allowances for every one allowance missing within six months. Civil penalties are levied if a covered or opt-in entity fails to submit penalty allowances.

Auctions and Accounts. The first allowance auction was held in February 2023. Each calendar year, allowances from the Program are sold at four regular quarterly auctions administered by Ecology. The Program also has provisions for special allowance price containment reserve (APCR) auctions to be held when a regular quarterly auction price is above a certain price for that year. APCR auctions are only open to businesses and entities that are required to obtain allowances to cover their emissions under the Program. General quarterly auctions are open to any and all bidders, including those who do not have a compliance obligation.

The following three primary CCA accounts are created under the Program to receive auction proceeds, and are subject to appropriation by the Legislature in the transportation, operating, and capital budgets:

- the Carbon Emissions Reduction Account (CERA) for projects that reduce emissions from the transportation sector, specifically by supporting the following activities: (1) active transportation; (2) transit programs and projects; (3) alternative fuel and electrification; (4) ferries; and (5) rail;
- the Climate Investment Account (CIA) for projects that support the transition to clean energy, build ecosystem resilience, and support carbon sequestration; and
- the Air Quality and Health Disparities Improvement Account for projects that help identify and reduce criteria pollutants and health disparities in the overburdened communities highly impacted by air pollution.

CERA revenues are annually transferred to two transportation accounts, with 56 percent transferred to the Climate Transit Program Account and 24 percent transferred to the Climate Active Transportation Account.

After administrative costs to implement the Program are covered, 75 percent of the CIA is distributed to the Climate Commitment Account and 25 percent to the Natural Climate Solutions Account.

The intent of the Legislature is that each year not less than 35 percent, with a goal of 40 percent, of the total investments made through these accounts provide benefits to vulnerable populations within overburdened communities. An additional 10 percent minimum target is established for projects supported by tribal resolution, with priority to projects directly administered or proposed by a tribe.

The state must develop a process to evaluate the impacts of the investments made, develop and track priorities across the funding categories in various state agencies, and work with the Environmental Justice Council to incorporate its recommendations and evaluation of the Program.

Revenue Generated. As of July 2024, \$2.149 billion has been collected from the quarterly auctions.

Environmental Justice Review. In addition to establishing a Cap and Invest Program, the CCA also directed Ecology to conduct an environmental justice review every two years, beginning in 2023, to ensure reductions in criteria pollutants as well as GHG emissions in overburdened communities highly impacted by air pollution. Ecology must deploy an air monitoring network in high priority overburdened communities to collect sufficient air quality data for the 2023 review and subsequent reviews.

Once the review determines the levels of criteria pollutants in an identified overburdened community, Ecology must:

- establish air quality targets;
- identify the stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing;
- achieve the reduction targets through adoption of emission control strategies or other methods;
- adopt stricter air quality standards, emission standards, or emissions limitations on criteria pollutants; and
- after adoption of the stricter air quality standards, emission standards, or emissions limitations, issue an enforceable order on affected permittees or registered sources to comply with the stricter standards or limitations.

The Environmental Justice Council (Council), established in 2021, must provide recommendations to the Legislature, agencies, and the Governor on the development and implementation of the Program, and programs funded from the CCA accounts. Additional duties of the Council include recommending environmental justice and environmental health goals for programs, activities, and projects funded from the Climate Investment Account, and reviewing agency annual reports on outcomes and progress toward meeting these goals; and providing a forum to analyze policies adopted under the Program to determine if policies lead to improvements within overburdened communities.

Tribal Consultation. Under the CCA, state agencies that administer funds from the Climate Investment Account, Climate Commitment Account, and Natural Solutions Account, must offer consultation to federally recognized tribes whose tribal resources may be affected by the award of funds from the accounts. The consultation is independent of, and in addition to, any public participation process that may otherwise be required by federal or state law, or by a federal or state agency.

At the earliest possible date prior to the submission of an application for funding from the three accounts referenced above, an applicant for funding must engage in a preapplication process with all federally recognized tribes within the project area. Agencies may not release funding or make permitting decisions that advance the proposed project during the pendency of the preapplication process, except where required by law.

Summary of Initiative: Under I-2117, "[a]ll state agencies are prohibited from implementing any type of carbon tax credit trading, also known as 'cap and trade' or 'cap and tax' scheme, including the climate commitment act previously codified as chapter 70A.65 RCW." The prohibition applies whether the costs are imposed on fuel recipients or fuel suppliers. The provisions of the act must be liberally construed to effectuate the policies, purposes, and intent.

Chapter 70A.65 RCW, which contains the majority of the CCA provisions is repealed, including sections prescribing definitions, the environmental justice review and assessment, annual allowance budget and timelines, Program coverage and requirements, auction requirements, compliance for covered and opt-in entities, enforcement and penalties, linkage requirements, reporting requirements, and five of the seven CCA accounts.

The CCA provisions that I-2117 does not repeal are the following:

- conforming amendments to existing statutes made in the underlying bill establishing the CCA, for example reporting GHG emissions under the Clean Air Act and enforcement by the Pollution Control Hearings Board;
- the Climate Transit Programs Account and the Climate Active Transportation Account; and
- multiple references to Program statutes throughout the code.

Effective Date: The initiative takes effect 30 days after the election at which it is approved.

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