

Washington's Cap-and-Invest Program Creates Opportunity for Tribes to Combat Climate Change and Generate Governmental Revenues

Legal Update
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Washington State's innovative [cap-and-invest program](#), established by the [Climate Commitment Act](#), presents a remarkable new opportunity for tribes to mitigate the effects of climate change and generate governmental revenues. The program, which adopts a market-based approach to regulating carbon emissions, sets a state-wide cap on total carbon emissions for regulated entities emitting more than 25,000 metric tons of greenhouse gases per year, including oil, gas, and energy companies; public utility districts; and qualifying railroads.

Regulated entities must purchase "allowances" equal to their emissions each year to comply with the program. Some regulated entities receive a portion of their allowances for free, but a majority must purchase them through auctions hosted by the Department of Ecology or the secondary market. Over time, the total emission allowances available for purchase will decrease, leading to a decrease in emissions. Non-compliance can result in penalties of up to \$10,000 per day, or up to \$50,000 per day for abuse of the auction system.

Regulated entities can also obtain "offset credits" to offset the total number of allowances they must purchase. They can obtain these offset credits by investing in offset projects or by purchasing them from tribes that undertake offset projects on tribal lands and certain other lands of importance to tribes. Offset projects include actions such as reforestation, forest preservation, destruction of ozone-depleting substances, installation of livestock emission reduction equipment, and other actions that result in a quantifiable reduction in greenhouse gas emissions. Regulated entities can offset up to 5% of their required allowance, with an additional 3% available for projects

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on tribal lands.

This presents a unique opportunity for federally recognized tribes with lands, sacred sites, burial grounds, traditional cultural properties, and other tribal sites protected by law within what is now Washington State. Tribes can undertake offset projects on these tribal lands and then sell the resulting offset credits to regulated entities.

In addition, to support tribes in developing carbon offset projects, the state of Washington has established the Tribal Carbon Offset Assistance Program, for which the legislature has allocated \$5 million in funding. Under the assistance program, [tribes can use the funding](#) toward “assessing a project’s technical feasibility investment requirements, development and operational costs, expected returns, administrative and legal hurdles, and project risks and pitfalls.”

The next round of applications for funding under the Tribal Carbon Offset Assistance Program is expected to open later this spring. Tribes interested in participating in this innovative program can [apply through the program's website](#). Foster Garvey, a leading law firm with decades of experience representing tribes, is available to provide advice and support to tribes interested in participating in the cap-and-invest program or the Tribal Carbon Offset Assistance Program.