

E2SHB 1112 - S COMM AMD  
By Committee on Ways & Means

ADOPTED AND ENGROSSED 4/15/19

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that  
4 hydrofluorocarbons are air pollutants that pose significant threats  
5 to our environment and that safer alternatives for the most damaging  
6 hydrofluorocarbons are readily available and cost-effective.

7 (2) Hydrofluorocarbons came into widespread commercial use as  
8 United States environmental protection agency-approved replacements  
9 for ozone-depleting substances that were being phased out under an  
10 international agreement. However, under a 2017 federal appeals court  
11 ruling, while the environmental protection agency had been given the  
12 power to originally designate hydrofluorocarbons as suitable  
13 replacements for the ozone-depleting substances, the environmental  
14 protection agency did not have clear authority to require the  
15 replacement of hydrofluorocarbons once the replacement of the  
16 original ozone-depleting substances had already occurred.

17 (3) Because the impacts of climate change will not wait until  
18 congress acts to clarify the scope of the environmental protection  
19 agency's authority, it falls to the states to provide leadership on  
20 addressing hydrofluorocarbons. Doing so will not only help the  
21 climate, but will help American businesses retain their positions as  
22 global leaders in air conditioning and refrigerant technologies.  
23 Although hydrofluorocarbons currently represent a small proportion of  
24 the state's greenhouse gas emissions, emissions of hydrofluorocarbons  
25 have been rapidly increasing in the United States and worldwide, and  
26 they are thousands of times more potent than carbon dioxide. However,  
27 hydrofluorocarbons are also a segment of the state's emissions that  
28 will be comparatively easy to reduce and eliminate without widespread  
29 implications for the way that power is produced, heavy industries  
30 operate, or people transport themselves. Substituting or reducing the  
31 use of hydrofluorocarbons with the highest global warming potential

1 will provide a significant boost to the state's efforts to reduce its  
2 greenhouse gas emissions to the limits established in RCW 70.235.020.

3 (4) Therefore, it is the intent of the legislature to transition  
4 to the use of less damaging hydrofluorocarbons or suitable  
5 substitutes in various applications in Washington, in a manner  
6 similar to the regulations that were adopted by the environmental  
7 protection agency, and that have been subsequently adopted or will be  
8 adopted in several other states around the country.

9 **Sec. 2.** RCW 70.235.010 and 2010 c 146 s 1 are each amended to  
10 read as follows:

11 The definitions in this section apply throughout this chapter  
12 unless the context clearly requires otherwise.

13 (1) "Carbon dioxide equivalents" means a metric measure used to  
14 compare the emissions from various greenhouse gases based upon their  
15 global warming potential.

16 (2) "Climate advisory team" means the stakeholder group formed in  
17 response to executive order 07-02.

18 (3) "Climate impacts group" means the University of Washington's  
19 climate impacts group.

20 (4) "Department" means the department of ecology.

21 (5) "Director" means the director of the department.

22 (6) "Greenhouse gas" and "greenhouse gases" includes carbon  
23 dioxide, methane, nitrous oxide, hydrofluorocarbons,  
24 perfluorocarbons, sulfur hexafluoride, and any other gas or gases  
25 designated by the department by rule.

26 (7) "Person" means an individual, partnership, franchise holder,  
27 association, corporation, a state, a city, a county, or any  
28 subdivision or instrumentality of the state.

29 (8) "Program" means the department's climate change program.

30 (9) "Western climate initiative" means the collaboration of  
31 states, Canadian provinces, Mexican states, and tribes to design a  
32 multisector market-based mechanism as directed under the western  
33 regional climate action initiative signed by the governor on February  
34 22, 2007.

35 (10) "Class I substance" and "class II substance" means those  
36 substances listed in 42 U.S.C. Sec. 7671a, as it read on November 15,  
37 1990, or those substances listed in Appendix A or B of Subpart A of  
38 40 C.F.R. Part 82, as those read on January 3, 2017.

1       (11) "Hydrofluorocarbons" means a class of greenhouse gases that  
2 are saturated organic compounds containing hydrogen, fluorine, and  
3 carbon.

4       (12) "Manufacturer" includes any person, firm, association,  
5 partnership, corporation, governmental entity, organization, or joint  
6 venture that produces any product that contains or uses  
7 hydrofluorocarbons or is an importer or domestic distributor of such  
8 a product.

9       (13) "Residential consumer refrigeration products" has the same  
10 meaning as defined in section 430.2 of Subpart A of 10 C.F.R. Part  
11 430 (2017).

12       (14) "Retrofit" has the same meaning as defined in section 152 of  
13 Subpart F of 40 C.F.R. Part 82, as that section existed as of January  
14 3, 2017.

15       (15) "Substitute" means a chemical, product substitute, or  
16 alternative manufacturing process, whether existing or new, that is  
17 used to perform a function previously performed by a class I  
18 substance or class II substance and any substitute subsequently  
19 adopted to perform that function, including, but not limited to,  
20 hydrofluorocarbons. "Substitute" does not include 2-BTP or any  
21 compound as applied to its use in aerospace fire extinguishing  
22 systems.

23       NEW SECTION. Sec. 3. A new section is added to chapter 70.235  
24 RCW to read as follows:

25       (1) A person may not offer any product or equipment for sale,  
26 lease, or rent, or install or otherwise cause any equipment or  
27 product to enter into commerce in Washington if that equipment or  
28 product consists of, uses, or will use a substitute, as set forth in  
29 appendix U and V, Subpart G of 40 C.F.R. Part 82, as those read on  
30 January 3, 2017, for the applications or end uses restricted by  
31 appendix U or V of the federal regulation, as those read on January  
32 3, 2017, consistent with the deadlines established in subsection (2)  
33 of this section. Except where existing equipment is retrofit, nothing  
34 in this subsection requires a person that acquired a restricted  
35 product or equipment prior to the effective date of the restrictions  
36 in subsection (2) of this section to cease use of that product or  
37 equipment. Products or equipment manufactured prior to the applicable  
38 effective date of the restrictions specified in subsection (2) of

1 this section may be sold, imported, exported, distributed, installed,  
2 and used after the specified effective date.

3 (2) The restrictions under subsection (1) of this section for the  
4 following products and equipment identified in appendix U and V,  
5 Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017,  
6 take effect beginning:

7 (a) January 1, 2021, for:

8 (i) Propellants;

9 (ii) Rigid polyurethane applications and spray foam, flexible  
10 polyurethane, integral skin polyurethane, flexible polyurethane foam,  
11 polystyrene extruded sheet, polyolefin, phenolic insulation board,  
12 and bunstock;

13 (iii) Supermarket systems, remote condensing units, stand-alone  
14 units, and vending machines;

15 (b) January 1, 2022, for:

16 (i) Refrigerated food processing and dispensing equipment;

17 (ii) Compact residential consumer refrigeration products;

18 (iii) Polystyrene extruded boardstock and billet, and rigid  
19 polyurethane low-pressure two component spray foam;

20 (c) January 1, 2023, for residential consumer refrigeration  
21 products other than compact and built-in residential consumer  
22 refrigeration products;

23 (d) January 1, 2024, for cold storage warehouses;

24 (e) January 1, 2024, for built-in residential consumer  
25 refrigeration products;

26 (f) January 1, 2025, for centrifugal chillers and positive  
27 displacement chillers; and

28 (g) On either January 1, 2021, or the effective date of the  
29 restrictions identified in appendix U and V, Subpart G of 40 C.F.R.  
30 Part 82, as those read on January 3, 2017, whichever comes later, for  
31 all other applications and end uses for substitutes not covered by  
32 the categories listed in (a) through (f) of this subsection.

33 (3) The department may by rule:

34 (a) Modify the effective date of a prohibition established in  
35 subsection (2) of this section if the department determines that the  
36 rule reduces the overall risk to human health or the environment and  
37 reflects the earliest date that a substitute is currently or  
38 potentially available or, in the case of certain specific  
39 applications of vending machines addressed by subsection (2)(a)(iii)  
40 of this section, modify the effective date of the prohibition to a

1 date no later than January 1, 2022, if the department determines that  
2 relevant safety standards including, but not limited to, those  
3 published by underwriters laboratories (UL) or the American society  
4 of heating, refrigerating and air-conditioning engineers (ASHRAE), do  
5 not permit the use of commercially available substitutes for  
6 hydrofluorocarbons in those specific applications;

7 (b) Prohibit the use of a substitute if the department determines  
8 that the prohibition reduces the overall risk to human health or the  
9 environment and that a lower risk substitute is currently or  
10 potentially available;

11 (c) (i) Adopt a list of approved substitutes, use conditions, or  
12 use limits, if any; and

13 (ii) Add or remove substitutes, use conditions, or use limits to  
14 or from the list of approved substitutes if the department determines  
15 those substitutes reduce the overall risk to human health and the  
16 environment; and

17 (d) Designate acceptable uses of hydrofluorocarbons for medical  
18 uses that are exempt from the requirements of subsection (2) of this  
19 section.

20 (4) (a) Within twelve months of another state's enactment or  
21 adoption of restrictions on substitutes applicable to new light duty  
22 vehicles, the department may adopt restrictions applicable to the  
23 sale, lease, rental, or other introduction into commerce by a  
24 manufacturer of new light duty vehicles consistent with the  
25 restrictions identified in appendix B, Subpart G of 40 C.F.R. Part  
26 82, as it read on January 3, 2017. The department may not adopt  
27 restrictions that take effect prior to the effective date of  
28 restrictions adopted or enacted in at least one other state.

29 (b) If the United States environmental protection agency approves  
30 a previously prohibited hydrofluorocarbon blend with a global warming  
31 potential of seven hundred fifty or less for foam blowing of  
32 polystyrene extruded boardstock and billet and rigid polyurethane  
33 low-pressure two-component spray foam pursuant to the significant new  
34 alternatives policy program under section 7671(k) of the federal  
35 clean air act (42 U.S.C. Sec. 7401 et seq.), the department must  
36 expeditiously propose a rule consistent with RCW 34.05.320 to conform  
37 the requirements established under this section with that federal  
38 action.

39 (5) A manufacturer must disclose the substitutes used in its  
40 products or equipment. That disclosure must take the form of:

1 (a) A label on the equipment or product. The label must meet  
2 requirements designated by the department by rule. To the extent  
3 feasible, the department must recognize existing labeling that  
4 provides sufficient disclosure of the use of substitutes in the  
5 product or equipment.

6 (i) The department must consider labels required by state  
7 building codes and other safety standards in its rule making; and

8 (ii) The department may not require labeling of aircraft and  
9 aircraft components subject to certification requirements of the  
10 federal aviation administration.

11 (b) Submitting information about the use of substitutes to the  
12 department, upon request.

13 (i) By December 31, 2019, all manufacturers must notify the  
14 department of the status of each product class utilizing  
15 hydrofluorocarbons or other substitutes restricted under subsection  
16 (1) of this section that the manufacturer sells, offers for sale,  
17 leases, installs, or rents in Washington state. This status  
18 notification must identify the substitutes used by products or  
19 equipment in each product or equipment class in a manner determined  
20 by rule by the department.

21 (ii) Within one hundred twenty days after the date of a  
22 restriction put in place under this section, any manufacturer  
23 affected by the restriction must provide an updated status  
24 notification. This notification must indicate whether the  
25 manufacturer has ceased the use of hydrofluorocarbons or substitutes  
26 restricted under this section within each product class and, if not,  
27 what hydrofluorocarbons or other restricted substitutes remain in  
28 use.

29 (iii) After the effective date of a restriction put in place  
30 under this section, any manufacturer must provide an updated status  
31 notification when the manufacturer introduces a new or modified  
32 product or piece of equipment that uses hydrofluorocarbons or changes  
33 the type of hydrofluorocarbons utilized within a product class  
34 affected by a restriction. Such a notification must occur within one  
35 hundred twenty days of the introduction into commerce in Washington  
36 of the product or equipment triggering this notification requirement.

37 (6) The department may adopt rules to administer, implement, and  
38 enforce this section. If the department elects to adopt rules, the  
39 department must seek, where feasible and appropriate, to adopt rules,  
40 including rules under subsection (4) of this section, that are the

1 same or consistent with the regulatory standards, exemptions,  
2 reporting obligations, disclosure requirements, and other compliance  
3 requirements of other states or the federal government that have  
4 adopted restrictions on the use of hydrofluorocarbons and other  
5 substitutes. Prior to the adoption or update of a rule under this  
6 section, the department must identify the sources of information it  
7 relied upon, including peer-reviewed science.

8 (7) For the purposes of implementing the restrictions specified  
9 in appendix U of Subpart G of 40 C.F.R. Part 82, as it read on  
10 January 3, 2017, consistent with this section, the department must  
11 interpret the term "aircraft maintenance" to mean activities to  
12 support the production, fabrication, manufacture, rework, inspection,  
13 maintenance, overhaul, or repair of commercial, civil, or military  
14 aircraft, aircraft parts, aerospace vehicles, or aerospace  
15 components.

16 (8) The authority granted by this section to the department for  
17 restricting the use of substitutes is supplementary to the  
18 department's authority to control air pollution pursuant to chapter  
19 70.94 RCW. Nothing in this section limits the authority of the  
20 department under chapter 70.94 RCW.

21 (9) Except where existing equipment is retrofit, the restrictions  
22 of this section do not apply to or limit any use of commercial  
23 refrigeration equipment that was installed or in use prior to the  
24 effective date of the restrictions established in this section.

25 **Sec. 4.** RCW 70.94.430 and 2011 c 96 s 49 are each amended to  
26 read as follows:

27 (1) Any person who knowingly violates any of the provisions of  
28 chapter 70.94 or 70.120 RCW, section 3 of this act, or any ordinance,  
29 resolution, or regulation in force pursuant thereto is guilty of a  
30 gross misdemeanor and upon conviction thereof shall be punished by a  
31 fine of not more than ten thousand dollars, or by imprisonment in the  
32 county jail for up to three hundred sixty-four days, or by both for  
33 each separate violation.

34 (2) Any person who negligently releases into the ambient air any  
35 substance listed by the department of ecology as a hazardous air  
36 pollutant, other than in compliance with the terms of an applicable  
37 permit or emission limit, and who at the time negligently places  
38 another person in imminent danger of death or substantial bodily harm  
39 is guilty of a gross misdemeanor and shall, upon conviction, be

1 punished by a fine of not more than ten thousand dollars, or by  
2 imprisonment for up to three hundred sixty-four days, or both.

3 (3) Any person who knowingly releases into the ambient air any  
4 substance listed by the department of ecology as a hazardous air  
5 pollutant, other than in compliance with the terms of an applicable  
6 permit or emission limit, and who knows at the time that he or she  
7 thereby places another person in imminent danger of death or  
8 substantial bodily harm, is guilty of a class C felony and shall,  
9 upon conviction, be punished by a fine of not less than fifty  
10 thousand dollars, or by imprisonment for not more than five years, or  
11 both.

12 (4) Any person who knowingly fails to disclose a potential  
13 conflict of interest under RCW 70.94.100 is guilty of a gross  
14 misdemeanor, and upon conviction thereof shall be punished by a fine  
15 of not more than five thousand dollars.

16 **Sec. 5.** RCW 70.94.431 and 2013 c 51 s 6 are each amended to read  
17 as follows:

18 (1) (a) Except as provided in RCW 43.05.060 through 43.05.080 and  
19 43.05.150, and in addition to or as an alternate to any other penalty  
20 provided by law, any person who violates any of the provisions of  
21 this chapter, chapter 70.120 (~~(RCW, chapter)~~) or 70.310 RCW, section  
22 3 of this act, or any of the rules in force under such chapters or  
23 section may incur a civil penalty in an amount not to exceed ten  
24 thousand dollars per day for each violation. Each such violation  
25 shall be a separate and distinct offense, and in case of a continuing  
26 violation, each day's continuance shall be a separate and distinct  
27 violation.

28 (b) Any person who fails to take action as specified by an order  
29 issued pursuant to this chapter shall be liable for a civil penalty  
30 of not more than ten thousand dollars for each day of continued  
31 noncompliance.

32 (2) (a) Penalties incurred but not paid shall accrue interest,  
33 beginning on the ninety-first day following the date that the penalty  
34 becomes due and payable, at the highest rate allowed by RCW 19.52.020  
35 on the date that the penalty becomes due and payable. If violations  
36 or penalties are appealed, interest shall not begin to accrue until  
37 the thirty-first day following final resolution of the appeal.



1       **(b)** The maximum penalty amounts established in this section may  
2 be increased annually to account for inflation as determined by the  
3 state office of the economic and revenue forecast council.

4       (3) Each act of commission or omission which procures, aids or  
5 abets in the violation shall be considered a violation under the  
6 provisions of this section and subject to the same penalty. The  
7 penalties provided in this section shall be imposed pursuant to RCW  
8 43.21B.300.

9       (4) All penalties recovered under this section by the department  
10 shall be paid into the state treasury and credited to the air  
11 pollution control account established in RCW 70.94.015 or, if  
12 recovered by the authority, shall be paid into the treasury of the  
13 authority and credited to its funds. If a prior penalty for the same  
14 violation has been paid to a local authority, the penalty imposed by  
15 the department under subsection (1) of this section shall be reduced  
16 by the amount of the payment.

17       (5) To secure the penalty incurred under this section, the state  
18 or the authority shall have a lien on any vessel used or operated in  
19 violation of this chapter which shall be enforced as provided in RCW  
20 60.36.050.

21       (6) Public or private entities that are recipients or potential  
22 recipients of department grants, whether for air quality related  
23 activities or not, may have such grants rescinded or withheld by the  
24 department for failure to comply with provisions of this chapter.

25       (7) In addition to other penalties provided by this chapter,  
26 persons knowingly under-reporting emissions or other information used  
27 to set fees, or persons required to pay emission or permit fees who  
28 are more than ninety days late with such payments may be subject to a  
29 penalty equal to three times the amount of the original fee owed.

30       (8) (~~By January 1, 1992,~~) The department shall develop rules  
31 for excusing excess emissions from enforcement action if such excess  
32 emissions are unavoidable. The rules shall specify the criteria and  
33 procedures for the department and local air authorities to determine  
34 whether a period of excess emissions is excusable in accordance with  
35 the state implementation plan.

36       **Sec. 6.** RCW 70.94.015 and 1998 c 321 s 33 are each amended to  
37 read as follows:

38       (1) The air pollution control account is established in the state  
39 treasury. All receipts collected by or on behalf of the department

1 from RCW 70.94.151(2), and receipts from nonpermit program sources  
2 under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW  
3 (~~70.94.650, 70.94.660, 82.44.020(2), and 82.50.405~~) 70.94.6528 and  
4 70.94.6534 shall be deposited into the account. Moneys in the account  
5 may be spent only after appropriation. Expenditures from the account  
6 may be used only to develop and implement the provisions of chapters  
7 70.94 and 70.120 RCW and section 3 of this act.

8 (2) The amounts collected and allocated in accordance with this  
9 section shall be expended upon appropriation except as otherwise  
10 provided in this section and in accordance with the following  
11 limitations:

12 Portions of moneys received by the department of ecology from the  
13 air pollution control account shall be distributed by the department  
14 to local authorities based on:

15 (a) The level and extent of air quality problems within such  
16 authority's jurisdiction;

17 (b) The costs associated with implementing air pollution  
18 regulatory programs by such authority; and

19 (c) The amount of funding available to such authority from other  
20 sources, whether state, federal, or local, that could be used to  
21 implement such programs.

22 (3) The air operating permit account is created in the custody of  
23 the state treasurer. All receipts collected by or on behalf of the  
24 department from permit program sources under RCW 70.94.152(1),  
25 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the  
26 account. Expenditures from the account may be used only for the  
27 activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and  
28 70.94.154(7). Moneys in the account may be spent only after  
29 appropriation.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.27  
31 RCW to read as follows:

32 The building code council shall adopt rules that permit the use  
33 of substitutes approved under section 3 of this act and that do not  
34 require the use of substitutes that are restricted under section 3 of  
35 this act.

36 NEW SECTION. **Sec. 8.** The department of ecology, in consultation  
37 with the department of commerce and the utilities and transportation  
38 commission, must complete a report addressing how to increase the use

1 of refrigerants with a low global warming potential in mobile  
2 sources, utility equipment, and consumer appliances, and how to  
3 reduce other uses of hydrofluorocarbons in Washington. The report  
4 must be submitted to the legislature consistent with RCW 43.01.036 by  
5 December 1, 2020, and must include recommendations for how to fund,  
6 structure, and prioritize a state program that incentivizes or  
7 provides grants to support the elimination of legacy uses of  
8 hydrofluorocarbons regulated under section 3 of this act or uses of  
9 hydrofluorocarbons not covered by section 3 of this act.

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.26  
11 RCW to read as follows:

12 (1) The department shall establish purchasing and procurement  
13 policies that provide a preference for products that:

14 (a) Are not restricted under section 3 of this act;

15 (b) Do not contain hydrofluorocarbons or contain  
16 hydrofluorocarbons with a comparatively low global warming potential;

17 (c) Are not designed to function only in conjunction with  
18 hydrofluorocarbons characterized by a comparatively high global  
19 warming potential; and

20 (d) Were not manufactured using hydrofluorocarbons or were  
21 manufactured using hydrofluorocarbons with a low global warming  
22 potential.

23 (2) No agency may knowingly purchase products that are not  
24 accorded a preference in the purchasing and procurement policies  
25 established by the department pursuant to subsection (1) of this  
26 section, unless there is no cost-effective and technologically  
27 feasible option that is accorded a preference.

28 (3) Nothing in this section requires the department or any other  
29 state agency to breach an existing contract or dispose of stock that  
30 has been ordered or is in the possession of the department or other  
31 state agency as of the effective date of this section.

32 (4) By December 1, 2020, and each December 1st of even numbered  
33 years thereafter, the department must submit a status report to the  
34 appropriate committees of the house of representatives and senate  
35 regarding the implementation and compliance of the department and  
36 state agencies with this section.

37 NEW SECTION. **Sec. 10.** If any provision of this act or its  
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected."

**E2SHB 1112** - S COMM AMD  
By Committee on Ways & Means

**ADOPTED 4/15/19**

3 On page 1, line 2 of the title, after "hydrofluorocarbons;"  
4 strike the remainder of the title and insert "amending RCW  
5 70.235.010, 70.94.430, 70.94.431, and 70.94.015; adding a new section  
6 to chapter 70.235 RCW; adding a new section to chapter 19.27 RCW;  
7 adding a new section to chapter 39.26 RCW; creating new sections; and  
8 prescribing penalties."

--- END ---