

**E2SSB 5842** - H COMM AMD

By Committee on Environment & Energy

**ADOPTED AS AMENDED 03/02/2022**

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

3 **"Sec. 1.** RCW 70A.65.070 and 2021 c 316 s 9 are each amended to  
4 read as follows:

5 (1)(a) The department shall commence the program by January 1,  
6 2023, by determining an emissions baseline establishing the  
7 proportionate share that the total greenhouse gas emissions of  
8 covered entities for the first compliance period bears to the total  
9 anthropogenic greenhouse gas emissions in the state during 2015  
10 through 2019, based on data reported to the department under RCW  
11 70A.15.2200 or provided as required by this chapter, as well as other  
12 relevant data. By October 1, 2022, the department shall adopt annual  
13 allowance budgets for the first compliance period of the program,  
14 calendar years 2023 through 2026, to be distributed from January 1,  
15 2023, through December 31, 2026.

16 (b) By October 1, 2026, the department shall add to its emissions  
17 baseline by incorporating the proportionate share that the total  
18 greenhouse gas emissions of new covered entities in the second  
19 compliance period bear to the total anthropogenic greenhouse gas  
20 emissions in the state during ((2023)) 2015 through ((2025)) 2019. In  
21 determining the addition to the baseline, the department may exclude  
22 a year from the determination if the department identifies that year  
23 to have been an outlier due to a state of emergency. The department  
24 shall adopt annual allowance budgets for the second compliance period  
25 of the program, calendar years 2027 through 2030, that will be  
26 distributed from January 1, 2027, through December 31, 2030.

27 (c) By October 1, 2028, the department shall adopt by rule the  
28 annual allowance budgets for calendar years 2031 through 2040.

29 (2) The annual allowance budgets must be set to achieve the share  
30 of reductions by covered entities necessary to achieve the 2030,  
31 2040, and 2050 statewide emissions limits established in RCW  
32 70A.45.020, based on data reported to the department under chapter

1 70A.15 RCW or provided as required by this chapter. Annual allowance  
2 budgets must be set such that the use of offsets as compliance  
3 instruments, consistent with RCW 70A.65.170, does not prevent the  
4 achievement of the emissions limits established in RCW 70A.45.020. In  
5 so setting annual allowance budgets, the department must reduce the  
6 annual allowance budget relative to the limits in an amount  
7 equivalent to offset use, or in accordance with a similar methodology  
8 adopted by the department. The department must adopt annual allowance  
9 budgets for the program on a calendar year basis that provide for  
10 progressively equivalent reductions year over year. An allowance  
11 distributed under the program, either directly by the department  
12 under RCW 70A.65.110 through 70A.65.130 or (~~though~~ ~~[through]~~)  
13 through auctions under RCW 70A.65.100, does not expire and may be  
14 held or banked consistent with RCW 70A.65.100(6) and 70A.65.150(1).

15 (3) The department must complete (~~an~~) evaluations by December  
16 31, 2027, and by December 31, 2035, of the performance of the  
17 program, including its performance in reducing greenhouse gases. If  
18 the evaluation shows that adjustments to the annual allowance budgets  
19 are necessary for covered entities to achieve their proportionate  
20 share of the 2030 and 2040 emission reduction limits identified in  
21 RCW 70A.45.020, as applicable, the department shall adjust the annual  
22 allowance budgets accordingly. The department must complete  
23 additional evaluations of the performance of the program by December  
24 31, 2040, and by December 31, 2045, and make any necessary  
25 adjustments in the annual allowance budgets to ensure that covered  
26 entities achieve their proportionate share of the 2050 emission  
27 reduction limit identified in RCW 70A.45.020. Nothing in this  
28 subsection precludes the department from making additional  
29 adjustments to annual allowance budgets as necessary to ensure  
30 successful achievement of the proportionate emission reduction limits  
31 by covered entities. The department shall determine and make public  
32 the circumstances, metrics, and processes that would initiate the  
33 public consideration of additional allowance budget adjustments to  
34 ensure successful achievement of the proportionate emission reduction  
35 limits.

36 (4) Data reported to the department under RCW 70A.15.2200 or  
37 provided as required by this chapter for 2015 through 2019 is deemed  
38 sufficient for the purpose of adopting annual allowance budgets and  
39 serving as the baseline by which covered entities demonstrate  
40 compliance under the first compliance period of the program. Data

1 reported to the department under RCW 70A.15.2200 or provided as  
2 required by this chapter for 2023 through 2025 is deemed sufficient  
3 for adopting annual allowance budgets and serving as the baseline by  
4 which covered entities demonstrate compliance under the second  
5 compliance period of the program.

6 (5) The legislature intends to promote a growing and sustainable  
7 economy and to avoid leakage of emissions from manufacturing to other  
8 jurisdictions. Therefore, the legislature finds that implementation  
9 of this section is contingent upon the enactment of RCW 70A.65.110.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 70A.65  
11 RCW to read as follows:

12 (1) A covered or opt-in entity has a compliance obligation for  
13 its emissions during each four-year compliance period, with the first  
14 compliance period commencing January 1, 2023. The department shall by  
15 rule require that covered or opt-in entities annually transfer a  
16 percentage of compliance instruments, but must fully satisfy their  
17 compliance obligation, for each compliance period.

18 (2) Compliance occurs through the transfer of the required  
19 compliance instruments or price ceiling units, on or before the  
20 transfer date, from the holding account to the compliance account of  
21 the covered or opt-in entity as described in RCW 70A.65.080.

22 (3)(a) A covered entity may substitute the submission of  
23 compliance instruments with price ceiling units.

24 (b) A covered or opt-in entity submitting insufficient compliance  
25 instruments to meet its compliance obligation is subject to a penalty  
26 as provided in RCW 70A.65.200.

27 (4) Older vintage allowances must be retired before newer vintage  
28 allowances.

29 (5) Upon receipt by the department of all compliance instruments  
30 transferred by a covered entity or opt-in entity to meet its  
31 compliance obligation, the department shall retire the allowances or  
32 offset credits.

33 **Sec. 3.** RCW 70A.65.100 and 2021 c 316 s 12 are each amended to  
34 read as follows:

35 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and  
36 70A.65.130, the department shall distribute allowances through  
37 auctions as provided in this section and in rules adopted by the

1 department to implement these sections. An allowance is not a  
2 property right.

3 (2) (a) The department shall hold a maximum of four auctions  
4 annually, plus any necessary reserve auctions. An auction may include  
5 allowances from the annual allowance budget of the current year and  
6 allowances from the annual allowance budgets from prior years that  
7 remain to be distributed. The department must transmit to the  
8 environmental justice council an auction notice at least 60 days  
9 prior to each auction, as well as a summary results report and a  
10 postauction public proceeds report within 60 days after each auction.  
11 The department must communicate the results of the previous calendar  
12 year's auctions to the environmental justice council on an annual  
13 basis beginning in 2024.

14 (b) The department must make future vintage allowances available  
15 through parallel auctions at least twice annually in addition to the  
16 auctions through which current vintage allowances are exclusively  
17 offered under (a) of this subsection.

18 (3) The department shall engage a qualified, independent  
19 contractor to run the auctions. The department shall also engage a  
20 qualified financial services administrator to hold the bid  
21 guarantees, evaluate bid guarantees, and inform the department of the  
22 value of bid guarantees once the bids are accepted.

23 (4) Auctions are open to covered entities, opt-in entities, and  
24 general market participants that are registered entities in good  
25 standing. The department shall adopt by rule the requirements for a  
26 registered entity to register and participate in a given auction.

27 (a) Registered entities intending to participate in an auction  
28 must submit an application to participate at least 30 days prior to  
29 the auction. The application must include the documentation required  
30 for review and approval by the department. A registered entity is  
31 eligible to participate only after receiving a notice of approval by  
32 the department.

33 (b) Each registered entity that elects to participate in the  
34 auction must have a different representative. Only a representative  
35 with an approved auction account is authorized to access the auction  
36 platform to submit an application or confirm the intent to bid for  
37 the registered entity, submit bids on behalf of the registered entity  
38 during the bidding window, or to download reports specific to the  
39 auction.

1 (5) The department may require a bid guarantee, payable to the  
2 financial services administrator, in an amount greater than or equal  
3 to the sum of the maximum value of the bids to be submitted by the  
4 registered entity.

5 (6) To protect the integrity of the auctions, a registered entity  
6 or group of registered entities with a direct corporate association  
7 are subject to auction purchase and holding limits. The department  
8 may impose additional limits if it deems necessary to protect the  
9 integrity and functioning of the auctions:

10 (a) A covered entity or an opt-in entity may not buy more than 10  
11 percent of the allowances offered during a single auction;

12 (b) A general market participant may not buy more than four  
13 percent of the allowances offered during a single auction and may not  
14 in aggregate own more than 10 percent of total allowances to be  
15 issued in a calendar year;

16 (c) No registered entity may buy more than the entity's bid  
17 guarantee; and

18 (d) No registered entity may buy allowances that would exceed the  
19 entity's holding limit at the time of the auction.

20 (7) (a) For fiscal year 2023, upon completion and verification of  
21 the auction results, the financial services administrator shall  
22 notify winning bidders and transfer the auction proceeds to the state  
23 treasurer for deposit as follows: (i) \$127,341,000 must first be  
24 deposited into the carbon emissions reduction account created in RCW  
25 70A.65.240; and (ii) the remaining auction proceeds to the climate  
26 investment account created in RCW 70A.65.250 and the air quality and  
27 health disparities improvement account created in RCW 70A.65.280.

28 (b) For fiscal year 2024, upon completion and verification of the  
29 auction results, the financial services administrator shall notify  
30 winning bidders and transfer the auction proceeds to the state  
31 treasurer for deposit as follows: (i) \$356,697,000 must first be  
32 deposited into the carbon emissions reduction account created in RCW  
33 70A.65.240; and (ii) the remaining auction proceeds to the climate  
34 investment account created in RCW 70A.65.250 and the air quality and  
35 health disparities improvement account created in RCW 70A.65.280.

36 (c) For fiscal year 2025, upon completion and verification of the  
37 auction results, the financial services administrator shall notify  
38 winning bidders and transfer the auction proceeds to the state  
39 treasurer for deposit as follows: (i) \$366,558,000 must first be  
40 deposited into the carbon emissions reduction account created in RCW

1 70A.65.240; and (ii) the remaining auction proceeds to the climate  
2 investment account created in RCW 70A.65.250 and the air quality and  
3 health disparities improvement account created in RCW 70A.65.280.

4 (d) For fiscal years 2026 through 2037, upon completion and  
5 verification of the auction results, the financial services  
6 administrator shall notify winning bidders and transfer the auction  
7 proceeds to the state treasurer for deposit as follows: (i)  
8 \$359,117,000 per year must first be deposited into the carbon  
9 emissions reduction account created in RCW 70A.65.240; and (ii) the  
10 remaining auction proceeds to the climate investment account created  
11 in RCW 70A.65.250 and the air quality and health disparities  
12 improvement account created in RCW 70A.65.280.

13 (e) The deposits into the carbon emissions reduction account  
14 pursuant to (a) through (d) of this subsection must not exceed  
15 \$5,200,000,000 over the first 16 fiscal years and any remaining  
16 auction proceeds must be deposited into the climate investment  
17 account created in RCW 70A.65.250 and the air quality and health  
18 disparities improvement account created in RCW 70A.65.280.

19 (f) For fiscal year 2038 and each year thereafter, upon  
20 completion and verification of the auction results, the financial  
21 services administrator shall notify winning bidders and transfer the  
22 auction proceeds to the state treasurer for deposit as follows: (i)  
23 50 percent of the auction proceeds to the carbon emissions reduction  
24 account created in RCW 70A.65.240; and (ii) the remaining auction  
25 proceeds to the climate investment account created in RCW 70A.65.250  
26 and the air quality and health disparities improvement account  
27 created in RCW 70A.65.280.

28 (8) The department shall adopt by rule provisions to guard  
29 against bidder collusion and minimize the potential for market  
30 manipulation. A registered entity may not release or disclose any  
31 bidding information including: Intent to participate or refrain from  
32 participation; auction approval status; intent to bid; bidding  
33 strategy; bid price or bid quantity; or information on the bid  
34 guarantee provided to the financial services administrator. The  
35 department may cancel or restrict a previously approved auction  
36 participation application or reject a new application if the  
37 department determines that a registered entity has:

38 (a) Provided false or misleading facts;

39 (b) Withheld material information that could influence a decision  
40 by the department;

1 (c) Violated any part of the auction rules;  
2 (d) Violated registration requirements; or  
3 (e) Violated any of the rules regarding the conduct of the  
4 auction.

5 (9) Records containing the following information are confidential  
6 and are exempt from public disclosure in their entirety:

7 (a) Bidding information as identified in subsection (8) of this  
8 section;

9 (b) Information contained in the secure, online electronic  
10 tracking system established by the department pursuant to RCW  
11 70A.65.090(6);

12 (c) Financial, proprietary, and other market sensitive  
13 information as determined by the department that is submitted to the  
14 department pursuant to this chapter;

15 (d) Financial, proprietary, and other market sensitive  
16 information as determined by the department that is submitted to the  
17 independent contractor or the financial services administrator  
18 engaged by the department pursuant to subsection (3) of this section;  
19 and

20 (e) Financial, proprietary, and other market sensitive  
21 information as determined by the department that is submitted to a  
22 jurisdiction with which the department has entered into a linkage  
23 agreement pursuant to RCW 70A.65.210, and which is shared with the  
24 department, the independent contractor, or the financial services  
25 administrator pursuant to a linkage agreement.

26 (10) Any cancellation or restriction approved by the department  
27 under subsection (8) of this section may be permanent or for a  
28 specified number of auctions and the cancellation or restriction  
29 imposed is not exclusive and is in addition to the remedies that may  
30 be available pursuant to chapter 19.86 RCW or other state or federal  
31 laws, if applicable.

32 ~~((10))~~ (11) The department shall design allowance auctions so  
33 as to allow, to the maximum extent practicable, linking with external  
34 greenhouse gas emissions trading programs in other jurisdictions and  
35 to facilitate the transfer of allowances when the state's program has  
36 entered into a linkage agreement with other external greenhouse gas  
37 emissions trading programs. The department may conduct auctions  
38 jointly with linked jurisdictions.

39 ~~((11))~~ (12) In setting the number of allowances offered at each  
40 auction, the department shall consider the allowances in the

1 marketplace due to the marketing of allowances issued as required  
2 under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's  
3 determination of the number of allowances to be offered at auction.  
4 The department shall offer only such number of allowances at each  
5 auction as will enhance the likelihood of achieving the goals of RCW  
6 70A.45.020.

7 **Sec. 4.** RCW 70A.65.200 and 2021 c 316 s 23 are each amended to  
8 read as follows:

9 (1) All covered and opt-in entities are required to submit  
10 compliance instruments in a timely manner to meet the entities'  
11 compliance obligations and shall comply with all requirements for  
12 monitoring, reporting, holding, and transferring emission allowances  
13 and other provisions of this chapter.

14 (2) If a covered or opt-in entity does not submit sufficient  
15 compliance instruments to meet its compliance obligation by the  
16 specified transfer dates, a penalty of four allowances for every one  
17 compliance instrument that is missing must be submitted to the  
18 department within six months. When a covered entity or opt-in entity  
19 reasonably believes that it will be unable to meet a compliance  
20 obligation, the entity shall immediately notify the department. Upon  
21 receiving notification, the department shall issue an order requiring  
22 the entity to submit the penalty allowances.

23 (3) If a covered entity or opt-in entity fails to submit penalty  
24 allowances as required by subsection (2) of this section, the  
25 department must issue an order or issue a penalty of up to \$10,000  
26 per day per violation, or both, for failure to submit penalty  
27 allowances as required by subsection (2) of the section. The order  
28 may include a plan and schedule for coming into compliance.

29 (4) The department may issue a penalty of up to \$50,000 per day  
30 per violation for violations of RCW 70A.65.100(8) (a) through (e).

31 (5) Except as provided in subsections (3) and (4) of this  
32 section, any person that violates the terms of this chapter or an  
33 order issued under this chapter incurs a penalty of up to \$10,000 per  
34 day per violation for each day that the person does not comply. All  
35 penalties under subsections (3) and (4) of this section and this  
36 subsection must be deposited into the climate investment account  
37 created in RCW 70A.65.250.

38 (6) Orders and penalties issued under this chapter are appealable  
39 to the pollution control hearings board under chapter 43.21B RCW.



1 (7) For the first compliance period, the department may reduce  
2 the amount of the penalty by adjusting the monetary amount or the  
3 number of penalty allowances described in subsections (2) and (3) of  
4 this section.

5 (8) An electric utility or natural gas utility must notify its  
6 retail customers and the environmental justice council in published  
7 form within three months of paying a monetary penalty under this  
8 section.

9 (9)(a) No city, town, county, township, or other subdivision or  
10 municipal corporation of the state may implement a charge or tax  
11 based exclusively upon the quantity of greenhouse gas emissions.

12 (b) No state agency may adopt or enforce a (~~program that~~  
13 ~~regulates greenhouse gas emissions from a stationary source except as~~  
14 ~~provided in this chapter~~) greenhouse gas pricing or market-based  
15 emissions cap and reduce program for stationary sources, or adopt or  
16 enforce emission limitations on greenhouse gas emissions from  
17 stationary sources except as:

18 (i) Provided in this chapter;

19 (ii) Authorized or directed by state statute; or

20 (iii) Required to implement a federal statute, rule, or program.

21 (c) This chapter preempts the provisions of chapter 173-442 WAC,  
22 and the department shall repeal chapter 173-442 WAC.

23 **Sec. 5.** RCW 70A.65.020 and 2021 c 316 s 3 are each amended to  
24 read as follows:

25 (1) To ensure that the program created in RCW 70A.65.060 through  
26 70A.65.210 achieves reductions in criteria pollutants as well as  
27 greenhouse gas emissions in overburdened communities highly impacted  
28 by air pollution, the department must:

29 (a) Identify overburdened communities, which may be accomplished  
30 through the department's process to identify overburdened communities  
31 under chapter (~~314, Laws of 2021~~) 70A.02 RCW;

32 (b) Deploy an air monitoring network in overburdened communities  
33 to collect sufficient air quality data for the 2023 review and  
34 subsequent reviews of criteria pollutant reductions conducted under  
35 subsection (2) of this section; and

36 (c)(i) Within the identified overburdened communities, analyze  
37 and determine which sources are the greatest contributors of criteria  
38 pollutants and develop a high priority list of significant emitters.

1 (ii) Prior to listing any entity as a high priority emitter, the  
2 department must notify that entity and share the data used to rank  
3 that entity as a high priority emitter, and provide a period of not  
4 less than 60 days for the covered entity to submit more recent data  
5 or other information relevant to the designation of that entity as a  
6 high priority emitter.

7 (2)(a) Beginning in 2023, and every two years thereafter, the  
8 department must conduct a review to determine levels of criteria  
9 pollutants, as well as greenhouse gas emissions, in the overburdened  
10 communities identified under subsection (1) of this section. This  
11 review must also include an evaluation of initial and subsequent  
12 health impacts related to criteria pollution in overburdened  
13 communities. The department may conduct this evaluation jointly with  
14 the department of health.

15 (b) Once this review determines the levels of criteria pollutants  
16 in an identified overburdened community, then the department, in  
17 consultation with local air pollution control authorities, must:

18 (i) Establish air quality targets to achieve air quality  
19 consistent with whichever is more protective for human health:

20 (A) National ambient air quality standards established by the  
21 United States environmental protection agency; or

22 (B) The air quality experienced in neighboring communities that  
23 are not identified as overburdened;

24 (ii) Identify the stationary and mobile sources that are the  
25 greatest contributors of those emissions that are either increasing  
26 or not decreasing;

27 (iii) Achieve the reduction targets through adoption of emission  
28 control strategies or other methods;

29 (iv) Adopt, along with local air pollution control authorities,  
30 stricter air quality standards, emission standards, or emissions  
31 limitations on criteria pollutants, consistent with the authority of  
32 the department provided under RCW 70A.15.3000, and may consider  
33 alternative mitigation actions that would reduce criteria pollution  
34 by similar amounts; and

35 (v) After adoption of the stricter air quality standards,  
36 emission standards, or emissions limitations on criteria pollutants  
37 under (b)(iv) of this subsection, issue an enforceable order or the  
38 local air authority must issue an enforceable order, as authorized  
39 under RCW 70A.15.1100, as necessary to comply with the stricter  
40 standards or limitations and the requirements of this section. The

1 department or local air authority must initiate the process,  
2 including provision of notice to all relevant affected permittees or  
3 registered sources and to the public, to adopt and implement an  
4 enforceable order required under this subsection within six months of  
5 the adoption of standards or limitations under (b)(iv) of this  
6 subsection.

7 (c) Actions imposed under this section may not impose  
8 requirements on a permitted stationary source that are  
9 disproportionate to the permitted stationary source's contribution to  
10 air pollution compared to other permitted stationary sources and  
11 other sources of criteria pollutants in the overburdened community.

12 (3) An eligible facility sited after July 25, 2021, that receives  
13 allowances under RCW 70A.65.110 must mitigate increases in (~~its~~  
14 ~~emissions of~~) particulate matter in overburdened communities due to  
15 its emissions.

16 (4) (a) The department must create and adopt a supplement to the  
17 department's community engagement plan developed pursuant to chapter  
18 (~~314, Laws of 2021~~) 70A.02 RCW. The supplement must describe how  
19 the department will engage with overburdened communities and  
20 vulnerable populations in:

21 (i) Identifying emitters in overburdened communities; and

22 (ii) Monitoring and evaluating criteria pollutant emissions in  
23 those areas.

24 (b) The community engagement plan must include methods for  
25 outreach and communication with those who face barriers, language or  
26 otherwise, to participation.

27 **Sec. 6.** RCW 70A.65.150 and 2021 c 316 s 17 are each amended to  
28 read as follows:

29 (1) To help minimize allowance price volatility in the auction,  
30 the department shall adopt by rule an auction floor price and a  
31 schedule for the floor price to increase by a predetermined amount  
32 every year. The department may not sell allowances at bids lower than  
33 the auction floor price. The department's rules must specify holding  
34 limits that determine the maximum number of allowances that may be  
35 held for use or trade by a registered entity at any one time. The  
36 department shall also establish (~~an auction ceiling~~) a reserve  
37 auction floor price to limit extraordinary prices and to determine  
38 when to offer allowances through the allowance price containment  
39 reserve auctions authorized under this section.

1 (2) For calendar years 2023 through 2026, the department must  
2 place no less than two percent of the total number of allowances  
3 available from the allowance budgets for those years in an allowance  
4 price containment reserve. The reserve must be designed as a  
5 mechanism to assist in containing compliance costs for covered and  
6 opt-in entities in the event of unanticipated high costs for  
7 compliance instruments.

8 (3) (a) The department shall adopt rules for holding auctions of  
9 allowances from the price containment reserve when the settlement  
10 prices in the preceding auction (~~(approach)~~) exceed the adopted  
11 (~~(auction ceiling)~~) reserve auction floor price. The auction must be  
12 separate from auctions of other allowances.

13 (b) Allowances must also be distributed from the allowance price  
14 containment reserve by auction when new covered and opt-in entities  
15 enter the program and allowances in the emissions containment reserve  
16 under RCW 70A.65.140(5) are exhausted.

17 (4) Only covered and opt-in entities may participate in the  
18 auction of allowances from the allowance price containment reserve.

19 (5) The process for reserve auctions is the same as the process  
20 provided in RCW 70A.65.100 and the proceeds from reserve auctions  
21 must be treated the same.

22 (6) The department shall by rule:

23 (a) Set the reserve auction floor price in advance of the reserve  
24 auction. The department may choose to establish multiple price tiers  
25 for the allowances from the reserve;

26 (b) Establish the requirements and schedule for the allowance  
27 price containment reserve auctions; and

28 (c) Establish the amount of allowances to be placed in the  
29 allowance price containment reserve after the first compliance period  
30 ending in 2026.

31 **Sec. 7.** RCW 70A.65.160 and 2021 c 316 s 18 are each amended to  
32 read as follows:

33 (1) The department shall establish a price ceiling to provide  
34 cost protection for (~~(facilities)~~) covered entities obligated to  
35 comply with this chapter. The ceiling must be set at a level  
36 sufficient to facilitate investments to achieve further emission  
37 reductions beyond those enabled by the price ceiling, with the intent  
38 that investments accelerate the state's achievement of greenhouse gas  
39 limits established under RCW 70A.45.020. The price ceiling must

1 increase annually in proportion to the (~~price floor~~) reserve  
2 auction floor price established in RCW 70A.65.150(1).

3 (2) In the event that no allowances remain in the allowance price  
4 containment reserve, the department must issue the number of price  
5 ceiling units for sale sufficient to provide cost protection for  
6 (~~facilities~~) covered entities as established under subsection (1)  
7 of this section. Purchases must be limited to entities that do not  
8 have sufficient eligible compliance instruments in their holding and  
9 compliance accounts for the (~~next~~) current compliance period and  
10 these entities may only purchase what they need to meet their  
11 compliance obligation for the current compliance period. Price  
12 ceiling units may not be sold or transferred and must be retired for  
13 compliance in the current compliance period. A price ceiling unit is  
14 not a property right.

15 (3) (~~Funds raised in connection with the sale of price ceiling~~  
16 ~~units~~) The price ceiling unit emission reduction investment account  
17 is created in the state treasury. All receipts from the sale of price  
18 ceiling units must be deposited in the account. Moneys in the account  
19 may only be spent after appropriation. Moneys in the account must be  
20 expended to achieve emissions reductions on at least a metric ton for  
21 metric ton basis that are real, permanent, quantifiable, verifiable,  
22 enforceable by the state, and in addition to any greenhouse gas  
23 emission reduction otherwise required by law or regulation and any  
24 other greenhouse gas emission reduction that otherwise would occur.

25 **Sec. 8.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to  
26 read as follows:

27 (1) It is the intent of the legislature that each year the total  
28 investments made through the carbon emissions reduction account  
29 created in RCW 70A.65.240, the climate commitment account created in  
30 RCW 70A.65.260, the natural climate solutions account created in RCW  
31 70A.65.270, and the air quality and health disparities improvement  
32 account created in RCW 70A.65.280, achieve the following:

33 (a) A minimum of not less than 35 percent and a goal of 40  
34 percent of total investments that provide direct and meaningful  
35 benefits to vulnerable populations within the boundaries of  
36 overburdened communities identified under chapter (~~314, Laws of~~  
37 ~~2021~~) 70A.02 RCW; and

38 (b) In addition to the requirements of (a) of this subsection, a  
39 minimum of not less than 10 percent of total investments that are

1 used for programs, activities, or projects formally supported by a  
2 resolution of an Indian tribe, with priority given to otherwise  
3 qualifying projects directly administered or proposed by an Indian  
4 tribe. An investment that meets the requirements of both this  
5 subsection (1)(b) and (a) of this subsection may count toward the  
6 minimum percentage targets for both subsections.

7 (2) The expenditure of moneys under this chapter must be  
8 consistent with applicable federal, state, and local laws, and treaty  
9 rights including, but not limited to, prohibitions on uses of funds  
10 imposed by the state Constitution.

11 (3) For the purposes of this section, "benefits" means  
12 investments or activities that:

13 (a) Reduce vulnerable population characteristics, environmental  
14 burdens, or associated risks that contribute significantly to the  
15 cumulative impact designation of (~~highly impacted~~) overburdened  
16 communities;

17 (b) Meaningfully protect an overburdened community from, or  
18 support community response to, the impacts of air pollution or  
19 climate change; or

20 (c) Meet a community need identified by vulnerable members of the  
21 overburdened community that is consistent with the intent of this  
22 chapter.

23 (4) The state must develop a process by which to evaluate the  
24 impacts of the investments made under this chapter, work across state  
25 agencies to develop and track priorities across the different  
26 eligible funding categories, and work with the environmental justice  
27 council pursuant to RCW 70A.65.040.

28 (5) No expenditures may be made from the carbon emissions  
29 reduction account created in RCW 70A.65.240, the climate investment  
30 account created in RCW 70A.65.250, or the air quality and health  
31 disparities improvement account created in RCW 70A.65.280 if, by  
32 April 1, 2023, the legislature has not considered and enacted request  
33 legislation brought forth by the department under RCW 70A.65.060 that  
34 outlines a compliance pathway specific to emissions-intensive, trade-  
35 exposed businesses for achieving their proportionate share of the  
36 state's emissions reduction limits through 2050.

37 **Sec. 9.** RCW 70A.15.2200 and 2021 c 316 s 33 are each amended to  
38 read as follows:

1 (1) The board of any activated authority or the department, may  
2 classify air contaminant sources, by ordinance, resolution, rule or  
3 regulation, which in its judgment may cause or contribute to air  
4 pollution, according to levels and types of emissions and other  
5 characteristics which cause or contribute to air pollution, and may  
6 require registration or reporting or both for any such class or  
7 classes. Classifications made pursuant to this section may be for  
8 application to the area of jurisdiction of such authority, or the  
9 state as a whole or to any designated area within the jurisdiction,  
10 and shall be made with special reference to effects on health,  
11 economic and social factors, and physical effects on property.

12 (2) Except as provided in subsection (3) of this section, any  
13 person operating or responsible for the operation of air contaminant  
14 sources of any class for which the ordinances, resolutions, rules or  
15 regulations of the department or board of the authority, require  
16 registration or reporting shall register therewith and make reports  
17 containing information as may be required by such department or board  
18 concerning location, size and height of contaminant outlets,  
19 processes employed, nature of the contaminant emission and such other  
20 information as is relevant to air pollution and available or  
21 reasonably capable of being assembled. In the case of emissions of  
22 greenhouse gases as defined in RCW 70A.45.010 the department shall  
23 adopt rules requiring reporting of those emissions. The department or  
24 board may require that such registration or reporting be accompanied  
25 by a fee, and may determine the amount of such fee for such class or  
26 classes: PROVIDED, That the amount of the fee shall only be to  
27 compensate for the costs of administering such registration or  
28 reporting program which shall be defined as initial registration and  
29 annual or other periodic reports from the source owner providing  
30 information directly related to air pollution registration, on-site  
31 inspections necessary to verify compliance with registration  
32 requirements, data storage and retrieval systems necessary for  
33 support of the registration program, emission inventory reports and  
34 emission reduction credits computed from information provided by  
35 sources pursuant to registration program requirements, staff review,  
36 including engineering or other reliable analysis for accuracy and  
37 currentness, of information provided by sources pursuant to  
38 registration program requirements, clerical and other office support  
39 provided in direct furtherance of the registration program, and  
40 administrative support provided in directly carrying out the

1 registration program: PROVIDED FURTHER, That any such registration  
2 made with either the board or the department shall preclude a further  
3 registration and reporting with any other board or the department,  
4 except that emissions of greenhouse gases as defined in RCW  
5 70A.45.010 must be reported as required under subsection (5) of this  
6 section.

7 All registration program and reporting fees collected by the  
8 department shall be deposited in the air pollution control account.  
9 All registration program fees collected by the local air authorities  
10 shall be deposited in their respective treasuries.

11 (3) If a registration or report has been filed for a grain  
12 warehouse or grain elevator as required under this section,  
13 registration, reporting, or a registration program fee shall not,  
14 after January 1, 1997, again be required under this section for the  
15 warehouse or elevator unless the capacity of the warehouse or  
16 elevator as listed as part of the license issued for the facility has  
17 been increased since the date the registration or reporting was last  
18 made. If the capacity of the warehouse or elevator listed as part of  
19 the license is increased, any registration or reporting required for  
20 the warehouse or elevator under this section must be made by the date  
21 the warehouse or elevator receives grain from the first harvest  
22 season that occurs after the increase in its capacity is listed in  
23 the license.

24 This subsection does not apply to a grain warehouse or grain  
25 elevator if the warehouse or elevator handles more than (~~ten~~  
26 million) 10,000,000 bushels of grain annually.

27 (4) For the purposes of subsection (3) of this section:

28 (a) A "grain warehouse" or "grain elevator" is an establishment  
29 classified in standard industrial classification (SIC) code 5153 for  
30 wholesale trade for which a license is required and includes, but is  
31 not limited to, such a licensed facility that also conducts cleaning  
32 operations for grain;

33 (b) A "license" is a license issued by the department of  
34 agriculture licensing a facility as a grain warehouse or grain  
35 elevator under chapter 22.09 RCW or a license issued by the federal  
36 government licensing a facility as a grain warehouse or grain  
37 elevator for purposes similar to those of licensure for the facility  
38 under chapter 22.09 RCW; and

39 (c) "Grain" means a grain or a pulse.



1 (5) (a) The department shall adopt rules requiring persons to  
2 report emissions of greenhouse gases as defined in RCW 70A.45.010  
3 where those emissions from a single facility, or from electricity or  
4 fossil fuels sold in Washington by a single supplier or local  
5 distribution company, meet or exceed (~~ten thousand~~) 10,000 metric  
6 tons of carbon dioxide equivalent annually. The rules adopted by the  
7 department must support implementation of the program created in RCW  
8 70A.65.060. In addition, the rules must require that:

9 (i) Emissions of greenhouse gases resulting from the combustion  
10 of fossil fuels be reported separately from emissions of greenhouse  
11 gases resulting from the combustion of biomass; and

12 (ii) Each annual report must include emissions data for the  
13 preceding calendar year and must be submitted to the department by  
14 March 31st of the year in which the report is due, except for an  
15 electric power entity, which must submit its report by June 1st of  
16 the year in which the report is due.

17 (b) (i) The department may by rule include additional gases to the  
18 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has  
19 been designated as a greenhouse gas by the United States congress, by  
20 the United States environmental protection agency, or included in  
21 external greenhouse gas emission trading programs with which  
22 Washington has pursuant to RCW 70A.65.210. Prior to including  
23 additional gases to the definition of "greenhouse gas" in RCW  
24 70A.45.010, the department shall notify the appropriate committees of  
25 the legislature.

26 (ii) The department may by rule exempt persons who are required  
27 to report greenhouse gas emissions to the United States environmental  
28 protection agency and who emit less than (~~ten thousand~~) 10,000  
29 metric tons carbon dioxide equivalent annually.

30 (iii) The department must establish a methodology for persons who  
31 are not required to report under this section to voluntarily report  
32 their greenhouse gas emissions.

33 (c) (i) The department shall review and if necessary update its  
34 rules whenever:

35 (A) The United States environmental protection agency adopts  
36 final amendments to 40 C.F.R. Part 98 to ensure consistency with  
37 federal reporting requirements for emissions of greenhouse gases; or

38 (B) Needed to ensure consistency with emissions reporting  
39 requirements for jurisdictions with which Washington has entered a  
40 linkage agreement.

1 (ii) The department shall not amend its rules in a manner that  
2 conflicts with this section.

3 (d) The department shall share any reporting information reported  
4 to it with the local air authority in which the person reporting  
5 under the rules adopted by the department operates.

6 (e) The fee provisions in subsection (2) of this section apply to  
7 reporting of emissions of greenhouse gases. Persons required to  
8 report under (a) of this subsection who fail to report or pay the fee  
9 required in subsection (2) of this section are subject to enforcement  
10 penalties under this chapter. The department shall enforce the  
11 reporting rule requirements. When a person that holds a compliance  
12 obligation under RCW 70A.65.080 fails to submit an emissions data  
13 report or fails to obtain a positive emissions data verification  
14 statement in accordance with (g)(ii) of this subsection, the  
15 department may assign an emissions level for that person.

16 (f) The energy facility site evaluation council shall,  
17 simultaneously with the department, adopt rules that impose  
18 greenhouse gas reporting requirements in site certifications on  
19 owners or operators of a facility permitted by the energy facility  
20 site evaluation council. The greenhouse gas reporting requirements  
21 imposed by the energy facility site evaluation council must be the  
22 same as the greenhouse gas reporting requirements imposed by the  
23 department. The department shall share any information reported to it  
24 from facilities permitted by the energy facility site evaluation  
25 council with the council, including notice of a facility that has  
26 failed to report as required. The energy facility site evaluation  
27 council shall contract with the department to monitor the reporting  
28 requirements adopted under this section.

29 (g)(i) The department must establish by rule the methods of  
30 verifying the accuracy of emissions reports.

31 (ii) Verification requirements apply at a minimum to persons  
32 required to report under (a) of this subsection with emissions that  
33 equal or exceed 25,000 metric tons of carbon dioxide equivalent  
34 emissions, including carbon dioxide from biomass-derived fuels, or to  
35 persons who have a compliance obligation under RCW 70A.65.080 in any  
36 year of the current compliance period. The department may adopt rules  
37 to accept verification reports from another jurisdiction with a  
38 linkage agreement pursuant to RCW 70A.65.180 in cases where the  
39 department deems that the methods or procedures are substantively  
40 similar.

1 (h)(i) The definitions in RCW 70A.45.010 apply throughout this  
2 subsection (5) unless the context clearly requires otherwise.

3 (ii) For the purpose of this subsection (5), the term "supplier"  
4 includes: (A) Suppliers that produce, import, or deliver, or any  
5 combination of producing, importing, or delivering, a quantity of  
6 fuel products in Washington that, if completely combusted, oxidized,  
7 or used in other processes, would result in the release of greenhouse  
8 gases in Washington equivalent to or higher than the threshold  
9 established under (a) of this subsection; and (B) suppliers of carbon  
10 dioxide that produce, import, or deliver a quantity of carbon dioxide  
11 in Washington that, if released, would result in emissions equivalent  
12 to or higher than the threshold established under (a) of this  
13 subsection.

14 (iii) For the purpose of this subsection (5), the term "person"  
15 includes: (A) An owner or operator of a facility; (B) a supplier; or  
16 (C) an electric power entity.

17 (iv) For the purpose of this subsection (5), the term "facility"  
18 includes facilities that directly emit greenhouse gases in Washington  
19 equivalent to the threshold established under (a) of this subsection  
20 with at least one source category listed in the United States  
21 environmental protection agency's mandatory greenhouse gas reporting  
22 regulation, 40 C.F.R. Part 98 Subparts C through II and RR through  
23 UU, as adopted on April 25, 2011.

24 (v) For the purpose of this subsection (5), the term "electric  
25 power entity" includes any of the following that supply electric  
26 power in Washington with associated emissions of greenhouse gases  
27 equal to or above the threshold established under (a) of this  
28 subsection: (A) Electricity importers and exporters; (B) retail  
29 providers, including multijurisdictional retail providers; and (C)  
30 first jurisdictional deliverers, as defined in RCW 70A.65.010, not  
31 otherwise included here.

32 **Sec. 10.** RCW 70A.65.010 and 2021 c 316 s 2 are each amended to  
33 read as follows:

34 The definitions in this section apply throughout this chapter  
35 unless the context clearly requires otherwise.

36 (1) "Allowance" means an authorization to emit up to one metric  
37 ton of carbon dioxide equivalent.

38 (2) "Allowance price containment reserve" means an account  
39 maintained by the department with allowances available for sale

1 through separate reserve auctions at predefined prices to assist in  
2 containing compliance costs for covered and opt-in entities in the  
3 event of unanticipated high costs for compliance instruments.

4 (3) "Annual allowance budget" means the total number of  
5 greenhouse gas allowances allocated for auction and distribution for  
6 one calendar year by the department.

7 (4) "Asset controlling supplier" means any entity that owns or  
8 operates interconnected electricity generating facilities or serves  
9 as an exclusive marketer for these facilities even though it does not  
10 own them, and has been designated by the department and received a  
11 department-published emissions factor for the wholesale electricity  
12 procured from its system. The department shall use a methodology  
13 consistent with the methodology used by an external greenhouse gas  
14 emissions trading program that shares the regional electricity  
15 transmission system. Electricity from an asset controlling supplier  
16 is considered a specified source of electricity.

17 (5) "Auction" means the process of selling greenhouse gas  
18 allowances by offering them up for bid, taking bids, and then  
19 distributing the allowances to winning bidders.

20 (6) "Auction floor price" means a price for allowances below  
21 which bids at auction are not eligible to be accepted.

22 (7) "Auction purchase limit" means the limit on the number of  
23 allowances one registered entity or a group of affiliated registered  
24 entities may purchase from the share of allowances sold at an  
25 auction.

26 (8) "Balancing authority" means the responsible entity that  
27 integrates resource plans ahead of time, maintains load-interchange-  
28 generation balance within a balancing authority area, and supports  
29 interconnection frequency in real time.

30 (9) "Balancing authority area" means the collection of  
31 generation, transmission, and load within the metered boundaries of a  
32 balancing authority. A balancing authority maintains load-resource  
33 balance within this area.

34 (10) "Best available technology" means a technology or  
35 technologies that will achieve the greatest reduction in greenhouse  
36 gas emissions, taking into account the fuels, processes, and  
37 equipment used by facilities to produce goods of comparable type,  
38 quantity, and quality. Best available technology must be technically  
39 feasible, commercially available, economically viable, not create  
40 excessive environmental impacts, and be compliant with all applicable

1 laws while not changing the characteristics of the good being  
2 manufactured.

3 (11) "Biomass" means nonfossilized and biodegradable organic  
4 material originating from plants, animals, and microorganisms,  
5 including products, by-products, residues, and waste from  
6 agriculture, forestry, and related industries as well as the  
7 nonfossilized and biodegradable organic fractions of municipal  
8 wastewater and industrial waste, including gases and liquids  
9 recovered from the decomposition of nonfossilized and biodegradable  
10 organic material.

11 (12) "Biomass-derived fuels," "biomass fuels," or "biofuels"  
12 means fuels derived from biomass that have at least 40 percent lower  
13 greenhouse gas emissions based on a full life-cycle analysis when  
14 compared to petroleum fuels for which biofuels are capable as serving  
15 as a substitute.

16 (13) "Carbon dioxide equivalents" means a measure used to compare  
17 the emissions from various greenhouse gases based on their global  
18 warming potential.

19 (14) "Carbon dioxide removal" means deliberate human activities  
20 removing carbon dioxide from the atmosphere and durably storing it in  
21 geological, terrestrial, or ocean reservoirs, or in products. "Carbon  
22 dioxide removal" includes existing and potential anthropogenic  
23 enhancement of biological or geochemical sinks and including, but not  
24 limited to, carbon mineralization and direct air capture and storage.

25 (15) "Climate commitment" means the process and mechanisms to  
26 ensure a coordinated and strategic approach to advancing climate  
27 resilience and environmental justice and achieving an equitable and  
28 inclusive transition to a carbon neutral economy.

29 (16) "Climate resilience" is the ongoing process of anticipating,  
30 preparing for, and adapting to changes in climate and minimizing  
31 negative impacts to our natural systems, infrastructure, and  
32 communities. For natural systems, increasing climate resilience  
33 involves restoring and increasing the health, function, and integrity  
34 of our ecosystems and improving their ability to absorb and recover  
35 from climate-affected disturbances. For communities, increasing  
36 climate resilience means enhancing their ability to understand,  
37 prevent, adapt, and recover from climate impacts to people and  
38 infrastructure.

1 (17) "Closed facility" means a facility at which the current  
2 owner or operator has elected to permanently stop production and will  
3 no longer be an emissions source.

4 (18) "Compliance instrument" means an allowance or offset credit  
5 issued by the department or by an external greenhouse gas emissions  
6 trading program to which Washington has linked its greenhouse gas  
7 emissions cap and invest program. One compliance instrument is equal  
8 to one metric ton of carbon dioxide equivalent.

9 (19) "Compliance obligation" means the requirement to submit to  
10 the department the number of compliance instruments equivalent to a  
11 covered or opt-in entity's covered emissions during the compliance  
12 period.

13 (20) "Compliance period" means the four-year period for which the  
14 compliance obligation is calculated for covered entities.

15 (21) "Cost burden" means the impact on rates or charges to  
16 customers of electric utilities in Washington state for the  
17 incremental cost of electricity service to serve load due to the  
18 compliance cost for greenhouse gas emissions caused by the program.  
19 Cost burden includes administrative costs from the utility's  
20 participation in the program.

21 (22) "Covered emissions" means the emissions for which a covered  
22 entity has a compliance obligation under RCW 70A.65.080.

23 (23) "Covered entity" means a person that is designated by the  
24 department as subject to RCW 70A.65.060 through 70A.65.210.

25 (24) "Cumulative environmental health impact" has the same  
26 meaning as provided in RCW 70A.02.010.

27 (25) "Curtailed facility" means a facility at which the owner or  
28 operator has temporarily suspended production but for which the owner  
29 or operator maintains operating permits and retains the option to  
30 resume production if conditions become amenable.

31 (26) "Department" means the department of ecology.

32 (27) "Electricity importer" means:

33 (a) For electricity that is scheduled with a NERC e-tag to a  
34 final point of delivery into a balancing authority area located  
35 entirely within the state of Washington, the electricity importer is  
36 identified on the NERC e-tag as the purchasing-selling entity on the  
37 last segment of the tag's physical path with the point of receipt  
38 located outside the state of Washington and the point of delivery  
39 located inside the state of Washington;

1 (b) For facilities physically located outside the state of  
2 Washington with the first point of interconnection to a balancing  
3 authority area located entirely within the state of Washington when  
4 the electricity is not scheduled on a NERC e-tag, the electricity  
5 importer is the facility operator or owner;

6 (c) For electricity imported through a centralized market, the  
7 electricity importer will be defined by rule consistent with the  
8 rules required under RCW 70A.65.080(1)(c);

9 (d) For electricity from facilities allocated to serve retail  
10 electricity customers of a multijurisdictional electric company, the  
11 electricity importer is the multijurisdictional electric company;

12 (e) If the importer identified under (a) of this subsection is a  
13 federal power marketing administration over which the state of  
14 Washington does not have jurisdiction, and the federal power  
15 marketing administration has not voluntarily elected to comply with  
16 the program, then the electricity importer is the next purchasing-  
17 selling entity in the physical path on the NERC e-tag, or if no  
18 additional purchasing-selling entity over which the state of  
19 Washington has jurisdiction, then the electricity importer is the  
20 electric utility that operates the Washington transmission or  
21 distribution system, or the generation balancing authority;

22 (f) For electricity that is imported into the state by a federal  
23 power marketing administration and sold to a public body or  
24 cooperative customer or direct service industrial customer located in  
25 Washington pursuant to section 5(b) or (d) of the Pacific Northwest  
26 electric power planning and conservation act of 1980, P.L. 96-501,  
27 the electricity importer is the federal marketing administration;

28 (g) If the importer identified under (f) of this subsection has  
29 not voluntarily elected to comply with the program, then the  
30 electricity importer is the public body or cooperative customer or  
31 direct service industrial customer; or

32 (h) For electricity from facilities allocated to a consumer-owned  
33 utility inside the state of Washington from a multijurisdictional  
34 consumer-owned utility, the electricity importer is the consumer-  
35 owned utility inside the state of Washington.

36 (28) "Emissions containment reserve allowance" means a  
37 conditional allowance that is withheld from sale at an auction by the  
38 department or its agent to secure additional emissions reductions in  
39 the event prices fall below the emissions containment reserve trigger  
40 price.

1 (29) "Emissions containment reserve trigger price" means the  
2 price below which allowances will be withheld from sale by the  
3 department or its agent at an auction, as determined by the  
4 department by rule.

5 (30) "Emissions threshold" means the greenhouse gas emission  
6 level at or above which a person has a compliance obligation.

7 (31) "Environmental benefits" has the same meaning as defined in  
8 RCW 70A.02.010.

9 (32) "Environmental harm" has the same meaning as defined in RCW  
10 70A.02.010.

11 (33) "Environmental impacts" has the same meaning as defined in  
12 RCW 70A.02.010.

13 (34) "Environmental justice" has the same meaning as defined in  
14 RCW 70A.02.010.

15 (35) "Environmental justice assessment" has the same meaning as  
16 identified in RCW 70A.02.060.

17 (36) "External greenhouse gas emissions trading program" means a  
18 government program, other than Washington's program created in this  
19 chapter, that restricts greenhouse gas emissions from sources outside  
20 of Washington and that allows emissions trading.

21 (37) "Facility" means any physical property, plant, building,  
22 structure, source, or stationary equipment located on one or more  
23 contiguous or adjacent properties in actual physical contact or  
24 separated solely by a public roadway or other public right-of-way and  
25 under common ownership or common control, that emits or may emit any  
26 greenhouse gas.

27 (38) "First jurisdictional deliverer" means the owner or operator  
28 of an electric generating facility in Washington or an electricity  
29 importer.

30 (39) "General market participant" means a registered entity that  
31 is not identified as a covered entity or an opt-in entity that is  
32 registered in the program registry and intends to purchase, hold,  
33 sell, or voluntarily retire compliance instruments.

34 (40) "Greenhouse gas" has the same meaning as in RCW 70A.45.010.

35 (41) "Holding limit" means the maximum number of allowances that  
36 may be held for use or trade by a registered entity at any one time.

37 (42) "Imported electricity" means electricity generated outside  
38 the state of Washington with a final point of delivery within the  
39 state.



1 (a) "Imported electricity" includes electricity from an organized  
2 market, such as the energy imbalance market.

3 (b) "Imported electricity" includes imports from linked  
4 jurisdictions, but such imports shall be construed as having no  
5 emissions.

6 (c) Electricity from a system that is marketed by a federal power  
7 marketing administration shall be construed as "imported  
8 electricity," not electricity generated in the state of Washington.

9 (d) "Imported electricity" does not include electricity imports  
10 of unspecified electricity that are netted by exports of unspecified  
11 electricity to any jurisdiction not covered by a linked program by  
12 the same entity within the same hour.

13 (e) For a multijurisdictional electric company, "imported  
14 electricity" means electricity, other than from in-state facilities,  
15 that contributes to a common system power pool. Where a  
16 multijurisdictional electric company has a cost allocation  
17 methodology approved by the utilities and transportation commission,  
18 the allocation of specific facilities to Washington's retail load  
19 will be in accordance with that methodology.

20 (f) For a multijurisdictional consumer-owned utility, "imported  
21 electricity" includes electricity from facilities that contribute to  
22 a common system power pool that are allocated to a consumer-owned  
23 utility inside the state of Washington pursuant to a methodology  
24 approved by the governing board of the consumer-owned utility.

25 (43) "Leakage" means a reduction in emissions of greenhouse gases  
26 within the state that is offset by a directly attributable increase  
27 in greenhouse gas emissions outside the state and outside the  
28 geography of another jurisdiction with a linkage agreement with  
29 Washington.

30 (44) "Limits" means the greenhouse gas emissions reductions  
31 required by RCW 70A.45.020.

32 (45) "Linkage" means a bilateral or multilateral decision under a  
33 linkage agreement between greenhouse gas market programs to accept  
34 compliance instruments issued by a participating jurisdiction to meet  
35 the obligations of regulated entities in a partner jurisdiction and  
36 to otherwise coordinate activities to facilitate operation of a joint  
37 market.

38 (46) "Linkage agreement" means a nonbinding agreement that  
39 connects two or more greenhouse gas market programs and articulates a

1 mutual understanding of how the participating jurisdictions will work  
2 together to facilitate a connected greenhouse gas market.

3 (47) "Linked jurisdiction" means a jurisdiction with which  
4 Washington has entered into a linkage agreement.

5 (48) "Multijurisdictional consumer-owned utility" means a  
6 consumer-owned utility that provides electricity to member owners in  
7 Washington and in one or more other states in a contiguous service  
8 territory or from a common power system.

9 (49) "Multijurisdictional electric company" means an investor-  
10 owned utility that provides electricity to customers in Washington  
11 and in one or more other states in a contiguous service territory or  
12 from a common power system.

13 (50) "NERC e-tag" means North American electric reliability  
14 corporation (NERC) energy tag representing transactions on the North  
15 American bulk electricity market scheduled to flow between or across  
16 balancing authority areas.

17 (51) "Offset credit" means a tradable compliance instrument that  
18 represents an emissions reduction or emissions removal of one metric  
19 ton of carbon dioxide equivalent.

20 (52) "Offset project" means a project that reduces or removes  
21 greenhouse gases that are not covered emissions under this chapter.

22 (53) "Offset protocols" means a set of procedures and standards  
23 to quantify greenhouse gas reductions or greenhouse gas removals  
24 achieved by an offset project.

25 (54) "Overburdened community" means a geographic area where  
26 vulnerable populations face combined, multiple environmental harms  
27 and health impacts or risks due to exposure to environmental  
28 pollutants or contaminants through multiple pathways, which may  
29 result in significant disparate adverse health outcomes or effects.

30 (a) "Overburdened community" includes, but is not limited to:

31 (i) Highly impacted communities as defined in RCW 19.405.020;

32 (ii) Communities located in census tracts that are fully or  
33 partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

34 (iii) Populations, including Native Americans or immigrant  
35 populations, who may be exposed to environmental contaminants and  
36 pollutants outside of the geographic area in which they reside based  
37 on the populations' use of traditional or cultural foods and  
38 practices, such as the use of resources, access to which is protected  
39 under treaty rights in ceded areas, when those exposures in  
40 conjunction with other exposures may result in disproportionately

1 greater risks, including risks of certain cancers or other adverse  
2 health effects and outcomes.

3 (b) Overburdened communities identified by the department may  
4 include the same communities as those identified by the department  
5 through its process for identifying overburdened communities under  
6 RCW 70A.02.010.

7 (55) "Person" has the same meaning as defined in RCW  
8 70A.15.2200(5)(h)(iii).

9 (56) "Point of delivery" means a point on the electricity  
10 transmission or distribution system where a deliverer makes  
11 electricity available to a receiver, or available to serve load. This  
12 point may be an interconnection with another system or a substation  
13 where the transmission provider's transmission and distribution  
14 systems are connected to another system, or a distribution substation  
15 where electricity is imported into the state over a  
16 multijurisdictional retail provider's distribution system.

17 (57) "Price ceiling unit" means the units issued at a fixed price  
18 by the department for the purpose of limiting price increases and  
19 funding further investments in greenhouse gas reductions.

20 (58) "Program" means the greenhouse gas emissions cap and invest  
21 program created by and implemented pursuant to this chapter.

22 (59) "Program registry" means the data system in which covered  
23 entities, opt-in entities, and general market participants are  
24 registered and in which compliance instruments are recorded and  
25 tracked.

26 (60) "Registered entity" means a covered entity, opt-in entity,  
27 or general market participant that has completed the process for  
28 registration in the program registry.

29 (61) "Resilience" means the ability to prepare, mitigate and plan  
30 for, withstand, recover from, and more successfully adapt to adverse  
31 events and changing conditions, and reorganize in an equitable manner  
32 that results in a new and better condition.

33 (62) "Retire" means to permanently remove a compliance instrument  
34 such that the compliance instrument may never be sold, traded, or  
35 otherwise used again.

36 (63) "Specified source of electricity" or "specified source"  
37 means a facility, unit, or asset controlling supplier that is  
38 permitted to be claimed as the source of electricity delivered. The  
39 reporting entity must have either full or partial ownership in the  
40 facility or a written power contract to procure electricity generated

1 by that facility or unit or from an asset controlling supplier at the  
2 time of entry into the transaction to procure electricity.

3 (64) "Supplier" means a supplier of fuel in Washington state as  
4 defined in RCW 70A.15.2200(5) (h) (ii).

5 (65) "Tribal lands" has the same meaning as defined in RCW  
6 70A.02.010.

7 (66) "Unspecified source of electricity" or "unspecified source"  
8 means a source of electricity that is not a specified source at the  
9 time of entry into the transaction to procure electricity.

10 (67) "Voluntary renewable reserve account" means a holding  
11 account maintained by the department from which allowances may be  
12 retired for voluntary renewable electricity generation, which is  
13 directly delivered to the state and has not and will not be sold or  
14 used to meet any other mandatory requirements in the state or any  
15 other jurisdiction, on behalf of voluntary renewable energy  
16 purchasers or end users.

17 (68) "Vulnerable populations" has the same meaning as defined in  
18 RCW 70A.02.010.

19 **Sec. 11.** RCW 70A.65.140 and 2021 c 316 s 16 are each amended to  
20 read as follows:

21 (1) To help ensure that the price of allowances remains  
22 sufficient to incentivize reductions in greenhouse gas emissions, the  
23 department must establish an emissions containment reserve and set an  
24 emissions containment reserve trigger price by rule. The price must  
25 be set at a reasonable amount above the auction floor price and equal  
26 to the level established in jurisdictions with which the department  
27 has entered into a linkage agreement. (~~In the event that~~) If a  
28 jurisdiction with which the department (~~has entered~~) might enter  
29 into a linkage agreement has no emissions containment trigger price,  
30 the department (~~shall~~) may suspend the trigger price under this  
31 subsection. The purpose of withholding allowances in the emissions  
32 containment reserve is to secure additional emissions reductions.

33 (2) In the event that the emissions containment reserve trigger  
34 price is met during an auction, the department must automatically  
35 withhold allowances as needed. The department must convert and  
36 transfer any allowances that have been withheld from auction into the  
37 emissions containment reserve account.

38 (3) Emissions containment reserve allowances may only be withheld  
39 from an auction if the demand for allowances would result in an

1 auction clearing price that is less than the emissions containment  
2 reserve trigger price prior to the withholding from the auction of  
3 any emissions containment reserve allowances.

4 (4) The department shall transfer allowances to the emissions  
5 containment reserve in the following situations:

6 (a) No less than two percent of the total number of allowances  
7 available from the allowance budgets for calendar years 2023 through  
8 2026;

9 (b) When allowances are unsold in auctions under RCW 70A.65.100;

10 (c) When facilities curtail or close consistent with RCW  
11 70A.65.110(6); or

12 (d) When facilities fall below the emissions threshold. The  
13 amount of allowances withdrawn from the program budget must be  
14 proportionate to the amount of emissions such a facility was  
15 previously using.

16 (5)(a) Allowances must be distributed from the emissions  
17 containment reserve by auction when new covered and opt-in entities  
18 enter the program.

19 (b) Allowances equal to the greenhouse gas emissions resulting  
20 from a new or expanded emissions-intensive, trade-exposed facility  
21 with emissions in excess of 25,000 metric tons per year during the  
22 first applicable compliance period will be provided to the facility  
23 from the reserve created in this section and must be retired by the  
24 facility. In subsequent compliance periods, the facility will be  
25 subject to the regulatory cap and related requirements under this  
26 chapter.

27 **Sec. 12.** RCW 70A.65.170 and 2021 c 316 s 19 are each amended to  
28 read as follows:

29 (1) The department shall adopt by rule the protocols for  
30 establishing offset projects and securing offset credits that may be  
31 used to meet a portion of a covered or opt-in entity's compliance  
32 obligation under this chapter (~~(316, Laws of 2021)~~). The protocols  
33 adopted by the department under this section must align with the  
34 policies of the state established under RCW 70A.45.090 and  
35 70A.45.100.

36 (2) Offset projects must:

37 (a) Provide direct environmental benefits to the state or be  
38 located in a jurisdiction with which Washington has entered into a  
39 linkage agreement;

1 (b) Result in greenhouse gas reductions or removals that:

2 (i) Are real, permanent, quantifiable, verifiable, and  
3 enforceable; and

4 (ii) Are in addition to greenhouse gas emission reductions or  
5 removals otherwise required by law and other greenhouse gas emission  
6 reductions or removals that would otherwise occur; and

7 (c) Have been certified by a recognized registry (~~(after July 25,~~  
8 ~~2021, or within two years prior to July 25, 2021)~~).

9 (3) (a) A total of no more than five percent of a covered or opt-  
10 in entity's compliance obligation during the first compliance period  
11 may be met by transferring offset credits. During these years, at  
12 least 50 percent of a covered or opt-in entity's compliance  
13 obligation satisfied by offset credits must be sourced from offset  
14 projects that provide direct environmental benefits in the state.

15 (b) A total of no more than four percent of a covered or opt-in  
16 entity's compliance obligation during the second compliance period  
17 may be met by transferring offset credits. During these years, at  
18 least 75 percent of a covered or opt-in entity's compliance  
19 obligation satisfied by offset credits must be sourced from offset  
20 projects that provide direct environmental benefits in the state. The  
21 department may reduce the 75 percent requirement if it determines  
22 there is not sufficient offset supply in the state to meet offset  
23 demand during the second compliance period.

24 (c) The limits in (a) and (b) of this subsection may be modified  
25 by rule as adopted by the department when appropriate to ensure  
26 achievement of the proportionate share of statewide emissions limits  
27 established in RCW 70A.45.020 and to provide for alignment with other  
28 jurisdictions to which the state has linked.

29 (d) The limits in (a) and (b) of this subsection may be reduced  
30 for a specific covered or opt-in entity if the department determines,  
31 in consultation with the environmental justice council, that the  
32 covered or opt-in entity has or is likely to:

33 (i) Contribute substantively to cumulative air pollution burden  
34 in an overburdened community as determined by criteria established by  
35 the department, in consultation with the environmental justice  
36 council; or

37 (ii) Violate any permits required by any federal, state, or local  
38 air pollution control agency where the violation may result in an  
39 increase in emissions.

1 (e) An offset project on federally recognized tribal land does  
2 not count against the offset credit limits described in (a) and (b)  
3 of this subsection.

4 (i) No more than three percent of a covered or opt-in entity's  
5 compliance obligation may be met by transferring offset credits from  
6 projects on federally recognized tribal land during the first  
7 compliance period.

8 (ii) No more than two percent of a covered or opt-in entity's  
9 compliance obligation may be met by transferring offset credits from  
10 projects on federally recognized tribal land during the second  
11 compliance period.

12 (4) In adopting protocols governing offset projects and covered  
13 and opt-in entities' use of offset credits, the department shall:

14 (a) Take into consideration standards, rules, or protocols for  
15 offset projects and offset credits established by other states,  
16 provinces, and countries with programs comparable to the program  
17 established in this chapter;

18 (b) Encourage opportunities for the development of offset  
19 projects in this state by adopting offset protocols that may include,  
20 but need not be limited to, protocols that make use of aggregation or  
21 other mechanisms to reduce transaction costs related to the  
22 development of offset projects and that support the development of  
23 carbon dioxide removal projects;

24 (c) Adopt a process for monitoring and invalidating offset  
25 credits as necessary to ensure the credit reflects emission  
26 reductions or removals that continue to meet the standards required  
27 by subsection (1) of this section. If an offset credit is  
28 invalidated, the covered or opt-in entity must, within six months of  
29 the invalidation, transfer replacement credits or allowances to meet  
30 its compliance obligation. Failure to transfer the required credits  
31 or allowances is a violation subject to penalties as provided in RCW  
32 70A.65.200; and

33 (d) Make use of aggregation or other mechanisms, including cost-  
34 effective inventory and monitoring provisions, to increase the  
35 development of offset and carbon removal projects by landowners  
36 across the broadest possible variety of types and sizes of lands,  
37 including lands owned by small forestland owners.

38 (5) Any offset credits used (~~may not~~) must:

1        (a) Not be in addition to or allow for an increase in the  
2 emissions limits established under RCW 70A.45.020, as reflected in  
3 the annual allowance budgets developed under RCW 70A.65.070;

4        (b) Have been issued for reporting periods wholly after July 25,  
5 2021, or within two years prior to July 25, 2021; and

6        (c) Be consistent with offset protocols adopted by the  
7 department.

8        (6) The offset credit must be registered and tracked as a  
9 compliance instrument.

10        (7) Beginning in 2031, the limits established in subsection (3)  
11 (b) and (e)(ii) of this section apply unless modified by rule as  
12 adopted by the department after a public consultation process.

13        **Sec. 13.** RCW 70A.65.030 and 2021 c 316 s 4 are each amended to  
14 read as follows:

15        (1) Each year or biennium, as appropriate, when allocating funds  
16 from the carbon emissions reduction account created in RCW  
17 70A.65.240, the climate commitment account created in RCW 70A.65.260,  
18 the natural climate solutions account created in RCW 70A.65.270, the  
19 climate investment account created in RCW 70A.65.250, or the air  
20 quality and health disparities improvement account created in RCW  
21 70A.65.280, or administering grants or programs funded by the  
22 accounts, agencies shall conduct an environmental justice assessment  
23 consistent with the requirements of RCW 70A.02.060 and establish a  
24 minimum of not less than 35 percent and a goal of 40 percent of total  
25 investments that provide direct and meaningful benefits to vulnerable  
26 populations within the boundaries of overburdened communities  
27 through: (a) The direct reduction of environmental burdens in  
28 overburdened communities; (b) the reduction of disproportionate,  
29 cumulative risk from environmental burdens, including those  
30 associated with climate change; (c) the support of community led  
31 project development, planning, and participation costs; or (d)  
32 meeting a community need identified by the community that is  
33 consistent with the intent of this chapter or RCW 70A.02.010.

34        (2) The allocation of funding under subsection (1) of this  
35 section must adhere to the following principles, additional to the  
36 requirements of RCW 70A.02.080: (a) Benefits and programs should be  
37 directed to areas and targeted to vulnerable populations and  
38 overburdened communities to reduce statewide disparities; (b)  
39 investments and benefits should be made roughly proportional to the



1 health disparities that a specific community experiences, with a goal  
2 of eliminating the disparities; (c) investments and programs should  
3 focus on creating environmental benefits, including eliminating  
4 health burdens, creating community and population resilience, and  
5 raising the quality of life of those in the community; and (d)  
6 efforts should be made to balance investments and benefits across the  
7 state and within counties, local jurisdictions, and unincorporated  
8 areas as appropriate to reduce disparities by location and to ensure  
9 efforts contribute to a reduction in disparities that exist based on  
10 race or ethnicity, socioeconomic status, or other factors.

11 (3) State agencies allocating funds or administering grants or  
12 programs from the carbon emissions reduction account created in RCW  
13 70A.65.240, the climate commitment account created in RCW 70A.65.260,  
14 the natural climate solutions account created in RCW 70A.65.270, the  
15 climate investment account created in RCW 70A.65.250, or the air  
16 quality and health disparities improvement account created in RCW  
17 70A.65.280, must:

18 (a) Report annually to the environmental justice council created  
19 in RCW 70A.02.110 regarding progress toward meeting environmental  
20 justice and environmental health goals;

21 (b) Consider recommendations by the environmental justice  
22 council; and

23 (c)(i) If the agency is not a covered agency subject to the  
24 requirements of chapter (~~314, Laws of 2021~~) 70A.02 RCW, create and  
25 adopt a community engagement plan to describe how it will engage with  
26 overburdened communities and vulnerable populations in allocating  
27 funds or administering grants or programs from the climate investment  
28 account.

29 (ii) The plan must include methods for outreach and communication  
30 with those who face barriers, language or otherwise, to  
31 participation.

32 **Sec. 14.** RCW 70A.65.040 and 2021 c 316 s 5 are each amended to  
33 read as follows:

34 (1) The environmental justice council created in RCW 70A.02.110  
35 must provide recommendations to the legislature, agencies, and the  
36 governor in the development and implementation of the program  
37 established in RCW 70A.65.060 through 70A.65.210, and the programs  
38 funded from the carbon emissions reduction account created in RCW  
39 70A.65.240, the climate commitment account created in RCW 70A.65.260,

1 the natural climate solutions account created in RCW 70A.65.270, and  
2 (~~from~~) the climate investment account created in RCW 70A.65.250.

3 (2) In addition to the duties and authorities granted in chapter  
4 70A.02 RCW to the environmental justice council, the environmental  
5 justice council must:

6 (a) Provide recommendations to the legislature, agencies, and the  
7 governor in the development of:

8 (i) The program established in RCW 70A.65.060 through 70A.65.210  
9 including, but not limited to, linkage with other jurisdictions,  
10 protocols for establishing offset projects and securing offset  
11 credits, designation of emissions-intensive and trade-exposed  
12 industries under RCW 70A.65.110, and administration of allowances  
13 under the program; and

14 (ii) Investment plans and funding proposals for the programs  
15 funded from the climate investment account created in RCW 70A.65.250  
16 for the purpose of providing environmental benefits and reducing  
17 environmental health disparities within overburdened communities;

18 (b) Provide a forum to analyze policies adopted under this  
19 chapter to determine if the policies lead to improvements within  
20 overburdened communities;

21 (c) Recommend procedures and criteria for evaluating programs,  
22 activities, or projects;

23 (d) Recommend copollutant emissions reduction goals in  
24 overburdened communities;

25 (e) Evaluate the level of funding provided to assist vulnerable  
26 populations, low-income individuals, and impacted workers and the  
27 funding of projects and activities located within or benefiting  
28 overburdened communities;

29 (f) Recommend environmental justice and environmental health  
30 goals for programs, activities, and projects funded from the climate  
31 investment account, and review agency annual reports on outcomes and  
32 progress toward meeting these goals;

33 (g) Provide recommendations to implementing agencies for  
34 meaningful consultation with vulnerable populations, including  
35 community engagement plans under RCW 70A.65.020 and 70A.65.030; and

36 (h) Recommend how to support public participation through  
37 capacity grants for participation.

38 (3) For the purpose of performing the duties under subsection (2)  
39 of this section, two additional tribal members are added to the  
40 council.

1       **Sec. 15.** RCW 70A.02.110 and 2021 c 314 s 20 are each amended to  
2 read as follows:

3       (1) The environmental justice council is established to advise  
4 covered agencies on incorporating environmental justice into agency  
5 activities.

6       (2) The council consists of 14 members, except as provided in RCW  
7 70A.65.040(3), appointed by the governor. The councilmembers must be  
8 persons who are well-informed regarding and committed to the  
9 principles of environmental justice and who, to the greatest extent  
10 practicable, represent diversity in race, ethnicity, age, and gender,  
11 urban and rural areas, and different regions of the state. The  
12 members of the council shall elect two members to serve as cochairs  
13 for two-year terms. The council must include:

14       (a) Seven community representatives, including one youth  
15 representative, the nominations of which are based upon applied and  
16 demonstrated work and focus on environmental justice or a related  
17 field, such as racial or economic justice, and accountability to  
18 vulnerable populations and overburdened communities;

19       (i) The youth representative must be between the ages of 18 and  
20 25 at the time of appointment;

21       (ii) The youth representative serves a two-year term. All other  
22 community representatives serve four-year terms, with six  
23 representatives initially being appointed to four-year terms and five  
24 being initially appointed to two-year terms, after which they will be  
25 appointed to four-year terms;

26       (b) Two members representing tribal communities, one from eastern  
27 Washington and one from western Washington, appointed by the  
28 governor, plus two tribal members as specified in RCW 70A.65.040. The  
29 governor shall solicit and consider nominees from each of the  
30 federally recognized tribes in Washington state. The governor shall  
31 collaborate with federally recognized tribes on the selection of  
32 tribal representatives. The tribal representatives serve four-year  
33 terms. One representative must be initially appointed for a four-year  
34 term. The other representative must be initially appointed for a two-  
35 year term, after which, that representative must be appointed for a  
36 four-year term;

37       (c) Two representatives who are environmental justice  
38 practitioners or academics to serve as environmental justice experts,  
39 the nominations of which are based upon applied and demonstrated work  
40 and focus on environmental justice;

1 (d) (i) One representative of a business that is regulated by a  
2 covered agency and whose ordinary business conditions are  
3 significantly affected by the actions of at least one other covered  
4 agency; and

5 (ii) One representative who is a member or officer of a union  
6 representing workers in the building and construction trades; and

7 (e) One representative at large, the nomination of which is based  
8 upon applied and demonstrated work and focus on environmental  
9 justice.

10 (3) Covered agencies shall serve as nonvoting, ex officio  
11 liaisons to the council. Each covered agency must identify an  
12 executive team level staff person to participate on behalf of the  
13 agency.

14 (4) Nongovernmental members of the council must be compensated  
15 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and  
16 43.03.220.

17 (5) The department of health must:

18 (a) Hire a manager who is responsible for overseeing all staffing  
19 and administrative duties in support of the council; and

20 (b) Provide all administrative and staff support for the council.

21 (6) In collaboration with the office of equity, the office of  
22 financial management, the council, and covered agencies, the  
23 department of health must:

24 (a) Establish standards for the collection, analysis, and  
25 reporting of disaggregated data as it pertains to tracking population  
26 level outcomes of communities;

27 (b) Create statewide and agency-specific process and outcome  
28 measures to show performance:

29 (i) Using outcome-based methodology to determine the  
30 effectiveness of agency programs and services on reducing  
31 environmental disparities; and

32 (ii) Taking into consideration community feedback from the  
33 council on whether the performance measures established accurately  
34 measure the effectiveness of covered agency programs and services in  
35 the communities served; and

36 (c) Create an online performance dashboard to publish performance  
37 measures and outcomes as referenced in RCW 70A.02.090 for the state  
38 and each covered agency.

1 (7) The department of health must coordinate with the  
2 consolidated technology services agency to address cybersecurity and  
3 data protection for all data collected by the department.

4 (8) (a) With input and assistance from the council, the department  
5 of health must establish an interagency work group to assist covered  
6 agencies in incorporating environmental justice into agency decision  
7 making. The work group must include staff from each covered agency  
8 directed to implement environmental justice provisions under this  
9 chapter and may include members from the council. The department of  
10 health shall provide assistance to the interagency work group by:

11 (i) Facilitating information sharing among covered agencies on  
12 environmental justice issues and between agencies and the council;

13 (ii) Developing and providing assessment tools for covered  
14 agencies to use in the development and evaluation of agency programs,  
15 services, policies, and budgets;

16 (iii) Providing technical assistance and compiling and creating  
17 resources for covered agencies to use; and

18 (iv) Training covered agency staff on effectively using data and  
19 tools for environmental justice assessments.

20 (b) The duties of the interagency work group include:

21 (i) Providing technical assistance to support agency compliance  
22 with the implementation of environmental justice into their strategic  
23 plans, environmental justice obligations for budgeting and funding  
24 criteria and decisions, environmental justice assessments, and  
25 community engagement plans;

26 (ii) Assisting the council in developing a suggested schedule and  
27 timeline for sequencing the types of: (A) Funding and expenditure  
28 decisions subject to rules; and (B) criteria incorporating  
29 environmental justice principles;

30 (iii) Identifying other policies, priorities, and projects for  
31 the council's review and guidance development;

32 (iv) Identifying goals and metrics that the council may use to  
33 assess agency performance in meeting the requirements of chapter 314,  
34 Laws of 2021 for purposes of communicating progress to the public,  
35 the governor, and the legislature; and

36 (v) Developing the guidance under subsection (9)(c) of this  
37 section in coordination with the council.

38 (9) The council has the following powers and duties:

39 (a) To provide a forum for the public to:

1 (i) Provide written or oral testimony on their environmental  
2 justice concerns;

3 (ii) Assist the council in understanding environmental justice  
4 priorities across the state in order to develop council  
5 recommendations to agencies for issues to prioritize; and

6 (iii) Identify which agencies to contact with their specific  
7 environmental justice concerns and questions;

8 (b)(i) The council shall work in an iterative fashion with the  
9 interagency work group to develop guidance for environmental justice  
10 implementation into covered agency strategic plans pursuant to RCW  
11 70A.02.040, environmental justice assessments pursuant to RCW  
12 70A.02.060, budgeting and funding criteria for making budgeting and  
13 funding decisions pursuant to RCW 70A.02.080, and community  
14 engagement plans pursuant to RCW 70A.02.050;

15 (ii) The council and interagency work group shall regularly  
16 update its guidance;

17 (c) In consultation with the interagency work group, the council:

18 (i) Shall provide guidance to covered agencies on developing  
19 environmental justice assessments pursuant to RCW 70A.02.060 for  
20 significant agency actions;

21 (ii) Shall make recommendations to covered agencies on which  
22 agency actions may cause environmental harm or may affect the  
23 equitable distribution of environmental benefits to an overburdened  
24 community or a vulnerable population and therefore should be  
25 considered significant agency actions that require an environmental  
26 justice assessment under RCW 70A.02.060;

27 (iii) Shall make recommendations to covered agencies:

28 (A) On the identification and prioritization of overburdened  
29 communities under this chapter; and

30 (B) Related to the use by covered agencies of the environmental  
31 and health disparities map in agency efforts to identify and  
32 prioritize overburdened communities;

33 (iv) May make recommendations to a covered agency on the timing  
34 and sequencing of a covered agencies' efforts to implement RCW  
35 70A.02.040 through 70A.02.080; and

36 (v) May make recommendations to the governor and the legislature  
37 regarding ways to improve agency compliance with the requirements of  
38 this chapter;

39 (d) By December 1, 2023, and biennially thereafter, and with  
40 consideration of the information shared on September 1st each year in

1 covered agencies' annual updates to the council required under RCW  
2 70A.02.090, the council must:

3 (i) Evaluate the progress of each agency in applying council  
4 guidance, and update guidance as needed; and

5 (ii) Communicate each covered agency's progress to the public,  
6 the governor, and the legislature. This communication is not required  
7 to be a report and may take the form of a presentation or other  
8 format that communicates the progress of the state and its agencies  
9 in meeting the state's environmental justice goals in compliance with  
10 chapter 314, Laws of 2021, and summarizing the work of the council  
11 pursuant to (a) through (d) of this subsection, and subsection (11)  
12 of this section; and

13 (e) To fulfill the responsibilities established for the council  
14 in RCW 70A.65.040.

15 (10) By November 30, 2023, and in compliance with RCW 43.01.036,  
16 the council must submit a report to the governor and the appropriate  
17 committees of the house of representatives and the senate on:

18 (a) The council's recommendations to covered agencies on the  
19 identification of significant agency actions requiring an  
20 environmental justice assessment under subsection (9)(c)(ii) of this  
21 section;

22 (b) The summary of covered agency progress reports provided to  
23 the council under RCW 70A.02.090(1), including the status of agency  
24 plans for performing environmental justice assessments required by  
25 RCW 70A.02.060; and

26 (c) Guidance for environmental justice implementation into  
27 covered agency strategic plans, environmental justice assessments,  
28 budgeting and funding criteria, and community engagement plans under  
29 subsection (9)(c)(i) of this section.

30 (11) The council may:

31 (a) Review incorporation of environmental justice implementation  
32 plans into covered agency strategic plans pursuant to RCW 70A.02.040,  
33 environmental justice assessments pursuant to RCW 70A.02.060,  
34 budgeting and funding criteria for making budgeting and funding  
35 decisions pursuant to RCW 70A.02.080, and community engagement plans  
36 pursuant to RCW 70A.02.050;

37 (b) Make recommendations for amendments to this chapter or other  
38 legislation to promote and achieve the environmental justice goals of  
39 the state;

1 (c) Review existing laws and make recommendations for amendments  
2 that will further environmental justice;

3 (d) Recommend to specific agencies that they create environmental  
4 justice-focused, agency-requested legislation;

5 (e) Provide requested assistance to state agencies other than  
6 covered agencies that wish to incorporate environmental justice  
7 principles into agency activities; and

8 (f) Recommend funding strategies and allocations to build  
9 capacity in vulnerable populations and overburdened communities to  
10 address environmental justice.

11 (12) The role of the council is purely advisory and council  
12 decisions are not binding on an agency, individual, or organization.

13 (13) The department of health must convene the first meeting of  
14 the council by January 1, 2022.

15 (14) All council meetings are subject to the open public meetings  
16 requirements of chapter 42.30 RCW and a public comment period must be  
17 provided at every meeting of the council."

18 Correct the title.

EFFECT: The striking amendment makes the following changes to the  
Engrossed Second Substitute Senate Bill:

(1) Eliminates the requirement that the Department of Ecology's  
(Ecology) Climate Commitment Act rules be similar to those of other  
jurisdictions with respect to the transfer of compliance instruments  
in a manner that smooths their compliance obligation over the  
compliance period;

(2) Specifies that the 5.2 billion dollar limit over 16 years on  
transfer of Climate Commitment Act revenues to the Carbon Emission  
Reduction Account used for transportation purposes be measured on a  
fiscal year basis;

(3) Specifies that Price Ceiling Units are available for purchase  
only by entities without sufficient compliance instruments for the  
current compliance period, rather than the next compliance period;

(4) Specifies that the Environmental Justice Council provides  
oversight of the expenditure of funds from the Natural Climate  
Solutions Account and the Climate Commitment Account created in the  
Climate Commitment Act, in addition to three other accounts created  
in the Climate Commitment Act;

(5) Specifies that the expenditure of funds from the Natural  
Climate Solutions Account and the Climate Commitment Account created  
in the Climate Commitment Act are subject to the environmental  
justice provisions that apply to other Climate Commitment Act  
accounts, including the requirement that an environmental justice  
assessment be conducted annually or biennially on fund uses;

(6) Creates a new account that receives receipts from sales of  
price ceiling units by Ecology, to be used for allowable expenditures  
specified in the 2021 Climate Commitment Act for such funds:  
Greenhouse gas emission reductions that are real, permanent,  
quantifiable, verifiable, enforceable by the state, and in addition



to any greenhouse gas emission reductions that are required by law or would occur;

(7) Makes conforming amendments to the statutory duties assigned to the Environmental Justice Council that was created in 2021 (SB 5141) to reflect the additional duties assigned to the Council in the 2021 Climate Commitment Act (SB 5126); and

(8) Makes additional technical corrections to the Climate Commitment Act.

--- END ---