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**SENATE BILL 5842**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Carlyle and Liiias

1 AN ACT Relating to state laws that address climate change;  
2 amending RCW 70A.65.070, 70A.65.100, 70A.65.200, 70A.65.020,  
3 70A.65.150, 70A.65.160, and 70A.65.230; and adding new sections to  
4 chapter 70A.65 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

8 (1)(a) The department shall commence the program by January 1,  
9 2023, by determining an emissions baseline establishing the  
10 proportionate share that the total greenhouse gas emissions of  
11 covered entities for the first compliance period bears to the total  
12 anthropogenic greenhouse gas emissions in the state during 2015  
13 through 2019, based on data reported to the department under RCW  
14 70A.15.2200 or provided as required by this chapter, as well as other  
15 relevant data. By October 1, 2022, the department shall adopt annual  
16 allowance budgets for the first compliance period of the program,  
17 calendar years 2023 through 2026, to be distributed from January 1,  
18 2023, through December 31, 2026.

19 (b) By October 1, 2026, the department shall add to its emissions  
20 baseline by incorporating the proportionate share that the total  
21 greenhouse gas emissions of new covered entities in the second

1 compliance period bear to the total anthropogenic greenhouse gas  
2 emissions in the state during ((2023)) 2015 through ((2025)) 2019. In  
3 determining the addition to the baseline, the department may exclude  
4 a year from the determination if the department identifies that year  
5 to have been an outlier due to a state of emergency. The department  
6 shall adopt annual allowance budgets for the second compliance period  
7 of the program, calendar years 2027 through 2030, that will be  
8 distributed from January 1, 2027, through December 31, 2030.

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

11 (2) The annual allowance budgets must be set to achieve the share  
12 of reductions by covered entities necessary to achieve the 2030,  
13 2040, and 2050 statewide emissions limits established in RCW  
14 70A.45.020, based on data reported to the department under chapter  
15 70A.15 RCW or provided as required by this chapter. Annual allowance  
16 budgets must be set such that the use of offsets as compliance  
17 instruments, consistent with RCW 70A.65.170, does not prevent the  
18 achievement of the emissions limits established in RCW 70A.45.020. In  
19 so setting annual allowance budgets, the department must reduce the  
20 annual allowance budget relative to the limits in an amount  
21 equivalent to offset use, or in accordance with a similar methodology  
22 adopted by the department. The department must adopt annual allowance  
23 budgets for the program on a calendar year basis that provide for  
24 progressively equivalent reductions year over year. An allowance  
25 distributed under the program, either directly by the department  
26 under RCW 70A.65.110 through 70A.65.130 or ((~~though~~—[~~through~~]))  
27 through auctions under RCW 70A.65.100, does not expire and may be  
28 held or banked consistent with RCW 70A.65.100(6) and 70A.65.150(1).

29 (3) The department must complete an evaluation by December 31,  
30 2027, and by December 31, 2035, of the performance of the program,  
31 including its performance in reducing greenhouse gases. If the  
32 evaluation shows that adjustments to the annual allowance budgets are  
33 necessary for covered entities to achieve their proportionate share  
34 of the 2030 and 2040 emission reduction limits identified in RCW  
35 70A.45.020, as applicable, the department shall adjust the annual  
36 allowance budgets accordingly. The department must complete  
37 additional evaluations of the performance of the program by December  
38 31, 2040, and by December 31, 2045, and make any necessary  
39 adjustments in the annual allowance budgets to ensure that covered  
40 entities achieve their proportionate share of the 2050 emission

1 reduction limit identified in RCW 70A.45.020. Nothing in this  
2 subsection precludes the department from making additional  
3 adjustments to annual allowance budgets as necessary to ensure  
4 successful achievement of the proportionate emission reduction limits  
5 by covered entities. The department shall determine and make public  
6 the circumstances, metrics, and processes that would initiate the  
7 public consideration of additional allowance budget adjustments to  
8 ensure successful achievement of the proportionate emission reduction  
9 limits.

10 (4) Data reported to the department under RCW 70A.15.2200 or  
11 provided as required by this chapter for 2015 through 2019 is deemed  
12 sufficient for the purpose of adopting annual allowance budgets and  
13 serving as the baseline by which covered entities demonstrate  
14 compliance under the first compliance period of the program. Data  
15 reported to the department under RCW 70A.15.2200 or provided as  
16 required by this chapter for 2023 through 2025 is deemed sufficient  
17 for adopting annual allowance budgets and serving as the baseline by  
18 which covered entities demonstrate compliance under the second  
19 compliance period of the program.

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

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

26 (1) A covered or opt-in entity has a compliance obligation for  
27 its emissions during each four-year compliance period, with the first  
28 compliance period commencing January 1, 2023. A covered or opt-in  
29 entity shall transfer a number of compliance instruments equal to the  
30 entity's covered emissions by November 1st of each calendar year in  
31 which a covered or opt-in entity has a compliance obligation. The  
32 department shall set by rule a percentage of compliance instruments  
33 that must be transferred in each year of the compliance period such  
34 that covered or opt-in entities are allowed to smooth their  
35 compliance obligation within the compliance period but must fully  
36 satisfy their compliance obligation over the course of the compliance  
37 period, in a manner similar to external greenhouse gas emissions  
38 trading programs in other jurisdictions. In meeting a given  
39 compliance obligation, a covered or opt-in entity may use allowances

1 issued in that compliance year, or allowances issued in any of the  
2 seven years immediately preceding that compliance year.

3 (2) Compliance occurs through the transfer of compliance  
4 instruments or price ceiling units, on or before the transfer date,  
5 from the holding account to the compliance account of the covered or  
6 opt-in entity as described in RCW 70A.65.080.

7 (3) (a) A covered entity with a facility eligible for use of price  
8 ceiling units under RCW 70A.65.160 may substitute the submission of  
9 compliance instruments with price ceiling units.

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

13 (4) Older vintage allowances must be retired before newer vintage  
14 allowances.

15 (5) A covered or opt-in entity may not borrow an allowance from a  
16 future allowance year to meet a current or past compliance  
17 obligation.

18 (6) Upon receipt by the department of all compliance instruments  
19 transferred by a covered entity or opt-in entity to meet its  
20 compliance obligation, the department shall retire the allowances or  
21 offset credits.

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

24 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and  
25 70A.65.130, the department shall distribute allowances through  
26 auctions as provided in this section and in rules adopted by the  
27 department to implement these sections. An allowance is not a  
28 property right.

29 (2) (a) The department shall hold a maximum of four auctions  
30 annually, plus any necessary reserve auctions. An auction may include  
31 allowances from the annual allowance budget of the current year and  
32 allowances from the annual allowance budgets from prior years that  
33 remain to be distributed. The department must transmit to the  
34 environmental justice council an auction notice at least 60 days  
35 prior to each auction, as well as a summary results report and a  
36 postauction public proceeds report within 60 days after each auction.  
37 The department must communicate the results of the previous calendar  
38 year's auctions to the environmental justice council on an annual  
39 basis beginning in 2024.

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

5 (3) The department shall engage a qualified, independent  
6 contractor to run the auctions. The department shall also engage a  
7 qualified financial services administrator to hold the bid  
8 guarantees, evaluate bid guarantees, and inform the department of the  
9 value of bid guarantees once the bids are accepted.

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

14 (a) Registered entities intending to participate in an auction  
15 must submit an application to participate at least 30 days prior to  
16 the auction. The application must include the documentation required  
17 for review and approval by the department. A registered entity is  
18 eligible to participate only after receiving a notice of approval by  
19 the department.

20 (b) Each registered entity that elects to participate in the  
21 auction must have a different representative. Only a representative  
22 with an approved auction account is authorized to access the auction  
23 platform to submit an application or confirm the intent to bid for  
24 the registered entity, submit bids on behalf of the registered entity  
25 during the bidding window, or to download reports specific to the  
26 auction.

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

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

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

38 (b) A general market participant may not buy more than four  
39 percent of the allowances offered during a single auction and may not

1 in aggregate own more than 10 percent of total allowances to be  
2 issued in a calendar year;

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

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

7 (7) (a) For fiscal year 2023, upon completion and verification of  
8 the auction results, the financial services administrator shall  
9 notify winning bidders and transfer the auction proceeds to the state  
10 treasurer for deposit as follows: (i) \$127,341,000 must first be  
11 deposited into the carbon emissions reduction account created in RCW  
12 70A.65.240; and (ii) the remaining auction proceeds to the climate  
13 investment account created in RCW 70A.65.250 and the air quality and  
14 health disparities improvement account created in RCW 70A.65.280.

15 (b) For fiscal year 2024, upon completion and verification of the  
16 auction results, the financial services administrator shall notify  
17 winning bidders and transfer the auction proceeds to the state  
18 treasurer for deposit as follows: (i) \$356,697,000 must first be  
19 deposited into the carbon emissions reduction account created in RCW  
20 70A.65.240; and (ii) the remaining auction proceeds to the climate  
21 investment account created in RCW 70A.65.250 and the air quality and  
22 health disparities improvement account created in RCW 70A.65.280.

23 (c) For fiscal year 2025, upon completion and verification of the  
24 auction results, the financial services administrator shall notify  
25 winning bidders and transfer the auction proceeds to the state  
26 treasurer for deposit as follows: (i) \$366,558,000 must first be  
27 deposited into the carbon emissions reduction account created in RCW  
28 70A.65.240; and (ii) the remaining auction proceeds to the climate  
29 investment account created in RCW 70A.65.250 and the air quality and  
30 health disparities improvement account created in RCW 70A.65.280.

31 (d) For fiscal years 2026 through 2037, upon completion and  
32 verification of the auction results, the financial services  
33 administrator shall notify winning bidders and transfer the auction  
34 proceeds to the state treasurer for deposit as follows: (i)  
35 \$359,117,000 per year must first be deposited into the carbon  
36 emissions reduction account created in RCW 70A.65.240; and (ii) the  
37 remaining auction proceeds to the climate investment account created  
38 in RCW 70A.65.250 and the air quality and health disparities  
39 improvement account created in RCW 70A.65.280.

1 (e) The deposits into the carbon emissions reduction account  
2 pursuant to (a) through (d) of this subsection must not exceed  
3 \$5,200,000,000 over the first 16 years and any remaining auction  
4 proceeds must be deposited into the climate investment account  
5 created in RCW 70A.65.250 and the air quality and health disparities  
6 improvement account created in RCW 70A.65.280.

7 (f) For fiscal year 2038 and each year thereafter, upon  
8 completion and verification of the auction results, the financial  
9 services administrator shall notify winning bidders and transfer the  
10 auction proceeds to the state treasurer for deposit as follows: (i)  
11 50 percent of the auction proceeds to the carbon emissions reduction  
12 account created in RCW 70A.65.240; and (ii) the remaining auction  
13 proceeds to the climate investment account created in RCW 70A.65.250  
14 and the air quality and health disparities improvement account  
15 created in RCW 70A.65.280.

16 (8) The department shall adopt by rule provisions to guard  
17 against bidder collusion and minimize the potential for market  
18 manipulation. A registered entity may not release or disclose any  
19 bidding information including: Intent to participate or refrain from  
20 participation; auction approval status; intent to bid; bidding  
21 strategy; bid price or bid quantity; or information on the bid  
22 guarantee provided to the financial services administrator. The  
23 department may cancel or restrict a previously approved auction  
24 participation application or reject a new application if the  
25 department determines that a registered entity has:

26 (a) Provided false or misleading facts;

27 (b) Withheld material information that could influence a decision  
28 by the department;

29 (c) Violated any part of the auction rules;

30 (d) Violated registration requirements; or

31 (e) Violated any of the rules regarding the conduct of the  
32 auction.

33 (9) The following information is confidential and is exempt from  
34 public disclosure:

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

37 (b) Information contained in the secure, online electronic  
38 tracking system established by the department pursuant to RCW  
39 70A.65.090(6);

1 (c) Financial or proprietary information submitted to the  
2 department pursuant to this chapter;

3 (d) Financial or proprietary information submitted to the  
4 independent contractor or the financial services administrator  
5 engaged by the department pursuant to subsection (3) of this section;  
6 and

7 (e) Financial or proprietary information submitted to a  
8 jurisdiction with which the department has entered into a linkage  
9 agreement pursuant to RCW 70A.65.210, and which is shared with the  
10 department, the independent contractor, or the financial services  
11 administrator pursuant to a linkage agreement.

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

18 ~~((10))~~ (11) The department shall design allowance auctions so  
19 as to allow, to the maximum extent practicable, linking with external  
20 greenhouse gas emissions trading programs in other jurisdictions and  
21 to facilitate the transfer of allowances when the state's program has  
22 entered into a linkage agreement with other external greenhouse gas  
23 emissions trading programs. The department may conduct auctions  
24 jointly with linked jurisdictions.

25 ~~((11))~~ (12) In setting the number of allowances offered at each  
26 auction, the department shall consider the allowances in the  
27 marketplace due to the marketing of allowances issued as required  
28 under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's  
29 determination of the number of allowances to be offered at auction.  
30 The department shall offer only such number of allowances at each  
31 auction as will enhance the likelihood of achieving the goals of RCW  
32 70A.45.020.

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

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



1 (2) If a covered or opt-in entity does not submit sufficient  
2 compliance instruments to meet its compliance obligation by the  
3 specified transfer dates, a penalty of four allowances for every one  
4 compliance instrument that is missing must be submitted to the  
5 department within six months. When a covered entity or opt-in entity  
6 reasonably believes that it will be unable to meet a compliance  
7 obligation, the entity shall immediately notify the department. Upon  
8 receiving notification, the department shall issue an order requiring  
9 the entity to submit the penalty allowances.

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

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

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

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

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

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

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

38 (b) No state agency may adopt or enforce a ~~((program that~~  
39 ~~regulates greenhouse gas emissions from a stationary source except as~~  
40 ~~provided in this chapter)) greenhouse gas pricing or market-based~~

1 emissions cap and reduce program for stationary sources, or adopt or  
2 enforce emission limitations on greenhouse gas emissions from  
3 stationary sources except as:

4 (i) Provided in this chapter;

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

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

7 (c) This chapter preempts the provisions of chapter 173-442 WAC.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 70A.65  
9 RCW to read as follows:

10 (1) The executive office of climate policy and accountability is  
11 established within the department. The office shall report to the  
12 director of the department.

13 (2) The primary purpose of the executive office of climate policy  
14 and accountability is to support Washington state's commitment to  
15 reduce greenhouse gas emissions, provide accountability to achieve  
16 the greenhouse gas limits established in RCW 70A.45.020, and provide  
17 an accurate greenhouse gas inventory. The office must aggressively  
18 implement laws and policies to achieve those limits including, but  
19 not limited to, the cap and invest program created under this  
20 chapter. The office is expected to represent the state on national  
21 and international greenhouse gas emissions reduction policies.

22 (3) The executive office of climate policy and accountability  
23 must be established by July 1, 2022, and staffing transfers must be  
24 complete by July 1, 2023.

25 (4) The executive office of climate policy and accountability  
26 must develop and present to the legislature a strategic climate work  
27 plan with performance milestones and accountability measures by  
28 January 31, 2024. The office must submit a legislative report on  
29 progress by January 31, 2025, and every two years thereafter.

30 **Sec. 6.** RCW 70A.65.020 and 2021 c 316 s 3 are each amended to  
31 read as follows:

32 (1) To ensure that the program created in RCW 70A.65.060 through  
33 70A.65.210 achieves reductions in criteria pollutants as well as  
34 greenhouse gas emissions in overburdened communities highly impacted  
35 by air pollution, the department must:

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

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

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

8 (ii) Prior to listing any entity as a high priority emitter, the  
9 department must notify that entity and share the data used to rank  
10 that entity as a high priority emitter, and provide a period of not  
11 less than 60 days for the covered entity to submit more recent data  
12 or other information relevant to the designation of that entity as a  
13 high priority emitter.

14 (2) (a) Beginning in 2023, and every two years thereafter, the  
15 department must conduct a review to determine levels of criteria  
16 pollutants, as well as greenhouse gas emissions, in the overburdened  
17 communities identified under subsection (1) of this section. This  
18 review must also include an evaluation of initial and subsequent  
19 health impacts related to criteria pollution in overburdened  
20 communities. The department may conduct this evaluation jointly with  
21 the department of health.

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

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

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

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

31 (ii) Identify the stationary and mobile sources that are the  
32 greatest contributors of those emissions that are either increasing  
33 or not decreasing;

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

36 (iv) Adopt, along with local air pollution control authorities,  
37 stricter air quality standards, emission standards, or emissions  
38 limitations on criteria pollutants, consistent with the authority of  
39 the department provided under RCW 70A.15.3000, and may consider

1 alternative mitigation actions that would reduce criteria pollution  
2 by similar amounts; and

3 (v) After adoption of the stricter air quality standards,  
4 emission standards, or emissions limitations on criteria pollutants  
5 under (b)(iv) of this subsection, issue an enforceable order or the  
6 local air authority must issue an enforceable order, as authorized  
7 under RCW 70A.15.1100, as necessary to comply with the stricter  
8 standards or limitations and the requirements of this section. The  
9 department or local air authority must initiate the process,  
10 including provision of notice to all relevant affected permittees or  
11 registered sources and to the public, to adopt and implement an  
12 enforceable order required under this subsection within six months of  
13 the adoption of standards or limitations under (b)(iv) of this  
14 subsection.

15 (c) Actions imposed under this section may not impose  
16 requirements on a permitted stationary source that are  
17 disproportionate to the permitted stationary source's contribution to  
18 air pollution compared to other permitted stationary sources and  
19 other sources of criteria pollutants in the overburdened community.

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

24 (4) (a) The department must create and adopt a supplement to the  
25 department's community engagement plan developed pursuant to chapter  
26 (~~314, Laws of 2021~~) 70A.02 RCW. The supplement must describe how  
27 the department will engage with overburdened communities and  
28 vulnerable populations in:

29 (i) Identifying emitters in overburdened communities; and  
30 (ii) Monitoring and evaluating criteria pollutant emissions in  
31 those areas.

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

35 **Sec. 7.** RCW 70A.65.150 and 2021 c 316 s 17 are each amended to  
36 read as follows:

37 (1) To help minimize allowance price volatility in the auction,  
38 the department shall adopt by rule an auction floor price and a  
39 schedule for the floor price to increase by a predetermined amount

1 every year. The department may not sell allowances at bids lower than  
2 the auction floor price. The department's rules must specify holding  
3 limits that determine the maximum number of allowances that may be  
4 held for use or trade by a registered entity at any one time. The  
5 department shall also establish (~~(an auction ceiling)~~) a reserve  
6 auction floor price to limit extraordinary prices and to determine  
7 when to offer allowances through the allowance price containment  
8 reserve auctions authorized under this section.

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

16 (3) (a) The department shall adopt rules for holding auctions of  
17 allowances from the price containment reserve when the settlement  
18 prices in the preceding auction (~~(approach)~~) exceed the adopted  
19 (~~(auction ceiling)~~) reserve auction floor price. The auction must be  
20 separate from auctions of other allowances.

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

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

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

30 (6) The department shall by rule:

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

34 (b) Establish the requirements and schedule for the allowance  
35 price containment reserve auctions; and

36 (c) Establish the amount of allowances to be placed in the  
37 allowance price containment reserve after the first compliance period  
38 ending in 2026.

1       **Sec. 8.** RCW 70A.65.160 and 2021 c 316 s 18 are each amended to  
2 read as follows:

3       (1) The department shall establish a price ceiling to provide  
4 cost protection for facilities obligated to comply with this chapter.  
5 The ceiling must be set at a level sufficient to facilitate  
6 investments to achieve further emission reductions beyond those  
7 enabled by the price ceiling, with the intent that investments  
8 accelerate the state's achievement of greenhouse gas limits  
9 established under RCW 70A.45.020. The price ceiling must increase  
10 annually in proportion to the (~~price floor~~) reserve auction floor  
11 price established in RCW 70A.65.150(1).

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

23       (3) Funds raised in connection with the sale of price ceiling  
24 units must be expended to achieve emissions reductions on at least a  
25 metric ton for metric ton basis that are real, permanent,  
26 quantifiable, verifiable, enforceable by the state, and in addition  
27 to any greenhouse gas emission reduction otherwise required by law or  
28 regulation and any other greenhouse gas emission reduction that  
29 otherwise would occur.

30       **Sec. 9.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to  
31 read as follows:

32       (1) It is the intent of the legislature that each year the total  
33 investments made through the carbon emissions reduction account  
34 created in RCW 70A.65.240, the climate commitment account created in  
35 RCW 70A.65.260, the natural climate solutions account created in RCW  
36 70A.65.270, and the air quality and health disparities improvement  
37 account created in RCW 70A.65.280, achieve the following:

38       (a) A minimum of not less than 35 percent and a goal of 40  
39 percent of total investments that provide direct and meaningful

1 benefits to vulnerable populations within the boundaries of  
2 overburdened communities identified under chapter (~~(314, Laws of~~  
3 ~~2021)~~) 70A.02 RCW; and

4 (b) In addition to the requirements of (a) of this subsection, a  
5 minimum of not less than 10 percent of total investments that are  
6 used for programs, activities, or projects formally supported by a  
7 resolution of an Indian tribe, with priority given to otherwise  
8 qualifying projects directly administered or proposed by an Indian  
9 tribe. An investment that meets the requirements of both this  
10 subsection (1)(b) and (a) of this subsection may count toward the  
11 minimum percentage targets for both subsections.

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

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

18 (a) Reduce vulnerable population characteristics, environmental  
19 burdens, or associated risks that contribute significantly to the  
20 cumulative impact designation of (~~(highly impacted)~~) overburdened  
21 communities;

22 (b) Meaningfully protect an overburdened community from, or  
23 support community response to, the impacts of air pollution or  
24 climate change; or

25 (c) Meet a community need identified by vulnerable members of the  
26 overburdened community that is consistent with the intent of this  
27 chapter.

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

33 (5) No expenditures may be made from the carbon emissions  
34 reduction account created in RCW 70A.65.240, the climate investment  
35 account created in RCW 70A.65.250, or the air quality and health  
36 disparities improvement account created in RCW 70A.65.280 if, by  
37 April 1, 2023, the legislature has not considered and enacted request  
38 legislation brought forth by the department under RCW 70A.65.060 that  
39 outlines a compliance pathway specific to emissions-intensive, trade-

1 exposed businesses for achieving their proportionate share of the  
2 state's emissions reduction limits through 2050.

--- **END** ---