
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5842

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Carlyle, Liias, Das, Nguyen, and Nobles)

READ FIRST TIME 02/07/22.

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, 70A.65.230, 70A.15.2200, 70A.65.010,
4 70A.65.140, 70A.65.170, 70A.65.030, 70A.65.040, and 70A.02.110; and
5 adding a new section to chapter 70A.65 RCW.

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

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

9 (1)(a) The department shall commence the program by January 1,
10 2023, by determining an emissions baseline establishing the
11 proportionate share that the total greenhouse gas emissions of
12 covered entities for the first compliance period bears to the total
13 anthropogenic greenhouse gas emissions in the state during 2015
14 through 2019, based on data reported to the department under RCW
15 70A.15.2200 or provided as required by this chapter, as well as other
16 relevant data. By October 1, 2022, the department shall adopt annual
17 allowance budgets for the first compliance period of the program,
18 calendar years 2023 through 2026, to be distributed from January 1,
19 2023, through December 31, 2026.

20 (b) By October 1, 2026, the department shall add to its emissions
21 baseline by incorporating the proportionate share that the total

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

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

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

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

1 entities achieve their proportionate share of the 2050 emission
2 reduction limit identified in RCW 70A.45.020. Nothing in this
3 subsection precludes the department from making additional
4 adjustments to annual allowance budgets as necessary to ensure
5 successful achievement of the proportionate emission reduction limits
6 by covered entities. The department shall determine and make public
7 the circumstances, metrics, and processes that would initiate the
8 public consideration of additional allowance budget adjustments to
9 ensure successful achievement of the proportionate emission reduction
10 limits.

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

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

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

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

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

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

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

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

6 (5) Upon receipt by the department of all compliance instruments
7 transferred by a covered entity or opt-in entity to meet its
8 compliance obligation, the department shall retire the allowances or
9 offset credits.

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

12 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
13 70A.65.130, the department shall distribute allowances through
14 auctions as provided in this section and in rules adopted by the
15 department to implement these sections. An allowance is not a
16 property right.

17 (2)(a) The department shall hold a maximum of four auctions
18 annually, plus any necessary reserve auctions. An auction may include
19 allowances from the annual allowance budget of the current year and
20 allowances from the annual allowance budgets from prior years that
21 remain to be distributed. The department must transmit to the
22 environmental justice council an auction notice at least 60 days
23 prior to each auction, as well as a summary results report and a
24 postauction public proceeds report within 60 days after each auction.
25 The department must communicate the results of the previous calendar
26 year's auctions to the environmental justice council on an annual
27 basis beginning in 2024.

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

32 (3) The department shall engage a qualified, independent
33 contractor to run the auctions. The department shall also engage a
34 qualified financial services administrator to hold the bid
35 guarantees, evaluate bid guarantees, and inform the department of the
36 value of bid guarantees once the bids are accepted.

37 (4) Auctions are open to covered entities, opt-in entities, and
38 general market participants that are registered entities in good

1 standing. The department shall adopt by rule the requirements for a
2 registered entity to register and participate in a given auction.

3 (a) Registered entities intending to participate in an auction
4 must submit an application to participate at least 30 days prior to
5 the auction. The application must include the documentation required
6 for review and approval by the department. A registered entity is
7 eligible to participate only after receiving a notice of approval by
8 the department.

9 (b) Each registered entity that elects to participate in the
10 auction must have a different representative. Only a representative
11 with an approved auction account is authorized to access the auction
12 platform to submit an application or confirm the intent to bid for
13 the registered entity, submit bids on behalf of the registered entity
14 during the bidding window, or to download reports specific to the
15 auction.

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

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

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

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

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

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

35 (7)(a) For fiscal year 2023, upon completion and verification of
36 the auction results, the financial services administrator shall
37 notify winning bidders and transfer the auction proceeds to the state
38 treasurer for deposit as follows: (i) \$127,341,000 must first be
39 deposited into the carbon emissions reduction account created in RCW
40 70A.65.240; and (ii) the remaining auction proceeds to the climate

1 investment account created in RCW 70A.65.250 and the air quality and
2 health disparities improvement account created in RCW 70A.65.280.

3 (b) For fiscal year 2024, upon completion and verification of the
4 auction results, the financial services administrator shall notify
5 winning bidders and transfer the auction proceeds to the state
6 treasurer for deposit as follows: (i) \$356,697,000 must first be
7 deposited into the carbon emissions reduction account created in RCW
8 70A.65.240; and (ii) the remaining auction proceeds to the climate
9 investment account created in RCW 70A.65.250 and the air quality and
10 health disparities improvement account created in RCW 70A.65.280.

11 (c) For fiscal year 2025, upon completion and verification of the
12 auction results, the financial services administrator shall notify
13 winning bidders and transfer the auction proceeds to the state
14 treasurer for deposit as follows: (i) \$366,558,000 must first be
15 deposited into the carbon emissions reduction account created in RCW
16 70A.65.240; and (ii) the remaining auction proceeds to the climate
17 investment account created in RCW 70A.65.250 and the air quality and
18 health disparities improvement account created in RCW 70A.65.280.

19 (d) For fiscal years 2026 through 2037, upon completion and
20 verification of the auction results, the financial services
21 administrator shall notify winning bidders and transfer the auction
22 proceeds to the state treasurer for deposit as follows: (i)
23 \$359,117,000 per year must first be deposited into the carbon
24 emissions reduction account created in RCW 70A.65.240; and (ii) the
25 remaining auction proceeds to the climate investment account created
26 in RCW 70A.65.250 and the air quality and health disparities
27 improvement account created in RCW 70A.65.280.

28 (e) The deposits into the carbon emissions reduction account
29 pursuant to (a) through (d) of this subsection must not exceed
30 \$5,200,000,000 over the first 16 fiscal years and any remaining
31 auction proceeds must be deposited into the climate investment
32 account created in RCW 70A.65.250 and the air quality and health
33 disparities improvement account created in RCW 70A.65.280.

34 (f) For fiscal year 2038 and each year thereafter, upon
35 completion and verification of the auction results, the financial
36 services administrator shall notify winning bidders and transfer the
37 auction proceeds to the state treasurer for deposit as follows: (i)
38 50 percent of the auction proceeds to the carbon emissions reduction
39 account created in RCW 70A.65.240; and (ii) the remaining auction
40 proceeds to the climate investment account created in RCW 70A.65.250

1 and the air quality and health disparities improvement account
2 created in RCW 70A.65.280.

3 (8) The department shall adopt by rule provisions to guard
4 against bidder collusion and minimize the potential for market
5 manipulation. A registered entity may not release or disclose any
6 bidding information including: Intent to participate or refrain from
7 participation; auction approval status; intent to bid; bidding
8 strategy; bid price or bid quantity; or information on the bid
9 guarantee provided to the financial services administrator. The
10 department may cancel or restrict a previously approved auction
11 participation application or reject a new application if the
12 department determines that a registered entity has:

13 (a) Provided false or misleading facts;

14 (b) Withheld material information that could influence a decision
15 by the department;

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

17 (d) Violated registration requirements; or

18 (e) Violated any of the rules regarding the conduct of the
19 auction.

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

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

24 (b) Information contained in the secure, online electronic
25 tracking system established by the department pursuant to RCW
26 70A.65.090(6);

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

30 (d) Financial, proprietary, and other market sensitive
31 information as determined by the department that is submitted to the
32 independent contractor or the financial services administrator
33 engaged by the department pursuant to subsection (3) of this section;
34 and

35 (e) Financial, proprietary, and other market sensitive
36 information as determined by the department that is submitted to a
37 jurisdiction with which the department has entered into a linkage
38 agreement pursuant to RCW 70A.65.210, and which is shared with the
39 department, the independent contractor, or the financial services
40 administrator pursuant to a linkage agreement.

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

7 ~~((10))~~ (11) The department shall design allowance auctions so
8 as to allow, to the maximum extent practicable, linking with external
9 greenhouse gas emissions trading programs in other jurisdictions and
10 to facilitate the transfer of allowances when the state's program has
11 entered into a linkage agreement with other external greenhouse gas
12 emissions trading programs. The department may conduct auctions
13 jointly with linked jurisdictions.

14 ~~((11))~~ (12) In setting the number of allowances offered at each
15 auction, the department shall consider the allowances in the
16 marketplace due to the marketing of allowances issued as required
17 under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
18 determination of the number of allowances to be offered at auction.
19 The department shall offer only such number of allowances at each
20 auction as will enhance the likelihood of achieving the goals of RCW
21 70A.45.020.

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

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

29 (2) If a covered or opt-in entity does not submit sufficient
30 compliance instruments to meet its compliance obligation by the
31 specified transfer dates, a penalty of four allowances for every one
32 compliance instrument that is missing must be submitted to the
33 department within six months. When a covered entity or opt-in entity
34 reasonably believes that it will be unable to meet a compliance
35 obligation, the entity shall immediately notify the department. Upon
36 receiving notification, the department shall issue an order requiring
37 the entity to submit the penalty allowances.

38 (3) If a covered entity or opt-in entity fails to submit penalty
39 allowances as required by subsection (2) of this section, the

1 department must issue an order or issue a penalty of up to \$10,000
2 per day per violation, or both, for failure to submit penalty
3 allowances as required by subsection (2) of the section. The order
4 may include a plan and schedule for coming into compliance.

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

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

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

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

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

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

27 (b) No state agency may adopt or enforce a (~~program that~~
28 ~~regulates greenhouse gas emissions from a stationary source except as~~
29 ~~provided in this chapter~~) greenhouse gas pricing or market-based
30 emissions cap and reduce program for stationary sources, or adopt or
31 enforce emission limitations on greenhouse gas emissions from
32 stationary sources except as:

33 (i) Provided in this chapter;

34 (ii) Authorized or directed by a state statute in effect as of
35 July 1, 2022; or

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

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

1 (10) (a) By December 1, 2023, the office of financial management
2 must submit a report to the appropriate committees of the legislature
3 that summarizes two categories of state laws other than this chapter:

4 (i) Laws that regulate greenhouse gas emissions from stationary
5 sources, and the greenhouse gas emission reductions attributable to
6 each chapter, relative to a baseline in which this chapter and all
7 other state laws that regulate greenhouse gas emissions are presumed
8 to remain in effect; and

9 (ii) Laws whose implementation may effectuate reductions in
10 greenhouse gas emissions from stationary sources.

11 (b) The state laws that the office of financial management may
12 address in completing the report required in this subsection include,
13 but are not limited to:

14 (i) Chapter 19.27A RCW;

15 (ii) Chapter 19.280 RCW;

16 (iii) Chapter 19.405 RCW;

17 (iv) Chapter 36.165 RCW;

18 (v) Chapter 43.21F RCW;

19 (vi) Chapter 70.30 RCW;

20 (vii) Chapter 70A.15 RCW;

21 (viii) Chapter 70A.45 RCW;

22 (ix) Chapter 70A.60 RCW;

23 (x) Chapter 70A.535 RCW;

24 (xi) Chapter 80.04 RCW;

25 (xii) Chapter 80.28 RCW;

26 (xiii) Chapter 80.70 RCW;

27 (xiv) Chapter 80.80 RCW; and

28 (xv) Chapter 81.88 RCW.

29 (c) The office of financial management may contract for all or
30 part of the work product required under this subsection.

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

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

37 (a) Identify overburdened communities, which may be accomplished
38 through the department's process to identify overburdened communities
39 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. 6.** 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. 7.** 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)~~) covered entities obligated to
5 comply with this chapter. The ceiling must be set at a level
6 sufficient to facilitate investments to achieve further emission
7 reductions beyond those enabled by the price ceiling, with the intent
8 that investments accelerate the state's achievement of greenhouse gas
9 limits established under RCW 70A.45.020. The price ceiling must
10 increase annually in proportion to the (~~(price floor)~~) reserve
11 auction floor 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)~~) covered entities as established under subsection (1)
16 of this section. Purchases must be limited to entities that do not
17 have sufficient eligible compliance instruments in their holding and
18 compliance accounts for the (~~(next)~~) current compliance period and
19 these entities may only purchase what they need to meet their
20 compliance obligation for the current compliance period. Price
21 ceiling units may not be sold or transferred and must be retired for
22 compliance in the current compliance period. A price ceiling unit is
23 not a property right.

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

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

36 (1) It is the intent of the legislature that each year the total
37 investments made through the carbon emissions reduction account
38 created in RCW 70A.65.240, the climate commitment account created in
39 RCW 70A.65.260, the natural climate solutions account created in RCW

1 70A.65.270, and the air quality and health disparities improvement
2 account created in RCW 70A.65.280, achieve the following:

3 (a) A minimum of not less than 35 percent and a goal of 40
4 percent of total investments that provide direct and meaningful
5 benefits to vulnerable populations within the boundaries of
6 overburdened communities identified under chapter (~~(314, Laws of~~
7 ~~2021)~~) 70A.02 RCW; and

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

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

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

22 (a) Reduce vulnerable population characteristics, environmental
23 burdens, or associated risks that contribute significantly to the
24 cumulative impact designation of (~~(highly impacted)~~) overburdened
25 communities;

26 (b) Meaningfully protect an overburdened community from, or
27 support community response to, the impacts of air pollution or
28 climate change; or

29 (c) Meet a community need identified by vulnerable members of the
30 overburdened community that is consistent with the intent of this
31 chapter.

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

37 (5) No expenditures may be made from the carbon emissions
38 reduction account created in RCW 70A.65.240, the climate investment
39 account created in RCW 70A.65.250, or the air quality and health
40 disparities improvement account created in RCW 70A.65.280 if, by

1 April 1, 2023, the legislature has not considered and enacted request
2 legislation brought forth by the department under RCW 70A.65.060 that
3 outlines a compliance pathway specific to emissions-intensive, trade-
4 exposed businesses for achieving their proportionate share of the
5 state's emissions reduction limits through 2050.

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

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

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

1 support of the registration program, emission inventory reports and
2 emission reduction credits computed from information provided by
3 sources pursuant to registration program requirements, staff review,
4 including engineering or other reliable analysis for accuracy and
5 currentness, of information provided by sources pursuant to
6 registration program requirements, clerical and other office support
7 provided in direct furtherance of the registration program, and
8 administrative support provided in directly carrying out the
9 registration program: PROVIDED FURTHER, That any such registration
10 made with either the board or the department shall preclude a further
11 registration and reporting with any other board or the department,
12 except that emissions of greenhouse gases as defined in RCW
13 70A.45.010 must be reported as required under subsection (5) of this
14 section.

15 All registration program and reporting fees collected by the
16 department shall be deposited in the air pollution control account.
17 All registration program fees collected by the local air authorities
18 shall be deposited in their respective treasuries.

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

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

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

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

1 (b) A "license" is a license issued by the department of
2 agriculture licensing a facility as a grain warehouse or grain
3 elevator under chapter 22.09 RCW or a license issued by the federal
4 government licensing a facility as a grain warehouse or grain
5 elevator for purposes similar to those of licensure for the facility
6 under chapter 22.09 RCW; and

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

8 (5)(a) The department shall adopt rules requiring persons to
9 report emissions of greenhouse gases as defined in RCW 70A.45.010
10 where those emissions from a single facility, or from electricity or
11 fossil fuels sold in Washington by a single supplier or local
12 distribution company, meet or exceed (~~ten thousand~~) 10,000 metric
13 tons of carbon dioxide equivalent annually. The rules adopted by the
14 department must support implementation of the program created in RCW
15 70A.65.060. In addition, the rules must require that:

16 (i) Emissions of greenhouse gases resulting from the combustion
17 of fossil fuels be reported separately from emissions of greenhouse
18 gases resulting from the combustion of biomass; and

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

24 (b)(i) The department may by rule include additional gases to the
25 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
26 been designated as a greenhouse gas by the United States congress, by
27 the United States environmental protection agency, or included in
28 external greenhouse gas emission trading programs with which
29 Washington has pursuant to RCW 70A.65.210. Prior to including
30 additional gases to the definition of "greenhouse gas" in RCW
31 70A.45.010, the department shall notify the appropriate committees of
32 the legislature.

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

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

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

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

6 (B) Needed to ensure consistency with emissions reporting
7 requirements for jurisdictions with which Washington has entered a
8 linkage agreement.

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

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

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

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

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

39 (ii) Verification requirements apply at a minimum to persons
40 required to report under (a) of this subsection with emissions that

1 equal or exceed 25,000 metric tons of carbon dioxide equivalent
2 emissions, including carbon dioxide from biomass-derived fuels, or to
3 persons who have a compliance obligation under RCW 70A.65.080 in any
4 year of the current compliance period. The department may adopt rules
5 to accept verification reports from another jurisdiction with a
6 linkage agreement pursuant to RCW 70A.65.180 in cases where the
7 department deems that the methods or procedures are substantively
8 similar.

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

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

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

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

32 (v) For the purpose of this subsection (5), the term "electric
33 power entity" includes any of the following that supply electric
34 power in Washington with associated emissions of greenhouse gases
35 equal to or above the threshold established under (a) of this
36 subsection: (A) Electricity importers and exporters; (B) retail
37 providers, including multijurisdictional retail providers; and (C)
38 first jurisdictional deliverers, as defined in RCW 70A.65.010, not
39 otherwise included here.

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

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

7 (2) "Allowance price containment reserve" means an account
8 maintained by the department with allowances available for sale
9 through separate reserve auctions at predefined prices to assist in
10 containing compliance costs for covered and opt-in entities in the
11 event of unanticipated high costs for compliance instruments.

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

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

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

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

30 (7) "Auction purchase limit" means the limit on the number of
31 allowances one registered entity or a group of affiliated registered
32 entities may purchase from the share of allowances sold at an
33 auction.

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

38 (9) "Balancing authority area" means the collection of
39 generation, transmission, and load within the metered boundaries of a

1 balancing authority. A balancing authority maintains load-resource
2 balance within this area.

3 (10) "Best available technology" means a technology or
4 technologies that will achieve the greatest reduction in greenhouse
5 gas emissions, taking into account the fuels, processes, and
6 equipment used by facilities to produce goods of comparable type,
7 quantity, and quality. Best available technology must be technically
8 feasible, commercially available, economically viable, not create
9 excessive environmental impacts, and be compliant with all applicable
10 laws while not changing the characteristics of the good being
11 manufactured.

12 (11) "Biomass" means nonfossilized and biodegradable organic
13 material originating from plants, animals, and microorganisms,
14 including products, by-products, residues, and waste from
15 agriculture, forestry, and related industries as well as the
16 nonfossilized and biodegradable organic fractions of municipal
17 wastewater and industrial waste, including gases and liquids
18 recovered from the decomposition of nonfossilized and biodegradable
19 organic material.

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

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

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

34 (15) "Climate commitment" means the process and mechanisms to
35 ensure a coordinated and strategic approach to advancing climate
36 resilience and environmental justice and achieving an equitable and
37 inclusive transition to a carbon neutral economy.

38 (16) "Climate resilience" is the ongoing process of anticipating,
39 preparing for, and adapting to changes in climate and minimizing
40 negative impacts to our natural systems, infrastructure, and

1 communities. For natural systems, increasing climate resilience
2 involves restoring and increasing the health, function, and integrity
3 of our ecosystems and improving their ability to absorb and recover
4 from climate-affected disturbances. For communities, increasing
5 climate resilience means enhancing their ability to understand,
6 prevent, adapt, and recover from climate impacts to people and
7 infrastructure.

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

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

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

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

22 (21) "Cost burden" means the impact on rates or charges to
23 customers of electric utilities in Washington state for the
24 incremental cost of electricity service to serve load due to the
25 compliance cost for greenhouse gas emissions caused by the program.
26 Cost burden includes administrative costs from the utility's
27 participation in the program.

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

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

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

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

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

39 (27) "Electricity importer" means:

1 (a) For electricity that is scheduled with a NERC e-tag to a
2 final point of delivery into a balancing authority area located
3 entirely within the state of Washington, the electricity importer is
4 identified on the NERC e-tag as the purchasing-selling entity on the
5 last segment of the tag's physical path with the point of receipt
6 located outside the state of Washington and the point of delivery
7 located inside the state of Washington;

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

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

16 (d) For electricity from facilities allocated to serve retail
17 electricity customers of a multijurisdictional electric company, the
18 electricity importer is the multijurisdictional electric company;

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

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

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

39 (h) For electricity from facilities allocated to a consumer-owned
40 utility inside the state of Washington from a multijurisdictional

1 consumer-owned utility, the electricity importer is the consumer-
2 owned utility inside the state of Washington.

3 (28) "Emissions containment reserve allowance" means a
4 conditional allowance that is withheld from sale at an auction by the
5 department or its agent to secure additional emissions reductions in
6 the event prices fall below the emissions containment reserve trigger
7 price.

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

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

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

16 (32) "Environmental harm" has the same meaning as defined in RCW
17 70A.02.010.

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

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

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

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

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

34 (38) "First jurisdictional deliverer" means the owner or operator
35 of an electric generating facility in Washington or an electricity
36 importer.

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

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

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

4 (42) "Imported electricity" means electricity generated outside
5 the state of Washington with a final point of delivery within the
6 state.

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

9 (b) "Imported electricity" includes imports from linked
10 jurisdictions, but such imports shall be construed as having no
11 emissions.

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

15 (d) "Imported electricity" does not include electricity imports
16 of unspecified electricity that are netted by exports of unspecified
17 electricity to any jurisdiction not covered by a linked program by
18 the same entity within the same hour.

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

26 (f) For a multijurisdictional consumer-owned utility, "imported
27 electricity" includes electricity from facilities that contribute to
28 a common system power pool that are allocated to a consumer-owned
29 utility inside the state of Washington pursuant to a methodology
30 approved by the governing board of the consumer-owned utility.

31 (43) "Leakage" means a reduction in emissions of greenhouse gases
32 within the state that is offset by a directly attributable increase
33 in greenhouse gas emissions outside the state and outside the
34 geography of another jurisdiction with a linkage agreement with
35 Washington.

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

38 (45) "Linkage" means a bilateral or multilateral decision under a
39 linkage agreement between greenhouse gas market programs to accept
40 compliance instruments issued by a participating jurisdiction to meet

1 the obligations of regulated entities in a partner jurisdiction and
2 to otherwise coordinate activities to facilitate operation of a joint
3 market.

4 (46) "Linkage agreement" means a nonbinding agreement that
5 connects two or more greenhouse gas market programs and articulates a
6 mutual understanding of how the participating jurisdictions will work
7 together to facilitate a connected greenhouse gas market.

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

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

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

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

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

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

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

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

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

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

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

39 (iii) Populations, including Native Americans or immigrant
40 populations, who may be exposed to environmental contaminants and

1 pollutants outside of the geographic area in which they reside based
2 on the populations' use of traditional or cultural foods and
3 practices, such as the use of resources, access to which is protected
4 under treaty rights in ceded areas, when those exposures in
5 conjunction with other exposures may result in disproportionately
6 greater risks, including risks of certain cancers or other adverse
7 health effects and outcomes.

8 (b) Overburdened communities identified by the department may
9 include the same communities as those identified by the department
10 through its process for identifying overburdened communities under
11 RCW 70A.02.010.

12 (55) "Person" has the same meaning as defined in RCW
13 70A.15.2200(5)(h)(iii).

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

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

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

27 (59) "Program registry" means the data system in which covered
28 entities, opt-in entities, and general market participants are
29 registered and in which compliance instruments are recorded and
30 tracked.

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

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

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

1 (63) "Specified source of electricity" or "specified source"
2 means a facility, unit, or asset controlling supplier that is
3 permitted to be claimed as the source of electricity delivered. The
4 reporting entity must have either full or partial ownership in the
5 facility or a written power contract to procure electricity generated
6 by that facility or unit or from an asset controlling supplier at the
7 time of entry into the transaction to procure electricity.

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

10 (65) "Tribal lands" has the same meaning as defined in RCW
11 70A.02.010.

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

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

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

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

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

38 (2) In the event that the emissions containment reserve trigger
39 price is met during an auction, the department must automatically

1 withhold allowances as needed. The department must convert and
2 transfer any allowances that have been withheld from auction into the
3 emissions containment reserve account.

4 (3) Emissions containment reserve allowances may only be withheld
5 from an auction if the demand for allowances would result in an
6 auction clearing price that is less than the emissions containment
7 reserve trigger price prior to the withholding from the auction of
8 any emissions containment reserve allowances.

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

11 (a) No less than two percent of the total number of allowances
12 available from the allowance budgets for calendar years 2023 through
13 2026;

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

15 (c) When facilities curtail or close consistent with RCW
16 70A.65.110(6); or

17 (d) When facilities fall below the emissions threshold. The
18 amount of allowances withdrawn from the program budget must be
19 proportionate to the amount of emissions such a facility was
20 previously using.

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

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

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

34 (1) The department shall adopt by rule the protocols for
35 establishing offset projects and securing offset credits that may be
36 used to meet a portion of a covered or opt-in entity's compliance
37 obligation under this chapter (~~(316, Laws of 2021)~~). The protocols
38 adopted by the department under this section must align with the

1 policies of the state established under RCW 70A.45.090 and
2 70A.45.100.

3 (2) Offset projects must:

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

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

8 (i) Are real, permanent, quantifiable, verifiable, and
9 enforceable; and

10 (ii) Are in addition to greenhouse gas emission reductions or
11 removals otherwise required by law and other greenhouse gas emission
12 reductions or removals that would otherwise occur; and

13 (c) Have been certified by a recognized registry (~~after July 25,~~
14 ~~2021, or within two years prior to July 25, 2021~~).

15 (3) (a) A total of no more than five percent of a covered or opt-
16 in entity's compliance obligation during the first compliance period
17 may be met by transferring offset credits. During these years, at
18 least 50 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.

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

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

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

39 (i) Contribute substantively to cumulative air pollution burden
40 in an overburdened community as determined by criteria established by

1 the department, in consultation with the environmental justice
2 council; or

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

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

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

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

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

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

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

29 (c) Adopt a process for monitoring and invalidating offset
30 credits as necessary to ensure the credit reflects emission
31 reductions or removals that continue to meet the standards required
32 by subsection (1) of this section. If an offset credit is
33 invalidated, the covered or opt-in entity must, within six months of
34 the invalidation, transfer replacement credits or allowances to meet
35 its compliance obligation. Failure to transfer the required credits
36 or allowances is a violation subject to penalties as provided in RCW
37 70A.65.200; and

38 (d) Make use of aggregation or other mechanisms, including cost-
39 effective inventory and monitoring provisions, to increase the
40 development of offset and carbon removal projects by landowners

1 across the broadest possible variety of types and sizes of lands,
2 including lands owned by small forestland owners.

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

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

7 (b) Have been issued for reporting periods wholly after July 25,
8 2021, or within two years prior to July 25, 2021; and

9 (c) Be consistent with offset protocols adopted by the
10 department.

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

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

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

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

37 (2) The allocation of funding under subsection (1) of this
38 section must adhere to the following principles, additional to the
39 requirements of RCW 70A.02.080: (a) Benefits and programs should be

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

14 (3) State agencies allocating funds or administering grants or
15 programs from the carbon emissions reduction account created in RCW
16 70A.65.240, the climate commitment account created in RCW 70A.65.260,
17 the natural climate solutions account created in RCW 70A.65.270, the
18 climate investment account created in RCW 70A.65.250, or the air
19 quality and health disparities improvement account created in RCW
20 70A.65.280, must:

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

24 (b) Consider recommendations by the environmental justice
25 council; and

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

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

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

37 (1) The environmental justice council created in RCW 70A.02.110
38 must provide recommendations to the legislature, agencies, and the
39 governor in the development and implementation of the program

1 established in RCW 70A.65.060 through 70A.65.210, and the programs
2 funded from the carbon emissions reduction account created in RCW
3 70A.65.240, the climate commitment account created in RCW 70A.65.260,
4 the natural climate solutions account created in RCW 70A.65.270, and
5 (~~from~~) the climate investment account created in RCW 70A.65.250.

6 (2) In addition to the duties and authorities granted in chapter
7 70A.02 RCW to the environmental justice council, the environmental
8 justice council must:

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

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

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

21 (b) Provide a forum to analyze policies adopted under this
22 chapter to determine if the policies lead to improvements within
23 overburdened communities;

24 (c) Recommend procedures and criteria for evaluating programs,
25 activities, or projects;

26 (d) Recommend copollutant emissions reduction goals in
27 overburdened communities;

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

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

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

39 (h) Recommend how to support public participation through
40 capacity grants for participation.

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

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

6 (1) The environmental justice council is established to advise
7 covered agencies on incorporating environmental justice into agency
8 activities.

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

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

22 (i) The youth representative must be between the ages of 18 and
23 25 at the time of appointment;

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

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

1 (c) Two representatives who are environmental justice
2 practitioners or academics to serve as environmental justice experts,
3 the nominations of which are based upon applied and demonstrated work
4 and focus on environmental justice;

5 (d) (i) One representative of a business that is regulated by a
6 covered agency and whose ordinary business conditions are
7 significantly affected by the actions of at least one other covered
8 agency; and

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

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

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

18 (4) Nongovernmental members of the council must be compensated
19 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
20 43.03.220.

21 (5) The department of health must:

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

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

25 (6) In collaboration with the office of equity, the office of
26 financial management, the council, and covered agencies, the
27 department of health must:

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

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

33 (i) Using outcome-based methodology to determine the
34 effectiveness of agency programs and services on reducing
35 environmental disparities; and

36 (ii) Taking into consideration community feedback from the
37 council on whether the performance measures established accurately
38 measure the effectiveness of covered agency programs and services in
39 the communities served; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (9) The council has the following powers and duties:
2 (a) To provide a forum for the public to:
3 (i) Provide written or oral testimony on their environmental
4 justice concerns;
5 (ii) Assist the council in understanding environmental justice
6 priorities across the state in order to develop council
7 recommendations to agencies for issues to prioritize; and
8 (iii) Identify which agencies to contact with their specific
9 environmental justice concerns and questions;
10 (b) (i) The council shall work in an iterative fashion with the
11 interagency work group to develop guidance for environmental justice
12 implementation into covered agency strategic plans pursuant to RCW
13 70A.02.040, environmental justice assessments pursuant to RCW
14 70A.02.060, budgeting and funding criteria for making budgeting and
15 funding decisions pursuant to RCW 70A.02.080, and community
16 engagement plans pursuant to RCW 70A.02.050;
17 (ii) The council and interagency work group shall regularly
18 update its guidance;
19 (c) In consultation with the interagency work group, the council:
20 (i) Shall provide guidance to covered agencies on developing
21 environmental justice assessments pursuant to RCW 70A.02.060 for
22 significant agency actions;
23 (ii) Shall make recommendations to covered agencies on which
24 agency actions may cause environmental harm or may affect the
25 equitable distribution of environmental benefits to an overburdened
26 community or a vulnerable population and therefore should be
27 considered significant agency actions that require an environmental
28 justice assessment under RCW 70A.02.060;
29 (iii) Shall make recommendations to covered agencies:
30 (A) On the identification and prioritization of overburdened
31 communities under this chapter; and
32 (B) Related to the use by covered agencies of the environmental
33 and health disparities map in agency efforts to identify and
34 prioritize overburdened communities;
35 (iv) May make recommendations to a covered agency on the timing
36 and sequencing of a covered agencies' efforts to implement RCW
37 70A.02.040 through 70A.02.080; and
38 (v) May make recommendations to the governor and the legislature
39 regarding ways to improve agency compliance with the requirements of
40 this chapter;

1 (d) By December 1, 2023, and biennially thereafter, and with
2 consideration of the information shared on September 1st each year in
3 covered agencies' annual updates to the council required under RCW
4 70A.02.090, the council must:

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

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

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

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

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

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

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

32 (11) The council may:

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

1 (b) Make recommendations for amendments to this chapter or other
2 legislation to promote and achieve the environmental justice goals of
3 the state;

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

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

8 (e) Provide requested assistance to state agencies other than
9 covered agencies that wish to incorporate environmental justice
10 principles into agency activities; and

11 (f) Recommend funding strategies and allocations to build
12 capacity in vulnerable populations and overburdened communities to
13 address environmental justice.

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

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

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

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