

E2SSB 5842 - H COMM AMD

By Committee on Environment & Energy

ADOPTED AND ENGROSSED 3/2/2022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (a) Provided false or misleading facts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (i) Provided in this chapter;

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

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

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

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

27 (i) Laws that regulate greenhouse gas emissions from stationary
28 sources, and the greenhouse gas emission reductions attributable to
29 each chapter, relative to a baseline in which this chapter and all
30 other state laws that regulate greenhouse gas emissions are presumed
31 to remain in effect; and

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

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

37 (i) Chapter 19.27A RCW;

38 (ii) Chapter 19.280 RCW;

39 (iii) Chapter 19.405 RCW;

40 (iv) Chapter 36.165 RCW;

1 (v) Chapter 43.21F RCW;
2 (vi) Chapter 70.30 RCW;
3 (vii) Chapter 70A.15 RCW;
4 (viii) Chapter 70A.45 RCW;
5 (ix) Chapter 70A.60 RCW;
6 (x) Chapter 70A.535 RCW;
7 (xi) Chapter 80.04 RCW;
8 (xii) Chapter 80.28 RCW;
9 (xiii) Chapter 80.70 RCW;
10 (xiv) Chapter 80.80 RCW; and
11 (xv) Chapter 81.88 RCW.
12 (c) The office of financial management may contract for all or
13 part of the work product required under this subsection.

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

16 (1) To ensure that the program created in RCW 70A.65.060 through
17 70A.65.210 achieves reductions in criteria pollutants as well as
18 greenhouse gas emissions in overburdened communities highly impacted
19 by air pollution, the department must:

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

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

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

30 (ii) Prior to listing any entity as a high priority emitter, the
31 department must notify that entity and share the data used to rank
32 that entity as a high priority emitter, and provide a period of not
33 less than 60 days for the covered entity to submit more recent data
34 or other information relevant to the designation of that entity as a
35 high priority emitter.

36 (2)(a) Beginning in 2023, and every two years thereafter, the
37 department must conduct a review to determine levels of criteria
38 pollutants, as well as greenhouse gas emissions, in the overburdened
39 communities identified under subsection (1) of this section. This

1 review must also include an evaluation of initial and subsequent
2 health impacts related to criteria pollution in overburdened
3 communities. The department may conduct this evaluation jointly with
4 the department of health.

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

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

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

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

14 (ii) Identify the stationary and mobile sources that are the
15 greatest contributors of those emissions that are either increasing
16 or not decreasing;

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

19 (iv) Adopt, along with local air pollution control authorities,
20 stricter air quality standards, emission standards, or emissions
21 limitations on criteria pollutants, consistent with the authority of
22 the department provided under RCW 70A.15.3000, and may consider
23 alternative mitigation actions that would reduce criteria pollution
24 by similar amounts; and

25 (v) After adoption of the stricter air quality standards,
26 emission standards, or emissions limitations on criteria pollutants
27 under (b)(iv) of this subsection, issue an enforceable order or the
28 local air authority must issue an enforceable order, as authorized
29 under RCW 70A.15.1100, as necessary to comply with the stricter
30 standards or limitations and the requirements of this section. The
31 department or local air authority must initiate the process,
32 including provision of notice to all relevant affected permittees or
33 registered sources and to the public, to adopt and implement an
34 enforceable order required under this subsection within six months of
35 the adoption of standards or limitations under (b)(iv) of this
36 subsection.

37 (c) Actions imposed under this section may not impose
38 requirements on a permitted stationary source that are
39 disproportionate to the permitted stationary source's contribution to

1 air pollution compared to other permitted stationary sources and
2 other sources of criteria pollutants in the overburdened community.

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

7 (4) (a) The department must create and adopt a supplement to the
8 department's community engagement plan developed pursuant to chapter
9 (~~314, Laws of 2021~~) 70A.02 RCW. The supplement must describe how
10 the department will engage with overburdened communities and
11 vulnerable populations in:

12 (i) Identifying emitters in overburdened communities; and

13 (ii) Monitoring and evaluating criteria pollutant emissions in
14 those areas.

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

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

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

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

38 (3) (a) The department shall adopt rules for holding auctions of
39 allowances from the price containment reserve when the settlement

1 prices in the preceding auction (~~(approach)~~) exceed the adopted
2 (~~(auction ceiling)~~) reserve auction floor price. The auction must be
3 separate from auctions of other allowances.

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

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

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

13 (6) The department shall by rule:

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

17 (b) Establish the requirements and schedule for the allowance
18 price containment reserve auctions; and

19 (c) Establish the amount of allowances to be placed in the
20 allowance price containment reserve after the first compliance period
21 ending in 2026.

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

24 (1) The department shall establish a price ceiling to provide
25 cost protection for (~~(facilities)~~) covered entities obligated to
26 comply with this chapter. The ceiling must be set at a level
27 sufficient to facilitate investments to achieve further emission
28 reductions beyond those enabled by the price ceiling, with the intent
29 that investments accelerate the state's achievement of greenhouse gas
30 limits established under RCW 70A.45.020. The price ceiling must
31 increase annually in proportion to the (~~(price floor)~~) reserve
32 auction floor price established in RCW 70A.65.150(1).

33 (2) In the event that no allowances remain in the allowance price
34 containment reserve, the department must issue the number of price
35 ceiling units for sale sufficient to provide cost protection for
36 (~~(facilities)~~) covered entities as established under subsection (1)
37 of this section. Purchases must be limited to entities that do not
38 have sufficient eligible compliance instruments in their holding and
39 compliance accounts for the (~~(next)~~) current compliance period and

1 these entities may only purchase what they need to meet their
2 compliance obligation for the current compliance period. Price
3 ceiling units may not be sold or transferred and must be retired for
4 compliance in the current compliance period. A price ceiling unit is
5 not a property right.

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

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

18 (1) It is the intent of the legislature that each year the total
19 investments made through the carbon emissions reduction account
20 created in RCW 70A.65.240, the climate commitment account created in
21 RCW 70A.65.260, the natural climate solutions account created in RCW
22 70A.65.270, and the air quality and health disparities improvement
23 account created in RCW 70A.65.280, achieve the following:

24 (a) A minimum of not less than 35 percent and a goal of 40
25 percent of total investments that provide direct and meaningful
26 benefits to vulnerable populations within the boundaries of
27 overburdened communities identified under chapter (~~314, Laws of~~
28 ~~2021~~) 70A.02 RCW; and

29 (b) In addition to the requirements of (a) of this subsection, a
30 minimum of not less than 10 percent of total investments that are
31 used for programs, activities, or projects formally supported by a
32 resolution of an Indian tribe, with priority given to otherwise
33 qualifying projects directly administered or proposed by an Indian
34 tribe. An investment that meets the requirements of both this
35 subsection (1)(b) and (a) of this subsection may count toward the
36 minimum percentage targets for both subsections.

37 (2) The expenditure of moneys under this chapter must be
38 consistent with applicable federal, state, and local laws, and treaty

1 rights including, but not limited to, prohibitions on uses of funds
2 imposed by the state Constitution.

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

5 (a) Reduce vulnerable population characteristics, environmental
6 burdens, or associated risks that contribute significantly to the
7 cumulative impact designation of (~~highly impacted~~) overburdened
8 communities;

9 (b) Meaningfully protect an overburdened community from, or
10 support community response to, the impacts of air pollution or
11 climate change; or

12 (c) Meet a community need identified by vulnerable members of the
13 overburdened community that is consistent with the intent of this
14 chapter.

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

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

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

31 (1) The board of any activated authority or the department, may
32 classify air contaminant sources, by ordinance, resolution, rule or
33 regulation, which in its judgment may cause or contribute to air
34 pollution, according to levels and types of emissions and other
35 characteristics which cause or contribute to air pollution, and may
36 require registration or reporting or both for any such class or
37 classes. Classifications made pursuant to this section may be for
38 application to the area of jurisdiction of such authority, or the
39 state as a whole or to any designated area within the jurisdiction,

1 and shall be made with special reference to effects on health,
2 economic and social factors, and physical effects on property.

3 (2) Except as provided in subsection (3) of this section, any
4 person operating or responsible for the operation of air contaminant
5 sources of any class for which the ordinances, resolutions, rules or
6 regulations of the department or board of the authority, require
7 registration or reporting shall register therewith and make reports
8 containing information as may be required by such department or board
9 concerning location, size and height of contaminant outlets,
10 processes employed, nature of the contaminant emission and such other
11 information as is relevant to air pollution and available or
12 reasonably capable of being assembled. In the case of emissions of
13 greenhouse gases as defined in RCW 70A.45.010 the department shall
14 adopt rules requiring reporting of those emissions. The department or
15 board may require that such registration or reporting be accompanied
16 by a fee, and may determine the amount of such fee for such class or
17 classes: PROVIDED, That the amount of the fee shall only be to
18 compensate for the costs of administering such registration or
19 reporting program which shall be defined as initial registration and
20 annual or other periodic reports from the source owner providing
21 information directly related to air pollution registration, on-site
22 inspections necessary to verify compliance with registration
23 requirements, data storage and retrieval systems necessary for
24 support of the registration program, emission inventory reports and
25 emission reduction credits computed from information provided by
26 sources pursuant to registration program requirements, staff review,
27 including engineering or other reliable analysis for accuracy and
28 currentness, of information provided by sources pursuant to
29 registration program requirements, clerical and other office support
30 provided in direct furtherance of the registration program, and
31 administrative support provided in directly carrying out the
32 registration program: PROVIDED FURTHER, That any such registration
33 made with either the board or the department shall preclude a further
34 registration and reporting with any other board or the department,
35 except that emissions of greenhouse gases as defined in RCW
36 70A.45.010 must be reported as required under subsection (5) of this
37 section.

38 All registration program and reporting fees collected by the
39 department shall be deposited in the air pollution control account.

1 All registration program fees collected by the local air authorities
2 shall be deposited in their respective treasuries.

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

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

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

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

25 (b) A "license" is a license issued by the department of
26 agriculture licensing a facility as a grain warehouse or grain
27 elevator under chapter 22.09 RCW or a license issued by the federal
28 government licensing a facility as a grain warehouse or grain
29 elevator for purposes similar to those of licensure for the facility
30 under chapter 22.09 RCW; and

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

32 (5)(a) The department shall adopt rules requiring persons to
33 report emissions of greenhouse gases as defined in RCW 70A.45.010
34 where those emissions from a single facility, or from electricity or
35 fossil fuels sold in Washington by a single supplier or local
36 distribution company, meet or exceed (~~ten-thousand~~) 10,000 metric
37 tons of carbon dioxide equivalent annually. The rules adopted by the
38 department must support implementation of the program created in RCW
39 70A.65.060. In addition, the rules must require that:

1 (i) Emissions of greenhouse gases resulting from the combustion
2 of fossil fuels be reported separately from emissions of greenhouse
3 gases resulting from the combustion of biomass; and

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

9 (b) (i) The department may by rule include additional gases to the
10 definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has
11 been designated as a greenhouse gas by the United States congress, by
12 the United States environmental protection agency, or included in
13 external greenhouse gas emission trading programs with which
14 Washington has pursuant to RCW 70A.65.210. Prior to including
15 additional gases to the definition of "greenhouse gas" in RCW
16 70A.45.010, the department shall notify the appropriate committees of
17 the legislature.

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

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

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

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

30 (B) Needed to ensure consistency with emissions reporting
31 requirements for jurisdictions with which Washington has entered a
32 linkage agreement.

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

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

38 (e) The fee provisions in subsection (2) of this section apply to
39 reporting of emissions of greenhouse gases. Persons required to
40 report under (a) of this subsection who fail to report or pay the fee

1 required in subsection (2) of this section are subject to enforcement
2 penalties under this chapter. The department shall enforce the
3 reporting rule requirements. When a person that holds a compliance
4 obligation under RCW 70A.65.080 fails to submit an emissions data
5 report or fails to obtain a positive emissions data verification
6 statement in accordance with (g)(ii) of this subsection, the
7 department may assign an emissions level for that person.

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

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

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

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

35 (ii) For the purpose of this subsection (5), the term "supplier"
36 includes: (A) Suppliers that produce, import, or deliver, or any
37 combination of producing, importing, or delivering, a quantity of
38 fuel products in Washington that, if completely combusted, oxidized,
39 or used in other processes, would result in the release of greenhouse
40 gases in Washington equivalent to or higher than the threshold

1 established under (a) of this subsection; and (B) suppliers of carbon
2 dioxide that produce, import, or deliver a quantity of carbon dioxide
3 in Washington that, if released, would result in emissions equivalent
4 to or higher than the threshold established under (a) of this
5 subsection.

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

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

16 (v) For the purpose of this subsection (5), the term "electric
17 power entity" includes any of the following that supply electric
18 power in Washington with associated emissions of greenhouse gases
19 equal to or above the threshold established under (a) of this
20 subsection: (A) Electricity importers and exporters; (B) retail
21 providers, including multijurisdictional retail providers; and (C)
22 first jurisdictional deliverers, as defined in RCW 70A.65.010, not
23 otherwise included here.

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

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

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

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

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

38 (4) "Asset controlling supplier" means any entity that owns or
39 operates interconnected electricity generating facilities or serves

1 as an exclusive marketer for these facilities even though it does not
2 own them, and has been designated by the department and received a
3 department-published emissions factor for the wholesale electricity
4 procured from its system. The department shall use a methodology
5 consistent with the methodology used by an external greenhouse gas
6 emissions trading program that shares the regional electricity
7 transmission system. Electricity from an asset controlling supplier
8 is considered a specified source of electricity.

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

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

14 (7) "Auction purchase limit" means the limit on the number of
15 allowances one registered entity or a group of affiliated registered
16 entities may purchase from the share of allowances sold at an
17 auction.

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

22 (9) "Balancing authority area" means the collection of
23 generation, transmission, and load within the metered boundaries of a
24 balancing authority. A balancing authority maintains load-resource
25 balance within this area.

26 (10) "Best available technology" means a technology or
27 technologies that will achieve the greatest reduction in greenhouse
28 gas emissions, taking into account the fuels, processes, and
29 equipment used by facilities to produce goods of comparable type,
30 quantity, and quality. Best available technology must be technically
31 feasible, commercially available, economically viable, not create
32 excessive environmental impacts, and be compliant with all applicable
33 laws while not changing the characteristics of the good being
34 manufactured.

35 (11) "Biomass" means nonfossilized and biodegradable organic
36 material originating from plants, animals, and microorganisms,
37 including products, by-products, residues, and waste from
38 agriculture, forestry, and related industries as well as the
39 nonfossilized and biodegradable organic fractions of municipal
40 wastewater and industrial waste, including gases and liquids

1 recovered from the decomposition of nonfossilized and biodegradable
2 organic material.

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

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

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

17 (15) "Climate commitment" means the process and mechanisms to
18 ensure a coordinated and strategic approach to advancing climate
19 resilience and environmental justice and achieving an equitable and
20 inclusive transition to a carbon neutral economy.

21 (16) "Climate resilience" is the ongoing process of anticipating,
22 preparing for, and adapting to changes in climate and minimizing
23 negative impacts to our natural systems, infrastructure, and
24 communities. For natural systems, increasing climate resilience
25 involves restoring and increasing the health, function, and integrity
26 of our ecosystems and improving their ability to absorb and recover
27 from climate-affected disturbances. For communities, increasing
28 climate resilience means enhancing their ability to understand,
29 prevent, adapt, and recover from climate impacts to people and
30 infrastructure.

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

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

39 (19) "Compliance obligation" means the requirement to submit to
40 the department the number of compliance instruments equivalent to a

1 covered or opt-in entity's covered emissions during the compliance
2 period.

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

5 (21) "Cost burden" means the impact on rates or charges to
6 customers of electric utilities in Washington state for the
7 incremental cost of electricity service to serve load due to the
8 compliance cost for greenhouse gas emissions caused by the program.
9 Cost burden includes administrative costs from the utility's
10 participation in the program.

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

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

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

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

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

22 (27) "Electricity importer" means:

23 (a) For electricity that is scheduled with a NERC e-tag to a
24 final point of delivery into a balancing authority area located
25 entirely within the state of Washington, the electricity importer is
26 identified on the NERC e-tag as the purchasing-selling entity on the
27 last segment of the tag's physical path with the point of receipt
28 located outside the state of Washington and the point of delivery
29 located inside the state of Washington;

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

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

38 (d) For electricity from facilities allocated to serve retail
39 electricity customers of a multijurisdictional electric company, the
40 electricity importer is the multijurisdictional electric company;

1 (e) If the importer identified under (a) of this subsection is a
2 federal power marketing administration over which the state of
3 Washington does not have jurisdiction, and the federal power
4 marketing administration has not voluntarily elected to comply with
5 the program, then the electricity importer is the next purchasing-
6 selling entity in the physical path on the NERC e-tag, or if no
7 additional purchasing-selling entity over which the state of
8 Washington has jurisdiction, then the electricity importer is the
9 electric utility that operates the Washington transmission or
10 distribution system, or the generation balancing authority;

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

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

21 (h) For electricity from facilities allocated to a consumer-owned
22 utility inside the state of Washington from a multijurisdictional
23 consumer-owned utility, the electricity importer is the consumer-
24 owned utility inside the state of Washington.

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

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

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

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

38 (32) "Environmental harm" has the same meaning as defined in RCW
39 70A.02.010.

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

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

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

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

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

17 (38) "First jurisdictional deliverer" means the owner or operator
18 of an electric generating facility in Washington or an electricity
19 importer.

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

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

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

27 (42) "Imported electricity" means electricity generated outside
28 the state of Washington with a final point of delivery within the
29 state.

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

32 (b) "Imported electricity" includes imports from linked
33 jurisdictions, but such imports shall be construed as having no
34 emissions.

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

38 (d) "Imported electricity" does not include electricity imports
39 of unspecified electricity that are netted by exports of unspecified

1 electricity to any jurisdiction not covered by a linked program by
2 the same entity within the same hour.

3 (e) For a multijurisdictional electric company, "imported
4 electricity" means electricity, other than from in-state facilities,
5 that contributes to a common system power pool. Where a
6 multijurisdictional electric company has a cost allocation
7 methodology approved by the utilities and transportation commission,
8 the allocation of specific facilities to Washington's retail load
9 will be in accordance with that methodology.

10 (f) For a multijurisdictional consumer-owned utility, "imported
11 electricity" includes electricity from facilities that contribute to
12 a common system power pool that are allocated to a consumer-owned
13 utility inside the state of Washington pursuant to a methodology
14 approved by the governing board of the consumer-owned utility.

15 (43) "Leakage" means a reduction in emissions of greenhouse gases
16 within the state that is offset by a directly attributable increase
17 in greenhouse gas emissions outside the state and outside the
18 geography of another jurisdiction with a linkage agreement with
19 Washington.

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

22 (45) "Linkage" means a bilateral or multilateral decision under a
23 linkage agreement between greenhouse gas market programs to accept
24 compliance instruments issued by a participating jurisdiction to meet
25 the obligations of regulated entities in a partner jurisdiction and
26 to otherwise coordinate activities to facilitate operation of a joint
27 market.

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

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

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

38 (49) "Multijurisdictional electric company" means an investor-
39 owned utility that provides electricity to customers in Washington

1 and in one or more other states in a contiguous service territory or
2 from a common power system.

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

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

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

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

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

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

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

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

24 (iii) Populations, including Native Americans or immigrant
25 populations, who may be exposed to environmental contaminants and
26 pollutants outside of the geographic area in which they reside based
27 on the populations' use of traditional or cultural foods and
28 practices, such as the use of resources, access to which is protected
29 under treaty rights in ceded areas, when those exposures in
30 conjunction with other exposures may result in disproportionately
31 greater risks, including risks of certain cancers or other adverse
32 health effects and outcomes.

33 (b) Overburdened communities identified by the department may
34 include the same communities as those identified by the department
35 through its process for identifying overburdened communities under
36 RCW 70A.02.010.

37 (55) "Person" has the same meaning as defined in RCW
38 70A.15.2200(5)(h)(iii).

39 (56) "Point of delivery" means a point on the electricity
40 transmission or distribution system where a deliverer makes

1 electricity available to a receiver, or available to serve load. This
2 point may be an interconnection with another system or a substation
3 where the transmission provider's transmission and distribution
4 systems are connected to another system, or a distribution substation
5 where electricity is imported into the state over a
6 multijurisdictional retail provider's distribution system.

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

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

12 (59) "Program registry" means the data system in which covered
13 entities, opt-in entities, and general market participants are
14 registered and in which compliance instruments are recorded and
15 tracked.

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

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

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

26 (63) "Specified source of electricity" or "specified source"
27 means a facility, unit, or asset controlling supplier that is
28 permitted to be claimed as the source of electricity delivered. The
29 reporting entity must have either full or partial ownership in the
30 facility or a written power contract to procure electricity generated
31 by that facility or unit or from an asset controlling supplier at the
32 time of entry into the transaction to procure electricity.

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

35 (65) "Tribal lands" has the same meaning as defined in RCW
36 70A.02.010.

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

1 (67) "Voluntary renewable reserve account" means a holding
2 account maintained by the department from which allowances may be
3 retired for voluntary renewable electricity generation, which is
4 directly delivered to the state and has not and will not be sold or
5 used to meet any other mandatory requirements in the state or any
6 other jurisdiction, on behalf of voluntary renewable energy
7 purchasers or end users.

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

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

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

24 (2) In the event that the emissions containment reserve trigger
25 price is met during an auction, the department must automatically
26 withhold allowances as needed. The department must convert and
27 transfer any allowances that have been withheld from auction into the
28 emissions containment reserve account.

29 (3) Emissions containment reserve allowances may only be withheld
30 from an auction if the demand for allowances would result in an
31 auction clearing price that is less than the emissions containment
32 reserve trigger price prior to the withholding from the auction of
33 any emissions containment reserve allowances.

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

36 (a) No less than two percent of the total number of allowances
37 available from the allowance budgets for calendar years 2023 through
38 2026;

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

1 (c) When facilities curtail or close consistent with RCW
2 70A.65.110(6); or

3 (d) When facilities fall below the emissions threshold. The
4 amount of allowances withdrawn from the program budget must be
5 proportionate to the amount of emissions such a facility was
6 previously using.

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

10 (b) Allowances equal to the greenhouse gas emissions resulting
11 from a new or expanded emissions-intensive, trade-exposed facility
12 with emissions in excess of 25,000 metric tons per year during the
13 first applicable compliance period will be provided to the facility
14 from the reserve created in this section and must be retired by the
15 facility. In subsequent compliance periods, the facility will be
16 subject to the regulatory cap and related requirements under this
17 chapter.

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

20 (1) The department shall adopt by rule the protocols for
21 establishing offset projects and securing offset credits that may be
22 used to meet a portion of a covered or opt-in entity's compliance
23 obligation under this chapter (~~(316, Laws of 2021)~~). The protocols
24 adopted by the department under this section must align with the
25 policies of the state established under RCW 70A.45.090 and
26 70A.45.100.

27 (2) Offset projects must:

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

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

32 (i) Are real, permanent, quantifiable, verifiable, and
33 enforceable; and

34 (ii) Are in addition to greenhouse gas emission reductions or
35 removals otherwise required by law and other greenhouse gas emission
36 reductions or removals that would otherwise occur; and

37 (c) Have been certified by a recognized registry (~~(after July 25,~~
38 ~~2021, or within two years prior to July 25, 2021)~~).

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

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

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

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

25 (i) Contribute substantively to cumulative air pollution burden
26 in an overburdened community as determined by criteria established by
27 the department, in consultation with the environmental justice
28 council; or

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

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

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

39 (ii) No more than two percent of a covered or opt-in entity's
40 compliance obligation may be met by transferring offset credits from

1 projects on federally recognized tribal land during the second
2 compliance period.

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

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

9 (b) Encourage opportunities for the development of offset
10 projects in this state by adopting offset protocols that may include,
11 but need not be limited to, protocols that make use of aggregation or
12 other mechanisms to reduce transaction costs related to the
13 development of offset projects and that support the development of
14 carbon dioxide removal projects;

15 (c) Adopt a process for monitoring and invalidating offset
16 credits as necessary to ensure the credit reflects emission
17 reductions or removals that continue to meet the standards required
18 by subsection (1) of this section. If an offset credit is
19 invalidated, the covered or opt-in entity must, within six months of
20 the invalidation, transfer replacement credits or allowances to meet
21 its compliance obligation. Failure to transfer the required credits
22 or allowances is a violation subject to penalties as provided in RCW
23 70A.65.200; and

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

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

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

33 (b) Have been issued for reporting periods wholly after July 25,
34 2021, or within two years prior to July 25, 2021; and

35 (c) Be consistent with offset protocols adopted by the
36 department.

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

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

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

6 (1) Each year or biennium, as appropriate, when allocating funds
7 from the carbon emissions reduction account created in RCW
8 70A.65.240, the climate commitment account created in RCW 70A.65.260,
9 the natural climate solutions account created in RCW 70A.65.270, the
10 climate investment account created in RCW 70A.65.250, or the air
11 quality and health disparities improvement account created in RCW
12 70A.65.280, or administering grants or programs funded by the
13 accounts, agencies shall conduct an environmental justice assessment
14 consistent with the requirements of RCW 70A.02.060 and establish a
15 minimum of not less than 35 percent and a goal of 40 percent of total
16 investments that provide direct and meaningful benefits to vulnerable
17 populations within the boundaries of overburdened communities
18 through: (a) The direct reduction of environmental burdens in
19 overburdened communities; (b) the reduction of disproportionate,
20 cumulative risk from environmental burdens, including those
21 associated with climate change; (c) the support of community led
22 project development, planning, and participation costs; or (d)
23 meeting a community need identified by the community that is
24 consistent with the intent of this chapter or RCW 70A.02.010.

25 (2) The allocation of funding under subsection (1) of this
26 section must adhere to the following principles, additional to the
27 requirements of RCW 70A.02.080: (a) Benefits and programs should be
28 directed to areas and targeted to vulnerable populations and
29 overburdened communities to reduce statewide disparities; (b)
30 investments and benefits should be made roughly proportional to the
31 health disparities that a specific community experiences, with a goal
32 of eliminating the disparities; (c) investments and programs should
33 focus on creating environmental benefits, including eliminating
34 health burdens, creating community and population resilience, and
35 raising the quality of life of those in the community; and (d)
36 efforts should be made to balance investments and benefits across the
37 state and within counties, local jurisdictions, and unincorporated
38 areas as appropriate to reduce disparities by location and to ensure

1 efforts contribute to a reduction in disparities that exist based on
2 race or ethnicity, socioeconomic status, or other factors.

3 (3) State agencies allocating funds or administering grants or
4 programs from the carbon emissions reduction account created in RCW
5 70A.65.240, the climate commitment account created in RCW 70A.65.260,
6 the natural climate solutions account created in RCW 70A.65.270, the
7 climate investment account created in RCW 70A.65.250, or the air
8 quality and health disparities improvement account created in RCW
9 70A.65.280, must:

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

13 (b) Consider recommendations by the environmental justice
14 council; and

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

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

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

26 (1) The environmental justice council created in RCW 70A.02.110
27 must provide recommendations to the legislature, agencies, and the
28 governor in the development and implementation of the program
29 established in RCW 70A.65.060 through 70A.65.210, and the programs
30 funded from the carbon emissions reduction account created in RCW
31 70A.65.240, the climate commitment account created in RCW 70A.65.260,
32 the natural climate solutions account created in RCW 70A.65.270, and
33 (~~from~~) the climate investment account created in RCW 70A.65.250.

34 (2) In addition to the duties and authorities granted in chapter
35 70A.02 RCW to the environmental justice council, the environmental
36 justice council must:

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

1 (i) The program established in RCW 70A.65.060 through 70A.65.210
2 including, but not limited to, linkage with other jurisdictions,
3 protocols for establishing offset projects and securing offset
4 credits, designation of emissions-intensive and trade-exposed
5 industries under RCW 70A.65.110, and administration of allowances
6 under the program; and

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

11 (b) Provide a forum to analyze policies adopted under this
12 chapter to determine if the policies lead to improvements within
13 overburdened communities;

14 (c) Recommend procedures and criteria for evaluating programs,
15 activities, or projects;

16 (d) Recommend copollutant emissions reduction goals in
17 overburdened communities;

18 (e) Evaluate the level of funding provided to assist vulnerable
19 populations, low-income individuals, and impacted workers and the
20 funding of projects and activities located within or benefiting
21 overburdened communities;

22 (f) Recommend environmental justice and environmental health
23 goals for programs, activities, and projects funded from the climate
24 investment account, and review agency annual reports on outcomes and
25 progress toward meeting these goals;

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

29 (h) Recommend how to support public participation through
30 capacity grants for participation.

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

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

36 (1) The environmental justice council is established to advise
37 covered agencies on incorporating environmental justice into agency
38 activities.

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

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

14 (i) The youth representative must be between the ages of 18 and
15 25 at the time of appointment;

16 (ii) The youth representative serves a two-year term. All other
17 community representatives serve four-year terms, with six
18 representatives initially being appointed to four-year terms and five
19 being initially appointed to two-year terms, after which they will be
20 appointed to four-year terms;

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

32 (c) Two representatives who are environmental justice
33 practitioners or academics to serve as environmental justice experts,
34 the nominations of which are based upon applied and demonstrated work
35 and focus on environmental justice;

36 (d) (i) One representative of a business that is regulated by a
37 covered agency and whose ordinary business conditions are
38 significantly affected by the actions of at least one other covered
39 agency; and

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

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

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

10 (4) Nongovernmental members of the council must be compensated
11 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
12 43.03.220.

13 (5) The department of health must:

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

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

17 (6) In collaboration with the office of equity, the office of
18 financial management, the council, and covered agencies, the
19 department of health must:

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

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

25 (i) Using outcome-based methodology to determine the
26 effectiveness of agency programs and services on reducing
27 environmental disparities; and

28 (ii) Taking into consideration community feedback from the
29 council on whether the performance measures established accurately
30 measure the effectiveness of covered agency programs and services in
31 the communities served; and

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

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

38 (8) (a) With input and assistance from the council, the department
39 of health must establish an interagency work group to assist covered
40 agencies in incorporating environmental justice into agency decision

1 making. The work group must include staff from each covered agency
2 directed to implement environmental justice provisions under this
3 chapter and may include members from the council. The department of
4 health shall provide assistance to the interagency work group by:

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

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

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

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

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

15 (i) Providing technical assistance to support agency compliance
16 with the implementation of environmental justice into their strategic
17 plans, environmental justice obligations for budgeting and funding
18 criteria and decisions, environmental justice assessments, and
19 community engagement plans;

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

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

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

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

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

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

34 (i) Provide written or oral testimony on their environmental
35 justice concerns;

36 (ii) Assist the council in understanding environmental justice
37 priorities across the state in order to develop council
38 recommendations to agencies for issues to prioritize; and

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

1 (b) (i) The council shall work in an iterative fashion with the
2 interagency work group to develop guidance for environmental justice
3 implementation into covered agency strategic plans pursuant to RCW
4 70A.02.040, environmental justice assessments pursuant to RCW
5 70A.02.060, budgeting and funding criteria for making budgeting and
6 funding decisions pursuant to RCW 70A.02.080, and community
7 engagement plans pursuant to RCW 70A.02.050;

8 (ii) The council and interagency work group shall regularly
9 update its guidance;

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

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

14 (ii) Shall make recommendations to covered agencies on which
15 agency actions may cause environmental harm or may affect the
16 equitable distribution of environmental benefits to an overburdened
17 community or a vulnerable population and therefore should be
18 considered significant agency actions that require an environmental
19 justice assessment under RCW 70A.02.060;

20 (iii) Shall make recommendations to covered agencies:

21 (A) On the identification and prioritization of overburdened
22 communities under this chapter; and

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

26 (iv) May make recommendations to a covered agency on the timing
27 and sequencing of a covered agencies' efforts to implement RCW
28 70A.02.040 through 70A.02.080; and

29 (v) May make recommendations to the governor and the legislature
30 regarding ways to improve agency compliance with the requirements of
31 this chapter;

32 (d) By December 1, 2023, and biennially thereafter, and with
33 consideration of the information shared on September 1st each year in
34 covered agencies' annual updates to the council required under RCW
35 70A.02.090, the council must:

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

38 (ii) Communicate each covered agency's progress to the public,
39 the governor, and the legislature. This communication is not required
40 to be a report and may take the form of a presentation or other

1 format that communicates the progress of the state and its agencies
2 in meeting the state's environmental justice goals in compliance with
3 chapter 314, Laws of 2021, and summarizing the work of the council
4 pursuant to (a) through (d) of this subsection, and subsection (11)
5 of this section; and

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

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

11 (a) The council's recommendations to covered agencies on the
12 identification of significant agency actions requiring an
13 environmental justice assessment under subsection (9)(c)(ii) of this
14 section;

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

19 (c) Guidance for environmental justice implementation into
20 covered agency strategic plans, environmental justice assessments,
21 budgeting and funding criteria, and community engagement plans under
22 subsection (9)(c)(i) of this section.

23 (11) The council may:

24 (a) Review incorporation of environmental justice implementation
25 plans into covered agency strategic plans pursuant to RCW 70A.02.040,
26 environmental justice assessments pursuant to RCW 70A.02.060,
27 budgeting and funding criteria for making budgeting and funding
28 decisions pursuant to RCW 70A.02.080, and community engagement plans
29 pursuant to RCW 70A.02.050;

30 (b) Make recommendations for amendments to this chapter or other
31 legislation to promote and achieve the environmental justice goals of
32 the state;

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

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

37 (e) Provide requested assistance to state agencies other than
38 covered agencies that wish to incorporate environmental justice
39 principles into agency activities; and

1 (f) Recommend funding strategies and allocations to build
2 capacity in vulnerable populations and overburdened communities to
3 address environmental justice.

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

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

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

11 Correct the title.

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