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**SECOND SUBSTITUTE SENATE BILL 5842**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

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

READ FIRST TIME 02/07/22.

1 AN ACT Relating to state laws that address climate change;  
2 amending RCW 70A.65.070, 70A.65.100, 70A.65.200, 70A.65.020,  
3 70A.65.150, 70A.65.160, 70A.65.230, 70A.15.2200, 70A.65.010, and  
4 70A.65.140; and adding new sections to chapter 70A.65 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) A covered or opt-in entity has a compliance obligation for  
27 its emissions during each four-year compliance period, with the first  
28 compliance period commencing January 1, 2023. The department shall by  
29 rule require that covered or opt-in entities annually transfer a  
30 percentage of compliance instruments in order to smooth their  
31 compliance obligation, but must fully satisfy their compliance  
32 obligation, for each compliance period, in a manner similar to  
33 external greenhouse gas emissions trading programs in other  
34 jurisdictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (7)(a) For fiscal year 2023, upon completion and verification of  
38 the auction results, the financial services administrator shall  
39 notify winning bidders and transfer the auction proceeds to the state  
40 treasurer for deposit as follows: (i) \$127,341,000 must first be

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

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

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

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

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

36 (f) For fiscal year 2038 and each year thereafter, upon  
37 completion and verification of the auction results, the financial  
38 services administrator shall notify winning bidders and transfer the  
39 auction proceeds to the state treasurer for deposit as follows: (i)  
40 50 percent of the auction proceeds to the carbon emissions reduction

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

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

15 (a) Provided false or misleading facts;

16 (b) Withheld material information that could influence a decision  
17 by the department;

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

19 (d) Violated registration requirements; or

20 (e) Violated any of the rules regarding the conduct of the  
21 auction.

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

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

26 (b) Information contained in the secure, online electronic  
27 tracking system established by the department pursuant to RCW  
28 70A.65.090(6);

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

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

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

1 department, the independent contractor, or the financial services  
2 administrator pursuant to a linkage agreement.

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

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

16 ~~((11))~~ (12) In setting the number of allowances offered at each  
17 auction, the department shall consider the allowances in the  
18 marketplace due to the marketing of allowances issued as required  
19 under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's  
20 determination of the number of allowances to be offered at auction.  
21 The department shall offer only such number of allowances at each  
22 auction as will enhance the likelihood of achieving the goals of RCW  
23 70A.45.020.

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

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

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



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

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

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

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

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

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

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

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

35 (i) Provided in this chapter;

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

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

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

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

3        (1) The executive office of climate policy and accountability is  
4    established within the department. The office shall report to the  
5    director of the department.

6        (2) The purpose of the executive office of climate policy and  
7    accountability is to support Washington state's commitment to reduce  
8    greenhouse gas emissions, provide accountability to achieve  
9    the greenhouse gas limits established in RCW 70A.45.020, provide an  
10   accurate greenhouse gas inventory, implement laws administered by the  
11   department in accordance with the principles established therein, and  
12   monitor the economic impacts of these laws to minimize leakage.

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

16       (4) By January 31, 2025, and every two years thereafter, the  
17   executive office of climate policy and accountability must submit a  
18   report to the legislature on the state's progress toward achieving  
19   the greenhouse gas limits established in RCW 70A.45.020.

20       (5) Nothing in this section establishes or creates legal  
21   authority for the department or any other state agency to enact,  
22   adopt, issue an order, or in any way implement additional regulatory  
23   programs beyond what is provided for under this chapter and other  
24   statutes.

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

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

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

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

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

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

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

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

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

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

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

27 (ii) Identify the stationary and mobile sources that are the  
28 greatest contributors of those emissions that are either increasing  
29 or not decreasing;

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

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

38 (v) After adoption of the stricter air quality standards,  
39 emission standards, or emissions limitations on criteria pollutants  
40 under (b)(iv) of this subsection, issue an enforceable order or the

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

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

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

19 (4) (a) The department must create and adopt a supplement to the  
20 department's community engagement plan developed pursuant to chapter  
21 (~~314, Laws of 2021~~) 70A.02 RCW. The supplement must describe how  
22 the department will engage with overburdened communities and  
23 vulnerable populations in:

24 (i) Identifying emitters in overburdened communities; and

25 (ii) Monitoring and evaluating criteria pollutant emissions in  
26 those areas.

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

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

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

1 auction floor price to limit extraordinary prices and to determine  
2 when to offer allowances through the allowance price containment  
3 reserve auctions authorized under this section.

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

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

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

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

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

25 (6) The department shall by rule:

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

29 (b) Establish the requirements and schedule for the allowance  
30 price containment reserve auctions; and

31 (c) Establish the amount of allowances to be placed in the  
32 allowance price containment reserve after the first compliance period  
33 ending in 2026.

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

36 (1) The department shall establish a price ceiling to provide  
37 cost protection for facilities obligated to comply with this chapter.  
38 The ceiling must be set at a level sufficient to facilitate  
39 investments to achieve further emission reductions beyond those

1 enabled by the price ceiling, with the intent that investments  
2 accelerate the state's achievement of greenhouse gas limits  
3 established under RCW 70A.45.020. The price ceiling must increase  
4 annually in proportion to the (~~price floor~~) reserve auction floor  
5 price established in RCW 70A.65.150(1).

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

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

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

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

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

37 (b) In addition to the requirements of (a) of this subsection, a  
38 minimum of not less than 10 percent of total investments that are  
39 used for programs, activities, or projects formally supported by a

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

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

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

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

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

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

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

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

36 **Sec. 10.** RCW 70A.15.2200 and 2021 c 316 s 33 are each amended to  
37 read as follows:

38 (1) The board of any activated authority or the department, may  
39 classify air contaminant sources, by ordinance, resolution, rule or

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

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



1 registration and reporting with any other board or the department,  
2 except that emissions of greenhouse gases as defined in RCW  
3 70A.45.010 must be reported as required under subsection (5) of this  
4 section.

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

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

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

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

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

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

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

38 (5)(a) The department shall adopt rules requiring persons to  
39 report emissions of greenhouse gases as defined in RCW 70A.45.010  
40 where those emissions from a single facility, or from electricity or

1 fossil fuels sold in Washington by a single supplier or local  
2 distribution company, meet or exceed (~~ten thousand~~) 10,000 metric  
3 tons of carbon dioxide equivalent annually. The rules adopted by the  
4 department must support implementation of the program created in RCW  
5 70A.65.060. In addition, the rules must require that:

6 (i) Emissions of greenhouse gases resulting from the combustion  
7 of fossil fuels be reported separately from emissions of greenhouse  
8 gases resulting from the combustion of biomass; and

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

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

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

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

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

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

35 (B) Needed to ensure consistency with emissions reporting  
36 requirements for jurisdictions with which Washington has entered a  
37 linkage agreement.

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 11.** RCW 70A.65.010 and 2021 c 316 s 2 are each amended to  
31 read as follows:

32 The definitions in this section apply throughout this chapter  
33 unless the context clearly requires otherwise.

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

36 (2) "Allowance price containment reserve" means an account  
37 maintained by the department with allowances available for sale  
38 through separate reserve auctions at predefined prices to assist in

1 containing compliance costs for covered and opt-in entities in the  
2 event of unanticipated high costs for compliance instruments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (27) "Electricity importer" means:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Sec. 12.** RCW 70A.65.140 and 2021 c 316 s 16 are each amended to  
20 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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