

1682

Proposed Second Substitute House Bill #2

H-2896.3

By Representative Fitzgibbon

Original Bill: Concerning a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

Proposed Second Substitute # 2 (H-2896.3) compared to the Substitute House Bill 1682 (H-2446.2):

Restores current-law provisions of the Climate Commitment Act (CCA) pertaining to emissions-intensive trade-exposed (EITE) facilities including the allocation of allowances to such facilities, except as follows:

- Establishes a codified but non-substantive legislative statement of intent with respect to EITE policy under the CCA;
- Moves up the current-law Department of Ecology (Ecology) report on EITEs from 2026 to 2024, and expands the advisory committee and scope of the study to consider the Legislature's statement of intent, and the potential impacts of EITE policy options on program linkage and to include a recommendation on a process through which an EITE can demonstrate its use of best available technology as a compliance method;
- Authorizes Ecology to make upwards adjustments to EITE allowance allocations only after the completion of the 2024 report;
- Provides Ecology authority to demand information about EITE emissions or production processes with respect to their current-law best available technology analysis responsibilities;
- Exempts certain district energy facilities from Cap-and-Invest program participation requirements during the first compliance period;
- Directs Ecology to adopt a rule determining the treatment of district energy facilities under the CCA prior the start of the second compliance period, and authorizes Ecology to demand information from district energy facilities in the same manner as may be demanded from EITE facilities;
- Makes technical corrections and clarifications to current-law provisions governing EITEs;
- Eliminates restrictions on state expenditures of CCA Program revenues that would take effect April 1, 2023, unless the Legislature enacts Ecology agency-request legislation outlining a compliance pathway for EITE facilities through 2050; and
- Authorizes the use of CCA Program revenues deposited in the Climate Commitment Account for programs, activities, or projects that reduce EITE facility emissions for which the facility has a compliance obligation under the CCA Program.

Committee: House Appropriations Committee
Staff: Jacob Lipson (786-7196) and Dan Jones (786-7118), Office of Program Research
Date: February 28, 2022
Draft: H-2896.3

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2896.3/22 3rd draft

ATTY/TYPIST: ML:akl

BRIEF DESCRIPTION: Concerning a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

Proposed Second Substitute House Bill

H-2896.3

By Representative Fitzgibbon

1 AN ACT Relating to a compliance pathway specific to emissions-
2 intensive, trade-exposed businesses for achieving their proportionate
3 share of the state's emissions reduction limits through 2050;
4 amending RCW 70A.65.110, 70A.65.230, 70A.65.260, 70A.65.010, and
5 70A.65.080; adding new sections to chapter 70A.65 RCW; and
6 prescribing penalties.

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

8 **Sec. 1.** RCW 70A.65.110 and 2021 c 316 s 13 are each amended to
9 read as follows:

10 (1) Facilities owned or operated by a covered entity must receive
11 an allocation of allowances for the covered emissions at those
12 facilities under this subsection at no cost if the operations of the
13 facility are classified as emissions-intensive and trade-exposed, as
14 determined by being engaged in one or more of the processes described
15 by the following industry descriptions and codes in the North
16 American industry classification system, as those classifications
17 existed on January 1, 2021:

18 (a) Metals manufacturing, including iron and steel making,
19 ferroalloy and primary metals manufacturing, secondary aluminum
20 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
21 and smelting, refining, and alloying of other nonferrous metals,

1 North American industry classification system codes beginning with
2 331;

3 (b) Paper manufacturing, including pulp mills, paper mills, and
4 paperboard milling, North American industry classification system
5 codes beginning with 322;

6 (c) Aerospace product and parts manufacturing, North American
7 industry classification system codes beginning with 3364;

8 (d) Wood products manufacturing, North American industry
9 classification system codes beginning with 321;

10 (e) Nonmetallic mineral manufacturing, including glass container
11 manufacturing, North American industry classification system codes
12 beginning with 327;

13 (f) Chemical manufacturing, North American industry
14 classification system codes beginning with 325;

15 (g) Computer and electronic product manufacturing, including
16 semiconductor and related device manufacturing, North American
17 industry classification system codes beginning with 334;

18 (h) Food manufacturing, North American industry classification
19 system codes beginning with 311;

20 (i) Cement manufacturing, North American industry classification
21 system code 327310;

22 (j) Petroleum refining, North American industry classification
23 system code 324110;

24 (k) Asphalt paving mixtures and block manufacturing from refined
25 petroleum, North American industry classification system code 324121;

26 (l) Asphalt shingle and coating manufacturing from refined
27 petroleum, North American industry classification system code 324122;
28 and

29 (m) All other petroleum and coal products manufacturing from
30 refined petroleum, North American industry classification system code
31 324199.

32 (2) By July 1, 2022, the department must adopt by rule objective
33 criteria for both emissions' intensity and trade exposure for the
34 purpose of identifying emissions-intensive, trade-exposed
35 (~~(manufacturing businesses)~~) facilities during the second compliance
36 period of the program and subsequent compliance periods. A
37 manufacturing facility covered by subsection (1)(a) through (m) of
38 this section is considered an emissions-intensive, trade-exposed
39 facility and is eligible for allocation of no cost allowances as
40 described in this section. In addition, any covered party that (~~is a~~

1 ~~manufacturing business~~) owns or operates a manufacturing facility
2 that can demonstrate to the department that it meets the objective
3 criteria adopted by rule is also eligible for treatment as emissions-
4 intensive, trade-exposed and is eligible for allocation of no cost
5 allowances as described in this section. In developing the objective
6 criteria under this subsection, the department must consider the
7 locations of facilities potentially identified as emissions-
8 intensive, trade-exposed (~~manufacturing businesses~~) facilities
9 relative to overburdened communities.

10 (3) (a) For the first compliance period beginning in January 1,
11 2023, the annual allocation of no cost allowances for direct
12 distribution to a facility identified as emissions-intensive and
13 trade-exposed must be equal to the facility's baseline carbon
14 intensity established using data from 2015 through 2019, or other
15 data as allowed under this section, multiplied by the facility's
16 actual production for each calendar year during the compliance
17 period. For facilities using the mass-based approach, the allocation
18 of no cost allowances shall be equal to the facility's mass-based
19 baseline using data from 2015 through 2019, or other data as allowed
20 under this section.

21 (b) For the second compliance period, beginning in January, 2027,
22 and in each subsequent compliance period, the annual allocation of no
23 cost allowances established in (a) of this subsection shall be
24 adjusted according to the benchmark reduction schedules established
25 in (b) (ii) and (iii) and (e) of this subsection multiplied by the
26 facility's actual production during the period. The department shall
27 adjust the no cost allocation of allowances and credits to an
28 emissions-intensive and trade-exposed facility to avoid duplication
29 with any no cost allowances transferred pursuant to RCW 70A.65.120
30 and 70A.65.130, if applicable.

31 (i) For the purpose of this section, "carbon intensity" means the
32 amount of carbon dioxide equivalent emissions from a facility in
33 metric tons divided by the facility specific measure of production
34 including, but not limited to, units of product manufactured or sold,
35 over the same time interval.

36 (ii) If an emissions-intensive and trade-exposed facility is not
37 able to feasibly determine a carbon intensity benchmark based on its
38 unique circumstances, the entity may elect to use a mass-based
39 baseline that does not vary based on changes in production volumes.
40 The mass-based baseline must be based upon data from 2015 through

1 2019, unless the emissions-intensive, trade-exposed facility can
2 demonstrate that there have been abnormal periods of operation that
3 materially impacted the facility and the baseline period should be
4 expanded to include years prior to 2015. For each year during the
5 first four-year compliance period that begins January 1, 2023, these
6 facilities must be awarded no cost allowances equal to 100 percent of
7 the facility's mass-based baseline. For each year during the second
8 four-year compliance period that begins January 1, 2027, these
9 facilities must be awarded no cost allowances equal to 97 percent of
10 the facility's mass-based baseline. For each year during the third
11 compliance period that begins January 1, 2031, these facilities must
12 be awarded no cost allowances equal to 94 percent of the facility's
13 mass-based baseline. Except as provided in (b)(iii) of this
14 subsection, if a facility elects to use a mass-based baseline, it may
15 not later convert to a carbon intensity benchmark during the first
16 three compliance periods.

17 (iii) A facility with a North American industry classification
18 system code beginning with 3364 that is utilizing a mass-based
19 baseline in (b)(ii) of this subsection must receive an additional no
20 cost allowance allocation under this section in order to accommodate
21 an increase in production that increases its emissions above the
22 baseline on a basis equivalent in principle to those awarded to
23 entities utilizing a carbon intensity benchmark pursuant to this
24 subsection (3)(b). The department shall establish methods to award,
25 for any annual period, additional no cost allowance allocations under
26 this section and, if appropriate based on projected production, to
27 achieve a similar ongoing result through the adjustment of the
28 facility's mass-based baseline. An eligible facility under this
29 subsection that has elected to use a mass-based baseline may not
30 convert to a carbon intensity benchmark until the next compliance
31 period.

32 (c)(i) By September 15, 2022, each emissions-intensive, trade-
33 exposed facility shall submit its carbon intensity baseline for the
34 first compliance period to the department. The carbon intensity
35 baseline for the first compliance period must use data from
36 2015-2019, unless the emissions-intensive, trade-exposed facility can
37 demonstrate that there have been abnormal periods of operation that
38 materially impacted the facility and the baseline period should be
39 expanded to include years prior to 2015.

1 (ii) By November 15, 2022, the department shall review and
2 approve each emissions-intensive, trade-exposed facility's baseline
3 carbon intensity for the first compliance period.

4 (d) During the first four-year compliance period that begins
5 January 1, 2023, each emissions-intensive, trade-exposed facility
6 must record its facility-specific carbon intensity baseline based on
7 its actual production.

8 (e)(i) For the second four-year compliance period that begins
9 January 1, 2027, the second period benchmark for each emissions-
10 intensive, trade-exposed facility is three percent below the first
11 period baseline specified in (a), (b), and (c) of this subsection.

12 (ii) For the third four-year compliance period that begins
13 January 1, 2031, the third period benchmark for each emissions-
14 intensive, trade-exposed facility is three percent lower than the
15 second period benchmark.

16 (f) Prior to the beginning of either the second, third, or
17 subsequent compliance periods, and only after the completion of the
18 report required in subsection (4) of this section, the department may
19 make an upward adjustment in the next compliance period's benchmark
20 for an emissions-intensive, trade-exposed facility based on the
21 facility's demonstration to the department that additional reductions
22 in carbon intensity or mass emissions are not technically or
23 economically feasible. The department may base the upward adjustment
24 applicable to an emissions-intensive, trade-exposed facility in the
25 next compliance period on the facility's best available technology
26 analysis. The department shall by rule provide for an emissions-
27 intensive, trade-exposed (~~facilities~~) facility to apply to the
28 department for an upwards adjustment to the allocation for direct
29 distribution of no cost allowances based on its facility-specific
30 carbon intensity benchmark or mass emissions baseline. The department
31 shall make adjustments based on:

32 (i) A significant change in the emissions use or emissions
33 attributable to the manufacture of an individual good or goods in
34 this state by an emissions-intensive, trade-exposed facility based on
35 a finding by the department that an adjustment is necessary to
36 accommodate for changes in the manufacturing process that have a
37 material impact on emissions;

38 (ii) Significant changes to an emissions-intensive, trade-exposed
39 facility's external competitive environment that result in a
40 significant increase in leakage risk; or

1 (iii) Abnormal operating periods when an emissions-intensive,
2 trade-exposed facility's carbon intensity has been materially
3 affected so that these abnormal operating periods are either excluded
4 or otherwise considered in the establishment of the compliance period
5 carbon intensity benchmarks.

6 (4) (a) By December 1, (~~(2026)~~) 2024, the department shall provide
7 a report to the appropriate committees of the senate and house of
8 representatives that describes alternative methods for determining
9 the amount and a schedule of allowances to be provided to facilities
10 owned or operated by each covered entity designated as an emissions-
11 intensive, trade-exposed facility from January 1, 2035, through
12 January 1, 2050. In developing the report, the department must
13 consider, among other relevant information, the criteria in the
14 statement of intent with respect to emissions-intensive, trade-
15 exposed industries in section 4 of this act. The report must include
16 a review of global best practices in ensuring against emissions
17 leakage and economic harm to businesses in carbon pricing programs
18 (~~and~~), describe alternative methods of emissions performance
19 benchmarking, and describe alternative methods of mass-based
20 allocation of no cost allowances. At a minimum, the department must
21 evaluate benchmarks based on both carbon intensity and mass, as well
22 as (~~the use of best available technology as a method for~~) recommend
23 a process through which an emissions-intensive, trade-exposed
24 facility may demonstrate its use of best available technology as a
25 method of compliance. For each alternative method considered, the
26 report must address any potential impact on the ability of the
27 department to enter into a linkage agreement with another
28 jurisdiction or to remain linked with another jurisdiction. In
29 developing the report, the department shall form an advisory group
30 that (~~includes~~) must include, but is not limited to,
31 representatives of the manufacturers listed in subsection (1) of this
32 section, other covered entities, environmental organizations, and
33 technical experts.

34 (b) If the legislature does not adopt a compliance obligation for
35 emissions-intensive, trade-exposed facilities by December 1, 2027,
36 those facilities must continue to receive allowances as provided in
37 the third four-year compliance period that begins January 1, 2031.

38 (5) If the actual emissions of an emissions-intensive, trade-
39 exposed facility exceed the facility's no cost allowances assigned
40 for that compliance period, it must acquire additional compliance

1 instruments such that the total compliance instruments transferred to
2 its compliance account consistent with this chapter (~~(316, Laws of~~
3 ~~2021)~~) equals emissions during the compliance period. An emissions-
4 intensive, trade-exposed facility must be allowed to bank unused
5 allowances, including for future sale and investment in best
6 available technology when economically feasible. The department shall
7 limit the use of offset credits for compliance by an emissions-
8 intensive, trade-exposed facility, such that the quantity of no cost
9 allowances plus the provision of offset credits does not exceed 100
10 percent of the facility's total compliance obligation over a
11 compliance period.

12 (6) The department must withhold or withdraw the relevant share
13 of allowances allocated to a covered entity under this section in the
14 event that the covered entity ceases production in the state and
15 becomes a closed facility. In the event an entity curtails all
16 production and becomes a curtailed facility, the allowances are
17 retained but cannot be traded, sold, or transferred and are still
18 subject to the emission reduction requirements specified in this
19 section. An owner or operator of a curtailed facility may transfer
20 the allowances to a new operator of the facility that will be
21 operated under the same North American industry classification system
22 codes. If the curtailed facility becomes a closed facility, then all
23 unused allowances will be transferred to the emissions containment
24 reserve. A curtailed facility is not eligible to receive free
25 allowances during a period of curtailment. Any allowances withheld or
26 withdrawn under this subsection must be transferred to the emissions
27 containment reserve.

28 (7) An owner or operator of more than one facility receiving no
29 cost allowances under this section may transfer allowances among the
30 eligible facilities.

31 (8) Rules adopted by the department under this section must
32 include protocols for allocating allowances at no cost to an eligible
33 facility built after July 25, 2021. The protocols must include
34 consideration of the products and criteria pollutants being produced
35 by the facility, as well as the local environmental and health
36 impacts associated with the facility. For a facility that is built on
37 tribal lands or is determined by the department to impact tribal
38 lands and resources, the protocols must be developed in consultation
39 with the affected tribal nations.

1 (9) (a) In order to support the department's ability to perform
2 best available technology analyses as provided in this section, the
3 department may require a person that owns or operates an emissions-
4 intensive, trade-exposed facility in Washington to provide emission
5 and production information to the department, including information
6 related to:

7 (i) The greenhouse gas emissions of facilities, and emissions
8 units within facilities, owned or operated by the person;

9 (ii) The products, and volumes of such products, produced by
10 facilities owned or operated by the person;

11 (iii) The greenhouse gas emissions intensity associated with
12 products produced by facilities owned or operated by the person; and

13 (iv) Information related to the technology and manufacturing
14 processes used by facilities owned or operated by the person.

15 (b) A person that is subject to an order under (a) of this
16 subsection must provide the requested information within a reasonable
17 period of time as specified by the department, after receipt of the
18 department's order.

19 (c) A person that submits information or records to the
20 department under this subsection may request that the information or
21 records be made available only for the confidential use of the
22 department, the director, or the appropriate division of the
23 department. The director shall give consideration to the request and
24 if this action is not detrimental to the public interest and is
25 otherwise in accordance with the policies and purposes of chapter
26 43.21A RCW, the director may grant the request, in whole or in part,
27 for the information to remain confidential as authorized in RCW
28 43.21A.160.

29 **Sec. 2.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to
30 read as follows:

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

37 (a) A minimum of not less than 35 percent and a goal of 40
38 percent of total investments that provide direct and meaningful
39 benefits to vulnerable populations within the boundaries of

1 overburdened communities identified under chapter 314, Laws of 2021;
2 and

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

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

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

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

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

23 (c) Meet a community need identified by vulnerable members of the
24 community that is consistent with the intent of this chapter.

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

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

1 **Sec. 3.** RCW 70A.65.260 and 2021 c 316 s 29 are each amended to
2 read as follows:

3 (1) The climate commitment account is created in the state
4 treasury. The account must receive moneys distributed to the account
5 from the climate investment account created in RCW 70A.65.250. Moneys
6 in the account may be spent only after appropriation. Projects,
7 activities, and programs eligible for funding from the account must
8 be physically located in Washington state and include, but are not
9 limited to, the following:

10 (a) Implementing the working families tax rebate in RCW
11 82.08.0206;

12 (b) Supplementing the growth management planning and
13 environmental review fund established in RCW 36.70A.490 for the
14 purpose of making grants or loans to local governments for the
15 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and
16 36.70A.600, for costs associated with RCW 36.70A.610, and to cover
17 costs associated with the adoption of optional elements of
18 comprehensive plans consistent with RCW 43.21C.420;

19 (c) Programs, activities, or projects that reduce and mitigate
20 impacts from greenhouse gases and copollutants in overburdened
21 communities, including strengthening the air quality monitoring
22 network to measure, track, and better understand air pollution levels
23 and trends and to inform the analysis, monitoring, and pollution
24 reduction measures required in RCW 70A.65.020;

25 (d) Programs, activities, or projects that deploy renewable
26 energy resources, such as solar and wind power, and projects to
27 deploy distributed generation, energy storage, demand-side
28 technologies and strategies, and other grid modernization projects;

29 (e) Programs, activities, or projects that increase the energy
30 efficiency or reduce greenhouse gas emissions of industrial
31 facilities including, but not limited to, proposals to implement
32 combined heat and power, district energy, or on-site renewables, such
33 as solar and wind power, to upgrade the energy efficiency of existing
34 equipment, to reduce process emissions, and to switch to less
35 emissions-intensive fuel sources, including programs, activities, or
36 projects that reduce covered emissions of facilities identified as
37 emissions-intensive, trade-exposed industries pursuant to RCW
38 70A.65.110;

1 (f) Programs, activities, or projects that achieve energy
2 efficiency or emissions reductions in the agricultural sector
3 including:

4 (i) Fertilizer management;

5 (ii) Soil management;

6 (iii) Bioenergy;

7 (iv) Biofuels;

8 (v) Grants, rebates, and other financial incentives for
9 agricultural harvesting equipment, heavy-duty trucks, agricultural
10 pump engines, tractors, and other equipment used in agricultural
11 operations;

12 (vi) Grants, loans, or any financial incentives to food
13 processors to implement projects that reduce greenhouse gas
14 emissions;

15 (vii) Renewable energy projects;

16 (viii) Farmworker housing weatherization programs;

17 (ix) Dairy digester research and development;

18 (x) Alternative manure management; and

19 (xi) Eligible fund uses under RCW 89.08.615;

20 (g) Programs, activities, or projects that increase energy
21 efficiency in new and existing buildings, or that promote low carbon
22 architecture, including use of newly emerging alternative building
23 materials that result in a lower carbon footprint in the built
24 environment over the life cycle of the building and component
25 building materials;

26 (h) Programs, activities, or projects that promote the
27 electrification and decarbonization of new and existing buildings,
28 including residential, commercial, and industrial buildings;

29 (i) Programs, activities, or projects that improve energy
30 efficiency, including district energy, and investments in market
31 transformation of high efficiency electric appliances and equipment
32 for space and water heating;

33 (j) Clean energy transition and assistance programs, activities,
34 or projects that assist affected workers or people with lower incomes
35 during the transition to a clean energy economy, or grow and expand
36 clean manufacturing capacity in communities across Washington state
37 including, but not limited to:

38 (i) Programs, activities, or projects that directly improve
39 energy affordability and reduce the energy burden of people with
40 lower incomes, as well as the higher transportation fuel burden of

1 rural residents, such as bill assistance, energy efficiency, and
2 weatherization programs;

3 (ii) Community renewable energy projects that allow qualifying
4 participants to own or receive the benefits of those projects at
5 reduced or no cost;

6 (iii) Programs, activities, or other worker-support projects for
7 bargaining unit and nonsupervisory fossil fuel workers who are
8 affected by the transition away from fossil fuels to a clean energy
9 economy. Worker support may include, but is not limited to: (A) Full
10 wage replacement, health benefits, and pension contributions for
11 every worker within five years of retirement; (B) full wage
12 replacement, health benefits, and pension contributions for every
13 worker with at least one year of service for each year of service up
14 to five years of service; (C) wage insurance for up to five years for
15 workers reemployed who have more than five years of service; (D) up
16 to two years of retraining costs, including tuition and related
17 costs, based on in-state community and technical college costs; (E)
18 peer counseling services during transition; (F) employment placement
19 services, prioritizing employment in the clean energy sector; and (G)
20 relocation expenses;

21 (iv) Direct investment in workforce development, via technical
22 education, community college, institutions of higher education,
23 apprenticeships, and other programs including, but not limited to:

24 (A) Initiatives to develop a forest health workforce established
25 under RCW 76.04.521; and

26 (B) Initiatives to develop new education programs, emerging
27 fields, or jobs pertaining to the clean energy economy;

28 (v) Transportation, municipal service delivery, and technology
29 investments that increase a community's capacity for clean
30 manufacturing, with an emphasis on communities in greatest need of
31 job creation and economic development and potential for commute
32 reduction;

33 (k) Programs, activities, or projects that reduce emissions from
34 landfills and waste-to-energy facilities through diversion of organic
35 materials, methane capture or conversion strategies, or other means;

36 (l) Carbon dioxide removal projects, programs, and activities;
37 and

38 (m) Activities to support efforts to mitigate and adapt to the
39 effects of climate change affecting Indian tribes, including capital
40 investments in support of the relocation of Indian tribes located in

1 areas at heightened risk due to anticipated sea level rise, flooding,
2 or other disturbances caused by climate change. The legislature
3 intends to dedicate at least \$50,000,000 per biennium from the
4 account for purposes of this subsection.

5 (2) Moneys in the account may not be used for projects or
6 activities that would violate tribal treaty rights or result in
7 significant long-term damage to critical habitat or ecological
8 functions. Investments from this account must result in long-term
9 environmental benefits and increased resilience to the impacts of
10 climate change.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 70A.65
12 RCW to read as follows:

13 (1) This section constitutes a statement of legislative intent
14 with respect to amending, at a future date, the allocation of
15 allowances to emissions-intensive, trade-exposed facilities under RCW
16 70A.65.110. Nothing in this section may be construed to establish,
17 amend, or eliminate a right, duty, or compliance obligation or other
18 obligation under this chapter or any other state law.

19 (2) It is the intent of the legislature, in establishing a policy
20 applicable to emissions-intensive, trade-exposed facilities, to:

21 (a) Ensure that emissions-intensive, trade-exposed industries
22 achieve their proportionate share of the state's emissions limits
23 established in RCW 70A.45.020 and avoid leakage of emissions and
24 jobs;

25 (b) Reduce criteria air pollution and environmental health
26 disparities, particularly in overburdened communities as defined in
27 chapter 70A.02 RCW; and

28 (c) Synchronize Washington's policy for reducing industrial
29 emissions with carbon border adjustment mechanisms as they are
30 adopted by other jurisdictions that have enacted a carbon price, in a
31 manner consistent with international trade law and the United States
32 Constitution.

33 (3) It is the intent of the legislature, upon establishing a
34 permanent policy applicable to emissions-intensive, trade-exposed
35 facilities, to:

36 (a) Transition industrial boilers used in manufacturing to
37 nonemitting technology, with a prioritization of transitioning:

38 (i) Boilers that burn coal or oil, followed by boilers that burn
39 gas;

1 (ii) Boilers that are less energy-efficient or emissions-
2 efficient over boilers that are comparatively more efficient; and

3 (iii) Larger boilers over smaller boilers;

4 (b) Transition industrial technologies that require temperatures
5 that cannot be produced by electricity to renewable natural gas,
6 renewable hydrogen, or other lower-emissions technologies;

7 (c) Maximize the use of building materials produced using
8 versions of lower-emissions manufacturing processes, such as:

9 (i) Lower-emissions steel as compared to other forms of steel,
10 prioritizing: (A) Recycled steel, followed by lower-emissions steel
11 produced using renewable hydrogen or molten oxide electrolysis; and
12 (B) to phase out the use of steel produced in a blast furnace; and

13 (ii) Low-clinker cement as compared to other forms of cement;

14 (d) Encourage recycling of emissions-intensive or energy-
15 intensive products, including steel, aluminum, plastic, concrete,
16 textiles, glass, and paper, where such recycling is less emissions-
17 intensive from a life-cycle perspective than using nonrecycled
18 manufacturing inputs; and

19 (e) Implement carbon capture and sequestration for the most
20 difficult to decarbonize industrial processes, including cement
21 production.

22 (4) It is the intent of the legislature to ensure that, just as
23 emissions-intensive, trade-exposed facilities are given special
24 consideration under this chapter due to their unique competitive
25 environment and emissions portfolios, the compliance obligations of
26 district energy facilities with emissions-intensive processes and
27 unique commercial characteristics be established with special
28 consideration given to the competitive market environment in which
29 such facilities operate and the particular aspects of their emissions
30 portfolios and potential for emission reductions or emission rate
31 reductions to be achieved at such facilities.

32 **Sec. 5.** RCW 70A.65.010 and 2021 c 316 s 2 are each amended to
33 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (27) "Electricity importer" means:

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

37 (b) For facilities physically located outside the state of
38 Washington with the first point of interconnection to a balancing
39 authority area located entirely within the state of Washington when

1 the electricity is not scheduled on a NERC e-tag, the electricity
2 importer is the facility operator or owner;

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

6 (d) For electricity from facilities allocated to serve retail
7 electricity customers of a multijurisdictional electric company, the
8 electricity importer is the multijurisdictional electric company;

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

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

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

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

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

38 (29) "Emissions containment reserve trigger price" means the
39 price below which allowances will be withheld from sale by the

1 department or its agent at an auction, as determined by the
2 department by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (55) "Person" has the same meaning as defined in RCW
6 70A.15.2200(5)(h)(iii).

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

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

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

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

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

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

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

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

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

3 (65) "Tribal lands" has the same meaning as defined in RCW
4 70A.02.010.

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

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

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

17 (69) "District energy facility" means a covered entity with the
18 North American industry classification system code 221330, as that
19 classification existed as of January 1, 2021, that serves at least
20 100 public or private customers, or both, within a municipality,
21 city, or town with steam, heated air, or cooled air.

22 **Sec. 6.** RCW 70A.65.080 and 2021 c 316 s 10 are each amended to
23 read as follows:

24 (1) A person is a covered entity as of the beginning of the first
25 compliance period and all subsequent compliance periods if the person
26 reported emissions under RCW 70A.15.2200 for any calendar year from
27 2015 through 2019, or if additional data provided as required by this
28 chapter indicates that emissions for any calendar year from 2015
29 through 2019 equaled or exceeded any of the following thresholds, or
30 if the person is a first jurisdictional deliverer and imports
31 electricity into the state during the compliance period:

32 (a) Where the person owns or operates a facility and the
33 facility's emissions equal or exceed 25,000 metric tons of carbon
34 dioxide equivalent;

35 (b) Where the person is a first jurisdictional deliverer and
36 generates electricity in the state and emissions associated with this
37 generation equals or exceeds 25,000 metric tons of carbon dioxide
38 equivalent;

1 (c) Where the person is a first jurisdictional deliverer
2 importing electricity into the state and the cumulative annual total
3 of emissions associated with the imported electricity, whether from
4 specified or unspecified sources, exceeds 25,000 metric tons of
5 carbon dioxide equivalent. In consultation with any linked
6 jurisdiction to the program created by this chapter, by October 1,
7 2026, the department, in consultation with the department of commerce
8 and the utilities and transportation commission, shall adopt by rule
9 a methodology for addressing imported electricity associated with a
10 centralized electricity market;

11 (d) Where the person is a supplier of fossil fuel other than
12 natural gas and from that fuel 25,000 metric tons or more of carbon
13 dioxide equivalent emissions would result from the full combustion or
14 oxidation, excluding the amounts for fuel products that are produced
15 or imported with a documented final point of delivery outside of
16 Washington and combusted outside of Washington; and

17 (e)(i) Where the person supplies natural gas in amounts that
18 would result in exceeding 25,000 metric tons of carbon dioxide
19 equivalent emissions if fully combusted or oxidized, excluding the
20 amounts for fuel products that are produced or imported with a
21 documented final point of delivery outside of Washington and
22 combusted outside of Washington, and excluding the amounts: (A)
23 Supplied to covered entities under (a) through (d) of this
24 subsection; and (B) delivered to opt-in entities;

25 (ii) Where the person who is not a natural gas company and has a
26 tariff with a natural gas company to deliver to an end-use customer
27 in the state in amounts that would result in exceeding 25,000 metric
28 tons of carbon dioxide equivalent emissions if fully combusted or
29 oxidized, excluding the amounts: (A) Supplied to covered entities
30 under (a) through (d) of this subsection; and (B) the amounts
31 delivered to opt-in entities;

32 (iii) Where the person is an end-use customer in the state who
33 directly purchases natural gas from a person that is not a natural
34 gas company and has the natural gas delivered through an interstate
35 pipeline to a distribution system owned by the purchaser in amounts
36 that would result in exceeding 25,000 metric tons of carbon dioxide
37 equivalent emissions if fully combusted or oxidized, excluding the
38 amounts: (A) Supplied to covered entities under (a) through (d) of
39 this subsection; and (B) delivered to opt-in entities.

1 (2) A person is a covered entity as of the beginning of the
2 second compliance period and all subsequent compliance periods if the
3 person reported emissions under RCW 70A.15.2200 or provided emissions
4 data as required by this chapter for any calendar year from 2023
5 through 2025, where the person owns or operates ((a));

6 (a) A waste to energy facility utilized by a county and city
7 solid waste management program and the facility's emissions equal or
8 exceed 25,000 metric tons of carbon dioxide equivalent; or

9 (b) A district energy facility and the facility's emissions equal
10 or exceed 25,000 metric tons of carbon dioxide equivalent, but only
11 if determined by the department by rule adopted under section 7 of
12 this act.

13 (3) (a) A person is a covered entity beginning January 1, 2031,
14 and all subsequent compliance periods if the person reported
15 emissions under RCW 70A.15.2200 or provided emissions data as
16 required by this chapter for any calendar year from 2027 through
17 2029, where the person owns or operates a:

18 (i) Landfill utilized by a county and city solid waste management
19 program and the facility's emissions equal or exceed 25,000 metric
20 tons of carbon dioxide equivalent; or

21 (ii) Railroad company, as that term is defined in RCW 81.04.010,
22 and the railroad company's emissions equal or exceed 25,000 metric
23 tons of carbon dioxide equivalent.

24 (b) Subsection (a) of this subsection does not apply to owners or
25 operators of landfills that:

26 (i) Capture at least 75 percent of the landfill gas generated by
27 the decomposition of waste using methods under 40 C.F.R. Part 98,
28 Subpart HH - Municipal Solid Waste landfills, and subsequent updates;
29 and

30 (ii) Operate a program, individually or through partnership with
31 another entity, that results in the production of renewable natural
32 gas or electricity from landfill gas generated by the facility.

33 (c) It is the intent of the legislature to adopt a greenhouse gas
34 reduction policy specific to landfills. If such a policy is not
35 enacted by January 1, 2030, the requirements of this subsection (3)
36 take full effect.

37 (4) When a covered entity reports, during a compliance period,
38 emissions from a facility under RCW 70A.15.2200 that are below the
39 thresholds specified in subsection (1) or (2) of this section, the
40 covered entity continues to have a compliance obligation through the

1 current compliance period. When a covered entity reports emissions
2 below the threshold for each year during an entire compliance period,
3 or has ceased all processes at the facility requiring reporting under
4 RCW 70A.15.2200, the entity is no longer a covered entity as of the
5 beginning of the subsequent compliance period unless the department
6 provides notice at least 12 months before the end of the compliance
7 period that the facility's emissions were within 10 percent of the
8 threshold and that the person will continue to be designated as a
9 covered entity in order to ensure equity among all covered entities.
10 Whenever a covered entity ceases to be a covered entity, the
11 department shall notify the appropriate policy and fiscal committees
12 of the legislature of the name of the entity and the reason the
13 entity is no longer a covered entity.

14 (5) For types of emission sources described in subsection (1) of
15 this section that begin or modify operation after January 1, 2023,
16 and types of emission sources described in subsection (2) of this
17 section that begin or modify operation after 2027, coverage under the
18 program starts in the calendar year in which emissions from the
19 source exceed the applicable thresholds in subsection (1) or (2) of
20 this section, or upon formal notice from the department that the
21 source is expected to exceed the applicable emissions threshold,
22 whichever happens first. Sources meeting these conditions are
23 required to transfer their first allowances on the first transfer
24 deadline of the year following the year in which their emissions were
25 equal to or exceeded the emissions threshold.

26 (6) For emission sources described in subsection (1) of this
27 section that are in operation or otherwise active between 2015 and
28 2019 but were not required to report emissions for those years under
29 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
30 coverage under the program starts in the calendar year following the
31 year in which emissions from the source exceed the applicable
32 thresholds in subsection (1) of this section as reported pursuant to
33 RCW 70A.15.2200 or provided as required by this chapter, or upon
34 formal notice from the department that the source is expected to
35 exceed the applicable emissions threshold for the first year that
36 source is required to report emissions, whichever happens first.
37 Sources meeting these criteria are required to transfer their first
38 allowances on the first transfer deadline of the year following the
39 year in which their emissions, as reported under RCW 70A.15.2200 or

1 provided as required by this chapter, were equal to or exceeded the
2 emissions threshold.

3 (7) The following emissions are exempt from coverage in the
4 program, regardless of the emissions reported under RCW 70A.15.2200
5 or provided as required by this chapter:

6 (a) Emissions from the combustion of aviation fuels;

7 (b) Emissions from watercraft fuels supplied in Washington that
8 are combusted outside of Washington;

9 (c) Emissions from a coal-fired electric generation facility
10 exempted from additional greenhouse gas limitations, requirements, or
11 performance standards under RCW 80.80.110;

12 (d) Carbon dioxide emissions from the combustion of biomass or
13 biofuels;

14 (e)(i) Motor vehicle fuel or special fuel that is used
15 exclusively for agricultural purposes by a farm fuel user. This
16 exemption is available only if a buyer of motor vehicle fuel or
17 special fuel provides the seller with an exemption certificate in a
18 form and manner prescribed by the department. For the purposes of
19 this subsection, "agricultural purposes" and "farm fuel user" have
20 the same meanings as provided in RCW 82.08.865.

21 (ii) The department must determine a method for expanding the
22 exemption provided under (e)(i) of this subsection to include fuels
23 used for the purpose of transporting agricultural products on public
24 highways. The department must maintain this expanded exemption for a
25 period of five years, in order to provide the agricultural sector
26 with a feasible transition period; and

27 (f) Emissions from facilities with North American industry
28 classification system code 92811 (national security).

29 (8) The department shall not require multiple covered entities to
30 have a compliance obligation for the same emissions. The department
31 may by rule authorize refineries, fuel suppliers, facilities using
32 natural gas, and natural gas utilities to provide by agreement for
33 the assumption of the compliance obligation for fuel or natural gas
34 supplied and combusted in the state. The department must be notified
35 of such an agreement at least 12 months prior to the compliance
36 obligation period for which the agreement is applicable.

37 (9)(a) The legislature intends to promote a growing and
38 sustainable economy and to avoid leakage of emissions from
39 manufacturing to other locations. The legislature further intends to

1 see innovative new businesses locate and grow in Washington that
2 contribute to Washington's prosperity and environmental objectives.

3 (b) Consistent with the intent of the legislature to avoid the
4 leakage of emissions to other jurisdictions, in achieving the state's
5 greenhouse gas limits in RCW 70A.45.020, the state, including lead
6 agencies under chapter 43.21C RCW, shall pursue the limits in a
7 manner that recognizes that the siting and placement of new or
8 expanded best-in-class facilities with lower carbon emitting
9 processes is in the economic and environmental interests of the state
10 of Washington.

11 (c) In conducting a life-cycle analysis, if required, for new or
12 expanded facilities that require review under chapter 43.21C RCW, a
13 lead agency must evaluate and attribute any potential net cumulative
14 greenhouse gas emissions resulting from the project as compared to
15 other existing facilities or best available technology including
16 best-in-class facilities and emerging lower carbon processes that
17 supply the same product or end use. The department may adopt rules to
18 determine the appropriate threshold for applying this analysis.

19 (d) Covered emissions from an entity that is or will be a covered
20 entity under this chapter may not be the basis for denial of a permit
21 for a new or expanded facility. Covered emissions must be included in
22 the analysis undertaken pursuant to (c) of this subsection. Nothing
23 in this subsection requires a lead agency or a permitting agency to
24 approve or issue a permit to a permit applicant, including to a new
25 or expanded fossil fuel project.

26 (e) A lead agency under chapter 43.21C RCW or a permitting agency
27 shall allow a new or expanded facility that is a covered entity or
28 opt-in entity to satisfy a mitigation requirement for its covered
29 emissions under this chapter (~~(316, Laws of 2021)~~) and under any
30 greenhouse gas emission mitigation requirements for covered emissions
31 under chapter 43.21C RCW by submitting to the department the number
32 of compliance instruments equivalent to its covered emissions during
33 a compliance period.

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 70A.65
35 RCW to read as follows:

36 (1)(a) By June 1, 2026, the department must by rule determine
37 whether to regulate district energy facilities under this chapter
38 through some combination of the following:

1 (i) As covered entities as of the beginning of the second
2 compliance period as specified in RCW 70A.65.080(2)(b);
3 (ii) As covered entities as of the date later than the beginning
4 of the second compliance period;
5 (iii) In a manner comparable to emissions-intensive, trade-
6 exposed facilities subject to RCW 70A.65.110;
7 (iv) In a manner comparable to the regulation of natural gas
8 utilities under RCW 70A.65.130; or
9 (v) By some other method.
10 (b) The department may adopt rules that achieve any of the
11 outcomes specified in (a) of this subsection with respect to district
12 energy facilities and may allocate allowances to such facilities
13 consistent with its determination under (a) of this subsection.
14 (2) To allow the department to adopt a rule under this section,
15 the department may demand information from a district energy facility
16 consistent with RCW 70A.65.110(9).

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