

Proposed Substitute House Bill 1682

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 Substitute (H-2446.2/22) compared to the House Bill 1682 (Z-0365.1):

- Amends the process for emissions-intensive trade-exposed (EITE) facilities to apply to the Department of Ecology (Ecology) prior to the beginning of the fourth compliance period for an upward adjustment to their benchmark allocation of no-cost allowances, including by:
 - Describing the process by which an EITE facility may claim that it is already employing best available technology (BAT), including the submission of data and information necessary to allow Ecology to make a BAT determination;
 - Providing for EITE facilities that already employ BAT to receive no-cost allowance allocations equal to 100 percent of their emissions;
 - Describing the process by which an EITE facility that is not already employing BAT may submit a BAT plan to Ecology. Such BAT plans:
 - Must propose to employ BAT within a reasonable period not to exceed 12 years;
 - Must describe each action or investment element towards the achievement of BAT, and the timeline and emission reductions associated with deployment; and
 - Must include a proposal for financing the deployment of BAT;
 - Limiting the distribution of no-cost allowances to EITE facilities operating under a BAT plan to no greater than the amount that the EITE facility would have received for the year beginning January 1, 2035;
 - Providing for EITE facilities that are implementing a BAT deployment plan to receive no-cost allowance allocations equal to 100 percent of their projected emissions under the BAT plan for each year of the plan;
 - Requiring EITE facilities to re-submit plan plans prior to each compliance period, but authorizing EITE facilities to use previously-approved plans as the basis for a re-submitted plan;
 - Authorizing Ecology to request or consider information about BAT for an EITE facility sourced from any person;

Committee: House Environment & Energy Committee
Staff: Jacob Lipson (786-7196), Office of Program Research
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- Providing for Ecology to reject any BAT plan for which Ecology does not have sufficient data or information to make a BAT determination;
- Providing for penalties for an EITE facility that fails to employ BAT as scheduled under the BAT plan, and precluding such an EITE facility from submitting a new BAT plan; and
- Authorizing any person to appeal a BAT plan approval or disapproval decision by Ecology to the Pollution Control Hearings Board;
- Amends the criteria by which Ecology may by rule modify allocations of no-cost allowance amounts to EITE facilities to include circumstances in which modification is necessary to ensure proper market functioning, and to allow modification of the amounts proposed for allocation under a BAT plan;
- Specifies that North American Industry Classification System (NAICS) codes used for identifying EITE facilities are those NAICS codes in place as of January 1, 2021;
- Specifies that Climate Commitment Act funding for EITE facilities is within the existing category of industrial facility emission programs, activities, and projects, rather than a creating a new EITE-specific category of allowable fund uses; and
- Makes changes to use consistent terminology, such as standardizing references to EITE facilities and owners or operators of EITEs, rather than referencing EITE businesses.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2446.2/22 2nd draft

ATTY/TYPIST: ML:eab

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.

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, and 70A.65.260; reenacting and
5 amending RCW 43.21B.110; and prescribing penalties.

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

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

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

17 (a) Metals manufacturing, including iron and steel making,
18 ferroalloy and primary metals manufacturing, secondary aluminum
19 smelting and alloying, aluminum sheet, plate, and foil manufacturing,
20 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. For the year beginning January 1, 2035, these
14 facilities must be awarded no cost allowances equal to 88 percent of
15 the facility's mass-based baseline. For each year beginning January
16 1, 2036, until January 1, 2050, these facilities must be awarded no
17 cost allowances that must be six percentage points below the
18 percentage of no cost allowances awarded during the preceding year.

19 Except as provided in (b)(iii) of this subsection, if a facility
20 elects to use a mass-based baseline, it may not later convert to a
21 carbon intensity benchmark during the first three compliance periods.

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

37 (c)(i) By September 15, 2022, each emissions-intensive, trade-
38 exposed facility shall submit its carbon intensity baseline for the
39 first compliance period to the department. The carbon intensity
40 baseline for the first compliance period must use data from

1 2015-2019, 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.

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

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

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

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

20 (iii) For the year beginning January 1, 2035, the benchmark for
21 each emissions-intensive, trade-exposed facility is 88 percent of the
22 facility's carbon intensity baseline. For each year beginning January
23 1, 2036, until January 1, 2050, the benchmark for each emissions-
24 intensive, trade-exposed facility is six percentage points below the
25 percentage of no cost allowances awarded during the preceding year.

26 ~~(f) ((Prior to the beginning of either the second, third, or~~
27 ~~subsequent compliance periods, the department may make an upward~~
28 ~~adjustment in the next compliance period's benchmark for an~~
29 ~~emissions-intensive, trade-exposed facility based on the facility's~~
30 ~~demonstration to the department that additional reductions in carbon~~
31 ~~intensity or mass emissions are not technically or economically~~
32 ~~feasible. The department may base the upward adjustment applicable to~~
33 ~~an emissions-intensive, trade-exposed facility in the next compliance~~
34 ~~period on the facility's best available technology analysis.)) (i)~~
35 The department shall by rule provide for an emissions-intensive,
36 trade-exposed ~~((facilities))~~ facility to apply, prior to the
37 beginning of the fourth or subsequent compliance periods, to the
38 department for an upwards adjustment to the allocation for direct
39 distribution of no cost allowances ~~((based on its facility-specific~~

1 carbon intensity benchmark or mass emissions baseline. The department
2 shall make adjustments based on:

3 (i) ~~A significant change in the emissions use or emissions~~
4 ~~attributable to the manufacture of an individual good or goods in~~
5 ~~this state by an emissions-intensive, trade-exposed facility based on~~
6 ~~a finding by the department that an adjustment is necessary to~~
7 ~~accommodate for changes in the manufacturing process that have a~~
8 ~~material impact on emissions;~~

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

12 (iii) ~~Abnormal operating periods when an emissions-intensive,~~
13 ~~trade-exposed facility's carbon intensity has been materially~~
14 ~~affected so that these abnormal operating periods are either excluded~~
15 ~~or otherwise considered in the establishment of the compliance period~~
16 ~~carbon intensity benchmarks)) to the facility.~~

17 (ii) (A) If the facility claims that it is already employing best
18 available technology, the application must provide a detailed
19 description of the technology and all data and information that may
20 be relevant to the department's determination as to whether the
21 facility is employing best available technology. The department may
22 require an applicant to submit data or other information as necessary
23 to allow the department to determine what constitutes best available
24 technology for the applicant. The department may request or consider
25 data and information regarding best available technology sourced from
26 a person other than an applicant. The department must deny an
27 application for which it does not have sufficient data or information
28 to allow it to determine what constitutes best available technology.

29 (B) If the facility is not already employing best available
30 technology, the application must set forth a detailed and credible
31 plan to employ best available technology within a reasonable period
32 of time, but not to exceed 12 years. The plan must include a
33 description of each technology, component, process, improvement,
34 equipment, or other action or investment that will result in
35 reductions in the facility's carbon intensity or mass-based
36 emissions, and the year of deployment and the emissions reductions
37 anticipated from each such action or investment; a description of how
38 the best available technology will be designed, installed, and
39 operated; and a description of how the best available technology will
40 be financed, which may include a proposed cost share with the state

1 using funds made available from the climate commitment account or the
2 dedication of any revenues generated from allowances allocated to the
3 owner or operator of the facility under this section. The plan must
4 also include an estimate of, and all relevant data and information
5 concerning, what the facility's carbon intensity or mass-based
6 baseline will be once the facility is employing best available
7 technology and for each year prior to the completion of the plan to
8 employ best available technology. The department may require an
9 applicant to submit data or other information as necessary to allow
10 the department to determine what constitutes best available
11 technology for the applicant. The department may request or consider
12 data and information regarding best available technology sourced from
13 a person other than an applicant. The department must deny an
14 application for which it does not have sufficient data or information
15 to allow it to determine what constitutes best available technology.

16 (iii) The department must grant the application if the department
17 determines, based upon a review of the data and information submitted
18 by the facility and any other relevant data and information, that:

19 (A) The facility is already employing best available technology;
20 or

21 (B) The facility is not employing best available technology but
22 has a detailed and credible plan to employ best available technology
23 within a reasonable period of time, but not to exceed 12 years, in a
24 manner that will result in additional reductions in carbon intensity
25 or mass-based emissions. The department and facility may agree to
26 additional terms or conditions that may be incorporated into the
27 facility's plan.

28 (iv) (A) Except as provided in (f) (iv) (C) of this subsection, if
29 the department grants an application to a facility that already
30 employs best available technology, it must award no cost allowances
31 equal to 100 percent of the facility's carbon intensity or mass-based
32 baseline for each year of the compliance period their application
33 concerned.

34 (B) Except as provided in (f) (iv) (C) of this subsection, if the
35 department grants an application to a facility that is not employing
36 best available technology, the department must award no cost
37 allowances equal to 100 percent of the facility's emissions as
38 projected under the best available technology plan for each year of
39 the compliance period their application concerned.

1 (C) Notwithstanding (f)(iv)(A) and (B) of this subsection,
2 allowances awarded pursuant to (f)(iv)(A) and (B) of this subsection
3 must not exceed the quantity of free allowances the facility
4 otherwise received, or otherwise would have received, for the year
5 beginning January 1, 2035.

6 (v) A facility's application seeking an upwards adjustment in the
7 allocation of no cost allowances, and any determination by the
8 department, is only valid for the compliance period it was submitted
9 concerning. A facility that has received an upwards adjustment in the
10 allocation of no cost allowances must reapply for an upwards
11 adjustment prior to the beginning of any subsequent compliance period
12 but may rely on a previously approved application as the basis of
13 their best available technology application to the department for any
14 components of best available technology or the best available
15 technology plan that have not changed since the plan was last
16 approved by the department.

17 (vi) A facility that has received an upwards adjustment in the
18 allocation of no cost allowances based upon a detailed and credible
19 plan to employ best available technology, but has failed to employ
20 best available technology consistent with the deployment schedule
21 required in the plan:

22 (A) Is subject to enforcement and penalties under RCW
23 70A.65.200(2) for a failure to submit sufficient compliance
24 instruments for every additional allowance that it received pursuant
25 to the upwards adjustment; and

26 (B) May not apply for, or receive, any upwards adjustment in the
27 allocation of no cost allowances in any subsequent compliance period.

28 (vii) Pursuant to RCW 43.21B.110(1)(o), a person may appeal a
29 decision by the department to approve or not approve an upwards
30 adjustment in the allocation of no cost allowances under this
31 subsection.

32 (g) Any adjustment granted pursuant to (f) of this subsection may
33 not:

34 (i) Increase the annual allowance budget for the program under
35 RCW 70A.65.070 for any calendar year in the compliance period for
36 which the adjustment was granted or for any future calendar year;

37 (ii) Reduce the progressively equivalent reductions year over
38 year in the annual allowance budgets under RCW 70A.65.070; or

39 (iii) Prevent the achievement of the emissions limits established
40 in RCW 70A.45.020, as those limits apply to this chapter.

1 ~~(4) ((a) By December 1, 2026, the department shall provide a~~
2 ~~report to the appropriate committees of the senate and house of~~
3 ~~representatives that describes alternative methods for determining~~
4 ~~the amount and a schedule of allowances to be provided to facilities~~
5 ~~owned or operated by each covered entity designated as an emissions-~~
6 ~~intensive, trade-exposed facility from January 1, 2035, through~~
7 ~~January 1, 2050. The report must include a review of global best~~
8 ~~practices in ensuring against emissions leakage and economic harm to~~
9 ~~businesses in carbon pricing programs and describe alternative~~
10 ~~methods of emissions performance benchmarking and mass-based~~
11 ~~allocation of no cost allowances. At a minimum, the department must~~
12 ~~evaluate benchmarks based on both carbon intensity and mass, as well~~
13 ~~as the use of best available technology as a method for compliance.~~
14 ~~In developing the report, the department shall form an advisory group~~
15 ~~that includes representatives of the manufacturers listed in~~
16 ~~subsection (1) of this section.~~

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

21 ~~(5))~~ If the actual emissions of an emissions-intensive, trade-
22 exposed facility exceed the facility's no cost allowances assigned
23 for that compliance period, it must acquire additional compliance
24 instruments such that the total compliance instruments transferred to
25 its compliance account consistent with chapter 316, Laws of 2021
26 equals emissions during the compliance period. An emissions-
27 intensive, trade-exposed facility must be allowed to bank unused
28 allowances, including for future sale and investment in best
29 available technology when economically feasible. The department shall
30 limit the use of offset credits for compliance by an emissions-
31 intensive, trade-exposed facility, such that the quantity of no cost
32 allowances plus the provision of offset credits does not exceed 100
33 percent of the facility's total compliance obligation over a
34 compliance period.

35 ~~((6))~~ (5) The department must withhold or withdraw the relevant
36 share of allowances allocated to a covered entity under this section
37 in the event that the covered entity ceases production in the state
38 and becomes a closed facility. In the event an entity curtails all
39 production and becomes a curtailed facility, the allowances are
40 retained but cannot be traded, sold, or transferred and are still

1 subject to the emission reduction requirements specified in this
2 section. An owner or operator of a curtailed facility may transfer
3 the allowances to a new operator of the facility that will be
4 operated under the same North American industry classification system
5 codes. If the curtailed facility becomes a closed facility, then all
6 unused allowances will be transferred to the emissions containment
7 reserve. A curtailed facility is not eligible to receive free
8 allowances during a period of curtailment. Any allowances withheld or
9 withdrawn under this subsection must be transferred to the emissions
10 containment reserve.

11 ~~((7))~~ (6) An owner or operator of more than one facility
12 receiving no cost allowances under this section may transfer
13 allowances among the eligible facilities.

14 ~~((8))~~ (7) Rules adopted by the department under this section
15 must include protocols for allocating allowances at no cost to an
16 eligible facility built after July 25, 2021. The protocols must
17 include consideration of the products and criteria pollutants being
18 produced by the facility, as well as the local environmental and
19 health impacts associated with the facility. For a facility that is
20 built on tribal lands or is determined by the department to impact
21 tribal lands and resources, the protocols must be developed in
22 consultation with the affected tribal nations.

23 (8) If deemed by the department necessary to ensure proper market
24 functioning, to achieve the share of the statewide emissions limits
25 established in RCW 70A.45.020 and covered by this act, or to provide
26 for alignment with other jurisdictions to which the state has
27 executed a linkage agreement, the department by rule may modify the
28 no cost allowance amounts in:

29 (a) Subsection (3)(b)(ii) of this section concerning each year
30 beginning January 1, 2035, until January 1, 2050; and

31 (b) Subsection (3)(e)(iii) of this section; and

32 (c) Subsection (3)(f) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~outlines a compliance pathway specific to emissions-intensive, trade-~~
2 ~~exposed businesses for achieving their proportionate share of the~~
3 ~~state's emissions reduction limits through 2050.)~~

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

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

13 (a) Implementing the working families tax rebate in RCW
14 82.08.0206;

15 (b) Supplementing the growth management planning and
16 environmental review fund established in RCW 36.70A.490 for the
17 purpose of making grants or loans to local governments for the
18 purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and
19 36.70A.600, for costs associated with RCW 36.70A.610, and to cover
20 costs associated with the adoption of optional elements of
21 comprehensive plans consistent with RCW 43.21C.420;

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

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

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

1 emissions-intensive, trade-exposed industries pursuant to RCW
2 70A.65.110;

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

6 (i) Fertilizer management;

7 (ii) Soil management;

8 (iii) Bioenergy;

9 (iv) Biofuels;

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

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

17 (vii) Renewable energy projects;

18 (viii) Farmworker housing weatherization programs;

19 (ix) Dairy digester research and development;

20 (x) Alternative manure management; and

21 (xi) Eligible fund uses under RCW 89.08.615;

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

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

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

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

1 (i) Programs, activities, or projects that directly improve
2 energy affordability and reduce the energy burden of people with
3 lower incomes, as well as the higher transportation fuel burden of
4 rural residents, such as bill assistance, energy efficiency, and
5 weatherization programs;

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

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

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

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

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

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

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

39 (l) Carbon dioxide removal projects, programs, and activities;
40 and

1 (m) Activities to support efforts to mitigate and adapt to the
2 effects of climate change affecting Indian tribes, including capital
3 investments in support of the relocation of Indian tribes located in
4 areas at heightened risk due to anticipated sea level rise, flooding,
5 or other disturbances caused by climate change. The legislature
6 intends to dedicate at least \$50,000,000 per biennium from the
7 account for purposes of this subsection.

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

14 **Sec. 4.** RCW 43.21B.110 and 2021 c 316 s 41 and 2021 c 313 s 16
15 are each reenacted and amended to read as follows:

16 (1) The hearings board shall only have jurisdiction to hear and
17 decide appeals from the following decisions of the department, the
18 director, local conservation districts, the air pollution control
19 boards or authorities as established pursuant to chapter 70A.15 RCW,
20 local health departments, the department of natural resources, the
21 department of fish and wildlife, the parks and recreation commission,
22 and authorized public entities described in chapter 79.100 RCW:

23 (a) Civil penalties imposed pursuant to RCW 18.104.155,
24 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
25 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
26 70A.65.200, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
27 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

28 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
29 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
30 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
31 90.48.120, and 90.56.330.

32 (c) Except as provided in RCW 90.03.210(2), the issuance,
33 modification, or termination of any permit, certificate, or license
34 by the department or any air authority in the exercise of its
35 jurisdiction, including the issuance or termination of a waste
36 disposal permit, the denial of an application for a waste disposal
37 permit, the modification of the conditions or the terms of a waste
38 disposal permit, or a decision to approve or deny an application for
39 a solid waste permit exemption under RCW 70A.205.260.

1 (d) Decisions of local health departments regarding the grant or
2 denial of solid waste permits pursuant to chapter 70A.205 RCW.

3 (e) Decisions of local health departments regarding the issuance
4 and enforcement of permits to use or dispose of biosolids under RCW
5 70A.226.090.

6 (f) Decisions of the department regarding waste-derived
7 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
8 decisions of the department regarding waste-derived soil amendments
9 under RCW 70A.205.145.

10 (g) Decisions of local conservation districts related to the
11 denial of approval or denial of certification of a dairy nutrient
12 management plan; conditions contained in a plan; application of any
13 dairy nutrient management practices, standards, methods, and
14 technologies to a particular dairy farm; and failure to adhere to the
15 plan review and approval timelines in RCW 90.64.026.

16 (h) Any other decision by the department or an air authority
17 which pursuant to law must be decided as an adjudicative proceeding
18 under chapter 34.05 RCW.

19 (i) Decisions of the department of natural resources, the
20 department of fish and wildlife, and the department that are
21 reviewable under chapter 76.09 RCW, and the department of natural
22 resources' appeals of county, city, or town objections under RCW
23 76.09.050(7).

24 (j) Forest health hazard orders issued by the commissioner of
25 public lands under RCW 76.06.180.

26 (k) Decisions of the department of fish and wildlife to issue,
27 deny, condition, or modify a hydraulic project approval permit under
28 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
29 comply, to issue a civil penalty, or to issue a notice of intent to
30 disapprove applications.

31 (l) Decisions of the department of natural resources that are
32 reviewable under RCW 78.44.270.

33 (m) Decisions of an authorized public entity under RCW 79.100.010
34 to take temporary possession or custody of a vessel or to contest the
35 amount of reimbursement owed that are reviewable by the hearings
36 board under RCW 79.100.120.

37 (n) Decisions of the department of ecology that are appealable
38 under RCW 70A.245.020 to set recycled minimum postconsumer content
39 for covered products or to temporarily exclude types of covered

1 products in plastic containers from minimum postconsumer recycled
2 content requirements.

3 (o) Decisions of the department of ecology to approve or not
4 approve an upwards adjustment to the allocation of no cost allowances
5 to an emissions-intensive, trade-exposed facility under RCW
6 70A.65.110(3)(f).

7 (2) The following hearings shall not be conducted by the hearings
8 board:

9 (a) Hearings required by law to be conducted by the shorelines
10 hearings board pursuant to chapter 90.58 RCW.

11 (b) Hearings conducted by the department pursuant to RCW
12 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
13 70A.15.3110, and 90.44.180.

14 (c) Appeals of decisions by the department under RCW 90.03.110
15 and 90.44.220.

16 (d) Hearings conducted by the department to adopt, modify, or
17 repeal rules.

18 (3) Review of rules and regulations adopted by the hearings board
19 shall be subject to review in accordance with the provisions of the
20 administrative procedure act, chapter 34.05 RCW.

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