
Environment & Energy Committee

HB 1682

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.

Sponsors: Representatives Fitzgibbon, Ramel, Duerr, Berry, Macri, Ormsby and Hackney; by request of Department of Ecology.

Brief Summary of Bill

- Establishes a formula and criteria for the distribution of no-cost allowances to Emissions-Intensive Trade-Exposed (EITE) facilities under the Climate Commitment Act's Cap-and-Invest Program (Program) between 2035 and 2050.
- Requires an EITE facility to employ best available technology in order for the Department of Ecology (Ecology) to make an upward adjustment to the carbon intensity benchmark or mass-based no-cost allowance distribution assigned to the EITE facility, and eliminates the option for Ecology to make upward benchmark adjustments in the second compliance period of the Program.
- Eliminates restrictions on state expenditures of 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.
- Authorizes the use of 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 Program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Hearing Date: 1/18/22

Staff: Jacob Lipson (786-7196).

Background:

Greenhouse Gas Emission Limits.

Since 2008, state law has established statewide limits on the emission of greenhouse gases (GHGs) in Washington (statewide statutory emission limits). The Department of Ecology (Ecology) is responsible for monitoring and tracking the state's progress in achieving the statewide statutory emissions limits. In 2020, additional legislation was enacted to update the statewide statutory emissions limits to the following:

- by 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 million metric tons of carbon dioxide equivalents (MMT CO₂e);
- by 2030, reduce overall emissions of GHGs in the state to 45 percent below 1990 levels, or 50 MMT CO₂e;
- by 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990 levels, or 27 MMT CO₂e; and
- by 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT CO₂e, and achieve net-zero GHG emissions.

The Climate Commitment Act's Cap-and-Invest Program.

Under the 2021 Climate Commitment Act (CCA), in order to ensure that GHG emissions are reduced consistent with the state's 2030, 2040, and 2050 statewide statutory emissions limits, Ecology must implement a cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, which include allowances or eligible offset credits. The Cap-and-Invest Program (Program) must commence by January 1, 2023.

The Program must consist of:

- establishing annual allowance budgets that limit emissions from covered entities;
- defining those entities covered by the Program, and those entities that may voluntarily opt into coverage under the Program;
- distributing emissions allowances;
- providing for offset credits as a method for meeting compliance obligations;
- defining the compliance obligations of covered entities;
- providing for the transfer of allowances and recognition of compliance instruments, including those issued by jurisdictions with which Washington may have linkage agreements in the future; and
- providing monitoring and oversight of the sale and transfer of allowances.

Ecology must consider opportunities to implement the Program in a manner that allows linking the Program with those of other jurisdictions.

Compliance obligations under the Program are phased in over the following four-year compliance periods:

- first compliance period: 2023 through 2026;
- second compliance period: 2027 through 2030; and
- subsequent four-year compliance periods beginning in 2031.

By October 1, 2022, Ecology must adopt annual allowance budgets for the first compliance period to be distributed from January 1, 2023, through December 31, 2026. Ecology must also adopt annual allowance budgets for the second compliance period. By October 1, 2028, Ecology must adopt by rule the annual allowance budgets for the calendar years 2031 through 2040. The annual allowance budgets established under the Program must be set to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide statutory emissions limits.

Emissions-Intensive Trade-Exposed Facilities (EITEs).

The following industry process descriptions in the North American Industry Classification System (NAICS) are considered emissions-intensive and trade-exposed:

- metals manufacturing (NAICS 331-);
- paper manufacturing (NAICS 322-);
- aerospace product and parts manufacturing (NAICS 3364-);
- wood products manufacturing (NAICS 321-);
- nonmetallic manufacturing (NAICS 327-);
- chemical manufacturing (NAICS 325-);
- computer and electronic product manufacturing (NAICS 334-);
- food manufacturing (NAICS 311-);
- cement manufacturing (NAICS 327310);
- petroleum refining (NAICS 324110);
- asphalt paving mixtures and block manufacturing from refined petroleum (NAICS 324121);
- asphalt shingle and coating manufacturing from refined petroleum (NAICS 324122); and
- all other petroleum and coal products manufacturing from refined petroleum (NAICS 324199).

By July 1, 2022, for purposes of the second compliance period, Ecology must adopt by rule objective criteria for emissions intensity and trade exposure to identify EITE businesses, in addition to the EITE facilities with the above-listed NAICS codes.

EITE Emission Reporting and No-Cost Allowance Allocation.

By September 2022, each EITE facility must submit its carbon intensity baseline to Ecology, using 2015-2019 data unless the facility experienced abnormal periods of operation. Ecology must review and approve the baseline by November 2022. During the first compliance period, each EITE must record its facility-specific carbon intensity baseline using actual production.

Owners or operators of EITE facilities that are required to participate in the Program must

receive an allocation of allowances at no cost as follows:

- for the first compliance period beginning in 2023, the annual allocation of allowances must equal the facility's baseline carbon intensity, under which emissions are measured relative to facility production, as established using 2015-2019 data, multiplied by EITE facility's actual production for each calendar year of the compliance period;
 - for facilities using a mass-based approach, the allocation of allowances must equal the facility's mass-based baseline established using 2015-2019 data, unless there were abnormal circumstances during those years. Facilities may use a mass-based baseline if it is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances. In general, a facility may not switch from using a mass-based baseline to a carbon intensity baseline;
- for the second compliance period beginning in 2027, the annual allocation of no-cost allowances is reduced to 97 percent of first compliance period allocations (for mass-based facilities); or 3 percent below the first compliance period benchmark; and
- for the third compliance period beginning in 2031, the annual allocation of no-cost allowances is 94 percent of first compliance period allocations (for mass-based facilities) or 3 percent below the second compliance period benchmark.

Prior to the second, third, or subsequent compliance periods, Ecology may adjust benchmarks upward after determining that additional reductions in carbon intensity or mass emissions by an EITE facility are not technically or economically feasible. Ecology may base this upward adjustment on an EITE facility's best available technology analysis. By rule, Ecology must provide for EITE facilities to apply for upward benchmark adjustments, based on any significant changes in an EITE's competitive environment or manufacturing processes or an EITE facility experiencing abnormal operating periods.

If an EITE facility's actual emissions exceed its assigned allowance allocation, it must acquire additional compliance instruments. Ecology must limit the use of offset credits for compliance so that the provision of offset credits plus no-cost allowances does not exceed 100 percent of an EITE facility's total compliance obligation.

If an EITE facility ceases production and closes, Ecology must withhold or withdraw allowances allocated to the facility.

If an EITE facility curtails production, it retains its allowances, does not receive new free allowances, and cannot sell, transfer, or trade its allowances. The allowances of a curtailed facility that closes are transferred to the emissions containment reserve (which is managed by Ecology, and which contain allowances that are distributed to new or expanded EITE facilities).

An owner or operator of multiple EITE facilities may transfer allowances among eligible facilities.

Ecology must adopt rules for the allocation of allowances at no cost to newly-constructed EITE facilities. A new or expanded EITE facility during the first compliance period receives, from the

emissions containment reserve, allowances equal to the amount of its emissions.

Required Ecology Engagement with the Legislature Regarding EITE Facilities.

During the 2022 regular legislative session, Ecology must propose agency-request legislation outlining a compliance pathway for EITE facilities to achieve a proportionate share of reductions to achieve the state's 2050 statewide statutory emission limits. No expenditures may be made from three of the accounts that Program auction proceeds are deposited into unless the Legislature enacts Ecology-request legislation that outlines a compliance pathway specific to EITE facilities for achieving their proportionate share of emission reductions under the statewide statutory emission limits.

By December 2026, Ecology must report to the Legislature on alternative methods for determining the amount and schedule of allowances allocated to EITE facilities covering the 2035-2050 period of Program implementation. Ecology must form an advisory committee that includes EITE manufacturers in developing the report. If the Legislature does not adopt a compliance obligation for EITE facilities by December 1, 2027, EITE facilities must continue to receive allowances as provided for in the third compliance period beginning in 2031.

Climate Commitment Account.

The Climate Commitment Account receives a portion of the auction revenues from the Program. Projects, activities, and programs eligible for funding from the Climate Commitment Account must be physically located in Washington and must meet high labor standards, including family sustaining wages, benefits including health care and employer-contributed retirement plans, career development opportunities, and access to economic benefits from such projects for local workers and diverse businesses. Eligible uses of Climate Commitment Account funds include, but are not limited to, those that involve the following:

- implementing the Working Families Tax Rebate;
- supplementing the Growth Management Planning and Environmental Review Fund for the purpose of making grants or loans to local governments;
- reducing and mitigating impacts from GHGs and co-pollutants in overburdened communities, including strengthening air quality monitoring networks;
- deploying renewable energy resources, such as solar and wind power, and projects to deploy distributed generation, energy storage, demand-side technologies and strategies, and other grid modernization projects;
- increasing the energy efficiency or reducing the GHG emissions of industrial facilities including, proposals to implement combined heat and power, district energy, or on-site renewables;
- achieving energy efficiency or emissions reductions in the agricultural sector, including 11 specified types of activities;
- increasing energy efficiency in new and existing buildings or promoting low-carbon architecture, including use of newly emerging alternative building materials that result in a lower carbon footprint in the built environment over the life cycle of the building and component materials;
- promoting the electrification and decarbonization of new and existing buildings, including

- residential, commercial, and industrial buildings;
- assisting affected workers or people with lower incomes transition to a clean energy economy, or growing and expanding clean manufacturing capacity in communities across Washington; and
- supporting efforts to mitigate and adapt to the effects of climate change affecting Indian tribes, including capital investments in support of the relocation of Indian tribes located in areas at heightened risk due to anticipated sea level rise, flooding, or other disturbances caused by climate change.

Money in the Climate Commitment Account may not be used for projects or activities that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from the Climate Commitment Account must result in long-term environmental benefits and increased resilience to the impacts of climate change.

Summary of Bill:

For the year beginning January 1, 2035, EITE facilities are awarded no-cost allowances equal to 88 percent of the facility's mass-based baseline, if the EITE facility is using a mass-based baseline, or 88 percent of the facility's carbon-intensity benchmark multiplied by the facility's actual production, if the EITE facility is using a carbon-intensity benchmark.

Each year from 2036 through 2050:

- for EITE facilities using a carbon-intensity benchmark, the benchmark upon which no-cost allowance distributions are annually based is 6 percent below the benchmark of the preceding year; and
- for EITE facilities using a mass-based baseline, a facility must annually be awarded no cost allowances that are six percent below the percentage of no-cost allowances it was awarded the previous year.

By rule, Ecology may modify the no-cost allowance allocations to EITE facilities between 2035 and 2050 if necessary to ensure achievement of the proportionate share of the statewide statutory emission limits or to provide for alignment with other jurisdictions to which the state has linked.

Ecology must adopt a rule to provide a process for an EITE facility to apply to Ecology for an upward adjustment in its allocation of direct no-cost allowances based on a demonstration that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. Ecology may grant an upward adjustment upon determining that the facility already employs best available technology, and other factors including significant changes in an EITE's competitive environment or manufacturing processes or an EITE facility experiencing abnormal operating periods. Ecology may only apply upward benchmark adjustments to the third or subsequent compliance periods.

An adjustment in the allocation to an EITE facility may not increase the Program's annual allowance budget for any calendar year of the compliance period in which the adjustment was

made or any future calendar years, and may not prevent the achievement of the statewide statutory emission limits.

Ecology is no longer required to submit a report to the Legislature on EITE facility allowance schedules in 2026. There is no longer a restriction on expenditures of Program revenues beginning in April 1, 2023.

Money in the Climate Commitment Account may be used for programs, activities, or projects that reduce EITE facility emissions for which the EITE facility has a compliance obligation under the Program.

Appropriation: None.

Fiscal Note: Requested on December 29, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.