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**SUBSTITUTE HOUSE BILL 1682**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Fitzgibbon, Ramel, Duerr, Berry, Macri, Ormsby, and Hackney; by request of Department of Ecology)

READ FIRST TIME 02/02/22.

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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