
SENATE BILL 5766

State of Washington

68th Legislature

2023 Regular Session

By Senators Mullet and Nguyen

1 AN ACT Relating to improving the administrability of emissions
2 exemptions and business practices under the climate commitment act;
3 amending RCW 70A.65.080 and 70A.65.100; adding new sections to
4 chapter 70A.65 RCW; and creating a new section.

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

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

8 (1)(a) By January 1, 2024, the department must establish a
9 remittance program for entities consuming fuels whose emissions are
10 exempted from coverage in the program under RCW 70A.65.080(7)(e). The
11 remittance program must include a climate commitment act remittance
12 portal that allows farm fuel users and freight haulers of
13 agricultural products to electronically submit, on a quarterly basis,
14 an application for remittance and supporting documentation.

15 (b) Supporting documentation for farm fuel users must include
16 receipts showing fuel purchases for fuel used exclusively for
17 agricultural purposes and the farm fuel user's department of revenue
18 farmer's certificate for wholesale purchases and sales tax
19 exemptions.

20 (c) Supporting documentation for entities transporting
21 agricultural products on public highways must include fuel tax

1 reports submitted to the department of licensing and documentation
2 indicating the approximate time, date, and location of each
3 agricultural product haul and a general description of the
4 agricultural products transported.

5 (2) An approved application for remittance under subsection (1)
6 of this section is eligible for a remittance equal to the auction
7 settlement price in effect for the calendar quarter in which the fuel
8 was purchased multiplied by eight-tenths of one percent and the
9 number of gallons in the remittance application.

10 **Sec. 2.** RCW 70A.65.080 and 2022 c 179 s 14 are each amended to
11 read as follows:

12 (1) A person is a covered entity as of the beginning of the first
13 compliance period and all subsequent compliance periods if the person
14 reported emissions under RCW 70A.15.2200 for any calendar year from
15 2015 through 2019, or if additional data provided as required by this
16 chapter indicates that emissions for any calendar year from 2015
17 through 2019 equaled or exceeded any of the following thresholds, or
18 if the person is a first jurisdictional deliverer and imports
19 electricity into the state during the compliance period:

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

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

27 (c) Where the person is a first jurisdictional deliverer
28 importing electricity into the state and the cumulative annual total
29 of emissions associated with the imported electricity, whether from
30 specified or unspecified sources, exceeds 25,000 metric tons of
31 carbon dioxide equivalent. In consultation with any linked
32 jurisdiction to the program created by this chapter, by October 1,
33 2026, the department, in consultation with the department of commerce
34 and the utilities and transportation commission, shall adopt by rule
35 a methodology for addressing imported electricity associated with a
36 centralized electricity market;

37 (d) Where the person is a supplier of fossil fuel other than
38 natural gas and from that fuel 25,000 metric tons or more of carbon
39 dioxide equivalent emissions would result from the full combustion or

1 oxidation, excluding the amounts for fuel products that are produced
2 or imported with a documented final point of delivery outside of
3 Washington and combusted outside of Washington; and

4 (e)(i) Where the person supplies natural gas in amounts that
5 would result in exceeding 25,000 metric tons of carbon dioxide
6 equivalent emissions if fully combusted or oxidized, excluding the
7 amounts for fuel products that are produced or imported with a
8 documented final point of delivery outside of Washington and
9 combusted outside of Washington, and excluding the amounts: (A)
10 Supplied to covered entities under (a) through (d) of this
11 subsection; and (B) delivered to opt-in entities;

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

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

27 (2) A person is a covered entity as of the beginning of the
28 second compliance period and all subsequent compliance periods if the
29 person reported emissions under RCW 70A.15.2200 or provided emissions
30 data as required by this chapter for any calendar year from 2023
31 through 2025, where the person owns or operates a waste to energy
32 facility utilized by a county and city solid waste management program
33 and the facility's emissions equal or exceed 25,000 metric tons of
34 carbon dioxide equivalent.

35 (3) A person is a covered entity beginning January 1, 2031, and
36 all subsequent compliance periods if the person reported emissions
37 under RCW 70A.15.2200 or provided emissions data as required by this
38 chapter for any calendar year from 2027 through 2029, where the
39 person owns or operates a railroad company, as that term is defined

1 in RCW 81.04.010, and the railroad company's emissions equal or
2 exceed 25,000 metric tons of carbon dioxide equivalent.

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

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

32 (6) For emission sources described in subsection (1) of this
33 section that are in operation or otherwise active between 2015 and
34 2019 but were not required to report emissions for those years under
35 RCW 70A.15.2200 for the reporting periods between 2015 and 2019,
36 coverage under the program starts in the calendar year following the
37 year in which emissions from the source exceed the applicable
38 thresholds in subsection (1) of this section as reported pursuant to
39 RCW 70A.15.2200 or provided as required by this chapter, or upon
40 formal notice from the department that the source is expected to

1 exceed the applicable emissions threshold for the first year that
2 source is required to report emissions, whichever happens first.
3 Sources meeting these criteria are required to transfer their first
4 allowances on the first transfer deadline of the year following the
5 year in which their emissions, as reported under RCW 70A.15.2200 or
6 provided as required by this chapter, were equal to or exceeded the
7 emissions threshold.

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

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

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

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

17 (d) Carbon dioxide emissions from the combustion of biomass or
18 biofuels;

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

26 (ii) The department must determine a method for expanding the
27 exemption provided under (e)(i) of this subsection to include fuels
28 used for the purpose of transporting agricultural products on public
29 highways. The department must maintain this expanded exemption for a
30 period of five years, in order to provide the agricultural sector
31 with a feasible transition period.

32 (iii) The exemptions under this subsection (7)(e) must be
33 administered through the remittance program established in section 1
34 of this act;

35 (f) Emissions from facilities with North American industry
36 classification system code 92811 (national security); and

37 (g) Emissions from municipal solid waste landfills that are
38 subject to, and in compliance with, chapter 70A.540 RCW.

39 (8) The department shall not require multiple covered entities to
40 have a compliance obligation for the same emissions. The department

1 may by rule authorize refineries, fuel suppliers, facilities using
2 natural gas, and natural gas utilities to provide by agreement for
3 the assumption of the compliance obligation for fuel or natural gas
4 supplied and combusted in the state. The department must be notified
5 of such an agreement at least 12 months prior to the compliance
6 obligation period for which the agreement is applicable.

7 (9) (a) The legislature intends to promote a growing and
8 sustainable economy and to avoid leakage of emissions from
9 manufacturing to other locations. The legislature further intends to
10 see innovative new businesses locate and grow in Washington that
11 contribute to Washington's prosperity and environmental objectives.

12 (b) Consistent with the intent of the legislature to avoid the
13 leakage of emissions to other jurisdictions, in achieving the state's
14 greenhouse gas limits in RCW 70A.45.020, the state, including lead
15 agencies under chapter 43.21C RCW, shall pursue the limits in a
16 manner that recognizes that the siting and placement of new or
17 expanded best-in-class facilities with lower carbon emitting
18 processes is in the economic and environmental interests of the state
19 of Washington.

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

28 (d) Covered emissions from an entity that is or will be a covered
29 entity under this chapter may not be the basis for denial of a permit
30 for a new or expanded facility. Covered emissions must be included in
31 the analysis undertaken pursuant to (c) of this subsection. Nothing
32 in this subsection requires a lead agency or a permitting agency to
33 approve or issue a permit to a permit applicant, including to a new
34 or expanded fossil fuel project.

35 (e) A lead agency under chapter 43.21C RCW or a permitting agency
36 shall allow a new or expanded facility that is a covered entity or
37 opt-in entity to satisfy a mitigation requirement for its covered
38 emissions under chapter 316, Laws of 2021 and under any greenhouse
39 gas emission mitigation requirements for covered emissions under
40 chapter 43.21C RCW by submitting to the department the number of

1 compliance instruments equivalent to its covered emissions during a
2 compliance period.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 70A.65
4 RCW to read as follows:

5 (1) A business may not include a separate charge or costs on any
6 invoice or other billing statement indicating that the charge or
7 cost, or any portion thereof, is imposed or collected in relation to
8 this chapter.

9 (2) The legislature finds that the acts or practices covered by
10 this section are matters vitally affecting the public interest for
11 the purposes of applying the consumer protection act, chapter 19.86
12 RCW. A violation of this section is not reasonable in relation to the
13 development and preservation of business and is an unfair or
14 deceptive act in trade or commerce and an unfair method of
15 competition for the purpose of applying the consumer protection act,
16 chapter 19.86 RCW.

17 NEW SECTION. **Sec. 4.** (1) The department of ecology must convene
18 a work group to review rules and processes that are developed to
19 exempt the emissions in RCW 70A.65.080 from coverage under chapter
20 70A.65 RCW and to develop recommendations for changes to laws, rules,
21 policies, and practices to ensure the full use and benefit of the
22 exemptions.

23 (2) The work group must be comprised of the following members:

24 (a) A representative from the department of revenue;

25 (b) A representative from the department of licensing;

26 (c) A representative from the department of transportation;

27 (d) Representatives from statewide organizations advocating for
28 the aviation industry and aviation enthusiasts;

29 (e) Representatives from statewide organizations advocating for
30 the watercraft industry and watercraft users;

31 (f) Representatives from statewide organizations advocating for
32 the agricultural industry and farmers;

33 (g) Representatives from statewide organizations advocating for
34 the fuel refineries, manufacturers, distributors, and retailers; and

35 (h) Representatives from statewide organizations that advocate
36 for the other products and activities that fall within the exemption
37 provided in RCW 70A.65.080.

1 (3) The work group shall review and make recommendations on the
2 following topics:

3 (a) Whether exemption processes have been responsive to how
4 markets have reacted to the greenhouse gas emissions cap and invest
5 program;

6 (b) Whether exemption processes can be improved or alternatives
7 developed to reduce the burdens on those seeking an exemption;

8 (c) The adequacy of current guidance and tools to report
9 exemptions;

10 (d) Whether changes are necessary related to the remittance
11 program created in section 1 of this act; and

12 (e) Other issues and topics the work group determines are
13 necessary to review the full use and enjoyment of the exemptions
14 provided in RCW 70A.65.080.

15 (4) Any statewide organizations advocating for an industry or
16 activity described in RCW 70A.65.080 may submit in writing its
17 recommendations to the work group for its review and consideration.

18 (5) Committee members are not entitled to be reimbursed for
19 travel expenses if they are elected officials or are participating on
20 behalf of an employer, governmental entity, or other organization.
21 Any reimbursement for members is subject to chapter 43.03 RCW.

22 (6) The department of ecology must submit a report containing its
23 review and recommendations to the appropriate committees of the
24 legislature by November 1, 2023.

25 **Sec. 5.** RCW 70A.65.100 and 2022 c 181 s 3 are each amended to
26 read as follows:

27 (1) Except as provided in RCW 70A.65.110, 70A.65.120, and
28 70A.65.130, the department shall distribute allowances through
29 auctions as provided in this section and in rules adopted by the
30 department to implement these sections. An allowance is not a
31 property right.

32 (2)(a) The department shall hold a maximum of four auctions
33 annually, plus any necessary reserve auctions. An auction may include
34 allowances from the annual allowance budget of the current year and
35 allowances from the annual allowance budgets from prior years that
36 remain to be distributed. The department must transmit to the
37 environmental justice council an auction notice at least 60 days
38 prior to each auction, as well as a summary results report and a
39 postauction public proceeds report within 60 days after each auction.

1 The department must communicate the results of the previous calendar
2 year's auctions to the environmental justice council on an annual
3 basis beginning in 2024.

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

8 (3) The department shall engage a qualified, independent
9 contractor to run the auctions. The department shall also engage a
10 qualified financial services administrator to hold the bid
11 guarantees, evaluate bid guarantees, and inform the department of the
12 value of bid guarantees once the bids are accepted.

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

17 (a) Registered entities intending to participate in an auction
18 must submit an application to participate at least 30 days prior to
19 the auction. The application must include the documentation required
20 for review and approval by the department. A registered entity is
21 eligible to participate only after receiving a notice of approval by
22 the department.

23 (b) Each registered entity that elects to participate in the
24 auction must have a different representative. Only a representative
25 with an approved auction account is authorized to access the auction
26 platform to submit an application or confirm the intent to bid for
27 the registered entity, submit bids on behalf of the registered entity
28 during the bidding window, or to download reports specific to the
29 auction.

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

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

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

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

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

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

9 (7) (a) For fiscal year 2023, upon completion and verification of
10 the auction results, the financial services administrator shall
11 notify winning bidders and transfer the auction proceeds to the state
12 treasurer for deposit as follows: (i) \$127,341,000 must first be
13 deposited into the carbon emissions reduction account created in RCW
14 70A.65.240; and (ii) the remaining auction proceeds to the climate
15 investment account created in RCW 70A.65.250 and the air quality and
16 health disparities improvement account created in RCW 70A.65.280.

17 (b) For fiscal year 2024, upon completion and verification of the
18 auction results, the financial services administrator shall notify
19 winning bidders and transfer the auction proceeds to the state
20 treasurer for deposit as follows: (i) \$356,697,000 must first be
21 deposited into the carbon emissions reduction account created in RCW
22 70A.65.240; (~~and~~) (ii) \$50,000,000 must then be deposited into the
23 climate commitment act remittance account created in section 6 of
24 this act; and (iii) the remaining auction proceeds to the climate
25 investment account created in RCW 70A.65.250 and the air quality and
26 health disparities improvement account created in RCW 70A.65.280.

27 (c) For fiscal year 2025, upon completion and verification of the
28 auction results, the financial services administrator shall notify
29 winning bidders and transfer the auction proceeds to the state
30 treasurer for deposit as follows: (i) \$366,558,000 must first be
31 deposited into the carbon emissions reduction account created in RCW
32 70A.65.240; (~~and~~) (ii) the amount appropriated in the omnibus
33 operating appropriations act to the climate commitment act remittance
34 account created in section 6 of this act must then be deposited into
35 the account; and (iii) the remaining auction proceeds to the climate
36 investment account created in RCW 70A.65.250 and the air quality and
37 health disparities improvement account created in RCW 70A.65.280.

38 (d) For fiscal years 2026 through 2037, upon completion and
39 verification of the auction results, the financial services
40 administrator shall notify winning bidders and transfer the auction

1 proceeds to the state treasurer for deposit as follows: (i)
2 \$359,117,000 per year must first be deposited into the carbon
3 emissions reduction account created in RCW 70A.65.240; ~~((and))~~ (ii)
4 the amount appropriated in the omnibus operating appropriations act
5 to the climate commitment act remittance account created in section 6
6 of this act must then be deposited into the account; and (iii) the
7 remaining auction proceeds to the climate investment account created
8 in RCW 70A.65.250 and the air quality and health disparities
9 improvement account created in RCW 70A.65.280.

10 (e) The deposits into the carbon emissions reduction account
11 pursuant to (a) through (d) of this subsection must not exceed
12 \$5,200,000,000 over the first 16 fiscal years and any remaining
13 auction proceeds must be deposited into the climate investment
14 account created in RCW 70A.65.250 and the air quality and health
15 disparities improvement account created in RCW 70A.65.280.

16 (f) For fiscal year 2038 and each year thereafter, upon
17 completion and verification of the auction results, the financial
18 services administrator shall notify winning bidders and transfer the
19 auction proceeds to the state treasurer for deposit as follows: (i)
20 50 percent of the auction proceeds to the carbon emissions reduction
21 account created in RCW 70A.65.240; ~~((and))~~ (ii) the amount
22 appropriated in the omnibus operating appropriations act to the
23 climate commitment act remittance account created in section 6 of
24 this act must then be deposited into the account; and (iii) the
25 remaining auction proceeds to the climate investment account created
26 in RCW 70A.65.250 and the air quality and health disparities
27 improvement account created in RCW 70A.65.280.

28 (8) The department shall adopt by rule provisions to guard
29 against bidder collusion and minimize the potential for market
30 manipulation. A registered entity may not release or disclose any
31 bidding information including: Intent to participate or refrain from
32 participation; auction approval status; intent to bid; bidding
33 strategy; bid price or bid quantity; or information on the bid
34 guarantee provided to the financial services administrator. The
35 department may cancel or restrict a previously approved auction
36 participation application or reject a new application if the
37 department determines that a registered entity has:

38 (a) Provided false or misleading facts;

39 (b) Withheld material information that could influence a decision
40 by the department;

1 (c) Violated any part of the auction rules;
2 (d) Violated registration requirements; or
3 (e) Violated any of the rules regarding the conduct of the
4 auction.

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

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

9 (b) Information contained in the secure, online electronic
10 tracking system established by the department pursuant to RCW
11 70A.65.090(6);

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

15 (d) Financial, proprietary, and other market sensitive
16 information as determined by the department that is submitted to the
17 independent contractor or the financial services administrator
18 engaged by the department pursuant to subsection (3) of this section;
19 and

20 (e) Financial, proprietary, and other market sensitive
21 information as determined by the department that is submitted to a
22 jurisdiction with which the department has entered into a linkage
23 agreement pursuant to RCW 70A.65.210, and which is shared with the
24 department, the independent contractor, or the financial services
25 administrator pursuant to a linkage agreement.

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

32 (11) The department shall design allowance auctions so as to
33 allow, to the maximum extent practicable, linking with external
34 greenhouse gas emissions trading programs in other jurisdictions and
35 to facilitate the transfer of allowances when the state's program has
36 entered into a linkage agreement with other external greenhouse gas
37 emissions trading programs. The department may conduct auctions
38 jointly with linked jurisdictions.

39 (12) In setting the number of allowances offered at each auction,
40 the department shall consider the allowances in the marketplace due

1 to the marketing of allowances issued as required under RCW
2 70A.65.110, 70A.65.120, and 70A.65.130 in the department's
3 determination of the number of allowances to be offered at auction.
4 The department shall offer only such number of allowances at each
5 auction as will enhance the likelihood of achieving the goals of RCW
6 70A.45.020.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 70A.65
8 RCW to read as follows:

9 The climate commitment act remittance account is created in the
10 state treasury. The account may receive deposits from auction
11 proceeds pursuant to section 5 of this act. Moneys in the account may
12 be spent only after appropriation. Expenditures from the account may
13 only be used for the purpose of the remittance program established in
14 section 1 of this act for entities consuming fuels whose emissions
15 are exempted from coverage in the program under RCW 70A.65.080(7)(e).
16 The department may not expend more than 10 percent per year on
17 administrative costs associated with the remittance program.

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