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**HOUSE BILL 1409**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Representatives Fitzgibbon, Doglio, Berry, Duerr, Parshley, Reed, Ormsby, Hill, and Macri

AN ACT Relating to the clean fuels program; amending RCW 70A.535.025, 70A.15.3150, and 70A.15.3160; reenacting and amending RCW 70A.535.010 and 43.21B.110; adding a new section to chapter 70A.535 RCW; and prescribing penalties.

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

**Sec.**  RCW 70A.535.025 and 2022 c 182 s 408 are each amended to read as follows:

(1) The department shall adopt rules that establish standards that reduce carbon intensity in transportation fuels used in Washington. The standards established by the rules must be based on the carbon intensity of gasoline and gasoline substitutes and the carbon intensity of diesel and diesel substitutes. The standards:

(a) Must reduce the overall, aggregate carbon intensity of transportation fuels used in Washington;

(b) May only require carbon intensity reductions at the aggregate level of all transportation fuels and may not require a reduction in carbon intensity to be achieved by any individual type of transportation fuel;

(c) Must assign a compliance obligation to fuels whose carbon intensity exceeds the standards adopted by the department, consistent with the requirements of RCW 70A.535.030; and

(d) Must assign credits that can be used to satisfy or offset compliance obligations to fuels whose carbon intensity is below the standards adopted by the department and that elect to participate in the program, consistent with the requirements of RCW 70A.535.030.

(2) The clean fuels program adopted by the department must be designed such that:

(a) Regulated parties generate deficits and may reconcile the deficits, and thus comply with the clean fuels program standards for a compliance period, by obtaining and retiring credits;

(b) Regulated parties and credit generators may generate credits for fuels used as substitutes or alternatives for gasoline or diesel;

(c) Regulated parties, credit generators, and credit aggregators shall have opportunities to trade credits; and

(d) Regulated parties shall be allowed to carry over to the next compliance period a small deficit without penalty.

(3) The department shall, throughout a compliance period, regularly monitor the availability of fuels needed for compliance with the clean fuels program.

(4)(a) Under the clean fuels program, the department shall monthly calculate the volume-weighted average price of credits and, no later than the last day of the month immediately following the month for which the calculation is completed, post the formula and the nonaggregated data the department used for the calculation and the results of the calculation on the department's website.

(b) In completing the calculation required by this subsection, the department may exclude from the data set credit transfers without a price or other credit transfers made for a price that falls two standard deviations outside of the mean credit price for the month. Data posted on the department's website under this section may not include any individually identifiable information or information that would constitute a trade secret.

(5)((~~(a) Except as provided in this section, the~~)) The rules adopted under this section must reduce the greenhouse gas emissions attributable to each unit of the fuels to 20 percent below 2017 levels by ((~~2038~~)) no earlier than January 1, 2034, based on the following schedule:

((~~(i)~~)) (a) No more than 0.5 percent each year in 2023 and 2024;

((~~(ii)~~)) (b) No more than an additional one percent each year beginning in 2025 ((~~through 2027;~~

~~(iii) No more than an additional 1.5 percent each year beginning in 2028 through 2031; and~~

~~(iv) No change in 2032 and 2033.~~

~~(b) The rules must establish a start date for the clean fuels program of no later than January 1, 2023.~~

~~(6) Beginning with the program year beginning in calendar year 2028, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the department demonstrates that the following have occurred:~~

~~(a) At least a 15 percent net increase in the volume of in-state liquid biofuel production and the use of feedstocks grown or produced within the state relative to the start of the program; and~~

~~(b) At least one new or expanded biofuel production facility representing an increase in production capacity or producing, in total, in excess of 60,000,000 gallons of biofuels per year has or have received after July 1, 2021, all necessary siting, operating, and environmental permits post all timely and applicable appeals. As part of the threshold of 60,000,000 gallons of biofuel under this subsection, at least one new facility producing at least 10,000,000 gallons per year must have received all necessary siting, operating, and environmental permits. Timely and applicable appeals must be determined by the attorney general's office.~~

~~(7) Beginning with the program year beginning in calendar year 2031, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the:~~

~~(a) Joint legislative audit and review committee report required in RCW 70A.535.140 has been completed; and~~

~~(b) 2033 regular legislative session has adjourned, in order to allow an opportunity for the legislature to amend the requirements of this chapter in light of the report required in (a) of this subsection.~~

~~(8)~~)) and on January 1, 2026;

(c) No more than an additional three percent beginning on January 1, 2027; and

(d) No more than an additional two percent each year beginning January 1, 2028, through January 1, 2034.

(6) Transportation fuels exported from Washington are not subject to the greenhouse gas emissions reduction requirements in this section.

((~~(9)~~)) (7) To the extent the requirements of this chapter conflict with the requirements of chapter 19.112 RCW, the requirements of this chapter prevail.

NEW SECTION. **Sec.**  A new section is added to chapter 70A.535 RCW to read as follows:

(1) All regulated parties and credit generators are required to submit reports under RCW 70A.535.070 in a timely manner to meet the entities' compliance obligations and shall comply with all requirements for recordkeeping, reporting, transacting credits, obtaining a carbon intensity calculation, and other provisions of this chapter.

(2) Each deficit for which a registered party does not retire a corresponding credit at the end of a compliance period constitutes a separate violation of this chapter unless that registered party participates in the credit clearance market as required under RCW 70A.535.030(8). For each violation, the department may issue a penalty of up to four times the maximum posted price of the most recent credit clearance market.

(3) The department may issue a penalty for any misreporting by a party that results in the claim of credits that does not meet the requirements of this chapter or the failure to report a deficit. The penalty issued under this subsection may be up to $1,000 per credit or deficit in violation of the requirements of this chapter. A registered party may not be penalized under this subsection if any misreporting in a quarterly report is corrected by the end of that quarter's reporting period.

(4) The department may issue a penalty of up to $10,000 per day each day a registered party does not submit a report under RCW 70A.535.070 by the reporting deadline.

(5) The department may issue a penalty for credits generated in exceedance of a carbon intensity standard adopted by the department for that year of up to $1,000 per credit for each illegitimate credit generated as a result of the incorrect carbon intensity score.

(6) The department may issue a penalty of up to $25,000 per month that a regulated party is not registered with the department in violation of RCW 70A.535.070.

(7) The department may issue to any participating electric utility a penalty of up to four times the credit revenue improperly spent in violation of RCW 70A.535.080 or rules adopted to implement that section.

(8) The department may issue a penalty of up to $50,000 or $10,000 per day for a violation of the third-party verification requirements adopted by the department under RCW 70A.535.030(3)(c) for as long as the registered party remains out of compliance with these requirements.

(9) For violations other than those described in subsections (2) through (8) of this section, the department may issue a penalty of up to $10,000 per day per violation for each day any registered party violates the terms of this chapter or an order issued under this chapter.

(10) An electric utility must notify its retail customers in published form within three months of paying a monetary penalty under this section.

(11) Penalties and orders issued under this section may be appealed to the pollution control hearings board created in chapter 43.21B.RCW. Penalties collected under this chapter must be deposited in the carbon emissions reduction account created in RCW 70A.65.240.

**Sec.**  RCW 70A.535.010 and 2023 c 232 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Alternative jet fuel" means a fuel that can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines and existing fuel distribution infrastructure, and that have a lower carbon intensity than the applicable annual carbon intensity standard in Table 2 of WAC 173-424-900, as it existed on July 1, 2023. Alternative jet fuel includes jet fuels derived from coprocessed feedstocks at a conventional petroleum refinery.

(2) "Carbon dioxide equivalents" has the same meaning as defined in RCW 70A.45.010.

(3) "Carbon intensity" means the quantity of life-cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO2e/MJ).

(4) "Clean fuels program" means the requirements established under this chapter.

(5) "Cost" means an expense connected to the manufacture, distribution, or other aspects of the provision of a transportation fuel product.

(6) "Credit" means a unit of measure generated when a transportation fuel with a carbon intensity that is less than the applicable standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, such that one credit is equal to one metric ton of carbon dioxide equivalents. A credit may also be generated through other activities consistent with this chapter.

(7) "Deficit" means a unit of measure generated when a transportation fuel with a carbon intensity that is greater than the applicable standard adopted by the department under RCW 70A.535.025 is produced, imported, or dispensed for use in Washington, such that one deficit is equal to one metric ton of carbon dioxide equivalents.

(8) "Department" means the department of ecology.

(9) "Electric utility" means a consumer-owned utility or investor-owned utility, as those terms are defined in RCW 19.29A.010.

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

(11) "Military tactical vehicle" means a motor vehicle owned by the United States department of defense or the United States military services and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(12) "Motor vehicle" has the same meaning as defined in RCW 46.04.320.

(13) "Price" means the amount of payment or compensation provided as consideration for a specified quantity of transportation fuel by a consumer or end user of the transportation fuel.

((~~(14)~~)) "Registered party" means a regulated party or credit generator registered under RCW 70A.535.070.

(15) "Regulated party" means a producer or importer of any amount of a transportation fuel that is ineligible to generate credits under this chapter.

((~~(15)~~)) (16)(a) "Tactical support equipment" means equipment using a portable engine, including turbines, that meets military specifications, owned by the United States military services or its allies, and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(b) "Tactical support equipment" includes, but is not limited to, engines associated with portable generators, aircraft start carts, heaters, and lighting carts.

((~~(16)~~)) (17) "Transportation fuel" means electricity and any liquid or gaseous fuel sold, supplied, offered for sale, or used for the propulsion of a motor vehicle or that is intended for use for transportation purposes.

**Sec.**  RCW 43.21B.110 and 2024 c 347 s 5, 2024 c 340 s 4, and 2024 c 339 s 16 are each reenacted and amended to read as follows:

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

(a) Civil penalties imposed pursuant to chapter 70A.230 RCW and RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.230.020, 70A.205.280, 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100, 70A.505.110, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140, 70A.65.200, 70A.455.090, section 2 of this act, 70A.550.030, 70A.555.110, 70A.560.020, 70A.565.030, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530, 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, section 2 of this act, 70A.505.100, 70A.555.110, 70A.560.020, 70A.565.030, 86.16.020, 88.46.070, 90.03.665, 90.14.130, 90.46.250, 90.48.120, 90.48.240, 90.56.330, and 90.64.040.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, a decision to approve or deny a solid waste management plan under RCW 70A.205.055, approval or denial of an application for a beneficial use determination under RCW 70A.205.260, an application for a change under RCW 90.03.383, or a permit to distribute reclaimed water under RCW 90.46.220.

(d) Decisions of local health departments regarding the granting or denial of solid waste permits pursuant to chapter 70A.205 RCW, including appeals by the department as provided in RCW 70A.205.130.

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

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

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

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

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

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

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

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

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

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

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW, except where appeals to the pollution control hearings board and appeals to the shorelines hearings board have been consolidated pursuant to RCW 43.21B.340.

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

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

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

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

**Sec.**  RCW 70A.15.3150 and 2023 c 470 s 1017 are each amended to read as follows:

(1) Any person who knowingly violates any of the provisions of this chapter, chapter 70A.25((~~,~~)) or 70A.60((~~, or 70A.535~~)) RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ((~~ten thousand dollars~~)) $10,000, or by imprisonment in the county jail for up to ((~~three hundred sixty-four~~)) 364 days, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ((~~ten thousand dollars~~)) $10,000, or by imprisonment for up to ((~~three hundred sixty-four~~)) 364 days, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than ((~~fifty thousand dollars~~)) $50,000, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70A.15.2000 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than ((~~five thousand dollars~~)) $5,000.

**Sec.**  RCW 70A.15.3160 and 2022 c 179 s 15 are each amended to read as follows:

(1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of this chapter, chapter 70A.25, 70A.60, 70A.450, ((~~70A.535,~~)) or 70A.540 RCW, RCW 76.04.205, or any of the rules in force under such chapters or section may incur a civil penalty in an amount not to exceed ((~~ten thousand dollars~~)) $10,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Enforcement actions related to violations of RCW 76.04.205 must be consistent with the provisions of RCW 76.04.205.

(b) Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ((~~ten thousand dollars~~)) $10,000 for each day of continued noncompliance.

(2)(a) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

(b) The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4)(a) Except as provided in (b) of this subsection, all penalties recovered under this section by the department or the department of natural resources shall be paid into the state treasury and credited to the air pollution control account established in RCW 70A.15.1010 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(b) All penalties recovered for violations of chapter 70A.60 RCW must be paid into the state treasury and credited to the refrigerant emission management account created in RCW 70A.60.050.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly underreporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) The department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

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