
HOUSE BILL 1409

State of Washington

69th Legislature

2025 Regular Session

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

Read first time 01/20/25. Referred to Committee on Environment & Energy.

1 AN ACT Relating to the clean fuels program; amending RCW
2 70A.535.025, 70A.15.3150, and 70A.15.3160; reenacting and amending
3 RCW 70A.535.010 and 43.21B.110; adding a new section to chapter
4 70A.535 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 70A.535.025 and 2022 c 182 s 408 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ~~(6) Beginning with the program year beginning in calendar year~~
7 ~~2028, the department may not increase the carbon intensity reductions~~
8 ~~required by the applicable clean fuels program standard adopted by~~
9 ~~the department under subsection (5) of this section beyond a 10~~
10 ~~percent reduction in carbon intensity until the department~~
11 ~~demonstrates that the following have occurred:~~

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

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

25 ~~(7) Beginning with the program year beginning in calendar year~~
26 ~~2031, the department may not increase the carbon intensity reductions~~
27 ~~required by the applicable clean fuels program standard adopted by~~
28 ~~the department under subsection (5) of this section beyond a 10~~
29 ~~percent reduction in carbon intensity until the:~~

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

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

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

37 ~~(c) No more than an additional three percent beginning on January~~
38 ~~1, 2027; and~~

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

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

4 ~~((+9))~~ (7) To the extent the requirements of this chapter
5 conflict with the requirements of chapter 19.112 RCW, the
6 requirements of this chapter prevail.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 70A.535
8 RCW to read as follows:

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

15 (2) Each deficit for which a registered party does not retire a
16 corresponding credit at the end of a compliance period constitutes a
17 separate violation of this chapter unless that registered party
18 participates in the credit clearance market as required under RCW
19 70A.535.030(8). For each violation, the department may issue a
20 penalty of up to four times the maximum posted price of the most
21 recent credit clearance market.

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

30 (4) The department may issue a penalty of up to \$10,000 per day
31 each day a registered party does not submit a report under RCW
32 70A.535.070 by the reporting deadline.

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

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

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

5 (8) The department may issue a penalty of up to \$50,000 or
6 \$10,000 per day for a violation of the third-party verification
7 requirements adopted by the department under RCW 70A.535.030(3)(c)
8 for as long as the registered party remains out of compliance with
9 these requirements.

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

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

18 (11) Penalties and orders issued under this section may be
19 appealed to the pollution control hearings board created in chapter
20 43.21B.RCW. Penalties collected under this chapter must be deposited
21 in the carbon emissions reduction account created in RCW 70A.65.240.

22 **Sec. 3.** RCW 70A.535.010 and 2023 c 232 s 2 are each reenacted
23 and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

19 (10) "Greenhouse gas" has the same meaning as defined in RCW
20 70A.45.010.

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

26 (12) "Motor vehicle" has the same meaning as defined in RCW
27 46.04.320.

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

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

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

36 ~~((15))~~ (16)(a) "Tactical support equipment" means equipment
37 using a portable engine, including turbines, that meets military
38 specifications, owned by the United States military services or its
39 allies, and that is used in combat, combat support, combat service

1 support, tactical or relief operations, or training for such
2 operations.

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

6 (~~(16)~~) (17) "Transportation fuel" means electricity and any
7 liquid or gaseous fuel sold, supplied, offered for sale, or used for
8 the propulsion of a motor vehicle or that is intended for use for
9 transportation purposes.

10 **Sec. 4.** RCW 43.21B.110 and 2024 c 347 s 5, 2024 c 340 s 4, and
11 2024 c 339 s 16 are each reenacted and amended to read as follows:

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

19 (a) Civil penalties imposed pursuant to chapter 70A.230 RCW and
20 RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.230.020,
21 70A.205.280, 70A.355.070, 70A.430.070, 70A.500.260, 70A.505.100,
22 70A.505.110, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040,
23 70A.245.050, 70A.245.070, 70A.245.080, 70A.245.130, 70A.245.140,
24 70A.65.200, 70A.455.090, section 2 of this act, 70A.550.030,
25 70A.555.110, 70A.560.020, 70A.565.030, 76.09.170, 77.55.440,
26 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310,
27 90.56.330, and 90.64.102.

28 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
29 18.104.130, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.15.4530,
30 70A.15.6010, 70A.205.280, 70A.214.140, 70A.300.120, 70A.350.070,
31 70A.245.020, 70A.65.200, section 2 of this act, 70A.505.100,
32 70A.555.110, 70A.560.020, 70A.565.030, 86.16.020, 88.46.070,
33 90.03.665, 90.14.130, 90.46.250, 90.48.120, 90.48.240, 90.56.330, and
34 90.64.040.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license
37 by the department or any air authority in the exercise of its
38 jurisdiction, including the issuance or termination of a waste
39 disposal permit, the denial of an application for a waste disposal

1 permit, the modification of the conditions or the terms of a waste
2 disposal permit, a decision to approve or deny a solid waste
3 management plan under RCW 70A.205.055, approval or denial of an
4 application for a beneficial use determination under RCW 70A.205.260,
5 an application for a change under RCW 90.03.383, or a permit to
6 distribute reclaimed water under RCW 90.46.220.

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

10 (e) Decisions of local health departments regarding the issuance
11 and enforcement of permits to use or dispose of biosolids under RCW
12 70A.226.090.

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

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

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

25 (i) Decisions of the department of natural resources, the
26 department of fish and wildlife, and the department that are
27 reviewable under chapter 76.09 RCW, and the department of natural
28 resources' appeals of county, city, or town objections under RCW
29 76.09.050(7).

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

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

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

39 (m) Decisions of an authorized public entity under RCW 79.100.010
40 to take temporary possession or custody of a vessel or to contest the

1 amount of reimbursement owed that are reviewable by the hearings
2 board under RCW 79.100.120.

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

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

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

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

15 (b) Hearings conducted by the department pursuant to RCW
16 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
17 70A.15.3110, and 90.44.180.

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

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

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

25 **Sec. 5.** RCW 70A.15.3150 and 2023 c 470 s 1017 are each amended
26 to read as follows:

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

34 (2) Any person who negligently releases into the ambient air any
35 substance listed by the department of ecology as a hazardous air
36 pollutant, other than in compliance with the terms of an applicable
37 permit or emission limit, and who at the time negligently places
38 another person in imminent danger of death or substantial bodily harm
39 is guilty of a gross misdemeanor and shall, upon conviction, be

1 punished by a fine of not more than (~~ten thousand dollars~~) \$10,000,
2 or by imprisonment for up to (~~three hundred sixty-four~~) 364 days,
3 or both.

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

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

17 **Sec. 6.** RCW 70A.15.3160 and 2022 c 179 s 15 are each amended to
18 read as follows:

19 (1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and
20 43.05.150, and in addition to or as an alternate to any other penalty
21 provided by law, any person who violates any of the provisions of
22 this chapter, chapter 70A.25, 70A.60, 70A.450, (~~70A.535,~~) or
23 70A.540 RCW, RCW 76.04.205, or any of the rules in force under such
24 chapters or section may incur a civil penalty in an amount not to
25 exceed (~~ten thousand dollars~~) \$10,000 per day for each violation.
26 Each such violation shall be a separate and distinct offense, and in
27 case of a continuing violation, each day's continuance shall be a
28 separate and distinct violation. Enforcement actions related to
29 violations of RCW 76.04.205 must be consistent with the provisions of
30 RCW 76.04.205.

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

35 (2)(a) Penalties incurred but not paid shall accrue interest,
36 beginning on the ninety-first day following the date that the penalty
37 becomes due and payable, at the highest rate allowed by RCW 19.52.020
38 on the date that the penalty becomes due and payable. If violations

1 or penalties are appealed, interest shall not begin to accrue until
2 the thirty-first day following final resolution of the appeal.

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

6 (3) Each act of commission or omission which procures, aids or
7 abets in the violation shall be considered a violation under the
8 provisions of this section and subject to the same penalty. The
9 penalties provided in this section shall be imposed pursuant to RCW
10 43.21B.300.

11 (4) (a) Except as provided in (b) of this subsection, all
12 penalties recovered under this section by the department or the
13 department of natural resources shall be paid into the state treasury
14 and credited to the air pollution control account established in RCW
15 70A.15.1010 or, if recovered by the authority, shall be paid into the
16 treasury of the authority and credited to its funds. If a prior
17 penalty for the same violation has been paid to a local authority,
18 the penalty imposed by the department under subsection (1) of this
19 section shall be reduced by the amount of the payment.

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

23 (5) To secure the penalty incurred under this section, the state
24 or the authority shall have a lien on any vessel used or operated in
25 violation of this chapter which shall be enforced as provided in RCW
26 60.36.050.

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

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

36 (8) The department shall develop rules for excusing excess
37 emissions from enforcement action if such excess emissions are
38 unavoidable. The rules shall specify the criteria and procedures for
39 the department and local air authorities to determine whether a

1 period of excess emissions is excusable in accordance with the state
2 implementation plan.

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