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**HOUSE BILL 2249**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representative Dye

AN ACT Relating to ensuring transparency regarding the impacts of allowing general market participants, including financial speculators, to participate in climate commitment act markets; amending RCW 70A.65.090 and 70A.65.220; adding a new section to chapter 70A.65 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that 40 percent of those registered and eligible to bid on emission allowances at Washington's regular quarterly carbon allowance auctions are bidding for other reasons, including financial speculation, rather than to comply with the states' emissions cap. Those who participate in the auction who have no compliance obligation are called "general market participants."

(2) The legislature finds that in September 2023, the department of ecology published an emergency rule to exclude general market participants from the allowance price containment reserve auctions (APCR auctions). APCR auctions are designed to lower the compliance costs of the climate commitment act for Washington's regulated entities. In justifying the emergency rule, the department of ecology asserted that excluding general market participants from the APCR auctions would prevent those allowances from being sold or traded on the secondary market and thereby ensure that the allowances sold would be used to meet compliance obligations and not for speculative purposes. The department of ecology stated that the emergency rule making was necessary to ensure market integrity and achieve greenhouse gas emissions reductions in an economically efficient way. Further, the department of ecology said that without the emergency rule excluding general market participants from APCR auctions, allowances could be misallocated at distorted prices that could affect not only program participants but the public as well.

(3) Therefore, the legislature intends to gather data and study the impact of including general market participants in the regular quarterly auctions. The legislature seeks to understand how the legislature might allow for regulated entities to achieve our state carbon emission reductions at a lower cost. Such information and analysis will help the legislature understand the degree to which general market participant trading may be driving up costs of compliance for covered Washington businesses and thereby increasing the prices of consumer goods and services provided by those businesses more than necessary for Washington consumers.

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

(1) By December 1, 2025, the Washington state institute for public policy must publish and submit a report to the appropriate committees of the legislature evaluating the program performance outcomes associated with the participation of general market participants in the program established under this chapter. The evaluation must attempt to quantify the cost impacts of allowance prices under this chapter that are attributable to the policy decision embedded in this chapter to allow the acquisition and sale by general market participants of compliance instruments.

(2) The department must share compliance instrument market information with the Washington state institute for public policy as needed to carry out the evaluation required under subsection (1) of this section, including confidential information otherwise exempt from disclosure under RCW 70A.65.100(9). The department may require the Washington state institute for public policy to treat as confidential and exempt from public disclosure information that is shared with the institute for purposes of carrying out the evaluation in subsection (1) of this section.

(3) The Washington state institute for public policy may contract with neutral, independent third parties as necessary to assist in carrying out the requirements of this section. Any entity that is contracted under this subsection may not have received a contract related to greenhouse gas emission market programs from a general market participant or had any similar affiliation with a general market participant, during the preceding five years.

(4) As long as general market participants continue to be authorized to participate in the program established under this chapter, the Washington state institute for public policy must update the evaluation under this section and submit updated reports to the appropriate committees of the legislature by December 1st of each odd-numbered year.

**Sec.**  RCW 70A.65.090 and 2021 c 316 s 11 are each amended to read as follows:

(1) All covered entities must register to participate in the program, following procedures adopted by the department by rule.

(2) Entities registering to participate in the program must describe any direct or indirect affiliation with other registered entities.

(3) A person responsible for greenhouse gas emissions that is not a covered entity may voluntarily participate in the program by registering as an opt-in entity. An opt-in entity must satisfy the same registration requirements as covered entities. Once registered, an opt-in entity is allowed to participate as a covered entity in auctions and must assume the same compliance obligation to transfer compliance instruments equal to their emissions at the appointed transfer dates. An opt-in entity may opt out of the program at the end of any compliance period by providing written notice to the department at least six months prior to the end of the compliance period. The opt-in entity continues to have a compliance obligation through the current compliance period. An opt-in entity is not eligible to receive allowances directly distributed under RCW 70A.65.110, 70A.65.120, or 70A.65.130.

(4) A person that is not covered by the program and is not a covered entity or opt-in entity may voluntarily participate in the program as a general market participant. General market participants must meet all applicable registration requirements specified by rule.

(5) Federally recognized tribes and federal agencies may elect to participate in the program as opt-in entities or general market participants.

(6) The department shall use a secure, online electronic tracking system to: Register entities in the state program; issue compliance instruments; track ownership of compliance instruments; enable and record compliance instrument transfers; facilitate program compliance; and support market oversight.

(7) The department must use an electronic tracking system that allows two accounts to each covered or opt-in entity:

(a) A compliance account where the compliance instruments are transferred to the department for retirement. Compliance instruments in compliance accounts may not be sold, traded, or otherwise provided to another account or person.

(b) A holding account that is used when a registered entity is interested in trading allowances. Allowances in holding accounts may be bought, sold, transferred to another registered entity, or traded. The amount of allowances a registered entity may have in its holding account is constrained by the holding limit as determined by the department by rule. Information about the contents of each holding account, including but not limited to the number of allowances in the account, must be displayed on a regularly maintained and searchable public website established and updated by the department.

(8) Registered general market participants are each allowed an account, to hold, trade, sell, or transfer allowances.

(9) The department shall maintain an account for the purpose of retiring allowances transferred by registered entities and from the voluntary renewable reserve account.

(10)(a) The department shall maintain a public roster of all covered entities, opt-in entities, and general market participants on the department's public website.

(b) At the conclusion of each auction of allowances, including allowances during a special auction of allowances from the allowance price containment reserve or the emissions containment reserve, the department must publish the following information on the department's website:

(i) The number of allowances purchased by each entity registered with the department as a general market participant;

(ii) The proportion of allowances purchased in aggregate by general market participants in the auction relative to the total number of allowances auctioned; and

(iii) The cumulative proportion of allowances purchased in aggregate at auction by general market participants relative to the total number of allowances auctioned, dating to the start of the contemporary compliance period.

(c) Promptly after the conclusion of each compliance period, the department must publish the following information on the department's website:

(i) The total number of retired compliance instruments that were, at one time during the compliance period, held by general market participants;

(ii) The proportion of compliance instruments that were, at one point prior to retirement, held by a general market participant, relative to the total number of allowances retired during that compliance period;

(iii) The number of transactions of compliance instruments involving at least one general market participant as a buyer or seller;

(iv) A rank-ordered list of the most active general market participants, numbered in descending order based on the number of transactions each general market participant participated in during the preceding compliance period; and

(v) The average gross profit margin, positive or negative, of the compliance instrument sales by each general market participant during the preceding compliance period.

(d) The information specified in (b) and (c) of this subsection is not confidential or exempt from public disclosure under RCW 70A.65.100(9).

(11) The department shall include a voluntary renewable reserve account.

**Sec.**  RCW 70A.65.220 and 2021 c 316 s 25 are each amended to read as follows:

(1) The department shall adopt rules to implement the provisions of the program established in RCW 70A.65.060 through 70A.65.210. The department may adopt emergency rules pursuant to RCW 34.05.350 for initial implementation of the program, to implement the state omnibus appropriations act for the 2021-2023 fiscal biennium, and to ensure that reporting and other program requirements are determined early for the purpose of program design and early notice to registered entities with a compliance obligation under the program.

(2) The department must adopt emergency rules consistent with the provisions of chapter 34.05 RCW to implement the provisions of RCW 70A.65.090(10) (b) and (c) to enable reporting of the information specified therein to begin no later than January 1, 2025. The rules adopted by the department under this subsection may require the reporting of information to the department by general market participants and, if necessary, covered and opt-in entities, to the extent necessary to allow the department to make public the information specified in RCW 70A.65.090(10) (b) and (c).

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