
Environment & Energy Committee

HB 2201

Brief Description: Facilitating linkage of Washington's carbon market with the California-Quebec carbon market.

Sponsors: Representatives Doglio, Fitzgibbon, Berry, Ramel, Reeves, Duerr, Hackney, Reed, Goodman and Pollet; by request of Department of Ecology.

Brief Summary of Bill

- Amends provisions of the Climate Commitment Act (CCA), including by directing the Department of Ecology to amend its CCA compliance period rules to synchronize with jurisdictions with which Washington enters a linkage agreement, by requiring importers of unspecified sources of electricity that has any associated greenhouse gas (GHG) emissions to be a covered entity that participates in the CCA's program, and by changing the purchase limits at auction applicable to covered and opt-in entities, and the holding limits for purchased allowances applicable to general market participants.
- Amends GHG emission reporting requirements under the Clean Air Act.

Hearing Date: 1/15/24

Staff: Jacob Lipson (786-7196).

Background:

State Emission Limits.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,

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perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO₂e).

Since 2008 state law has established limits on the emission of greenhouse gases (GHGs) in Washington. Ecology is responsible for monitoring and tracking the state's progress in achieving these emissions limits. In 2020 additional legislation was enacted to update the statewide emissions limits to the following:

- by 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 million metric tons of carbon dioxide equivalents (MMT CO₂e);
- by 2030, reduce overall emissions of GHGs in the state to 45 percent below 1990 levels, or 50 MMT CO₂e;
- by 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990 levels, or 27 MMT CO₂e; and
- by 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT CO₂e, and achieve net-zero GHG emissions.

Greenhouse Gas Emission Reporting.

Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of CO₂e report their emissions to the EPA. At the state level, GHG reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities, and fuel suppliers, including suppliers of fossil fuels and electricity, whose emissions exceed 10,000 metric tons of CO₂e each year to report their annual emissions to Ecology.

Ecology is required to review its GHG reporting rules whenever the EPA adopts amendments to federal GHG reporting requirements or when needed to ensure consistency with emission reporting requirements in jurisdictions with which Washington has linked its GHG emission reduction carbon market program.

Climate Commitment Act Overview.

Under the 2021 Climate Commitment Act (CCA), in order to ensure that GHG emissions are reduced consistent with the state's 2030, 2040, and 2050 emissions limits, Ecology must implement a cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, which include allowances or eligible offset credits. The Cap-and-Invest Program (Program) commenced on January 1, 2023.

The Program:

- establishes annual allowance budgets that limit emissions from covered entities;
- defines those entities covered by the Program (covered entities), those entities that may voluntarily opt into coverage under the Program (opt-in entities) and other persons that participate in auctions or allowance markets by purchasing, holding, selling, or voluntarily retiring compliance instruments (general market participants);
- provides for the distribution of emissions allowances at no-cost to certain covered entities, or by purchase at auction;
- provides for offset credits as a method for meeting compliance obligations;
- defines the compliance obligations of covered entities;
- provides for the transfer of allowances and recognition of compliance instruments, including those issued by jurisdictions with which Washington may have linkage agreements in the future; and
- provides monitoring and oversight of the sale and transfer of allowances.

Climate Commitment Act Allowance Budgets.

Compliance obligations under the Program are phased in over the following four-year compliance periods:

- first compliance period: 2023 through 2026;
- second compliance period: 2027 through 2030; and
- subsequent four-year compliance periods beginning in 2031.

By October 1, 2022, Ecology must adopt annual allowance budgets for the first compliance period to be distributed from January 1, 2023, through December 31, 2026. Ecology must also adopt annual allowance budgets for the second compliance period. By October 1, 2028, Ecology must adopt by rule the annual allowance budgets for the calendar years 2031 through 2040. The annual allowance budgets established under the Program must be set to achieve the share of reductions by covered entities necessary to achieve the state's 2030, 2040, and 2050 emissions limits. Annual allowance budgets must be set such that the use of offsets as compliance instruments does not prevent the achievement of the state's emissions limits.

Climate Commitment Act Allowance Auctions, Compliance Obligations, and Enforcement.

Except for directly distributed, no-cost allowances allocated to certain entities, allowances must be distributed via allowance auctions. Auctions are open to covered entities, opt-in entities, and general market participants that are registered entities in good standing. Covered entities and opt-in entities may not buy more than 10 percent of the allowances offered during a single auction. General market participants may not buy more than 4 percent of the allowances offered during a single auction, and may not in aggregate own more than 10 percent of the total number of allowances issued in a calendar year.

Certain entities, including emissions-intensive trade-exposed (EITE) facilities, receive directly distributed, no-cost allowances from Ecology. Owners or operators of EITE facilities that are

required to participate in the Program must receive an allocation of allowances at no cost as follows:

- for the first compliance period beginning in 2023, the annual allocation of allowances must equal the facility's baseline carbon intensity, under which emissions are measured relative to facility production, as established using 2015 through 2019 data, multiplied by the EITE facility's actual production for each calendar year of the compliance period;
 - for facilities using a mass-based approach, the allocation of allowances must equal the facility's mass-based baseline established using 2015 through 2019 data, unless there were abnormal circumstances during those years. Facilities may use a mass-based baseline if it is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances. In general, a facility may not switch from using a mass-based baseline to a carbon intensity baseline;
- for the second compliance period beginning in 2027, the annual allocation of no-cost allowances is reduced to 97 percent of first compliance period allocations (for mass-based facilities); or 3 percent below the first compliance period benchmark; and
- for the third compliance period beginning in 2031, the annual allocation of no-cost allowances is 94 percent of first compliance period allocations (for mass-based facilities) or 3 percent below the second compliance period benchmark.

For electricity, the covered entity that must satisfy a compliance obligation is specified in statute and in rule, and includes first jurisdictional deliverers of electricity, which include importers of electricity. The CCA specifies eight types of persons whose activities may qualify the person as an electricity importer. Imported electricity does not include electricity imports of unspecified electricity that are netted by exports of unspecified electricity to any jurisdiction with which Washington has not linked, by the same entity within the same hour. An unspecified source of electricity is electricity that, at the time of entry into a transaction to procure electricity, is not a specified facility, unit, or asset controlling supplier that is permitted to be claimed as the source of electricity delivered. First jurisdictional deliverers of electricity are covered entities that must participate in the CCA if their imported electricity has associated cumulative annual emissions exceeding 25,000 tons of CO₂e.

All covered and opt-in entities are required to submit compliance instruments in a timely manner to meet their compliance obligations and must comply with all requirements for monitoring, reporting, holding, and transferring emission allowances. If a covered or opt-in entity does not submit sufficient compliance instruments to meet its compliance obligation by the specified transfer dates, a penalty of four allowances for every one compliance instrument that is missing must be submitted to Ecology within six months. When a covered or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity must immediately notify Ecology. Upon receiving notification, Ecology must issue an order requiring the entity to submit the appropriate penalty allowances. If a covered or opt-in entity fails to submit the appropriate penalty allowances, Ecology must issue an order or a penalty of up to \$10,000 per day per violation, or both. During the first compliance period, Ecology may reduce the amount of a penalty owed by either adjusting the monetary amount or the number of penalty allowances that must be submitted.

Offset Credits.

Ecology must adopt by rule protocols for establishing offset projects and securing offset credits. The protocols adopted by Ecology must align with specified policies, including policies identifying the role of the forest products sector in carbon sequestration.

Offset projects must:

- provide direct environmental benefits to the state or be located in a jurisdiction with which the state has entered into a linkage agreement;
- result in GHG emission reductions or removals that:
 - are real, permanent, quantifiable, verifiable, and enforceable; and
 - are in addition to GHG emission reductions or removals otherwise required by law and other GHG emission reductions or removals that would otherwise occur; and
- have been certified by a recognized registry after the effective date of the CCA or within two years prior to the effective date of the CCA.

In adopting protocols governing offset projects and covered and opt-in entities' use of offset credits, Ecology must:

- take into consideration standards, rules, or protocols for offset projects and offset credits established in other states, provinces, and countries with programs comparable to the Program;
- encourage opportunities for the development of offset projects in the state by adopting offset protocols that may include protocols that make use of aggregation or other mechanisms to reduce transaction costs related to the development of offset projects and that support the development of carbon dioxide removal projects; and
- adopt a process for monitoring and invalidating offset credits, as necessary to ensure quality control.

The use of offset credits by covered entities is limited to specified percentages of their compliance obligations:

- During the first compliance period, five percent of a covered entity or opt-in entity's compliance obligation may be satisfied by offset projects, plus an additional three percent may be satisfied by offset projects located on federally recognized Indian tribal land.
- Beginning in the second compliance period, four percent of a covered entity or opt-in entity's compliance obligation may be satisfied by offset projects, plus an additional two percent may be satisfied by offset projects located on federally recognized Indian tribal land.

Program allowance budgets must be set so that the use of offsets does not prevent the achievement of state emission limits. In setting annual allowance budgets, Ecology must reduce the number of allowances in the budget in an amount equivalent to offset use, or according to a similar methodology that Ecology may adopt by rule.

Linkage with Other Jurisdictions.

Ecology must seek to link the Program with those of other jurisdictions in order to:

- allow for the mutual use and recognition of compliance instruments issued by Washington and other linked jurisdictions;
- broaden the GHG emission reduction opportunities to reduce the costs of compliance on covered entities and consumers;
- enable allowance auctions to be held jointly and provide for the use of a unified tracking system for compliance instruments;
- enhance market security;
- reduce program administration costs; and
- provide consistent requirements for covered entities whose operations span jurisdictional boundaries.

The state of California and the Canadian province of Quebec currently have a linked, combined carbon emission market that functions, in many respects, in a manner similar to the Program implemented by Ecology.

The Director of Ecology (Director) is authorized to execute linkage agreements with other jurisdictions with established external GHG emissions trading programs.

Any linkage agreement involving the Program must cover the following:

- provisions relating to quarterly auctions;
- provisions related to holding limits to ensure no entities in any of the linked programs are disadvantaged relative to their counterparts in the participating jurisdictions;
- other requirements, such as GHG reporting and verification, offset protocols, criteria, and process, and supervision and enforcement to prevent fraud, abuse, and market manipulation;
- common program registry, electronic auction platform, tracking systems for compliance instruments, and monitoring of compliance instruments;
- provisions to ensure coordinated administrative and technical support;
- provisions for public notice and participation; and
- provisions to collectively resolve differences, amend the agreements, and delink or otherwise withdraw from the agreements.

Before entering into a linkage agreement, Ecology must evaluate and make a finding regarding whether the aggregate number of unused allowances in a linked program would reduce the stringency of the Program and the state's ability to achieve its GHG emissions reduction limits. Ecology must include in its evaluation a consideration of pre-2020 unused allowances that may exist in the Program with which it is proposing to link. Before entering into a linkage agreement, Ecology must also establish a finding that the linking jurisdiction and the linkage agreement meets certain criteria and conduct a public comment process to obtain input and a review of the linkage agreement by relevant stakeholders and other interested parties. The input received from the public comment process must be considered before finalizing a linkage agreement.

In the event that Ecology determines that a full linkage agreement is unlikely to meet the required criteria, it may enter into a linkage agreement with limitations, including limits on the share of compliance that may be met with allowances originating from linked jurisdictions.

A linkage agreement approved by Ecology must:

- ensure that the linking jurisdiction has provisions to ensure the distribution of benefits from the linked program to vulnerable populations and overburdened communities;
- be determined by Ecology to not yield net adverse impacts to either jurisdictions' highly impacted communities or analogous communities in the aggregate, relative to the baseline level of emissions; and
- not adversely impact Washington's ability to achieve its statewide emission reduction limits.

The state retains all legal and policymaking authority over the design and enforcement of the Program.

In November 2023 the Director of Ecology (Director) made a preliminary determination to pursue linkage with California and Quebec's carbon market, based on Ecology's analysis that linkage with California and Quebec is expected to provide substantial benefits to the Program, and Washington's economy and communities. Ecology has not yet carried out its required environmental justice assessment of a proposed linkage agreement, and each of the three jurisdictions exploring linkage may need to adjust regulatory requirements in order for a linkage agreement to be negotiated among the jurisdictions, and the jurisdiction's programs to become linked. The Director's November 2023 letter to the Governor of Washington providing notification of the Director's intent to use the Director's statutory authority to pursue linkage forecasted that the process of linking Washington's Program to the combined California-Quebec market will not be able to be completed until 2025 or later.

Initiative 2117.

Initiative 2117 was filed in 2023 as an Initiative to the Legislature. The Secretary of State has not yet certified the measure as of January 11, 2024. Initiative 2117 would repeal the CCA, and prohibit state agencies from implementing any type of carbon tax credit trading, if the Initiative is approved by the voters in the November 2024 general election.

Summary of Bill:

Changes to Greenhouse Gas Emission Reporting Requirements.

The greenhouse gas (GHG) emission reporting rules adopted by the Department of Ecology (Ecology) must require electric power entities to report emissions of GHGs of all electricity that is purchased, sold, imported, exported, or exchanged in Washington. The exemption from GHG reporting requirements for the reporting of emissions in an amount less than 10,000 metric tons

of CO₂e per year does not apply to emissions from electricity.

Ecology must establish GHG emission reporting methodologies for persons required to report GHG emissions. Ecology is no longer required to review and, when necessary, update its GHG reporting requirements whenever the Environmental Protection Agency amends federal GHG reporting requirements, or to ensure consistency with a jurisdiction that has entered into a linkage agreement with Washington.

Changes to the Climate Commitment Act.

Compliance Period Duration and Timing.

If Ecology enters into a linkage agreement, Ecology must amend its Climate Commitment Act (CCA) rules to synchronize Washington's compliance periods with those of the linked jurisdictions. Changes are made throughout the CCA to remove references to the dates by which specific compliance periods must begin or end, including by:

- amending the timing of Ecology's compliance period program implementation reports to the Legislature to occur December 1 of the year after the end of a compliance period, rather than December 1, 2027 and every four years thereafter;
- amending the date on which owners or operators of railroad companies become covered entities from January 1, 2031 to the beginning of the third compliance period; and
- amending the timing of declines in the allocation of mass-based no-cost allowances to emissions-intensive trade-exposed (EITE) facilities, reducing the no-cost EITE allowance allocation from 100 percent to 97 percent at the beginning of the second compliance period, rather than on January 1, 2027, reducing the no-cost EITE allowance allocation to 94 percent beginning at the beginning of the third compliance period, rather than beginning January 1, 2031, and making similar changes to EITE allowances that are allocated at no cost using the carbon intensity benchmark, for those entities that do not use the mass-based allocation approach.

Covered Electricity.

The types of electricity importers that are specified to qualify as a covered entity that must participate in the CCA's Cap-and-Invest Program (Program) are expanded to include:

- for electricity provided as balancing energy for a resource located in Washington, including balancing energy within a balancing authority area that includes areas outside of Washington, the electricity importer may be defined by Ecology rule; and
- for imported electricity not otherwise assigned an electricity importer in the other nine categories of specified persons whose activities qualify them as an electricity importer, the electricity importer may be defined by Ecology rule.

The exclusion from coverage under the CCA of electricity imports of unspecified electricity netted by exports of unspecified electricity to a non-linked jurisdiction by the same entity within the same hour is eliminated.

For unspecified sources of electricity, a first jurisdictional deliverer of electricity is a covered entity under the CCA if the cumulative annual total of emissions associated with the imported electricity exceeds zero tons of CO₂e.

Offset Projects and Credits.

The entire 8 percent of a covered entity's compliance obligation that may be satisfied by offset projects in the first compliance period may be satisfied by offset projects on federally recognized Indian tribal land. The entire 6 percent of a covered entity's compliance obligation that may be satisfied by offset projects during the second compliance period may be satisfied by offset projects on federally recognized Indian tribal land. An entity that does not generate or obtain any offset credits from offset projects on federally recognized Indian tribal land is limited to satisfying 5 percent of its compliance obligation from offset credits in the first compliance period, and is limited to satisfying four percent of its compliance obligations from offset credits in the second compliance period.

The requirement that offset credits be generated wholly after July 25, 2021, or within two years prior to July 25, 2021, applies only to offset credits issued by Ecology that are consistent with Ecology-adopted protocols. Offset credits issued by a jurisdiction with which Washington has entered into a linkage agreement must come from offset projects that are located in the linked jurisdiction.

Auction and Holding Limits.

The auction purchase limit for a single covered entity or opt-in entity is increased from 10 percent of the allowances offered during a single auction to 25 percent of the allowances offered during a single auction.

The 10 percent limit on the number of allowances from a single calendar year that a general market participant may own applies only until Washington links with a jurisdiction that does not have this requirement.

Penalty Discretion.

The discretion for Ecology to reduce the amount of penalty allowances or civil penalties issued for violations during the first compliance period of the Program is eliminated.

Other.

The changes to the CCA and GHG emission reporting requirements are declared to not constitute an alternative to Initiative 2117. If a court of competent jurisdiction enters a final judgment that is no longer subject to appeal directing the Secretary of State to place this act on the ballot in the November 2024 general election as a conflicting measure to Initiative 2117, the act is null and

void and may not be placed on the ballot.

Appropriation: None.

Fiscal Note: Requested on January 5, 2024.

Effective Date: The bill contains a contingent effective date. Please see the bill.