ESB 6246 - H AMD **2342**
By Representative Doglio

ADOPTED 03/06/2026

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 70A.65.110 and 2024 c 352 s 6 are each amended to read as follows:

(1) Facilities owned or operated by a covered entity must receive an allocation of allowances for the covered emissions at those facilities under this subsection at no cost if the operations of the facility are classified as emissions-intensive and trade-exposed, as determined by being engaged in one or more of the processes described by the following industry descriptions and codes in the North American industry classification system as those classifications existed on January 1, 2026:

(a) Metals manufacturing, including iron and steel making, ferroalloy and primary metals manufacturing, secondary aluminum smelting and alloying, aluminum sheet, plate, and foil manufacturing, and smelting, refining, and alloying of other nonferrous metals, North American industry classification system codes beginning with 331;

(b) Paper manufacturing, including pulp mills, paper mills, and paperboard milling, North American industry classification system codes beginning with 322;

(c) Aerospace product and parts manufacturing, North American industry classification system codes beginning with 3364;

(d) Wood products manufacturing, North American industry classification system codes beginning with 321;

(e) Nonmetallic mineral manufacturing, including glass container manufacturing, North American industry classification system codes beginning with 327;

(f) Chemical manufacturing, North American industry classification system codes beginning with 325;

(g) Computer and electronic product manufacturing, including semiconductor and related device manufacturing, North American industry classification system codes beginning with 334;

(h) Food manufacturing, North American industry classification system codes beginning with 311;

(i) Cement manufacturing, North American industry classification system code 327310;

(j) Petroleum refining, North American industry classification system code 324110;

(k) Asphalt paving mixtures and block manufacturing from refined petroleum, North American industry classification system code 324121;

(l) Asphalt shingle and coating manufacturing from refined petroleum, North American industry classification system code 324122; and

(m) All other petroleum and coal products manufacturing from refined petroleum, North American industry classification system code 324199.

(2) By July 1, 2022, the department must adopt by rule objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive, trade-exposed ((~~manufacturing businesses~~)) facilities during the second compliance period of the program and subsequent compliance periods. A manufacturing facility covered by subsection (1)(a) through (m) of this section is considered an emissions-intensive, trade-exposed facility and is eligible for allocation of no cost allowances as described in this section. In addition, any covered party that ((~~is a manufacturing business~~)) owns or operates a manufacturing facility that can demonstrate to the department that it meets the objective criteria adopted by rule is also eligible for treatment as emissions-intensive, trade-exposed and is eligible for allocation of no cost allowances as described in this section. In developing the objective criteria under this subsection, the department must consider the locations of facilities potentially identified as emissions-intensive, trade-exposed ((~~manufacturing businesses~~)) facilities relative to overburdened communities.

(3)(a) For the years 2023 through 2026, the annual allocation of no cost allowances for direct distribution to a facility identified as emissions-intensive and trade-exposed must be equal to the facility's baseline carbon intensity established using data from 2015 through 2019, or other data as allowed under this section, multiplied

by the facility's actual production for each calendar year during the compliance period. For facilities using the mass-based approach, the allocation of no cost allowances shall be equal to the facility's mass-based baseline using data from 2015 through 2019, or other data as allowed under this section.

(b) For the four years beginning January 2027 and in each subsequent four-year period, the annual allocation of no cost allowances established in (a) of this subsection shall be adjusted according to the benchmark reduction schedules established in (b)(ii) and (iii) and (e) of this subsection multiplied by the facility's actual production during the period. The department shall adjust the no cost allocation of allowances and credits to an emissions-intensive and trade-exposed facility to avoid duplication with any no cost allowances transferred pursuant to RCW 70A.65.120 and 70A.65.130, if applicable.

(i) For the purpose of this section, "carbon intensity" means the amount of carbon dioxide equivalent emissions from a facility in metric tons divided by the facility specific measure of production including, but not limited to, units of product manufactured or sold, over the same time interval.

(ii) If an emissions-intensive and trade-exposed facility is not able to feasibly determine a carbon intensity benchmark based on its unique circumstances, the entity may elect to use a mass-based baseline that does not vary based on changes in production volumes. The mass-based baseline must be based upon data from 2015 through 2019, unless the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015. For the years 2023 through 2026, these facilities must be awarded no cost allowances equal to 100 percent of the facility's mass-based baseline. For each year during the years 2027 through 2030, these facilities must be awarded no cost allowances equal to 97 percent of the facility's mass-based baseline. For each year during the years 2031 through 2034, these facilities must be awarded no cost allowances equal to 94 percent of the facility's mass-based baseline. Except as provided in (b)(iii) of this subsection, if a facility elects to use a mass-based baseline, it may not later convert to a carbon intensity benchmark during the years 2023 through 2034.

(iii) A facility with a North American industry classification system code beginning with 3364 that is utilizing a mass-based baseline in (b)(ii) of this subsection must receive an additional no cost allowance allocation under this section in order to accommodate an increase in production that increases its emissions above the baseline on a basis equivalent in principle to those awarded to entities utilizing a carbon intensity benchmark pursuant to this subsection (3)(b). The department shall establish methods to award, for any annual period, additional no cost allowance allocations under this section and, if appropriate based on projected production, to achieve a similar ongoing result through the adjustment of the facility's mass-based baseline. An eligible facility under this subsection that has elected to use a mass-based baseline may not convert to a carbon intensity benchmark until the next compliance period.

(c)(i) By September 15, 2022, each emissions-intensive, trade-exposed facility shall submit its carbon intensity baseline for the first compliance period to the department. The carbon intensity baseline for the first compliance period must use data from 2015-2019, unless the emissions-intensive, trade-exposed facility can demonstrate that there have been abnormal periods of operation that materially impacted the facility and the baseline period should be expanded to include years prior to 2015.

(ii) By November 15, 2022, the department shall review and approve each emissions-intensive, trade-exposed facility's baseline carbon intensity for the years 2023 through 2026.

(d) During the years 2023 through 2026, each emissions-intensive, trade-exposed facility must record its facility-specific carbon intensity baseline based on its actual production.

(e)(i) For the years 2027 through 2030, the second period benchmark for each emissions-intensive, trade-exposed facility is three percent below the first period baseline specified in (a), (b), and (c) of this subsection.

(ii) For the years 2031 through 2034, the third period benchmark for each emissions-intensive, trade-exposed facility is three percent lower than the years 2027 through 2030.

(f) Prior to the beginning of 2027, 2031, or subsequent four-year periods, the department may make an upward adjustment in the next four-year period's benchmark for an emissions-intensive, trade-exposed facility based on the facility's demonstration to the

department that additional reductions in carbon intensity or mass emissions are not technically or economically feasible. The department may base the upward adjustment applicable to an emissions-intensive, trade-exposed facility in the next four-year period on the facility's best available technology analysis, and may consider information submitted to the department under subsection (9) of this section. The department shall by rule provide for an emissions-intensive, trade-exposed ((~~facilities~~)) facility to apply to the department for an upward adjustment to the allocation for direct distribution of no cost allowances based on its facility-specific carbon intensity benchmark or mass emissions baseline. The department shall make adjustments based on:

(i) A significant change in the emissions use or emissions attributable to the manufacture of an individual good or goods in this state by an emissions-intensive, trade-exposed facility based on a finding by the department that an adjustment is necessary to accommodate for changes in the manufacturing process that have a material impact on emissions;

(ii) Significant changes to an emissions-intensive, trade-exposed facility's external competitive environment that result in a significant increase in leakage risk; or

(iii) Abnormal operating periods when an emissions-intensive, trade-exposed facility's carbon intensity has been materially affected so that these abnormal operating periods are either excluded or otherwise considered in the establishment of the carbon intensity benchmarks.

(4)((~~(a) By December 1, 2026, the department shall provide a report to the appropriate committees of the senate and house of representatives that describes alternative methods for determining the amount and a schedule of allowances to be provided to facilities owned or operated by each covered entity designated as an emissions-intensive, trade-exposed facility from January 1, 2035, through January 1, 2050. The report must include a review of global best practices in ensuring against emissions leakage and economic harm to businesses in carbon pricing programs and describe alternative methods of emissions performance benchmarking and mass-based allocation of no cost allowances. At a minimum, the department must evaluate benchmarks based on both carbon intensity and mass, as well as the use of best available technology as a method for compliance. In developing the report, the department shall form an advisory group~~

~~that includes representatives of the manufacturers listed in subsection (1) of this section.~~

~~(b)~~)) If the legislature does not adopt a ((~~compliance obligation for~~)) schedule of allowances to be provided to facilities owned or operated by each covered entity designated as emissions-intensive, trade-exposed facilities ((~~by December 1, 2027~~)) from January 1, 2035, through January 1, 2050, those facilities must continue to receive allowances as provided in the years 2031 through 2034 until a schedule is adopted by the legislature.

(5) If the actual emissions of an emissions-intensive, trade-exposed facility exceed the facility's no cost allowances assigned for that compliance period, it must acquire additional compliance instruments such that the total compliance instruments transferred to its compliance account consistent with this chapter equals emissions during the compliance period. An emissions-intensive, trade-exposed facility must be allowed to bank unused allowances, including for future sale and investment in best available technology when economically feasible. The department shall limit the use of offset credits for compliance by an emissions-intensive, trade-exposed facility, such that the quantity of no cost allowances plus the provision of offset credits does not exceed 100 percent of the facility's total compliance obligation over a compliance period.

(6) The department must withhold or withdraw the relevant share of allowances allocated to a covered entity under this section in the event that the covered entity ceases production in the state and becomes a closed facility. In the event an entity curtails all production and becomes a curtailed facility, the allowances are retained but cannot be traded, sold, or transferred and are still subject to the emissions reduction requirements specified in this section. An owner or operator of a curtailed facility may transfer the allowances to a new operator of the facility that will be operated under the same North American industry classification system codes. If the curtailed facility becomes a closed facility, then all unused allowances will be transferred to the emissions containment reserve. A curtailed facility is not eligible to receive free allowances during a period of curtailment. Any allowances withheld or withdrawn under this subsection must be transferred to the emissions containment reserve.

(7) An owner or operator of more than one facility receiving no cost allowances under this section may transfer allowances among the eligible facilities.

(8) Rules adopted by the department under this section must include protocols for allocating allowances at no cost to an eligible facility built after July 25, 2021. The protocols must include consideration of the products and criteria pollutants being produced by the facility, as well as the local environmental and health impacts associated with the facility. For a facility that is built on tribal lands or is determined by the department to impact tribal lands and resources, the protocols must be developed in consultation with the affected tribal nations.

(9)(a) The purpose of the reporting requirements of this subsection (9) is to establish a framework under which measures for reducing greenhouse gas emissions by emissions-intensive, trade-exposed facilities in support of statewide emissions limits, including implementation barriers, can be identified, evaluated, and progressed. It is not, however, the intent of the legislature that the reporting framework established in this section require implementation of any specific emissions reduction measures identified, but to collect information that will inform the development and implementation of state policies and programs that directly support or enable emissions reduction activities by emissions-intensive, trade-exposed facilities. The legislature intends, using the provisions of this subsection (9), for a future legislature to establish a framework that will:

(i) Achieve emissions reductions by emissions-intensive, trade-exposed facilities in a manner that does not conflict with the overall allowance budgets established under this chapter and that does not prohibit the state from achieving the statewide emissions limits of chapter 70A.45 RCW; and

(ii) Inform the development and implementation of policies and programs, including financial incentives, to support and enable emissions reductions by owners and operators of emissions-intensive, trade-exposed facilities, including when the department and other state agencies consider grant applications or award other funds deriving from revenues under this chapter.

(b) By December 1, 2028, and every four years thereafter, the owner or operator of an emissions-intensive, trade-exposed facility

must provide the following to the department in a form and manner prescribed by the department through guidance or rule:

(i) Information about the greenhouse gas emissions of each emissions-intensive facility, including industrial processes resulting in greenhouse gas emissions; and

(ii) An assessment of technically and economically feasible measures to reduce greenhouse gas emissions at the facility. The assessment must:

(A) Identify technically feasible emissions reduction projects in each facility that could be implemented within the next five to 10 years, based on a comprehensive review of current scientific and technical sources along with their estimated implementation costs and an assessment of economic feasibility, including justification for the conclusions reached. For each applicable emissions reduction project, the following information must be provided:

(I) A description of the project;

(II) The project's ability to meet process specifications, permitting requirements, and low, medium, and high heat temperature ranges;

(III) Estimated emissions reductions;

(IV) Availability or maturation of technology;

(V) Estimated capital expenditures;

(VI) Estimated annual operating expenditures, including changes in annual costs resulting from project implementation, such as energy or maintenance costs;

(VII) Cost-effectiveness;

(VIII) Estimated implementation timeline;

(IX) Project constraints, if applicable, such as electricity supply availability and permitting requirements; and

(X) Estimated impacts on the emissions of criteria air pollutants and hazardous air pollutants by the facility;

(B) Evaluate potential measures for greenhouse gas emissions reductions at the facility including, but not limited to, any combination of improved energy efficiency, deployment of new technologies, fuel switching, or energy conversion; and

(C) Be reviewed by a licensed professional engineer that is not employed by or currently otherwise working under a contract with the emissions-intensive, trade-exposed facility, its subsidiaries, or related entities and has no common ownership with the facility or covered entity. The licensed professional engineer must certify that:

(I) The information submitted in this subsection (9)(b)(ii) is credible; and

(II) The owner or operator of an emissions-intensive, trade-exposed facility has undertaken a comprehensive and credible process to identify projects for greenhouse gas emissions reductions that are technically and economically feasible within the next five to 10 years.

(c) In addition to potential measures to reduce emissions at the facility, the owner or operator of an emissions-intensive, trade-exposed facility may optionally include in its assessment submitted under (b)(ii) of this subsection (9), alternative projects that:

(i) Reduce emissions upstream or downstream of the facility;

(ii) Relate to raw material input; or

(iii) Provide cobenefits alongside emissions reductions, including community or environmental benefits.

(d) For the limited purpose of calculating emissions or submitting an assessment as provided in (b) of this subsection (9), the department must not require any new permanent submetering for greenhouse gas emissions sources. Nothing in this subsection limits the authority of the department to require permanent submetering for other purposes, including under this chapter, or in conjunction with future authority provided under this section by the legislature.

(e) The department must assess a penalty in accordance with RCW 70A.65.200(5) if an owner or operator of an emissions-intensive, trade-exposed facility fails to comply with the requirements of this subsection (9).

(f) Information contained in assessments submitted to the department by an emissions-intensive, trade-exposed facility under this subsection (9) are records containing financial, proprietary, and other market-sensitive information in accordance with RCW 70A.65.100(9)(c), and such assessments are fully exempt from public disclosure in their entirety. The department may make public summarized information contained in assessments submitted under this subsection (9) in an aggregated manner that does not allow for the identification of any facility-specific financial, proprietary, or market-sensitive information.

NEW SECTION. **Sec. 2.** A new section is added to chapter 70A.65 RCW to read as follows:

(1) By December 1, 2026, the department shall provide recommendations for the consideration of the legislature regarding the schedule of allowances to be provided to emissions-intensive, trade-exposed facilities specified in RCW 70A.65.110 from January 1, 2035, through January 1, 2050.

(2) Recommendations in the report due December 1, 2026, must identify:

(a) A proposed method for making annual reductions to emissions-intensive, trade-exposed facility allowance allocation that would ensure against leakage and ensure total no-cost allowances allocated to emissions-intensive, trade-exposed facilities do not conflict with the annual allowance budgets established by the department under RCW 70A.65.070 and do not prohibit the state from achieving the emissions limits established in RCW 70A.45.020, including the percentage reductions in emissions-intensive, trade-exposed facility allowance allocation that would be applied each year from January 1, 2035, through January 1, 2050;

(b) Proposed criteria and methods to make adjustments to allowances allocated at no cost to emissions-intensive, trade-exposed facilities to address significant changes in leakage risk and to achieve the purposes of the greenhouse gas emissions cap and invest program established under this chapter including, but not limited to, the achievement of emissions limits established in RCW 70A.45.020;

(c) The proposed design of an allowance allocation policy or method that would require a portion of the allowances provided at no cost to emissions-intensive, trade-exposed facilities to be consigned to auction and for the proceeds to be invested in projects or programs for reducing greenhouse gas emissions at the emissions-intensive, trade-exposed facilities from which they were consigned, including the percentage of allowances to be consigned to auction and proposed criteria and methods for the distribution and use of consigned funds at each emissions-intensive, trade-exposed facility;

(d) Additional state policies or strategies that may be necessary to support the reduction of emissions and decarbonization of emissions-intensive, trade-exposed facilities in support of the achievement of emissions limits established in RCW 70A.45.020, including how to address technological and economic feasibility and infeasibility, and other barriers to implementation; and

(e) Provisions of this chapter or other state laws that need to be amended to implement the recommendations developed by the department under this section.

(3) In developing these recommendations, the department must consider input received from representatives of the facilities listed in RCW 70A.65.110(1), covered entities, environmental advocates, overburdened communities, tribes, subject matter experts, and the public, and should consider:

(a) Anticipated demand for allowances from emissions-intensive, trade-exposed facilities and other covered entities through 2050;

(b) Potential for deployment of technologies and strategies for reducing emissions at emissions-intensive, trade-exposed facilities through 2050 and other facility-specific or industry-specific factors, including consideration of factors that may affect deployment of these technologies and strategies, such as technical and economic feasibility and infeasibility;

(c) Potential impacts of implementing the recommendations on overburdened communities and vulnerable populations; and

(d) Interactions with other state policies and programs designed to reduce greenhouse gas emissions and achieve statewide emissions limits established in RCW 70A.45.020.

(4) In addition to these recommendations, the department may include information on additional state policies or strategies that incentivize emissions-intensive, trade-exposed facilities to use lower-carbon raw materials, recycled materials, or material substitutions, to reduce the emissions attributable to the manufacture of an individual good or goods in the state.

(5) This section expires July 1, 2029.

NEW SECTION. **Sec. 3.** (1) The department of ecology, in consultation with the department of commerce, must contract for an independent third party to complete a report on the risk of emissions and job leakage from emissions-intensive, trade-exposed facilities specified in RCW 70A.65.110. The report must estimate impacts on employment, investment, production, and the risk of leakage for each affected industry. The study must be completed by December 1, 2028, and published on the department's website.

(2) This section expires July 1, 2029."

Correct the title.

EFFECT: • Requires Ecology, in consultation with the Department of Commerce, to contract for an independent third party to complete a report on emissions and job leakage from emissions-intensive, trade-exposed (EITE) facilities, due December 1, 2028.

• Amends the contents of Ecology's 2026 report to the Legislature regarding the post-2035 allocation of allowances to EITE facilities, including by (1) specifying that allowance allocations must ensure against leakage rather than mitigate leakage and (2) requiring that allocations not conflict with the Climate Commitment Act's (CCA) allowance budgets and do not prohibit the state from achieving state emissions limits, rather than that the allocations align with CCA allowance budgets and be consistent with state emissions limits.

• Eliminates the requirement that EITE facilities require information to Ecology specifically addressing greenhouse gas emissions from each unit within an EITE facility.

• Amends the contents of EITE assessments of potential greenhouse gas emissions reduction projects that must be submitted to Ecology, including by requiring the assessment to identify technically feasible emissions reduction projects in each facility that could be implemented within the next five to 10 years, and by requiring assessments to address estimated impacts on criteria air pollutant and hazardous air pollutant emissions.

• Requires the licensed professional engineers that review EITE assessments to not be employed by or currently otherwise working under a contract with the EITE facility, its subsidiaries, or related entities.

• Specifies that the limits on Ecology's authority to require submetering by EITE facilities associated with the new assessment and GHG reporting requirements for EITE facilities does not limit other existing authority of Ecology, or the ability of the Legislature to extend such authority in the future.

• Provides that information in EITE assessments submitted to Ecology are records containing financial proprietary, or market sensitive information, and that EITE assessments are fully exempt from public disclosure.

• Authorizes Ecology to make public summarized, aggregated information contained in EITE assessments.

--- END ---