

HOUSE BILL REPORT

HB 2537

As Reported by House Committee On:
Environment & Energy

Title: An act relating to emissions from emissions-intensive, trade-exposed facilities under the climate commitment act.

Brief Description: Concerning emissions from emissions-intensive, trade-exposed facilities under the climate commitment act.

Sponsors: Representatives Doglio, Fitzgibbon, Berry, Parshley, Pollet, Ramel and Scott.

Brief History:

Committee Activity:

Environment & Energy: 1/27/26, 2/3/26 [DP].

Brief Summary of Bill

- Requires the owners or operators of emissions-intensive trade-exposed (EITE) facilities covered under the Climate Commitment Act to report certain information to the Department of Ecology (Ecology) and develop plans to reduce greenhouse gas emissions, as a condition of the continued receipt of no-cost allowances.
- Amends the required contents of an Ecology report on EITE no-cost allowance allocation that is due to the Legislature in December, 2026.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 12 members: Representatives Doglio, Chair; Hall, Vice Chair; Berry, Duerr, Fey, Hackney, Kloba, Mena, Ramel, Stearns, Street and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Abell, Barnard and Ley.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 4 members: Representatives Abbarno, Mendoza, Stuebe and Ybarra.

Staff: Jacob Lipson (786-7196).

Background:

State law establishes the following limits on the emissions of greenhouse gases (GHGs) in Washington:

- 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.

Under the Climate Commitment Act (CCA), in order to ensure that GHG emissions are reduced consistent with the state's 2030, 2040, and 2050 emissions limits, the Department of Ecology (Ecology) is required to implement a program that establishes a cap on GHG emissions from covered entities and that tracks, verifies, and enforces compliance through the use of allowances or offset credits. The Cap-and-Invest Program (Program) commenced on January 1, 2023.

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. Under Ecology's rules adopted to implement the Program, the allowance budgets are set to be reduced:

- by 7 percent each year between 2023 and 2030;
- by 1.8 percent from 2031 to 2042; and
- by 2.6 percent each year from 2043 to 2049.

All covered and opt-in entities are required to submit allowances or offset credits in a timely manner to meet their compliance obligations, which are based on an entity's GHG emissions over a compliance period of four years. Most CCA violations are subject to a penalty of up to \$10,000 per violation per day for noncompliance, although violations of certain Program requirements are subject to alternative penalty amounts.

Allowances are available for purchase at quarterly auctions open to covered entities and other Program participants. Electric utilities, natural gas utilities, and emissions-intensive trade-exposed (EITE) facilities also receive no-cost allowance allocations directly distributed to them by Ecology. Owners or operators of EITE facilities that are required to participate in the Program receive an allocation of allowances at no cost as follows:

- For the years 2023 through 2026, 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. A facility 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 years 2027 through 2030, 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.
- For the years 2031 through 2034, 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.
- If the Legislature does not adopt a compliance obligation for EITE facilities by December 1, 2027, those facilities must continue to receive allowances as provided in the years 2031 through 2034.

Ecology is required to submit a report to the Legislature by December 1, 2026, that describes alternative methods for determining the amount and schedule of allowances to be provided to EITE facility owners and operators from January 1, 2035, through January 1, 2050. Ecology submitted a report to the Legislature on this topic in January of 2026.

Summary of Bill:

The report from Ecology due to the Legislature by December 1, 2026, must provide recommendations addressing the schedule of allowances provided to EITE facilities from 2035 to 2050. The report must identify:

- a proposed method for making annual reductions to EITE allowance allocations that would ensure alignment with the allowance budgets established by Ecology for the Program and with state emission limits;
- proposed criteria and methods for Ecology to adjust EITE no-cost allowance allocations to address significant changes in leakage risk and to achieve Program purposes and state emission limits;
- the proposed design of a policy that would require a portion of an EITE facility's no-cost allowances to be consigned to auction, with the proceeds invested in GHG reductions at the EITE facility;
- additional state policies or strategies related to EITE decarbonization and emission reductions; and
- provisions of state law that would need to be amended to implement these recommendations.

In developing these recommendations, Ecology must consider input from certain parties and should consider other specified factors.

If the Legislature does not adopt a schedule of allowances to be provided to EITE owners or operators from January 1, 2035, through January 1, 2050, those EITE facilities must continue to receive allowances as provided for in the years 2031 through 2034 until a schedule is adopted.

To receive no-cost allowances associated with GHG emissions after January 1, 2027, an EITE facility owner or operator must provide biennial reports to Ecology beginning March 31, 2028, and must submit plans by March 31, 2028, that are updated every four years afterwards.

The biennial reports to Ecology by EITE owners or operators must include information about the GHG emissions of each unit of each EITE facility, including:

- the products and volumes of products produced by the facility;
- a qualitative description of EITE facility emission sources; and
- emissions associated with industrial processes, electrical generation, fossil fuel combustion for low-temperature heat, medium-temperature heat, and high-temperature heat, and other information adopted by Ecology by rule.

Reports must be accompanied by a description and data documenting that the EITE facility owner or operators has achieved tangible progress towards implementing best practices for energy efficiency at the facility, as determined by Ecology.

The plans submitted to Ecology by EITE owners or operators every four years must:

- assess potentially technically feasible or emerging technology options to reduce EITE facility emissions that are subject to Program requirements;
- include all GHG reduction measures that have the potential to result in meaningful emission reductions;
- be informed by a best available technology assessment;
- consider opportunities associated with low-, medium-, and high-temperature heat categories;
- be verified by an independent third party; and
- include certain minimum contents, including technical aspects of each option, the expected GHG emission reductions, a budget and expected timeline, the identification of complementary options, and a summary of any emission reductions achieved consistent with previous planning efforts by the EITE facility.

Violations of EITE reporting or planning requirements are subject to a penalty of up to \$10,000 per violation per day for noncompliance. Information submitted to Ecology must be structured to include a self-contained part that contains no confidential information, and a second part intended to be available only for the confidential use of Ecology, which

Ecology must treat as confidential when consistent with Ecology's standard agency process for confidential information it receives.

Several statements declaring the purpose of the new EITE reporting and planning obligations are included. These statements reference an intent to use the reporting and planning obligations as a starting point to achieve EITE emission reductions in a manner compatible with overall Program allowance budgets and that provides appropriate financial incentives for early actions by EITE owners, and to consider EITE facility owner actions when Ecology considers grant applications or awards from funds deriving from Program revenues.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Emissions-intensive trade-exposed facilities represent a range of types of industries. Under the CCA, EITEs will continue to receive more free allowances than the long-term allowance budget of the Program can accommodate. Each EITE is different and faces unique challenges in decarbonizing. The state's policy goal is to avoid leakage whereby EITEs move to other jurisdictions that do not have climate policies. Requiring EITEs to plan for decarbonization will spur innovation by businesses. Reporting and planning by EITEs will allow the state to better understand what is possible to expect of EITE decarbonization in the future. It is reasonable for free allowance subsidies to be conditional upon additional reporting and planning requirements. The EITEs should be subject to a consignment policy that sets aside a percentage of the free allowances they receive, to be invested back into plans to reduce GHGs at each EITE facility. The new Ecology report due at the end of this year will help set the stage for additional policy conversations on this topic next year. The planning and reporting requirements in this bill will need to be paired with additional future policy changes to ensure the achievement of the CCA's goals and statewide emission limits.

(Opposed) All EITEs compete in a global marketplace. If financial pressures on EITEs from carbon policy become too great, they will close businesses in Washington or reduce production rather than deploy capital and technology investments to decarbonize. Many EITEs have already taken the comparatively easy and cost-effective decarbonization improvements that are available to them. The EITEs face major constraints in decarbonization efforts, including uncertain permitting timelines that make it challenging to obtain project financing, and difficulty obtaining the large amounts of electricity needed to

electrify industrial processes. Recent increases in electricity prices are already putting financial pressure on many EITEs in Washington, and in some areas of the state it is cheaper to use natural gas than electricity to run industrial processes. Policy that is focused on EITEs, including the conditioning of no-cost allowances that were promised to the EITEs when the CCA was enacted, should retain leakage avoidance as the primary policy focus. Leakage of GHG emissions to other jurisdictions does nothing to help the global climate problem that the CCA is attempting to address. Working families will bear the consequences of EITE facility closures. The EITEs would benefit from targeted state financial support for facility decarbonization. New reporting and planning requirements will be costly and time consuming efforts that would be better directed towards actually implementing decarbonization projects.

(Other) The EITE facilities are critical to the long-term success of the CCA. The data and reporting requirements will generally be helpful in informing future EITE policy development, but should contain the flexibility to be adjusted by future rulemakings. There are significant costs to implement the new requirements that are not in the Governor's budget. Policies for EITEs should recognize the permitting and electricity access challenges, and allocate more allowances to facilities to incentivize capital investments. An EITE brings good jobs to communities. The policy recommendations that Ecology makes to the Legislature should be focused on avoiding leakage. Facilities should receive credits for GHG-reducing actions other than direct facility emission reductions, such as by reducing the carbon intensity of product inputs. Many EITE facilities have already made significant decarbonization investment in recent years. Most EITE facilities are already doing decarbonization planning, and have taken cost-effective steps that can be achieved.

Persons Testifying: (In support) Representative Beth Doglio, prime sponsor; Leah Missik, Climate Solutions; Caitlin Krenn, Washington Conservation Action; David Mendoza, The Nature Conservancy; and Kate White Tudor, The Natural Resources Defense Council.

(Opposed) Jessica Spiegel, WSPA; Peter Godliewski, AWB; Brandon Houskeeper, Alliance of Western Energy Consumers; Josh Estes, Association of Western Pulp and Paper Workers; Chris McCabe, Northwest Pulp and Paper Association; Diana Carlen, Food NW; and Perry Hanson, Simplot Company.

(Other) Joel Creswell, Washington Department of Ecology; Isaac Kastama, Clean and Prosperous Washington; Joe Schwindt, USW Local 338; Edgar Scott, Kaiser Aluminum; Steve Taylor, Cowlitz PUD; and Toyin Olowu, Nucor Steel.

Persons Signed In To Testify But Not Testifying: None.