CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2077

Chapter 419, Laws of 2025

69th Legislature
2025 Regular Session

SURPLUS ZERO-EMISSION VEHICLE CREDITS—BANKING AND SALE—EXCISE TAX

EFFECTIVE DATE: May 20, 2025

Passed by the House April 22, 2025
Yeas 52 Nays 45

LAURIE JINKINS

Speaker of the House of Representatives

Passed by the Senate April 26, 2025
Yeas 28 Nays 19

DENNY HECK

President of the Senate

Approved May 20, 2025 3:28 PM

BOB FERGUSON

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2077** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 21, 2025

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 2077

Passed Legislature - 2025 Regular Session

State of Washington 69th Legislature 2025 Regular Session

By House Finance (originally sponsored by Representatives Fitzgibbon and Macri)

AN ACT Relating to establishing a tax on certain business activities related to surpluses generated under the zero-emission vehicle program; amending RCW 42.56.270; adding a new chapter to Title 82 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The legislature finds that the zero-emission vehicle program is a key policy supporting state efforts to achieve greenhouse gas emissions reductions required in RCW 70A.45.020. The advanced clean cars and advanced clean cars II components of the zero-emission vehicle program require manufacturers of passenger cars and light duty trucks to achieve an escalating minimum percentage of zero-emission vehicles for sale or lease in Washington, or to obtain surplus credits from an auto manufacturer that has exceeded this minimum compliance obligation. By providing for the creation of these tradeable and bankable credits, the program creates an incentive for vehicle manufacturers to maximize their investments in developing and selling cleaner cars. The legislature also finds that the creation of these tradeable and bankable credits creates the opportunity for a financial windfall accruing to firms that are not burdened by the legacy production of internal combustion engine vehicles that make a compliance obligation more difficult

under the program. Therefore, it is the intent of the legislature to address this unintended outcome by taxing the windfall profits from the generation of surplus zero-emission vehicle credits and reinvesting those funds in other programs and incentives that promote cleaner vehicles that further state climate goals.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Banked" means a ZEV credit that a manufacturer has carried over for use in future model years in which a manufacturer has a shortfall or for use to offset a manufacturer's deficit carried over from a previous model year.

(2) "Manufacturer" has the same meaning as in WAC 173-423-040, as it existed as of January 1, 2025.

(3) "Model year" has the same meaning as in WAC 173-423-040, as it existed as of January 1, 2025.

(4) "Pooled" means a ZEV credit that has been earned in Washington and transferred to another state that implements a program for zero-emission vehicles that is consistent with California motor vehicle emissions standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act).

(5) "Surplus" means when a manufacturer's zero-emission vehicle requirement performance is above the applicable annual zero-emission vehicle requirement, as calculated under the zero-emission vehicle program rules adopted by the department of ecology.

(6)(a) "Zero-emission vehicle program" means a rule adopted by the department of ecology under chapter 70A.30 RCW that requires manufacturers to deliver a minimum percentage of zero-emission vehicles in or into Washington that is applicable to passenger cars, light duty trucks, and medium duty vehicles. "Zero-emission vehicle program" includes the rule adopted by the department of ecology codified in chapter 173-423 WAC, as it existed as of the effective date of this section, and any successor rules adopted by the department of ecology applicable to passenger cars, light duty trucks, and medium duty vehicles.

(b) "Zero-emission vehicle program" does not include the advanced clean trucks rule adopted by the department of ecology under chapter 70A.30 RCW or other successor rules adopted by the department under chapter 70A.30 RCW applicable to heavy duty vehicles.

(7) "Zero-emission vehicle requirement" means a manufacturer's zero-emission vehicle production required, expressed in whole vehicles, for the applicable model year under the zero-emission vehicle program.

(8) "ZEV credit" means a unit of measure generated when a manufacturer delivers a zero-emission vehicle or qualifying plug-in hybrid vehicle for sale in Washington or undertakes other activities specified in rules adopted by the department of ecology to implement chapter 70A.30 RCW.

NEW SECTION. **Sec. 3.** (1) By October 31st of each year, the department of ecology must transmit to the department the following information related to each manufacturer's zero-emission vehicle program activities during the preceding model year, using information reported to the department of ecology under chapter 70A.30 RCW:

(a) Beginning with implementation of the zero-emission vehicle program for purposes of model year 2024, the number of surplus ZEV credits banked by each manufacturer for use in complying with the requirements of the zero-emission vehicle program during a future model year, and the model year of each banked credit. The information reported under this subsection (1)(a) must include any banked ZEV credits that were generated prior to model year 2024 that continued to be banked during implementation of the program in model year 2024 and in subsequent model years; and

(b) Beginning with implementation of the zero-emission vehicle program for purposes of model year 2024, for each purchase or sale of zero-emission vehicle credits by the manufacturer:

(i) The date of the purchase or sale;

(ii) The identity of the other manufacturer involved in the purchase or sale transaction;

(iii) The volume of zero-emission vehicle credits included in the purchase or sale; and

(iv) The model year of the credits purchased or sold.

(2) Beginning with implementation of the zero-emission vehicle program for purposes of model year 2024, each manufacturer must record and report to the department, in a form and manner prescribed by the department, the price, per credit and in total, of the zero-emission vehicle credits included in transactions specified in subsection (1)(b) of this section and in such a way that it identifies the specific transaction reported by the department of

ecology to the department. A manufacturer that sold credits associated with model year 2023 vehicles prior to the effective date of this section must report to the department the price per credit, and number of such credits sold, at the same time that it is required to report any sales of model year 2024 credits. Manufacturers must report the information required under this subsection by October 31st for the previous model year of the zero-emission vehicle program.

(3) Unaggregated information pertaining to the price of zero-emission vehicle credits in an individual zero-emission vehicle credit transaction is financial, commercial, and proprietary information exempt from public disclosure under chapter 42.56 RCW. Information related to the price of zero-emission vehicle credits in an individual zero-emission vehicle credit transaction under subsection (2) of this section must be aggregated by a time period no more frequent than the calendar quarter in which the transaction occurred, and in a manner that does not disclose the price of a ZEV credit in a specific transaction.

NEW SECTION. **Sec. 4.** (1) Beginning the effective date of this section for purposes of model year 2024 program implementation, an excise tax is imposed on the banking and sale of surplus ZEV credits as verified by the department of ecology for each model year. The excise tax imposed under this section does not apply to pooled surplus ZEV credits.

(a) For a ZEV credit sold to another manufacturer, the amount of the tax with respect to such sale is equal to the credit sales price reported under section 3 of this act multiplied by a rate of two percent.

(b) For a ZEV credit banked by a manufacturer, and thus considered sold under this chapter, the amount of tax with respect to the privilege of holding a banked ZEV credit for use in a future model year is equal to the average ZEV credit price calculated by the department under subsection (3) of this section, multiplied by the rate of 10 percent. For purposes of the tax imposed under this chapter, a banked ZEV credit held at the start of the next model year is considered sold.

(2) For each year of zero-emission vehicle program implementation that a ZEV credit is banked or continues to be banked, the manufacturer must pay the tax specified in subsection (1)(b) of this section. The tax in subsection (1)(b) of this section applies to

banked credits that were generated prior to model year 2024 that continue to be banked during implementation of the program for purposes of model year 2024 or subsequent model years.

(3) Based on the ZEV credit sales prices reported to the department under section 3 of this act:

(a) For each model year, the department must calculate the average ZEV credit price and share this information with the department of ecology for publication. The average ZEV credit price for a model year must be calculated by aggregating the reported sales prices of ZEV credits under section 3 of this act by all manufacturers that reported transactions for the model year. If there were no transactions of ZEV credits reported to the department for a specific model year, the department must apply the average ZEV credit price for the most recent model year for which such data are available for purposes of that specific model year.

(b) Beginning November 1, 2026, and each year thereafter, the department must calculate the amount of the tax by each manufacturer due under this section. The department must notify the manufacturer of their tax liability for the most recent reporting year no later than January 31st of the immediately following calendar year, except that the department may notify the manufacturer of their tax liability for both model year 2024 and model year 2025 no later than January 31, 2027.

(c) Once the average ZEV credit price has been calculated and is published to the department of ecology's website, the amount is considered final and cannot be altered based on amended information received by the department from the department of ecology or a participating manufacturer.

(4) Penalties and interest under chapter 82.32 RCW will apply to any tax liability not paid by the due date of the notice of tax liability under subsection (3) of this section.

(5) The proceeds from the tax imposed under this chapter must be deposited as follows:

(a) 30 percent to the electric vehicle incentive account created in RCW 43.330.365;

(b)(i) Until June 30, 2027, 70 percent to the state general fund; and

(ii) Beginning July 1, 2027, 70 percent to the carbon emissions reduction account created in RCW 70A.65.240.

NEW SECTION. **Sec. 5.** (1) Except as otherwise provided by law and to the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of taxes imposed under this chapter.

(2) The department may adopt any rules it considers useful in administering the tax under this chapter.

NEW SECTION. **Sec. 6.** The tax imposed under section 4 of this act does not apply to a manufacturer that banks or sells credits associated with zero-emission vehicles or qualifying plug-in hybrid zero-emission vehicles in an amount below a total of 25,000 zero-emission vehicles or plug-in hybrid zero-emission vehicles that are banked or sold for a model year by the manufacturer. A manufacturer that banks or sells ZEV credits, in total, for a model year of zero-emission vehicle program implementation in an amount equal to or exceeding the ZEV credits associated with 25,000 zero-emission vehicles or plug-in hybrid zero-emission vehicles must pay the tax imposed under this chapter on each credit banked or sold by the manufacturer for that model year.

NEW SECTION. **Sec. 7.** RCW 82.32.805 and 82.32.808 do not apply to this act.

NEW SECTION. **Sec. 8.** Sections 2 through 6 of this act constitute a new chapter in Title 82 RCW.

Sec. 9. RCW 42.56.270 and 2023 c 340 s 11 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative

public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, 43.168, and 43.181 RCW and RCW 43.155.160, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), cannabis producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed cannabis business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8);

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business; and

(iii) Financial or proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.31.625 (3)(b) and (4);

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of 60 days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70A.500 RCW to implement chapter 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell cannabis as allowed under chapter 69.50 RCW;

(25) Cannabis transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of cannabis product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the

liquor and cannabis board in applications for cannabis research licenses under RCW 69.50.372, or in reports submitted by cannabis research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed cannabis business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW 70A.515.130; ((~~and~~))

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW; and

(33) Unaggregated or individual information submitted to the department of revenue under section 3 of this act pertaining to the sales price of zero-emission vehicle credits in transactions between manufacturers.

NEW SECTION. **Sec. 10.** This act applies to ZEV credits banked or sold after the effective date of this act and thereafter.

NEW SECTION. **Sec. 11.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 12.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House April 22, 2025.
Passed by the Senate April 26, 2025.
Approved by the Governor May 20, 2025.
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