

By Senator Carlyle
[A.2]

P2SSB 5126 (S-2069.2/21) - S COMM AMD
By Committee on Ways & Means

1 On page 2, line 30, after "of" strike "greenhouse gas emissions
2 and"

3 On page 4, line 24, after "means" insert ", consistent with the
4 intergovernmental panel on climate change's 2019 report entitled
5 global warming of 1.5°C,"

6 On page 4, beginning on line 29, after "mineralization" strike
7 all material through "activities" on line 31

8 On page 5, line 5, after "(14)" insert "'Closed facility" means a
9 facility that has elected to permanently stop production and will no
10 longer be an emissions source.

11 (15)"

12 Renumber the remaining subsections consecutively and correct any
13 internal references accordingly.

14 On page 5, line 5, after "allowance" insert ", price ceiling
15 unit,"

16 On page 5, beginning on line 16, strike all of subsection (17)

17 Renumber the remaining subsections consecutively and correct any
18 internal references accordingly.

19 On page 5, line 35, after "(22)" insert "'Curtailed facility"
20 means a facility that has temporarily suspended production. The
21 facility maintains its operating permits and retains the option to
22 resume production if conditions become amenable.

23 (23)"

24 Renumber the remaining subsections consecutively and correct any
25 internal references accordingly.

1 On page 10, line 6, after "(51)" insert ""Price ceiling unit"
2 means the units issued at a fixed price by the department for the
3 purpose of limiting price increases and funding further investments
4 in greenhouse gas reduction. A price ceiling unit is not a property
5 right.

6 (52)"

7 Renumber the remaining subsections consecutively and correct any
8 internal references accordingly.

9 On page 11, line 3, after "reductions in" strike "greenhouse gas
10 emissions and other"

11 On page 11, line 9, after "concentrations of" strike "greenhouse
12 gas emissions and"

13 On page 11, line 13, after "reviews of" strike "greenhouse gas
14 and"

15 On page 11, line 16, after "(c)" insert "(i)"

16 On page 11, beginning on line 17, after "which" strike all
17 material through "emissions and" on line 18 and insert "sources are
18 the greatest contributors of"

19 On page 11, after line 19, insert the following:

20 "(ii) Prior to listing any entity as a high priority emitter, the
21 department must notify that entity and share the data used to rank
22 that entity as a high priority emitter, and provide a period of not
23 less than 60 days for the covered entity to submit more recent data
24 or other information relevant to the designation of that entity as a
25 high priority emitter."

26 On page 11, line 21, after "determine if" strike "greenhouse
27 gases and"

28 On page 11, line 24, after "finds that" strike "greenhouse gases
29 and"

30 On page 11, beginning on line 29, after "identify the" strike
31 "covered entities and other"

1 On page 11, line 32, after "targets" strike "as expeditiously as
2 possible"

3 On page 11, line 33, after "methods" strike "and" and insert ".
4 Actions imposed under this section may not impose requirements on
5 covered entities or opt-in entities that are disproportionate to
6 their contribution to air pollution compared to other sources of
7 criteria pollutants in the overburdened community. The department
8 may"

9 On page 11, line 36, after "limitations" insert "on criteria
10 pollutants"

11 On page 11, line 37, after "(ii)" strike "Reduce" and insert "If
12 a covered entity or opt-in entity is identified as a high priority
13 emitter of criteria pollutants, and the emissions of greenhouse gases
14 and the source of criteria pollutants are correlated, reduce"

15 On page 12, line 2, after "of" insert "criteria pollutant"

16 On page 12, line 10, after "evaluating" strike "greenhouse gases
17 and"

18 On page 17, line 5, after "allowances;" strike "and"

19 On page 17, line 10, after "communities" insert "; and
20 (k) Creating a price ceiling and associated mechanisms in section
21 17 of this act"

22 On page 18, beginning on line 26, after "greenhouse gases" strike
23 "and criteria pollutants in overburdened communities"

24 On page 18, beginning on line 30, after "70A.45.020" strike all
25 material through "communities" on line 31

26 Beginning on page 18, line 38, after "limits." strike all
27 material through "areas." on page 19, line 3

28 On page 31, line 4, after "through" strike "2040" and insert
29 "2045"

30 On page 31, line 8, after "periods." insert "The rule developed
31 under this subsection (2)(d) may prescribe an amount of allowances
32 allocated at no cost that must be consigned to auction by consumer-

1 owned and investor-owned electric utilities. However, utilities may
2 use allowances for compliance equal to their covered emissions in any
3 calendar year they were not subject to potential penalty under RCW
4 19.405.090. Under no circumstances may utilities receive any free
5 allowances after 2045."

6 On page 31, line 20, after "auction." insert "For calendar year
7 2030, electric utilities may use allowances for compliance equal to
8 their covered emissions if not subject to potential penalty under RCW
9 19.405.090."

10 Beginning on page 33, line 34, after "WITHHOLDING." strike all
11 material through "limits." on page 34, line 19 and insert "(1) To
12 help ensure that the price of allowances remains sufficient to
13 incentivize reductions in greenhouse gas emissions, the department
14 must establish an emissions containment reserve and set an emissions
15 containment reserve trigger price by rule. The price must be set at a
16 reasonable amount above the auction floor price and equal to the
17 level established in jurisdictions with which the department has
18 entered into a linkage agreement. In the event that a jurisdiction
19 with which the department has entered into a linkage agreement has no
20 emissions containment trigger price, the department shall suspend the
21 trigger price under this subsection. The purpose of withholding
22 allowances in the emissions containment reserve is to secure
23 additional emissions reductions.

24 (2) In the event that the emissions containment reserve trigger
25 price is met during an auction, the department must automatically
26 withhold allowances as needed. The department must convert and
27 transfer any allowances that have been withheld from auction into the
28 emissions containment reserve account.

29 (3) Emissions containment reserve allowances may only be withheld
30 from an auction if the demand for allowances would result in an
31 auction clearing price that is less than the emissions containment
32 reserve trigger price prior to the withholding from the auction of
33 any emissions containment reserve allowances.

34 (4) Allowances shall also be transferred to the emissions
35 containment reserve in the following situations:

36 (a) No less than two percent of the total number of allowances
37 available from the allowance budgets for calendar years 2023 through
38 2026;

(b) When allowances are unsold in auctions under section 11 of this act;

(c) When facilities curtail or close consistent with section 12(7) of this act; or

(d) When facilities fall below the emissions threshold. The amount of allowances withdrawn from the program budget must be proportionate to the amount of emissions such a facility was previously using.

(5)(a) Allowances must be distributed from the emissions containment reserve by auction when new covered and opt-in entities enter the program.

(b) Allowances equal to the greenhouse gas emissions resulting from a new or expanded emissions-intensive, trade-exposed facility with emissions in excess of 25,000 metric tons per year during the first applicable compliance period will be provided to the facility from the reserve created in this section and must be retired by the facility. In subsequent compliance periods, the facility will be subject to the regulatory cap and related requirements under this chapter."

On page 34, line 32, after "than" strike "four" and insert "two"

On page 34, line 38, after "(3)" insert "(a)"

On page 35, after line 3, insert the following:

"(b) Allowances must also be distributed from the allowance price containment reserve by auction when new covered and opt-in entities enter the program and allowances in the emissions containment reserve under section 15 of this act are exhausted."

On page 35, after line 17, insert the following:

NEW SECTION. **Sec. 17.** PRICE CONTAINMENT. (1) The department shall establish a price ceiling to provide cost protection for facilities obligated to comply with this chapter. The ceiling must be set at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling, with the intent that investments accelerate the state's achievement of greenhouse gas limits established under RCW 70A.45.020. The price ceiling must increase annually in proportion to the price floor.

(2) In the event that no allowances remain in the allowance price containment reserve, the department must issue the number of price ceiling units for sale sufficient to provide cost protection for facilities as established under subsection (1) of this section. Purchases must be limited to entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts for the next compliance period and these entities may only purchase what they need to meet their compliance obligation for the current compliance period. Price ceiling units may not be sold or transferred and must be retired for compliance in the current compliance period.

(3) Funds raised in connection with the sale of price ceiling units must be expended to achieve emissions reductions on at least a metric ton for metric ton basis that are real, permanent, quantifiable, verifiable, enforceable by the state, and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 40, after line 2, insert the following:

"(8)(a) No city, town, county, township, or other subdivision or municipal corporation of the state may implement a charge or tax based exclusively upon the quantity of greenhouse gas emissions.

(b) No state agency may adopt or enforce a program that regulates greenhouse gas emissions from a stationary source except as provided in this chapter."

On page 42, beginning on line 27, after "funds," strike all material through "act," on line 28

Beginning on page 51, line 35, strike all of sections 25 through 27 and insert the following:

NEW SECTION. **Sec. 25.** CONSISTENCY WITH REVIEW OF NEW FACILITIES. (1) The legislature intends to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other locations. The legislature further intends to

1 see innovative new businesses locate and grow in Washington that
2 contribute to Washington's prosperity and environmental objectives.

3 (2) Consistent with the intent of the legislature to avoid the
4 leakage of emissions to other jurisdictions, in achieving the state's
5 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the
6 limits in a manner that recognizes that the siting and placement of
7 new best in class facilities that provide for the displacement of
8 more carbon-intensive processes is in the economic and environmental
9 interests of the state of Washington.

10 (3) For new or expanded facilities that require review under
11 chapter 43.21C RCW, and which would result in annual greenhouse gas
12 emissions in excess of 25,000 metric tons per year, the department
13 must evaluate the net cumulative greenhouse gas emissions of the
14 facility, including any net displacement of global emissions
15 resulting from the project. The department may adopt rules to
16 determine how to evaluate net cumulative emissions reductions.

17 (4) The limits in RCW 70A.45.020 or greenhouse gas emissions that
18 are addressed under this section may not be the basis for denial of a
19 permit application or for judicial review of the grant of a permit
20 for a new or expanded emissions-intensive and trade-exposed facility.

21 (5) Compliance with the requirements of this chapter is the only
22 mitigation for greenhouse gases that can be required from these
23 facilities.

24 (6) Inclusion as a covered entity under this chapter constitutes
25 mitigation of any significant adverse impacts with respect to
26 greenhouse gases for a facility subject to the requirements of the
27 state environmental policy act."

28 Renumber the remaining sections consecutively and correct any
29 internal references accordingly.

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30 On page 1, line 4 of the title, after "date;" strike "providing
31 an expiration date;"

EFFECT: Removes greenhouse gas (GHG) emissions from the coverage
of the environmental justice review, so that only criteria pollutant

emissions, concentrations, and reductions are monitored and evaluated in overburdened communities under the review.

Replaces references to "covered entities and other sources" with "sources" when describing potential emitters of criteria pollutants subject to the environmental justice review.

Requires the Department of Ecology (Ecology) to notify an entity before designating it as a high priority emitter and share the data used to rank that entity, and provide a period of not less than 60 days for the entity to submit more recent data or other information relevant.

Removes the requirement that the Department of Ecology (Ecology) achieve air quality reduction targets as expeditiously as possible, as part of the review.

Requires that actions imposed under the environmental justice review may not impose requirements on covered entities or opt-in entities that are disproportionate to their contribution to air pollution compared to other sources of criteria pollutants. If criteria pollutant reductions are not occurring in identified overburdened communities, provides that the department may, rather than must, adopt stricter air quality standards, emission standards, or emissions limitations; reduce offset limits; or revise a linkage agreement.

Provides that offset limits may only be reduced for a covered or opt-in entity under the review if emissions of GHGs and the source of criteria pollutants are correlated.

Removes the evaluation of GHG and criteria pollutant reductions in overburdened communities from the scope of the cap and invest program performance reviews occurring by 2028 and 2035.

Allows the electric utilities to retain an amount of allowances to cover emissions already offset under the Clean Energy Transformation Act.

Directs that the emissions containment reserve trigger price must be equal to the level established in linked jurisdictions. Ecology must suspend the trigger price if a linked jurisdiction has no trigger price.

Requires allowances to be transferred to the emissions containment reserve when allowances are unsold in auctions, when facilities are curtailed or closed, or when facilities fall below 25,000 metric tons.

Requires, rather than allows, allowances to be distributed from the reserve when new entities enter the program. If the reserve is exhausted, allowances must be distributed from the allowance price containment reserve by auction for new entities.

Directs that new emissions-intensive, trade-exposed entrants will be covered using allowances from the emissions containment reserve when they come on line and then subjects them to the requirements of the program in subsequent compliance periods.

Reduces the minimum amount of allowances from 4 to 2 percent of the allowance budgets during the first compliance period to be available in the allowance price containment reserve.

Establishes a price ceiling and price containment reserve to provide cost protection for facilities obligated to comply with the program. The price ceiling shall be set at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling.

Requires Ecology to issue price ceiling units for sale if no allowances remain in the allowance price containment reserve. Funds raised in connection with sales of price ceiling units must be expended to achieve emissions reductions.

Directs Ecology to evaluate the net cumulative GHG emissions for a new or expanded facility that require review under the State Environmental Policy Act (SEPA) and would result in annual GHG emissions in excess of 25,000 metric tons per year.

Directs that the statewide GHG emissions limits or GHG emissions from a new or expanded facility must not be the basis for denial of a permit application or for judicial review of a grant of permit and compliance with the cap and invest program is the only mitigation for GHGs that can be required from these facilities.

Removes Sections 25 and 26, which established the comprehensive program to implement the state's climate commitment and climate commitment task force.

Adds that no state agency may adopt or enforce a program that regulates GHG emissions for a stationary source except as provided under this act.

Adds definitions for closed and curtailed facilities and price ceiling units.

Clarifies the definition of carbon dioxide removal to make it consistent with the intergovernmental panel on climate change's 2019 report.

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