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## Environment & Energy Committee

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### HB 1110

**Brief Description:** Reducing the greenhouse gas emissions associated with transportation fuels.

**Sponsors:** Representatives Fitzgibbon, Slatter, Kloba, Peterson, Tharinger, Jinkins, Macri, Cody, Bergquist, Doglio, Robinson, Pollet, Stanford and Frame.

#### Brief Summary of Bill

- Directs the Department of Ecology (ECY) to adopt a rule establishing a Clean Fuels Program to limit the greenhouse gas emissions per unit of transportation fuel energy to 10 percent below 2017 levels by 2028 and 20 percent below 2017 levels by 2035.
- Excludes exported fuel, fuel used by vessels, railroad locomotives, and aircraft, and certain other categories of fuel from the Clean Fuels Program requirements.
- Requires the Clean Fuels Program to include processes for the tracking of compliance obligations and bankable, tradeable credits.
- Requires annual reporting by the ECY on the Clean Fuels Program, as well as an analysis of the program's first five years by the Joint Legislative Audit and Review Committee.
- Retains the current distribution of revenue under the 2015 Transportation Revenue Package, eliminating changes that would have been triggered as a result of the establishment of a Clean Fuels Program.

**Hearing Date:** 1/15/19

**Staff:** Jacob Lipson (786-7196).

#### **Background:**

##### Greenhouse Gas Reporting Requirements.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (ECY) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the

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

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 CO<sub>2</sub>e).

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 CO<sub>2</sub>e report their emissions to the EPA. At the state level, GHG reporting is regulated by the ECY under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of carbon dioxide equivalent each year to report their annual emissions to the ECY. Distributors of gasoline, diesel, and aircraft fuel whose GHG emissions exceed 10,000 metric tons and who pay fuel taxes to the Department of Licensing (DOL) must use the fuel sale information submitted for the DOL fuel tax purposes to report to the state the GHG emissions associated with the fuel.

The ECY and Department of Commerce (COM) must report to the Governor and Legislature by December 31 of even-numbered years regarding total GHG emissions and GHG emissions by source sector in Washington. According to the most recent report submitted to the Legislature in December 2018, as of 2015 the total annual GHG emissions in Washington were estimated at 97.4 million metric tons (MMT) of CO<sub>2</sub>e. Of these emissions, a total of 42.5 MMT CO<sub>2</sub>e were attributable to transportation sources, of which on-road gasoline accounted for 21.42 MMT CO<sub>2</sub>e and on-road diesel accounted for 8.15 MMT CO<sub>2</sub>e.

#### Clean Air Rule.

In September 2016 the ECY adopted a rule under state Clean Air Act authority (the Clean Air Rule) to limit emissions of GHGs from certain stationary emission sources, fuel supplied by petroleum product producers, importers, and natural gas distributors. Fuels used for transportation purposes are among the fuels covered by the rule. For purposes of meeting compliance obligations under the Clean Air Rule, parties that are required to reduce GHG emissions may use emission reduction units, which represent the emission of one metric ton of CO<sub>2</sub>e.

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In December 2017 a Thurston County Superior Court judge adjudicating a legal challenge to the Clean Air Rule ruled from the bench that the ECY's rule exceeded statutory authority. The ECY appealed that decision directly to the state supreme court, where oral arguments in the case are scheduled for March 2019.

#### Other State Clean Air Act Authority.

The ECY and seven local air pollution control authorities (local air authorities) have each received approval from the EPA to administer aspects of the federal Clean Air Act in Washington. Local clean air agencies have primary responsibility for administering the state and

federal Clean Air Acts in counties which have elected to activate a local air authority or to form a multicounty air authority. In other areas of the state, the ECY is responsible for administering state and federal Clean Air Act programs.

Under the federal Clean Air Act, each state maintains a State Implementation Plan (SIP) that describes how the state implements clean air programs to achieve the federal National Ambient Air Quality Standards (NAAQS) for certain air pollutants, known as criteria pollutants. If the state does not achieve NAAQS in a portion of the state for a particular criteria pollutant, that area is considered to be in nonattainment, and the state must revise its SIP with the goal of regaining attainment with NAAQS. Areas that have previously been designated as nonattainment areas but that subsequently regained NAAQS compliance are considered to be maintenance areas. In maintenance areas, the state SIP must be revised to incorporate local maintenance plans designed to prevent those areas from relapsing into nonattainment status. Areas in Washington covered by maintenance plans for various criteria pollutants as of January 1, 2019, include areas of King, Pierce, Snohomish, Spokane, and Thurston counties, as well as the cities of Vancouver, Yakima, and Wallula. No areas of Washington are currently designated with nonattainment status.

Violations of Clean Air Act requirements are punishable by a variety of criminal and civil penalties. Civil penalties of up to \$10,000 per violation are authorized by the state Clean Air Act. Penalties recovered by the ECY (rather than by a local air authority) are paid into the Air Pollution Control Account in the State Treasury, and may be used by the ECY to implement the Clean Air Act.

#### Fuel Content.

The state Motor Fuel Quality Act (MFQA), enacted in 1990, adopted motor fuel standards, authorized the Washington State Department of Agriculture (WSDA) to set state fuel standards, and established a sampling, testing, and enforcement program administrated by the WSDA. Under the MFQA, it is unlawful to deceive the purchaser of fuel as to its nature or quality, among other aspects. Violations of this prohibition are enforced by the WSDA. Washington's Renewable Fuel Standard was enacted in 2006 as a component of the MFQA, and establishes requirements for the biodiesel content of diesel fuel, and the ethanol content of gasoline:

- At least 2 percent of diesel fuel annually sold in Washington must be biodiesel or renewable diesel fuel. This requirement will increase to at least 5 percent if the WSDA determines that both in-state feedstock and oilseed crushing capacity can satisfy a 3 percent requirement. This in-state threshold has not been met.
- At least 2 percent of the total gasoline sold in the state must be denatured ethanol. This ethanol requirement may be increased if the WSDA determines an increase would not jeopardize the state's continued attainment of federal Clean Air Act standards, and that the state can economically support the production of higher ethanol blends.

#### Clean Fuel Programs in Other States.

California and Oregon have each instituted policies that require reductions in the GHG emissions associated with transportation fuels, as measured against a standard unit of fuel energy (carbon intensity). California's program, which began in 2010, requires a 10 percent reduction by 2020 and a 20 percent reduction by 2030 in the carbon intensity of gasoline and diesel fuel, in conjunction with the use of fuels that serve as substitutes for those fuels. Oregon's program,

which began in 2015, requires a 10 percent reduction by 2025 in the carbon intensity of transportation fuels.

Both the California and Oregon programs function by assigning compliance obligations, also known as deficits, to persons associated with the production or import of fuels that exceed an average carbon intensity of fuel based on a baseline year. In tandem with the assignment of deficits, the programs provide for the generation of credits that denote the production or import of fuel with a carbon intensity of less than the baseline carbon intensity. As of 2019, California's program also allows the generation of credits for certain other activities with a nexus to the transportation fuel supply chain, such as for the installation of electric vehicle charging infrastructure. The programs of both states measure the carbon intensity of transportation fuels based on a lifecycle analysis of direct and indirect GHG emissions associated with the production, distribution, and consumption of the fuels. Both programs provide exemptions for certain categories of transportation fuels.

#### 2015 Transportation Revenue Package.

In 2015 the Legislature enacted a bill that raised revenue for transportation purposes from a variety of transportation-related sources ("Transportation Revenue Package"). Among other sources of revenue, the Transportation Revenue Package generated revenue by increasing fees for:

- enhanced and commercial driver's licenses; and
- vehicle weight fees that apply to passenger vehicles and motor homes.

In general, the enhanced and commercial driver's license fees are deposited into the Highway Safety Fund (used for driver's license implementation, driver improvement, and financial responsibility, among other programs), while the vehicle weight fees are deposited into a combination of the Multimodal Transportation Account (used for transportation purposes) and the Freight Mobility Multimodal Account (used for certain freight mobility projects approved by the Freight Mobility Strategic Investment Board). However, if a clean fuel standard policy is adopted by rule or otherwise initiated by a state agency prior to July 1, 2023, changes to these accounts that were made in the Transportation Revenue Package specify that additional revenue raised from the driver's license and vehicle weight fee increases would be redirected from the Highway Safety Fund, Multimodal Transportation Account, and Freight Mobility Multimodal Account, and would instead be deposited into the Connecting Washington Account, which is used for projects that have been identified in a transportation appropriations act as "Connecting Washington" projects or improvements.

#### **Summary of Bill:**

##### Program Goal.

The Department of Ecology (ECY) is directed to adopt a rule establishing a Clean Fuels Program limiting the GHG emissions attributable to each unit of transportation fuel (carbon intensity) to 10 percent below 2017 levels by 2028 and 20 percent below 2017 levels by 2035. The rule must establish a start date for the program of no later than January 1, 2021.

##### Covered and Exempt Fuels.

Electricity and liquid and gaseous fuels are covered by the Clean Fuels Program, so long as the fuels or electricity are used to propel motor vehicles or are intended for transportation purposes

(transportation fuels). Excluded from the Clean Fuels Program carbon intensity reduction requirements are the following:

- transportation fuel that is exported or otherwise not used in Washington;
- transportation fuel that is used for the propulsion of all aircraft, railroad locomotives, or vessels;
- transportation fuels that are used in volumes below thresholds adopted by rule by the ECY; and
- any other fuels that the ECY may adopt rules to exempt in order, with respect to similar greenhouse gas or low carbon fuel programs, to avoid mismatched incentives, fuel shifting between markets, or other outcomes counter to the intent of the Act.

#### Mechanics of the Clean Fuels Program.

The rule adopted by the ECY to implement the Clean Fuels Program must include:

- standards for assigning levels of GHG emissions attributable to transportation fuels based on a lifecycle analysis that considers emissions from the production, storage, transportation, and combustion of the fuels, and associated changes in land use;
- processes for assigning and verifying bankable, tradeable credits for the production, import, or dispensation for use of transportation fuels with associated lifecycle GHG emissions that are less than 80 percent of the carbon intensity standard adopted by the ECY, or when other specified activities are undertaken that support the reduction of GHG emissions associated with transportation in Washington;
- a requirement that producers or importers of transportation fuels that are ineligible to generate credits must register in the Clean Fuels Program;
- the option for persons associated with exempt transportation fuels or transportation fuels with a carbon intensity below the carbon intensity standard to elect to register and participate in the Clean Fuels Program;
- a determination of the carbon intensity of electricity supplied by electric utilities participating in the Clean Fuels Program based on the mix of generating resources used by each electric utility; and
- cost containment mechanisms.

Except where inconsistent with specific statutory direction from the Legislature, the ECY's rule establishing the Clean Fuels Program should seek to harmonize with similar programs that have been adopted by other states with significant amounts of transportation fuel supplied to or from Washington. In adopting the rule for the Clean Fuels Program, the ECY must consider whether GHG emission reduction units earned under the Clean Air Rule are eligible for credit under the Clean Fuels Program, and vice-versa.

The ECY may require electric utilities and transportation fuel suppliers to submit GHG emissions data that is different from the types of data currently submitted to the state by those entities. The ECY may also require periodic reporting on Clean Fuels Program activities from producers and importers of transportation fuels. Transactions that transfer ownership of fuels in the program must be accompanied by documentation assigning compliance responsibility for the fuels.

#### Public Reporting Requirements.

Beginning in 2023, the ECY must submit a report to the Legislature every year on May 1 detailing certain information regarding the previous year's Clean Fuels Program, including

volumes of credits and transportation fuels. The annual report may also be supplemented, in December of each year, by recommendations for any draft legislation deemed necessary to more efficiently achieve the GHG emission reduction goals of the Clean Fuels Program.

The Department of Commerce must develop a periodic fuel supply forecast to project the availability of fuels and credits necessary for compliance with Clean Fuels Program requirements. This forecast must be finalized no later than 90 days before the start of a Clean Fuels Program compliance period.

By December 1, 2027, the Joint Legislative Audit and Review Committee is required to perform an analysis of the first five years of the Clean Fuels Program. This analysis must include the costs and benefits of the program and an evaluation of the information summarized by the ECY in their annual reports.

#### Other Provisions.

The current distribution is retained for revenues granted by the 2015 Transportation Package, eliminating changes that would have been triggered as a result of the establishment of a clean fuels standard.

The ECY may require that persons electing or required to participate in the Clean Fuels Program pay a fee to cover the direct and indirect costs to ECY for developing and implementing the Clean Fuels Program. The ECY must adopt rules to set a payment schedule and the amount of the fee. Fees are deposited into a Clean Fuels Program Account (Account) used to carry out the Clean Fuels Program.

Violations of Clean Fuels Program requirements are subject to civil penalties under state Clean Air Act authority. Penalties collected from Clean Fuels Program violations must be deposited into the Account.

Fifty percent of revenues earned by electric utilities from participating in the Clean Fuels Program must be used for transportation electrification. Of this 50 percent, 60 percent of the transportation electrification projects must be in federal Clean Air Act maintenance or nonattainment areas, areas at risk of maintenance or nonattainment designation, or areas designated as maintenance or nonattainment as of January 1, 2019, if such areas are within the service area of the utility. The ECY may adopt rules governing the limitations on the use of the other 50 percent of revenues earned by electric utilities from participating in the Clean Fuels Program.

To the extent that the Clean Fuels Program conflicts with the state Motor Fuel Quality Act and biofuel requirements, the Clean Fuels Program's requirements supersede.

The requirement that the ECY limit the carbon intensity of transportation fuel is declared not to acknowledge, deny, or limit any authority that existed prior to the bill to adopt rules related to the GHG emissions intensity of fuel under the Clean Air Act.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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