

HOUSE BILL REPORT

HB 1110

As Reported by House Committee On: Environment & Energy

Title: An act relating to reducing the greenhouse gas emissions associated with transportation fuels.

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 History:

Committee Activity:

Environment & Energy: 1/15/19, 1/24/19 [DPS].

Brief Summary of Substitute 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, electricity, fuel used by vessels, railroad locomotives, and aircraft, and certain other categories of transportation fuel from the Clean Fuels Program's greenhouse gas emission intensity reduction 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead and Peterson.

Minority Report: Without recommendation. Signed by 4 members: Representatives Dye, Assistant Ranking Minority Member; Boehnke, DeBolt and Shewmake.

Minority Report: Do not pass. Signed by 1 member: Representative Shea, Ranking Minority Member.

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 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 CO₂e).

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 CO₂e 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 CO₂e 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 the Department of Commerce 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 CO₂e. Of these emissions, a total of 42.5 MMT CO₂e were attributable to transportation sources, of which on-road gasoline accounted for 21.42 MMT CO₂e and on-road diesel accounted for 8.15 MMT CO₂e.

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 CO₂e.

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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 administered 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:

- Special fuel licensees must provide evidence that at least 2 percent of diesel fuel annually sold in Washington is 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. The WSDA has not certified that the state has met this threshold.
- Motor vehicle fuel licensees must provide evidence that at least 2 percent of the total gasoline sold in the state is 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 Substitute Bill:

Program Goal.

The Department of Ecology (ECY) is directed to adopt a rule establishing a Clean Fuels Program limiting the greenhouse gas (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 within the scope of 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;
- electricity;
- 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 GHG or low carbon fuel programs, to avoid mismatched incentives, fuel shifting between markets, or other outcomes counter to the intent of the act establishing the Clean Fuels Program.

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 2017 baseline carbon intensity levels established 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 to elect to register and participate in the Clean Fuels Program for: (1) persons associated with transportation fuels with a carbon intensity below the carbon intensity standard, and (2) persons associated with exempt transportation fuels, including electricity and fuel used to propel vessels, railroad locomotives, or aircraft;
- 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 and information 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. To the extent practicable, the ECY's Clean Fuels Program reporting rules for persons associated with the supply chains of transportation fuels must be consistent with the reporting procedures of similar clean fuels programs in other states and with other state programs that require similar information to be reported by regulated parties, including electric utilities.

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 ECY must cite the source of information that it relied upon in the annual reports.

The Department of Commerce (COM) 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. The COM must cite the sources of information that it relied upon in the annual reports.

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 Revenue 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. If the ECY elects to require program participants to pay a fee, 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 electricity supplied to retail customers to generate credits under the Clean Fuels Program must be used for transportation electrification. Of this 50 percent, 60 percent of the transportation electrification projects must be in or directly benefit 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.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- adds additional findings to the intent section noting the impacts of greenhouse gas emissions on aspects of public health and the environment;
- clarifies that electricity is not subject the greenhouse gas emission reductions required of transportation fuels, but is eligible to be used as a transportation fuel to generate Clean Fuels Program credits;
- authorizes the Department of Ecology (ECY) to apply an asset-controlling supplier emission factor used in similar low-carbon fuel programs for purposes of measuring the emissions of electricity supplied by an electric utility;
- specifies that only the electricity supplied to retail customers is subject to information reporting requirements applicable to electric utilities, and to provisions addressing the electric utility's use of program revenues;

- prohibits transportation fuels with associated greenhouse gas emissions of more than 80 percent of the 2017 carbon intensity levels from earning credits under the program, rather than prohibiting fuels with a carbon intensity greater than 80 percent of the applicable per-year standard from earning credits;
- specifies that the ECY may require data or information used to calculate greenhouse gas emissions to be submitted by transportation fuel suppliers or electric utilities;
- requires the ECY, to the extent practicable, to establish reporting procedures for persons associated with the supply chains of transportation fuels participating in the Clean Fuels Program that are consistent with the reporting procedures of similar clean fuels programs in other states and with other state programs that require similar information to be reported by regulated parties; and
- requires the ECY to cite the sources of information that it relied upon, including peer-reviewed science, in its annual reports to the Legislature on the Clean Fuels Program, and requires the Department of Commerce to cite the sources of information that it relied upon, including peer-reviewed science, in its periodic fuel supply forecasts.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) A low carbon fuel standard will incentivize investments in low carbon fuel production, create large numbers of family-wage jobs, and keep consumer money from flowing to out of state fossil fuel producers. The establishment of low-carbon fuel policies drive biofuel and other company infrastructure investment decisions by reducing business risks. Because Washington does not currently have a Clean Fuels Program, much of the low-carbon fuel currently produced in Washington is sent to California and Oregon markets. Programs in Oregon and California have been success stories, with cost-effective reductions in greenhouse gas (GHG) emissions, and without price spikes or unintended consequences. Clean fuels programs are flexible, adaptable, and technology-neutral, and allow forward-thinking companies to be appropriately valued for the GHG emission reductions they are able to achieve. Low carbon fuels benefit air quality by reducing particulate matter emissions, saving unnecessary deaths and protecting the vulnerable. Greenhouse gases and particulate pollutants are harmful to animal life, including birds. Washington should adopt policies with easy wins like requiring drive-through businesses to post no-idling signs, which would save tons of fuel and emissions. Washington has low GHG emissions from its electric sector, allowing the program to incentivize big emission reductions through transportation electrification. Because Washington's electric sector is so clean, it will make it easier and less costly to achieve Clean Fuels Program targets relative to programs in other states. The emission reduction targets in the bill are achievable. This bill must be paired with other efforts to reduce GHG emissions. The program may present a modest cost to consumers, but the economic and environmental benefits would be significant. Any increases in gasoline

prices are offset, at least in part, by reductions in the prices of alternative fuels which consumers experience. Clean fuel standards provide incentive for electric vehicle infrastructure that is otherwise expensive and difficult to build out, but essential for the transition to transportation electrification. Switching to electric cars saves customers thousands of dollars per year in fuel and maintenance costs. Automobile manufacturers are investing heavily in electric vehicles, and this policy will fund rebates or credits to help bring down the price of electric vehicles at the point of sale. This bill is consistent with the 2015 transportation revenue package, which did not restrict a future legislative effort to adopt a low carbon fuel standard. A state standard to reduce GHG emissions from transportation is a necessary supplement to the piecemeal and local emission reduction activities already underway. A local clean fuel standard is an option that the Puget Sound Clean Air Agency is considering, but regulated parties and consumers should both prefer a single state standard.

(Opposed) Clean fuel standards are costly to customers, and are not cost-effective ways of reducing GHG emissions. There are not sufficient quantities of low-carbon fuels available on the market to meet program goals. Real-world experience in states that have adopted similar programs has shown that the programs increase gasoline prices. The impacts of the program on fuel costs will be passed on to transportation fuel consumers. The bill will make all consumer goods more costly, because the costs of transporting goods will increase alongside fuel prices. The cost of food will increase as food production and transportation is dependent upon the use of fuel. Trucks have no alternative but to use fossil fuels, since hybrid-electric or electric trucks are years away from reaching the market. An incentive-laden pathway towards cleaner fuel use would be preferable to an approach that punishes industries for failing to use technologies that are not yet available. This bill undoes a politically-fragile transportation revenue package agreement from 2015 to increase gasoline taxes in order to pay for highway improvements. Gas taxes that are used to build better transportation infrastructure would be preferable to programs that increase the price of fuel without similar tangible results.

(Other) Electricity in Washington is clean and should be encouraged as a transportation fuel. Even with electric vehicles, gasoline and liquid fuels will be dominant in the market for years to come, and the bill should not arbitrarily penalize liquid fuels like ethanol or under-value fuels like cellulosic ethanol. The program is a high-cost, low-benefit way to reduce carbon dioxide emissions. The particulate matter reductions associated with clean fuels programs are negligible.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Dow Constantine and Bruce Bassett, King County; Ryan Calkins, Port of Seattle; Scott Richards, National Biodiesel Board; Ian Hill, SeQuential; Kent Hartwig, Renewable Energy Group; Nina Kapoor, Coalition for Renewable Natural Gas; Graham Noyes, Low Carbon Fuels Coalition; Michael Mann, EVgo; Olivia Sanderfoot, National Science Foundation; Jeremy Martin, Union of Concerned Scientists; Adam Maxwell, Washington Audubon; Michael Transue, Association of Global Automakers; Marian Dacca, Tacoma Public Utilities; Ryan Spiller, Alliance of Automobile Manufacturers; Craig Kenworthy, Puget Sound Clean Air Agency; Carrie Nyssen, American Lung Association; Stu Clark, Department of Ecology; Clifton Swiggett, Educational Software; Eric Berman, Environmental Entrepreneurs; Dave Daggett; Jim Smith, Klickitat Public Utility District; Kevin Kelly, Recology Cleanscapes;

Mark Quinn, Citizens for Commonsense Climate Solutions; Greg Rock, Carbon Washington; Kelly Hall, Climate Solutions; and Cliff Traisman, Washington Conservation Voters.

(Opposed) Jessica Spiel, Western States Petroleum Association; Michael Ennis, Association of Washington Business; Sheri Call, Washington Trucking Associations; Dave Ducharme, Washington Oil Marketers Association; Jerry VanderWood, Associated General Contractors; and Dan Coyne, Northwest Agricultural Cooperative Council, Food Northwest.

(Other) Nicolas Garcia, Washington Public Utility District Association; Tom McBride, Growth Energy; and Todd Myers, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: None.