

HOUSE BILL REPORT

HB 2338

As Reported by House Committee On:
Environment

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, Cody, Hudgins, Goodman, Tarleton, Santos, McBride, Stanford, Tharinger, Macri, Jinkins, Ormsby and Doglio.

Brief History:

Committee Activity:

Environment: 1/9/18, 1/23/18 [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.
- 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 legislative enactment of a Clean Fuels Program.

HOUSE COMMITTEE ON ENVIRONMENT

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 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

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, over a 100-year timeframe, to the emission of an identical volume of carbon dioxide (carbon dioxide equivalent).

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 carbon dioxide equivalent 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 or to local air pollution control authorities that implement the state Clean Air Act. 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 2016, as of 2013 the total annual greenhouse gas emissions in Washington were estimated at 94.4 million metric tons (MMT) of carbon dioxide equivalent (CO₂e). Of these emissions, a total of 40.4 MMT CO₂e were attributable to transportation sources, of which on-road gasoline accounted for 21.71 MMT CO₂e and on-road diesel accounted for 7.01 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, as well as from fuel supplied by petroleum product producers and importers and natural gas distributors.

Transportation fuels are subject to the Clean Air 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.

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; however, a written order or decision has not yet been issued as of January 2, 2018.

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, 2018, included 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, among other aspects, its nature or quality. 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 greenhouse gas 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 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. The programs of both states measure the carbon intensity of transportation fuels based on a lifecycle analysis of direct and indirect greenhouse gas 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 FY 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 prior to July 1, 2023, the Transportation Revenue Package specifies that additional revenue raised from the driver's license and vehicle weight fee increases is redirected from the Highway Safety Fund, Multimodal Transportation Account, and Freight Mobility Multimodal Account, and is instead 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 emissions attributable to each unit of transportation fuel (carbon intensity) to 10 percent below 2017 levels by 2028. The rule must establish a start date for the program of January 1, 2020.

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's 10 percent reduction requirement for the carbon intensity of fuels by 2028 are the following:

- transportation fuel that is exported from the state;
- transportation fuel that is used for the propulsion of aircraft, railroad locomotives, or vessels; and
- transportation fuels that are used in volumes below thresholds adopted by rule by the ECY.

Mechanics of the Clean Fuels Program.

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

- a requirement that producers or importers of transportation fuels that exceed the carbon intensity standard adopted by the ECY register and participate 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;
- 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;
- processes for assigning compliance obligations and bankable, tradeable credits (which are equal to 1 metric ton of carbon dioxide equivalent that is not emitted when a fuel with a carbon intensity less than the standard is used). Only transportation fuels with a carbon intensity below 80 percent of the 2017 transportation fuel carbon intensity baseline adopted in ECY rule are eligible to earn credits;
- 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 must be consistent with similar programs that have been adopted by other states.

In adopting the rule for the Clean Fuels Program, the ECY must consider whether GHG emission reduction units that may be 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 2021, the ECY must submit a report to the Legislature every year on April 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 accompanied by any draft legislation deemed necessary to more efficiently achieve the GHG emission reduction goals of the Clean Fuels Program.

In FY 2026 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, calculations of GHG emission reductions achieved by the Clean Fuels Program, and the effects of the program on the prices of certain transportation fuels.

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 legislative enactment of a clean fuels standard.

Penalties collected under state Clean Air Act authority for Clean Fuels Program violations must be used by the ECY for grants to local governments for transportation electrification projects in areas that are categorized as nonattainment or maintenance areas under the federal Clean Air Act.

Twenty-five percent of revenues from the Clean Fuels Program earned by electric utilities must be used for transportation electrification in federal Clean Air Act maintenance or nonattainment areas, 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 75 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.

Substitute Bill Compared to Original Bill:

The substitute bill amends the statement addressing the authority of the Department of Ecology (ECY) to adopt rules under the Clean Air Act prior to the bill's effective date, to instead declare that the bill's requirement that the ECY adopt rules to limit transportation fuel carbon intensity is not an acknowledgement, denial, or limitation of any Clean Air Act authority to regulate the carbon intensity of transportation fuels that may have existed prior to the bill's effective date. The calculation of credits under the Clean Fuels Program, and the determination of which fuels must register and participate in the Clean Fuels Program, are based on a measurement of the fuel's carbon intensity relative to the carbon intensity standard adopted by the ECY rule, rather than relative to the 2017 carbon intensity baseline.

Appropriation: None.

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) Clean Fuels Programs are a market-driven alignment of science and policy rather than a regulatory mandate on individual companies, and allow efficient achievement of greenhouse gas (GHG) reduction goals. The Clean Fuels Program rule adopted by the Department of Ecology (ECY) should take into account land use changes, use market-based approaches that provide compliance flexibility, and support the development of electric vehicle infrastructure. The impacts of climate change are evident, and are impacting bird habitat and wildlife viewing opportunities. Producing alternative fuels reduces dependence on foreign oil, and helps protect American troops. GHG emissions from transportation fuels are a significant component of the state's overall emissions. Reducing transportation fuel emissions is one prong of a strategy to develop a holistic, clean transportation system. Reducing GHG emissions from transportation fuels will also reduce traditional pollutants, like benzene, which are especially harmful to children and other vulnerable populations. Other West Coast states have successfully implemented similar programs, and we have learned from their experiences. When other states adopted this program, opponents made dire predictions about the negative impacts, such as gasoline price spikes, that did not bear out in reality. Clean fuels programs stimulate the market for alternative fuels and new vehicle technology. Clean fuels programs allow investments in the electrification of public transportation to become financially possible. Companies have made investments to produce low-carbon fuels in Washington, and companies would look hard at increasing their investments, which do not require a lot of capital to build, if this program were in place in Washington. Clean fuels programs will create jobs in Washington and will spur technological innovation.

(Opposed) The bill gives too much authority to the ECY to decide how the Clean Fuels Program is run. Rather than authorize the Clean Fuels Program to be implemented and then evaluate impacts, the likely impacts, such as increases in gas prices, should be studied before the Clean Fuels Program is designed. Because alternative fuel production is uncertain, there

are costly and volatile impacts on the prices of credits under the program and on their associated effects on consumers. Program implementation in other states has not been as smooth as portrayed by advocates, and the full impacts of the program have not yet revealed themselves. The Clean Fuels Program creates an implicit tax that will reduce production of high-GHG fuels. The Clean Fuels Program could lead to vastly more expensive gasoline and other fuel costs. The bill does not do enough to protect small and trade-dependent businesses that will bear the costs of the Clean Fuels Program. Truckers that move the freight are a low-margin business, and will not be able to absorb the costs generated by this program. Truckers already pay a disproportionate gas tax relative to the mileage they drive on Washington roads. Electric trucks are not a realistic or cost-effective option for truckers because of their capital-intensity. Trucks have already made huge strides in reducing the emissions associated with their operations.

(Other) Clean fuels programs are not an effective way of limiting traditional air pollutants like fine particulate matter. This program would only reduce a tiny fraction of the state's overall GHG emissions, and would do so at a high cost to consumers. While there are some easy-to-achieve reductions in the carbon intensity of transportation fuels, they are not sufficiently widespread to allow a 10 percent overall reduction in the GHG emissions of transportation fuels. While impacts on fuel prices associated with the Clean Fuels Program have been limited to date in other jurisdictions, projections forecasting a long-term low-cost implementation of clean fuels programs rely on unreasonably optimistic projections about alternative fuel production and electric vehicle adoption. The real costs of a program in Washington are likely to be higher than what programs in other states have experienced thus far, because those programs' compliance requirements get rapidly more stringent in the later years of the program. A Washington program would suffer high costs due to market competition for low-carbon fuels coming from California's comparatively more-stringent and high-volume program.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; Vlad Gutman-Britten, Climate Solutions; Phil Jones, Carbon Washington; Gail Gatton, Audubon Washington; Shelby Neal, National Biodiesel Board; Kent Hartwig, Renewable Energy Group; Ian Hill, Sequential Biodiesel; Craig Kenworthy, Puget Sound Clean Air Agency; Carrie Nyssen, American Lung Association; Amy Fowler, Western Washington Clean Cities Coalition; Lisa John, Physicians for Social Responsibility; Jessica Zimmerle, Earth Ministry; Justin Leighton, Washington State Transit Association; Rick Hegdahl, Vet Voice Foundation; Andrew Villeneuve, Northwest Progressive Institute; Art Wang, Tahoma Audubon Society; Elyette Weinstein, Washington League of Women Voters; and Stu Clark, Department of Ecology.

(Opposed) Greg Hanon, Western States Petroleum Association; Mary Catherine McAleer, Washington Association of Business; and Frank Riordan, Washington Trucking Association.

(Other) Dave Hackett, Stillwater Associates, LLC; Todd Meyers, Washington Policy Center; and Brian Young, Department of Commerce.

Persons Signed In To Testify But Not Testifying: None.