SENATE BILL REPORT
SB 5412

As of January 28, 2019

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: Senators Saldaña, Carlyle, Palumbo, Das, Nguyen, McCoy, Darneille, Frockt, Hunt, Keiser, Kuderer, Liias, Pedersen and Rolfes.

Brief History:
Committee Activity: Environment, Energy & Technology: 1/30/19.

Brief Summary of Bill

- Directs the Department of Ecology (DOE) to adopt a rule establishing a Clean Fuels Program (Program) to limit greenhouse gas (GHG) 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 Program's requirements.
- Requires the Program to include processes for tracking compliance obligations and bankable, tradeable credits.
- Requires annual reporting by the DOE on the Program, as well as an analysis of the Program's first five years by the Joint Legislative Audit and Review Committee.
- Retains the current revenue distribution under the 2015 Transportation revenue package, eliminating changes that would have been triggered as a result of the establishment of a Program.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Kimberly Cushing (786-7421)

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.

Background: Greenhouse Gas Reporting Requirements. Under the federal Clean Air Act, greenhouse gases (GHGs) are regulated as an air pollutant and are subject to several air regulations administered by the United States Environmental Protection Agency (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 (CO2e) report their emissions to the EPA. At the state level, GHG reporting is regulated by DOE 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 DOE.

DOE and the Department of Commerce (Commerce) must report the total GHG emissions, by source sector, in Washington State. According to the most recent report submitted to the Legislature in December 2018, as of 2015 the total annual GHG emissions in Washington State were estimated at 97.4 million metric tons (MMT) of CO2e. Of these emissions, 42.5 percent 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, DOE adopted a rule citing the state Clean Air Act authority (Clean Air Rule) to limit emissions of GHGs from certain stationary emissions sources, petroleum product producers and importers, and natural gas distributors.

In March 2018, the Thurston County Superior Court ruled parts of the Clean Air Rule are invalid. The superior court's ruling prevents DOE from implementing Clean Air Rule regulations that cap and gradually reduce major sources of carbon pollution. Thus, compliance with the rule is currently suspended. On May 14, 2018, DOE filed an appeal with the Washington State Supreme Court.

Clean Fuel Programs in Other States. California and Oregon have each instituted policies requiring reductions in 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 serving 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.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Clean Fuels Program. DOE is directed to adopt rules establishing a Program limiting GHG emissions attributable to each unit of transportation fuel energy (carbon intensity) to 10 percent below 2017 levels by 2028 and 20 percent below 2017 levels by 2035. The Program must start no later than January 1, 2021.

Exempt Fuels. Excluded from the Program carbon intensity reduction requirements are:

- transportation fuel that is exported or otherwise not used in Washington State;
- electricity;
- transportation fuel used for the propulsion of all aircraft, vessels, or railroad locomotives;
- transportation fuels that are used in volumes below thresholds adopted by rule; and

- any other fuels DOE may exempt by rule in order to avoid mismatched incentives in similar GHG or low carbon fuel programs, fuel shifting between markets, or other outcomes counter to the intent of this Program.

Electricity and liquid and gaseous fuels are within the scope of the Program, so long as the fuels or electricity are used to propel motor vehicles or are intended for transportation purposes.

Implementation of the Clean Fuels Program. The rules adopted by DOE to implement the Program are:
- 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 (1) fuels produced, imported, or dispensed for use in Washington State with associated lifecycle GHG emissions that are less than 80 percent of the 2017 baseline carbon intensity levels or (2) when other specified activities are undertaken that support reducing GHG emissions associated with transportation in Washington State;
- a determination of the carbon intensity of electricity supplied by electric utilities participating in the Program based on the mix of generating resources used by each electric utility;
- a requirement to register in the Program for producers or importers of transportation fuels that are ineligible to generate credits;
- the option to register and participate in the 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; and
- cost containment mechanisms.

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

DOE may require electric utilities and transportation fuel suppliers to submit GHG emissions data and information different from the types of data currently submitted to the state by those entities.

DOE may also require periodic reporting on Program activities from producers and importers of transportation fuels. Transactions transferring ownership of fuels in the Program must be accompanied by documentation assigning compliance responsibility for the fuels. To the extent practicable, DOE's reporting rules for persons associated with transportation fuels supply chains must be consistent with the reporting procedures of similar clean fuels programs and programs requiring similar information to be reported by regulated parties in other states, including electric utilities.

To the extent the Program conflicts with the state Motor Fuel Quality Act, the Program's requirements supersede.

Public Reporting Requirements. Beginning December 1 of 2022, DOE must annually submit recommendations for any draft legislation to more efficiently achieve the GHG emission reduction goals of the Program. Additionally, beginning May 1, 2023, DOE must annually post on its web site certain information regarding the previous year's Program, including credits and deficits generated, volumes of transportation fuels, costs or cost savings per gallon of gasoline and diesel, and total GHG emissions reductions attributable to the Program.

Commerce must develop a periodic fuel supply forecast to project the availability of fuels and credits necessary for compliance with Program requirements. This forecast must be finalized no later than 90 days before the start of a 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 Program and report to the Legislature. This analysis must include the costs and benefits of the Program, using specific metrics, an evaluation of the information summarized by DOE in their annual reports, and the total statewide costs of the Program per ton of GHG emissions reductions achieved.

Clean Fuels Program Account and Fee. DOE may require persons electing or required to participate in the Program to pay a fee to cover DOE's direct and indirect costs for development and implementation. If DOE elects to require Program participants to pay a fee, it 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 Program.

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

Electric Utility Revenues. Fifty percent of revenues earned by electric utilities from electricity supplied to retail customers to generate credits under the Program must be used for transportation electrification projects. Of this 50 percent, 60 percent of the transportation electrification projects must be located in or directly benefit federal Clean Air Act maintenance or nonattainment areas or areas at risk of maintenance or nonattainment designation, if such areas are within the service area of the utility.
DOE may adopt rules governing the limitations on the use of the remaining 50 percent of revenues in consultation with electric utilities participating in the Program.

Transportation Fees. 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.

Appropriation: None.

Fiscal Note: Requested on January 26, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.