

# SENATE BILL REPORT

## SB 5412

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As of January 26, 2020

**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, 1/16/20.

### Brief Summary of Bill

- Directs the Department of Ecology (Ecology) to adopt a rule establishing a Clean Fuels Program (Program) to limit 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 Program's requirements.
- Requires the Program to include processes for tracking compliance obligations and bankable, tradeable credits.
- Requires annual reporting by Ecology 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.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Kimberly Cushing (786-7421)

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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.*

**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 (CO<sub>2</sub>e) report their emissions to the EPA. At the state level, greenhouse gas (GHG) reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of CO<sub>2</sub>e each year to report their annual emissions to Ecology.

Ecology and the Department of Commerce (Commerce) must report the total GHG emissions, by source sector, in Washington State. According to the most recent data from Ecology in November 2019, as of 2017 the total annual GHG emissions in Washington State were estimated at 97.5 million metric tons (MMT) of CO<sub>2</sub>e. Of these emissions, 44.6 percent were attributable to transportation sources.

Clean Air Rule. In September 2016, Ecology 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 Ecology from implementing Clean Air Rule regulations that cap and gradually reduce major sources of carbon pollution. Compliance with the rule is currently suspended. On May 14, 2018, Ecology 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.

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—and 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.

Under the transportation revenue package, if a clean fuel standard policy is adopted by rule or otherwise initiated by a state agency prior to July 1, 2023, 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 instead deposited into the Connecting Washington Account. This account is located in the Motor Vehicle Fund and is used for highway projects that have been identified in a transportation appropriations act as Connecting Washington projects or improvements.

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

**Summary of Bill (Proposed Substitute):** Clean Fuels Program. Ecology 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.

Transportation fuel means electricity and any liquid or gaseous fuel sold, supplied, offered for sale, or used to propel motor vehicles or intended for transportation purposes.

Exempt Fuels. The following are excluded from the carbon intensity reduction requirements under the Program:

- transportation fuel exported or otherwise not used in Washington State;
- electricity;
- transportation fuel used for the propulsion of all aircraft, vessels, or railroad locomotives;
- military tactical vehicles and tactical support equipment;
- transportation fuels used in volumes below thresholds adopted by rule; and
- any other fuels Ecology 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.

Until January 1, 2028, the following fuels are also exempt from the Clean Fuels Program's carbon intensity reduction requirements:

- special fuel used off-road in vehicles used primarily to transport logs;
- dyed special fuel used in vehicles that are not designed to transport persons or property, not designed to be operated on highways, and that are used primarily for construction work, including timber harvest and mining; and
- dyed special fuel used for agricultural purposes that are exempt from state fuel taxation.

Implementation of the Clean Fuels Program. The rules adopted by Ecology to implement the Program are as follow.

1. 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. Hydroelectricity must be attributed zero associated lifecycle GHG emissions. Ecology must establish separate carbon intensity standards for gasoline and its substitutes and diesel and its substitutes.

2. Processes for assigning and verifying bankable, tradeable credits for 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 when other specified activities are undertaken that support reducing GHG emissions associated with transportation in Washington State.
3. 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.
4. A requirement to register in the Program for producers or importers of transportation fuels that are ineligible to generate credits.
5. The option to register and participate in the Program for persons associated with transportation fuels with a carbon intensity below the carbon intensity standard, and persons associated with exempt transportation fuels.
6. Cost containment mechanisms.

Ecology's rules may allow the generation of credits from specified activities associated with the reduction of greenhouse gas emissions associated with transportation, including:

- specified carbon capture and sequestration projects;
- fueling electric vehicles directly with zero-carbon electricity or through the retirement of renewable energy credits associated with the electricity;
- the provision of zero emission vehicle infrastructure; and
- using smart vehicle charging technology that results in electric vehicle fueling during times of comparatively low carbon intensity of the electric grid.

Transportation fuels derived from palm oil are ineligible for credit generation, and Ecology must consider land use changes in determining the carbon intensity of transportation fuels made from sugar cane.

Except where inconsistent with specific statutory direction from the Legislature, Ecology'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, Ecology must consider whether GHG emission reduction units earned under the Clean Air Rule are eligible for credit under the Program, and vice-versa.

Ecology 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.

Ecology 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, Ecology'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.

The requirement that Ecology 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.

Public Reporting Requirements. Beginning December 1, 2022, Ecology 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, Ecology must annually post on its website certain information regarding the previous year's Program, including credits and deficits generated, volumes of transportation fuels, and total GHG emissions reductions attributable to the Program. Ecology must contract with an independent consultant to determine the best estimate or range in probable costs or cost savings per gallon of gasoline and per gallon of diesel 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 Ecology 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. Ecology may require persons electing or required to participate in the Program to pay a fee to cover Ecology's direct and indirect costs for development and implementation. If Ecology 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.

Ecology 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:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony on Proposed Substitute:** PRO: The way we are doing business and our fuel economy is not sustainable. It is more profitable for renewable fuels producers to go to other states. Transportation is about 45 percent of GHG emissions. Cleaner fuels means less air pollution. Expanded transit is a key strategy to reduce CO2 in King County. To meet our climate goals, low carbon fuels need to be more widely available. We need to set commitments on behalf of citizens. Communities located on the edge of Puget Sound are experiencing climate change and developing a draft vision for 2050. We need the state to be a partner and act aggressively. This bill will expand the market for low carbon fuels by joining Oregon and California, and we can be administratively efficient by building off their programs. Climate change is having a significant effect on Washington already with health care costs, including medical premiums and premature deaths. Heart attacks are not free. Breathing particular matter linked to cancer, heart disease, behavior problems, fertility, stress management. Air pollution affects everyone, but low-income communities bear the burden of air pollution. A low carbon fuel standard (LCFS) is a good tool. The worse case scenario assumes the oil industry does not diversify, but it is. It is smarter to innovate. This bill creates jobs in biofuel refineries and in installing electric vehicle infrastructure. There are many gains for electrical workers, but the concerns for other workers are real. We have made progress with GHGs recently, but have done little in the transportation sector, where one of the key elements is cleaner fuels. Oil companies are making profits. This bill provides a good opportunity to help transit agencies transition to cleaner fuels. Natural areas can be part of solution, for example, animal waste collected to made in to low-cost renewable gas, biomass-based fuels, might help your community. Electricity is critical part of low carbon future. LCFS is a good tool for utilities to help reduce carbon in the transportation sector. Fuel cells and hydrogen as transportation fuels have a tremendous future in the region. We need to keep the fuel we make in Washington here. The program will help incentivize renewable natural gas. Using renewable natural gas in trucks saves 85 percent in GHG emissions. There is an unlimited supply of renewable natural gas. LCFS worked well in California—retail prices in gas and diesel are virtually the same and it has reduced GHGs. LCFS is the most efficient way to achieve multiple policy objects—air pollutants, GHG reduction, and a diverse fuel pool. Without a LCFS our state pays a premium on sustainable aviation fuels. The bill provides elusive equity to expand the reach of EVs to working classes. There are no other tools to reduce carbon pollution from the transportation industry.

CON: This bill will increase costs on farmers who transport grains and fruits. LCFS is a regressive tax and will hit families hard. Washington drivers already pay the second highest gas tax in the country. LCFS will impact those who least can afford it. More and more people are driving farther to work. Builders rely on personal vehicles to get to work. This bill affects eastern Washington individuals who have to travel where the jobs are, especially

with lack of affordable housing. This is not an investment in transportation, which is what we need instead. Laborers are not climate deniers but we need to put money in housing. When the cost of trucking goes up, it makes the prices on all things, such as milk, to go up. A gas tax is a pass-through-tax. Infrastructure upgrades will be needed for pumps. Investments will not pencil out.

If a logging company has to eat costs, it will prevent wage raises. Electrical vehicles for construction do not exist. Ethanol has a shorter life span and farmers can not store it as long. Farmers like to buy fuel in bulk and as cheap as possible. Ethanol eats rubber and requires increased maintenance to equipment. Non-ethanol fuel gets better fuel mileage. This is a virtual gas tax, without additional funding for transportation projects. Reductions in air pollution would be small compared to current regulations, and would not have meaningful health impacts or achieve meaningful GHG emission reductions. This bill will cost a lot and will reduce gross regional product across the state. A LCFS is inefficient.

OTHER: Data points show this is an inefficient way to reduce CO2. The language in the substitute is improved. Liquid fuels will continue to play an important role even as other technologies flourish.

**Persons Testifying:** PRO: Senator Rebecca Saldaña, Prime Sponsor; Stu Clark, Special Assistant to the Director, Department of Ecology; Celia Jackson, King County; Nancy Tosta, Councilmember, Burien City; Jay Arnold, Kirkland Deputy Mayor; Phyllis Farrell, League of Women Voters; Jeff Bissonette, Union of Concerned Scientists; Dennis McLerran, citizen; Carrie Nyssen, American Lung Association; Lisa Johnson, Washington Academy of Family Physicians; Craig Kenworthy, Puget Sound Clean Air Agency; Matthew Hepner, Certified Electrical Workers of Washington; Lindsey Grad, Service Employees International Union; Leah Missik, Climate Solutions; Bryce Yadon, Transportation Choices Coalition; Cliff Traisman, Washington Environmental Council, Washington Conservation Voters; Scott Richards, The Nature Conservancy; Marian Dacca, Tacoma Public Utilities; Mendy Droke, Seattle City Light; Dave Warren, Klickitat PUD, Renewable Hydrogen Alliance; Floyd Vergara, National Biodiesel Board; Michael Mann, Forth; Bill Clarke, REG; Charlie Brown, Northwest Natural; David Mendoza, Front and Centered; Becky Bogard, Republic Services; Ryan Spiller, Auto Alliance; Ryan Calkins, Port of Seattle; Joseph Hiss, citizen; Reed Schuler, Office of the Governor; Brian Grunkemeyer, FlexCharging, Inc, Founder.

CON: Ben Buchholz, NW Agricultural Cooperative Council; Leanne Guier, UA Local 32; Mark Martinez, Pierce County BT; Billy Wallace, Laborers' International Union of North America; Lee Newgent; Sheri Call, Washington Trucking Associations; Gary Christensen, Christensen USA; Carmen Smith, RL Smith Logging; Dave Ducharme, Washington Oil Marketers Association; Jerry VanderWood, Associated General Contractors of Washington; Mike Clayton, Red Apple Orchards, Chelan Douglas Farm Bureau; Taylor Perrault, Perrault Farm, Yakima County Farm Bureau; Kevin Dobbins, Dobbins Farms, Clark County Farm Bureau; Jessica Spiegel, WSPA; Bruce Chattin, Washington Aggregates and Concrete Association; Bill Stauffacher, Building Industries Association of Washington; Mike Ennis, Association of Washington Business; Paul Graves, Oak Harbor Freight Lines.

OTHER: Todd Myers, Washington Policy Center; Tom McBride, Growth Energy.

**Persons Signed In To Testify But Not Testifying:** No one.