

# HOUSE BILL REPORT

## E3SHB 1091

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### As Amended by the Senate

**Title:** An act relating to reducing greenhouse gas emissions by reducing the carbon intensity of transportation fuel.

**Brief Description:** Reducing greenhouse gas emissions by reducing the carbon intensity of transportation fuel.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Fitzgibbon, Slatter, Berry, Dolan, Bateman, Ramos, Simmons, Ramel, Senn, Peterson, Duerr, Ryu, Valdez, Callan, Kloba, Chopp, Ormsby, Frame, Macri, Pollet, Goodman and Bergquist; by request of Office of the Governor).

### Brief History:

#### Committee Activity:

Environment & Energy: 1/14/21, 1/15/21, 1/21/21 [DPS];

Appropriations: 2/4/21, 2/9/21 [DP2S(w/o sub ENVI)];

Transportation: 2/16/21, 2/19/21 [DP3S(w/o sub APP)].

#### Floor Activity:

Passed House: 2/27/21, 52-46.

Senate Amended.

Passed Senate: 4/8/21, 27-20.

### Brief Summary of Engrossed Third Substitute Bill

- Directs the Department of Ecology (Ecology) to adopt rules establishing a Clean Fuels Program (CFP) to limit the aggregate, overall 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.
- Directs Ecology to update, prior to 2032, CFP rules to further reduce GHG emissions from each unit of transportation fuel for each year through 2050, consistent with statutory state emission reduction limits.
- Excludes exported fuel, fuel used by vessels, railroad locomotives, and

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aircraft, and certain other categories of transportation fuel from the CFP's GHG emission intensity reduction requirements.

- Requires the CFP to include processes for the registering, reporting, and tracking of compliance obligations and to establish bankable, tradeable credits used to satisfy compliance obligations.
- Requires annual reporting by Ecology on the CFP, 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 CFP.
- Requires the Washington State University Energy Program to initiate a program to identify least-conflict priority sites for low-carbon transportation fuel projects, and requires Ecology to periodically convene specified parties to discuss mitigation of significant likely environmental impacts associated with low-carbon transportation fuel projects.

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## HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel and Slatter.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Shewmake.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 17 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 15 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick, Springer and Steele.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Sullivan.

**Staff:** Dan Jones (786-7118).

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The third substitute bill be substituted therefor and the third substitute bill do pass and do not pass the substitute bill by Committee on Appropriations. Signed by 17 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Berry, Chapman, Duerr, Entenman, Hackney, Lovick, Paul, Ramel, Riccelli, Slatter, Taylor, Valdez and Wicks.

**Minority Report:** Do not pass. Signed by 11 members: Representatives Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Dent, Goehner, Griffey, Klicker, McCaslin, Orcutt and Sutherland.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Walsh.

**Staff:** Beth Redfield (786-7140).

### **Background:**

#### Greenhouse Gas Reporting Requirements and State Limits.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) 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 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 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. 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.

Ecology 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 Ecology data, as of 2017 the total annual GHG emissions in Washington were estimated at 97.5 million metric tons (MMT) of CO<sub>2</sub>e. Of these emissions, a total of 43.26 MMT CO<sub>2</sub>e were attributable to transportation sources, of which on-road gasoline accounted for 21.53 MMT CO<sub>2</sub>e and on-road diesel accounted for 8.36 MMT CO<sub>2</sub>e.

In 2008 Washington enacted legislation that sets a series of limits on the emission of GHGs within the state. Ecology is responsible for monitoring and tracking the state's progress toward the emission limits. In 2020 additional legislation was enacted to update the state limits to the following:

- By 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 MMT.
- By 2030, reduce GHGs to 45 percent below 1990 levels, or 50 MMT.
- By 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990 levels, or 27 MMT.
- By 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT, and achieve net-zero GHG emissions.

#### State Clean Air Act.

Ecology 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 air authorities 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, Ecology 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 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, 2021, include areas of King, Pierce, 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.

#### 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, currently requires a 10 percent reduction by 2025 in the carbon intensity of transportation fuels, although additional targets for Oregon's program have been set for 2030 and 2035 by executive order but have not yet been adopted into program rules.

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. Since 2019 California's program has allowed 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, the additional revenue raised from the driver's license and vehicle weight fee increases in the 2015 Transportation Revenue Package 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 Engrossed Third Substitute Bill:**

##### Program Goal.

The Department of Ecology (Ecology) is directed to adopt a rule establishing a Clean Fuels Program (CFP) 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 reduce the overall, aggregate carbon intensity of transportation fuels used in Washington. The rule may only require aggregate

carbon intensity reductions, and may not require a reduction in carbon intensity to be achieved by any individual type of transportation fuel. The rule must establish a start date for the program of no later than January 1, 2023. By December 31, 2031, Ecology must update its CFP rules to reduce the carbon intensity of transportation fuel for each year through 2050 so that total emissions from transportation sources in 2050 are consistent with a 2050 reduction in overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 million metric tons, and achieving net-zero GHG emissions.

#### Covered and Exempt Fuels.

Electricity and liquid and gaseous fuels are within the scope of the CFP, so long as the fuels or electricity are used to propel motor vehicles or are intended for transportation purposes (transportation fuels). Excluded from the CFP 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;
- military tactical vehicles and tactical support equipment;
- transportation fuels that are used in volumes below thresholds adopted by rule by Ecology; and
- any other fuels that Ecology 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 CFP.

Until January 1, 2028, the following fuels are also exempt from the CFP'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.

#### Mechanics of the Clean Fuels Program.

The rule adopted by Ecology to implement the CFP 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. Ecology must establish separate carbon intensity standards for gasoline and its substitutes and diesel and its substitutes;
- 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 the 2017 baseline carbon intensity levels established by

- Ecology, 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 CFP;
  - the option to elect to register and earn credits in the CFP 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 CFP based on the mix of generating resources used by each electric utility, and mechanisms that allow for the certification of electricity that has a carbon intensity of zero, but that do not require electricity to have a carbon intensity of zero in order to be eligible to generate credits;
  - mechanisms that allow for the assignment of credits to an electric utility for, at minimum, residential electric vehicle charging or fueling; and
  - cost containment mechanisms that are harmonized with other states with similar CFP requirements. Cost containment mechanisms may include a credit clearance market or similar procedures. Ecology must consider a credit price cap or other cost containment measures if necessary to harmonize market credit costs with other states with similar CFP requirements.

Except where inconsistent with specific statutory direction from the Legislature, Ecology's CFP rule must seek to harmonize with similar programs that have been adopted by other states with significant amounts of transportation fuel supplied to or from Washington.

Ecology 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. Ecology may also require periodic reporting on CFP activities from producers and importers of transportation fuels. Transactions that transfer ownership of fuels required to be covered by the CFP must be accompanied by documentation assigning compliance responsibility for the fuels. To the extent practicable, CFP 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.

Ecology must conduct a biennial review of innovative technologies and pathways to reduce carbon and generate credits, and to modify rules or guidance as needed to maintain stable credit markets.

Ecology must issue an emergency deferral of the CFP in the event of a low carbon fuel shortage of at least 5 percent of the amount forecasted to be available during the effective compliance period, or upon the issuance of a Governor's declaration of an energy emergency under existing statutory processes. Ecology emergency deferral orders must



specify the duration of the deferral, the type of applicable fuel, and the applicable methods for deferring compliance with CFP requirements, which may include temporary adjustments to the carbon intensity standard, the carryover of deficits accrued during an emergency deferral, or a suspension of deficit accrual. Emergency deferrals may last no less than either 30 days or a calendar quarter, depending on the type of emergency deferral ordered by Ecology. Ecology may terminate an emergency deferral prior to its scheduled expiration.

#### Alternative Credit-Generating Mechanisms.

In addition to the provision of transportation fuel with a carbon intensity below the Ecology-established standard, Ecology's CFP rules may allow the generation of credits from specified activities related to the reduction of GHG emissions associated with transportation, including:

- specified carbon capture and sequestration projects, including crude oil production projects, project-based refinery mitigation, direct air capture, deployment of machinery and equipment used for certain nonfossil feedstocks, and broadband access infrastructure investments;
- the fueling of electric vehicles by commercial, public, and nonprofit entities that are not electric utilities; and
- the use of smart vehicle charging technology that results in electric vehicle fueling during times of comparatively low carbon intensity of the electric grid.

Ecology's rules must allow the generation of credits based on capacity for zero emission vehicle infrastructure, and may allow the generation of credits from the provision of low-carbon fuel infrastructure. Ecology's rules may establish limits on the number of credits available from alternative credit-generating mechanisms, and any limits on refueling infrastructure credits must consider the return on investment necessary for a credit-generating activity to be financially viable.

#### Public Reporting Requirements.

Beginning in 2025, Ecology must submit a report to the Legislature every year on May 1 detailing certain information regarding the previous year's CFP activities, including volumes of credits and transportation fuels. An estimate of probable costs or cost savings per gallon of gasoline and diesel attributable to the CFP must be prepared annually by an independent consultant under contract to Ecology, and must be announced to the news media in a press release when the annual report is submitted to the Legislature. Ecology must also contract for a forecast that estimates, using multiple methodologies, probable costs or cost savings per gallon of gasoline and diesel from the program, which must be completed and submitted to the Legislature by July 1, 2022. In annual reports or other public documents or communications that refer to assumed public health benefits from the CFP, Ecology must distinguish between pollutant reductions from the CFP and those reductions primarily attributable to vehicle emission standards.

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

By December 1, 2029, the Joint Legislative Audit and Review Committee is required to perform an analysis of the first five years of the CFP. This analysis must include the costs and benefits of the program and an evaluation of the information summarized by Ecology 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.

Ecology may require that persons electing or required to participate in the CFP pay a fee to cover the direct and indirect costs to Ecology and the Department of Commerce for developing and implementing the CFP. 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, and must enter into an interagency agreement with the Department of Commerce and complete a biennial workload analysis. Fees are deposited into a Clean Fuels Program Account (Account) used to carry out the CFP.

Ecology must establish and consult with a forestland and agricultural landowner stakeholder advisory panel to solicit input on how to incentivize the sequestration of GHGs on forest and agricultural lands through program credit allotment.

Violations of CFP requirements are subject to civil and criminal penalties under state Clean Air Act authority. Penalties collected from CFP 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 CFP must be used for transportation electrification, which may include the production and provision of hydrogen. 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, areas designated as maintenance or nonattainment, or areas identified by the Department of Health as disproportionately impacted communities, if such areas are within the service area of the utility. Ecology, in consultation with the Utilities and Transportation Commission, may adopt rules governing the limitations on the use of the other 50 percent of revenues earned by electric utilities from participating in the CFP. Ecology must provide for the establishment and funding of a statewide CFP to provide light duty vehicle consumers with reasonable purchase incentives on electric vehicles at the time of purchase or lease, and must require some portion of this 50 percent of revenues to be

contributed by each electric utility to this program.

The generation, purchase, sale, transfer, or retirement of CFP credits is not subject to the business and occupation tax. A tax preference performance statement is not required for this exemption from the business and occupation tax.

The Washington State University (WSU) Energy Program, in coordination with specified state agencies, must initiate a program to identify least conflict priority sites for clean energy projects with the potential to produce significant volumes of low carbon transportation fuel. State Environmental Policy Act and environmental permit processes apply to project proposals in areas identified through the WSU Energy Program site identification process. The WSU Energy Program must update its identification of priority areas every six years.

Ecology must periodically convene stakeholders, specified agencies, and Indian tribes to identify and discuss mitigation of significant likely environmental impacts associated with clean energy projects with the potential to produce significant volumes of transportation fuel with a low carbon intensity, or that support the production of such transportation fuel, in Washington. Ecology must provide a periodic report to the Legislature on mitigation resources, funding needs, and potential policies and programs to modify permitting and environmental review associated with clean energy projects that produce transportation fuel.

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

A severability clause and a null and void clause are included.

#### **EFFECT OF SENATE AMENDMENT(S):**

##### The Senate amendment:

- requires the Clean Fuels Program rules adopted by the Department of Ecology (Ecology) to be designed to meet a number of new criteria, including:
  1. establishing a point of compliance for motor vehicle fuel at the same point in the supply chain where the motor vehicle fuel tax is paid;
  2. authorizing regulated parties to carry over a small deficit to the next compliance period without penalty;
  3. specifying a process for Ecology to calculate and post publicly the average price of credits; and
  4. requiring, rather than authorizing, Ecology to establish a credit clearance market, and specifying the mechanisms by which the credit clearance market must function, including by establishing a maximum price for credits in the credit clearance market not to exceed \$200 for 2028, an amount which may be adjusted for inflation beginning in 2029;
- amends the carbon intensity reduction standards established under the program,

including by:

1. removing the requirement that the program set a standard that reduced carbon intensity by 10 percent below 2017 levels by 2028;
2. specifying the maximum annual pace of carbon intensity reductions that Ecology's program rules can establish, including 0.5 percent per year reductions during each of the first two years of the program (2023 and 2024), 1 percent per year during each of the following three years (2025-2027), 1.5 percent per year during each of the four subsequent years (2028-2031), and 2.5 percent per year from 2032 to 2034;
3. requiring explicit legislative authorization to be enacted after January 1, 2029 in order for Ecology's Clean Fuels Program rules to establish a reduction level beyond a 10 percent carbon intensity reduction;
4. beginning January 1, 2026, or January 1, 2028, prohibiting Ecology from increasing the applicable Clean Fuels Program standard until it can demonstrate that the following have occurred:
  - at least a 25 percent net increase in the volume of instate liquid biofuel production and the use of agricultural feedstocks grown within the state relative to the start of the program; and
  - at least one new biofuels production facility producing in excess of 60 million gallons of biofuels per year has received all necessary siting, operating, and environmental permits post all applicable appeals;
- makes the 2023 start of the implementation of the Clean Fuels Program contingent upon the enactment of a transportation funding act in which the combined total of new state revenues deposited into the motor vehicle fund and the multimodal transportation account exceed \$500 million per biennium;
- requires new or expanded low-carbon fuel production facilities requiring State Environmental Policy Act review to be evaluated by Ecology on the net cumulative greenhouse gas (GHG) emissions of a facility, netting the direct emissions with reductions associated with the fuel product;
- prohibits existing statutory greenhouse gas (GHG) emission limits from being the basis for the denial of a permit application or for judicial review of a permit for a new or expanded facility;
- eliminates investments in broadband infrastructure as an activity for which Ecology may allow credit generation under Clean Fuels Program rules;
- requires the rules for the Clean Fuels Program to allow the generation of credits from state transportation investments funded in an omnibus transportation appropriations act for activities and projects that reduce GHG emissions and decarbonize the transportation sector;
- requires 50 percent of revenues earned by electric utilities (other than the 50 percent required to be spent on transportation electrification projects) to be spent on activities and projects that have the highest impact on reducing GHG emissions and decarbonizing the transportation sector, as determined by Ecology and the Washington State Department of Transportation, and eliminates Ecology's rulemaking directive for this 50 percent of revenues and the requirement that some

portion of this 50 percent of revenues be used for the establishment of a Clean Fuels Reward program;

- specifies that as part of Ecology's annual report on the Clean Fuels Program, Ecology must identify the GHG emission reductions from the program isolated from other state and national programs;
- clarifies that Ecology's contracted, independent, forward-looking analysis of Clean Fuels Program impacts on gas and diesel prices is a one-time study that covers each year of the program through 2035;
- requires the Department of Commerce to consult with the Utilities and Transportation Commission, in addition to the Department of Ecology and the Department of Agriculture, in developing the periodic fuel supply forecast;
- requires the Department of Commerce to consider in its fuel supply forecasts the existing and future vehicle fleet in Washington, and any constraints preventing access to low-carbon fuels by Washington, and requires Commerce to compare estimates of fuel availability and total banked credits and carried over deficits for purposes of indicating the availability of fuels needed for Clean Fuels Program compliance;
- authorizes Commerce to appoint a Clean Fuels Program forecast review team of experts;
- requires the Ecology to issue a forecast deferral of Clean Fuels Program compliance obligations if the Department of Commerce's fuel supply forecast predicts that inadequate credits will be available to regulated parties for compliance purposes, and specifies the procedures related to the issuance and end of a forecast deferral;
- amends the criteria under which Ecology may issue an emergency deferral of Clean Fuels Program compliance obligations, and amends the procedures relating to the issuance and end of an emergency deferral;
- requires all rulemaking to implement the Clean Fuels Program to be conducted under the Administrative Procedure Act's standards for significant legislative rules; and
- removes portions of the intent section.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on April 5, 2021.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Environment & Energy):**

(In support) Transportation fuels, and on-road fuels in particular, are responsible for a large portion of Washington's greenhouse gas emissions. Washington will not achieve its overall greenhouse gas emission reduction goals without policies targeted to transportation emissions. Air pollution from transportation sources disproportionately impacts people of color and lower-income populations. A portion of Clean Fuels Program (CFP) revenues should be invested in electric vehicle rebates for consumers, since electric vehicles are

responsible for generating credits under the program. Successful CFPs have been implemented in California and Oregon without the negative impacts on gasoline and diesel prices that opponents forecasted. Auto manufacturers are committed to reducing greenhouse gas emissions from vehicles and support CFP policies because they are effective at reducing emissions. Without a CFP, Washington misses out on significant investments in alternative fuel infrastructure. A CFP provides long-term, technology-neutral regulatory certainty for companies to invest in lower-carbon solutions. Because Washington does not have in-state oil and gas production, money spent on fossil fuels largely flows out of state. Renewable hydrogen, renewable natural gas, and biogas are economically viable, home-grown fuels that will benefit from the CFP and will be key to the program's success. Emission reductions should be more significant and faster than the standards proposed in the bill. The negative impacts of climate change in Washington become clearer each year. Puget Sound is warming and acidifying due to climate change.

(Opposed) Clean Fuels Programs are a costly and ineffective way to reduce greenhouse gas emissions. Claims of improved air quality and other environmental benefits of the program are overstated and come at a high cost relative to other emission reduction policy options. The program is not likely to spur jobs in Washington, and will send economic investments out of the state. The CFPs in California and Oregon have increased fuel prices, and led the trucking industry to adopt surcharges for shipments into or out of California. A CFP will increase gas prices without raising revenues for investments in transportation infrastructure. The increase in gas prices caused by a CFP will make it harder to enact new fuel taxes. Increased gas prices increase operation costs for agricultural, trucking, and other businesses, and ultimately lead to increased prices for consumer goods. Clean Fuels Programs hurt people who live in rural areas and must travel long distances to employment opportunities. Increases in gas prices have regressive economic impacts that primarily hurt lower-income individuals.

(Other) A CFP would do little to improve air quality and is an ineffective way to reduce greenhouse gas emissions as measured on a cost-per-ton basis. The CFP should include cost-caps and regulatory off-ramps to reduce the risks of negative impacts from the program. Companies will adapt to a CFP and other regulations that shape the transportation fuel market. Utilities should use CFP revenues to ensure the equitable access to electric vehicle charging infrastructure.

### **Staff Summary of Public Testimony (Appropriations):**

(In support) The Clean Fuels Program (CFP) would help boost investments in sustainable biofuels and electrification without requiring government funds. The CFP would be good for jobs and for the environment. Public health would be improved through reductions in air pollution, which disproportionately affect tribes and people of color. The bill would create a more predictable policy environment for pools of capital looking for investments. The CFP would reduce climate impacts in the future. The CFP helps decarbonize the transportation system, which is the largest source of greenhouse gas emissions in

Washington. The revenue could be used to invest in electrification, more electric vehicle chargers, cleaner fuels, and greater use of electric vehicles. The California and Oregon programs have reduced pollution with only modest fuel price increases.

(Opposed) The costs of the CFP will be borne by the people of the state. The bill impacts the transportation budget, including making a transportation funding package more difficult, and should go through the Transportation Committee. Similar programs in California and Oregon have increased the price of fuel. The CFP amounts to a regressive tax on fuels. The CFP is not an effective tool and most of the costs don't reduce emissions. Better approaches are available, such as Seattle City Light's approach. The bill doesn't provide funding for infrastructure. The environmental claims are not supported by data. The bill amounts to a costly, ineffective mandate. Any increases in fuel prices caused by this bill will affect profit margins in food, farming, and small businesses. The pace of the policy is too aggressive. The California Legislative Analyst's Office states that a CFP is 10 times more expensive than other carbon programs. The credits system under the bill will shift money outside the state.

(Other) In the California version of the CFP, most of the projects have been in wealthy communities. Additional amendments to the electric utility provisions would accelerate the benefits of the policy. The credits from electrification should be wholly reinvested in electrification. Improvements could be made in the transition to electric vehicles. The CFP would reduce carbon and get more electric vehicles on the road.

#### **Staff Summary of Public Testimony (Transportation):**

(In support) This policy is a strong incentive to transition to fuels that pollute our air less and endanger our climate less. On-road transportation fuel emits about 30 million tons of carbon dioxide per year in our state, which is a third of our state greenhouse gas emissions. Producing feed stocks to produce clean fuels will spur economic activity in the areas of the state that need it the most. Transportation is the greatest challenge for carbon emissions in Washington. It will require lowering emissions from millions of tailpipes. This bill will help the state meet the recently updated emissions reduction targets. It will increase investments in sustainable biofuels and electrification and keep those jobs here in Washington and not exported to the other regions that have this program. Fuel in Oregon is still cheaper than in Washington even after accounting for Oregon's lower fuel tax. We know that renewable diesel and electricity are substantially cheaper than fuels they would replace. Low-carbon fuel standard (LCFS) revenue will allow further investment in transportation electrification including customer outreach and education, building and supporting the growth of vehicle-charging infrastructure, helping to develop hydrogen and other clean fuels, and assisting in fleet electrification for school districts and transit agencies. With the LCFS, revenue generated from residential electric vehicle charging can be used to provide incentives for the purchase or lease of new electric vehicles; this results in a cycle that accelerates the electric vehicle market. This bill will both reduce fossil fuel consumption in the transportation sector while creating family wage jobs in the electric

vehicle industry without using existing state funds. It will encourage investment in biofuel refineries here at home. In California, ports are investing millions of dollars generated by the LCFS in projects that reduce the emissions from port operations, and they are growing their market share in the process. For California consumers, gasoline prices have fallen 40 cents per gallon since the LCFS went into effect in 2011. Renewable diesel costs, on average, 17 cents less per gallon compared to conventional diesel. Households in California spent an average of 16 percent less on fuels. Tangible benefits on the climate side include 17 billion gallons of petroleum displaced, 69 million tons of carbon dioxide eliminated, a 36 percent drop in carbon intensity of fuels, and the California transportation sector's gross domestic product grew by 93.9 percent. California has seen investments in four new large conventional-to-renewable refinery projects worth \$4 billion. Biofuels reduce smog and other pollutants, which is particularly important to poor and disadvantaged communities that typically surround high-diesel-use areas like ports. There are large public health benefits only available through fuel incentivized by the LCFS. We know that there is an increased risk of asthma in children living in areas of higher prevalence of pollution. Other risks include premature birth, low birth rates, eczema, cardiovascular diseases, obesity, and increased predisposition to developmental conditions such as autism and attention-deficit/hyperactivity disorder. Children are at a higher risk of dangers of air pollution than adults because of faster breathing rates, immature immunity and respiratory systems, and increased time outside. These conditions also lead to missed school days, parental absences from work, and poor quality of life. The LCFS is an evidence-based approach to improving child health. The clean fuel standard approach is an ideal mix of government regulation and market response. Government sets the target and the market is allowed to figure out how to reach those targets. We need to look at many other actions to deal with climate change.

(Opposed) The LCFS is not a strong state policy and the imbalance of costs and benefits is concerning at this time of economic and public health challenges. The Legislature should prioritize policies which improve the environment, protect consumers, create jobs, and grow the economy. In California and Oregon the vast majority of the benefits leave the state, emissions reductions have been minimal, and costs are pushed down to consumers. Many workers could lose their jobs because of this policy. The implementation schedule is more aggressive than it was in our sister states to the south. The timelines are too fast. We do not have the infrastructure to meet the demand to supply these new blended fuels. Washington does not grow the needed fuel stocks. Money that would be dedicated to purchase the low-carbon fuels would be more productive paying for new transportation projects which will jump-start the economy with family wage jobs. Washington would be sending the money out of state to buy the low-carbon fuels. It is important to be able to permit new renewable facilities. Fuel is one of the largest costs to farms. This would reduce the competitive advantage in Washington's exported agricultural products. This price increase would be in addition to proposed increases in fuel and carbon taxes. This bill is tone deaf to small agricultural businesses which are struggling now more than ever. Our vehicles do not qualify for red dye agriculture-exempt fuels. This bill drives up the cost of fuel even further. Small equipment engines are not designed for biofuels, the blends gunk up our engines, add to wear and tear, which causes more down time and repair costs. This will



decrease our bottom line. Trucking will pass through the costs of increases to fuel and the policy favors out-of-state companies. The Washington food industry operates within low profit margins and is a leader in trying to reduce emissions. Every penny can increase the cost of food. The cost impacts will impact logging employers, employees, and communities; everyone's pocketbook will be impacted. The LCFS is the least cost-effective method of reducing emissions, costing 10 times more than carbon-reducing alternatives. The fuel price increases will cost \$900 per family. Employees of family farms travel long distances to work and this will increase their costs, and they should not be punished. All reports conclude that the LCFS raises fuel prices and emission reductions are only 1 to 2 percent. There is a direct and significant impact on the transportation budget. Any fuel cost increases directly affect transportation taxing and revenue capacity. The LCFS would provide zero improvements while raising the price of gas by 57 cents, making it impossible to pass a transportation revenue package. It is unlikely that voters will accept both. This policy increases the cost of energy. Why not just increase the gas tax to generate revenue for investments? Voters have repeatedly said "no" to carbon taxes and yet legislators want to pass increases.

(Other) The reason fuel prices are lower in Oregon and California is because increased domestic oil production drove prices down; it is ironic to count on increased oil production to hide the cost of an LCFS. It may be worth paying those prices to reduce carbon dioxide emissions. But the LCFS is one of the most expensive ways to reduce carbon dioxide emissions. In California it costs \$200 to reduce one metric ton of carbon dioxide, Seattle City light pays \$7 for that same amount. We need to reduce carbon dioxide emissions in the most effective way.

**Persons Testifying (Environment & Energy):** (In support) Representative Fitzgibbon, prime sponsor; Larry Luton, 350 Spokane; Peter Fink, Intercollegiate Athletics University of Washington; Dave Warren, Warren Group and Klickitat Public Utility District, and Washington State Hospital Association; Becky Bogard, Republic Services; Patrick Serfass, American Biogas Council; Curt Augustine, Alliance for Automotive Innovation; Jay Manning, Puget Sound Partnership Leadership Council; Stu Clark and Joel Cresswell, Department of Ecology; Leah Missik, Climate Solutions; Matthew Hepner, International Brotherhood of Electric Workers; Fred Felleman, Port of Seattle and Northwest Seaport Alliance; and Tim Zenk, Neste.

(Opposed) Jessica Spiegel, Washington State Petroleum Association; Robert Thompson, Vintners Logistics LLC; Neil Hartman, Washington State Association of the United Association of Plumbers and Pipefitters; Josh Swanson, International Union of Operating Engineers Local 302; Billy Wallace, District Council of Laborers; Jerry Vanderwood, Association of General Contractors of Washington; Paul Graves, Oak Harbor Freight Lines; Dan Coyne, Food Northwest; Mike Ennis, Association of Washington Business; Sheri Call, Washington Trucking Associations; and Frank Lyall, Lyall Farms.

(Other) Todd Myers, Washington Policy Center; Tom Wolf, BP America; and Randal

Friedman.

**Persons Testifying (Appropriations):** (In support) Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Robyn Rothman, Washington Health Climate Alliance; Suzanne Hunt, Generate Capital; Larry Luton, 350 Spokane; Logan Bahr, Tacoma Power; Stu Clark, Office of the Governor; Joel Creswell, Department of Ecology; Chris Nevers, Rivian Automotive; and Ryan Spiller, Alliance for Automotive Innovation.

(Opposed) Jeff Pack; Mark Riker; Billy Wallace; Josh Swanson; Sheri Call, Washington Trucking Associations; Jerry VanderWood, Associated General Contractors of Washington; Ben Buchholz, Northwest Agricultural Cooperative Council; Carolyn Logue, Washington Food Industry Association; Mike Ennis, Association of Washington Business; Vicki Malloy, Harry's Pollen Service; Mike Clayton, Red Apple Orchards; Deanna Martinez; Jessica Spiegel, Western States Petroleum Association; and Dan Coyne, Food Northwest.

(Other) Todd Myers, Washington Policy Center; Thad Kurowski, Tesla; and Spencer Reeder, Audi.

**Persons Testifying (Transportation):** (In support) Representative Fitzgibbon, prime sponsor; Larry Luton, 350 Spokane; Pragya Rai; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Christine Cooley, Tacoma Power; Matthew Hepner, International Brotherhood of Electrical Workers; Ryan Calkins, Port of Seattle; Tim Zenk, Neste; Floyd Vergara, National Biodiesel Board; Curt Augustine and Steve Douglas, Alliance for Automotive Innovation; Patrick Serfass, American Biogas Council; and Joel Creswell and Stu Clark, Washington State Department of Ecology.

(Opposed) Neil Hartman, Washington State Association of Plumbers and Pipefitters and HVAC/R Service Technicians; Josh Swanson, International Union of Operating Engineers, Local 302; Billy Wallace, Washington and Northern Idaho District Council of Laborers; Jessica Spiegel, Western State Petroleum Association; Vicki Malloy, Harry's Cherries, Inc.; Dan Coyne, Food Northwest; Ben Buchholz, Northwest Agricultural Cooperative Council; Sheri Call, Washington Trucking Associations; Jerry VanderWood, Associated General Contractors of Washington; Mike Ennis, Association of Washington Business; Matt Ewers, Inland Empire Distribution Systems Third Party Logistics; Carolyn Logue, Washington Food Industry Association; Tim Eyman, PermanentOffense.com; Jerrold Bonagofsky, Washington Contract Loggers Association; and Frank Lyall, Lyall Farms.

(Other) Todd Myers, Washington Policy Center.

**Persons Signed In To Testify But Not Testifying (Environment & Energy):** Logan Bahr, Tacoma Public Utilities; Susan Baird-Joshi, Washington State Parent Teacher Association; Dan Bartelheimer, Sno Valley Farms Inc and Snohomish County Farm Bureau; Jerrold Bonagofsky, Washington Contract Loggers Association; Bruce Chattin,

Washington Aggregates and Concrete Association; Annemarie Dooley, Washington Physicians for Social Responsibility; Nicolas Garcia, Washington Public Utility Districts Association; Steve Gordon, Gordon Truck Centers; Samantha Grad, United Food and Commercial Workers 21; Brian Grunkemeyer, FlexCharging; Suzanne Hunt, Generate Capital; Howard Jensen, Sun Heaven Farms and Benton County Farm Bureau; Janet Kelly, Puget Sound Energy; Michele Kiesz, Washington Association of Wheat Growers and Washington Farm Bureau; Thad Kurowski, Tesla; Alexandra Leumer, ChargePoint; Vicki Malloy, Harry's Pollen Service and Chelan-Douglas County Farm Bureau; John McKay; Gerry O'Keefe, Washington Public Ports Association; Mary Paterson, Solutionary Rail; Robyn Rothman, Washington Health Climate Association; Pat Ruble, Washington Trails Association; and Cliff Traisman, Washington Environmental Council and Washington Conservation Voters.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.

**Persons Signed In To Testify But Not Testifying (Transportation):** None.