

SENATE BILL REPORT

E3SHB 1091

As of March 8, 2021

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

Committee Activity: Environment, Energy & Technology: 3/10/21.

Brief Summary of 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 aircraft, and certain other categories of transportation fuel from the CFP's GHG emission intensity reduction requirements.
- Requires the CFP to include processes for registering, reporting, and tracking compliance obligations and to establish bankable, tradeable credits used to satisfy compliance obligations.
- Retains the current distribution of revenue under the 2015 Transportation

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 stakeholders to discuss mitigation of significant likely environmental impacts associated with low-carbon transportation fuel projects.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Kimberly Cushing (786-7421)

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 Ecology 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 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, as of 2018 the total annual GHG emissions in Washington State were 99.6 million metric tons (MMT) of CO₂e. Of these emissions, 44.9 percent were attributable to transportation sources.

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 statewide emissions 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; and
- 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.

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.

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. 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 identified in a transportation appropriations act as Connecting Washington projects or improvements.

Summary of Bill: Clean Fuels Program. Ecology is directed to adopt a rule establishing a Clean Fuels Program (CFP) limiting the 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 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 total emissions from transportation sources in 2050 are consistent with reaching the 2050 statewide emissions limits.

Covered and Exempt Fuels. The CFP applies to transportation fuels, defined as electricity and any liquid and gaseous fuels, so long as the fuels or electricity are used to propel motor

vehicles or are intended for transportation purposes. Excluded from the CFP carbon intensity reduction requirements are the following:

- transportation fuel exported or otherwise not used in Washington;
- transportation fuel used for the propulsion of all aircraft, railroad locomotives, or vessels;
- military tactical vehicles and tactical support equipment;
- transportation fuels used in volumes below thresholds adopted by rule by Ecology; and
- any other fuels 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 not designed to transport persons or property, not designed to be operated on highways, and used primarily for construction work, including timber harvest and mining; and
- dyed special fuel used for agricultural purposes exempt from state fuel taxation.

Clean Fuels Program Requirements. 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 and any permanent GHG sequestration activities—Ecology must establish separate carbon intensity standards for gasoline and its substitutes and diesel and its substitutes;
- processes for assigning and verifying bankable, tradable credits for the production, import, or dispensation for use of transportation fuels with associated lifecycle GHG emissions less than the carbon intensity standards 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 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 and hydrogen 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 do not require electricity to have a carbon intensity of zero 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 harmonized with other states with similar CFP requirements; and (1) cost containment mechanisms may include a credit clearance market or similar procedures; (2) 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 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 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.

Emergency Deferral. 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 receiving credits for 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;
- fueling electric vehicles by commercial, public, and nonprofit entities that are not electric utilities; and
- using 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.

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.

Public Reporting Requirements. Beginning in 2025, Ecology must submit a report to the Legislature every year on May 1st detailing certain information regarding the previous year's CFP activities, including the number of credits and deficits, volumes of transportation fuels, and total GHG emissions reductions attributable to the CFP.

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 an ex ante analysis for each year through 2035 of these probable costs or cost savings to impute price impacts using multiple methodologies, 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 reductions primarily attributable to vehicle emission standards.

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 using specific metrics, an evaluation of the information summarized by Ecology in their annual reports, and the total statewide costs of the CFP per

ton of GHG emissions reductions achieved.

Clean Fuels Program Account and Fee. 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 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 Commerce and complete a biennial workload analysis. Fees are deposited into a Clean Fuels Program Account (account) used to carry out the CFP.

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

Electric Utility Credit Revenues. 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 and other gaseous fuels produced from nonfossil feedstocks. Of this 50 percent, 60 percent of the transportation electrification projects must be in or directly benefit federal Clean Air Act maintenance or nonattainment areas, areas at risk of maintenance or nonattainment designation, or areas 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, must adopt requirements for spending the other 50 percent of revenues earned by electric utilities from participating in the CFP. Ecology must establish and fund a statewide Clean Fuel Reward Program 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.

Project Siting. 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 transportation fuel with a low carbon intensity, or that support the production of such transportation fuel, in Washington. 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 low carbon transportation fuel. 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.

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.

Other Provisions. 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.

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 is included.

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

Fiscal Note: Available. New fiscal note requested on March 1, 2021.

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

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