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## Environment & Energy Committee

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### HB 1409

**Brief Description:** Concerning the clean fuels program.

**Sponsors:** Representatives Fitzgibbon, Doglio, Berry, Duerr, Parshley, Reed, Ormsby, Hill and Macri.

#### Brief Summary of Bill

- Amends the carbon intensity reduction requirements for transportation fuels under the Clean Fuels Program (CFP).
- Establishes penalties and other enforcement powers specific to the CFP program requirements, and eliminates Clean Air Act criminal and civil penalties for violations of the CFP.

**Hearing Date:** 1/28/25

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

#### Background:

In 2021, legislation was enacted directing the Department of Ecology (Ecology) 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 20 percent below 2017 levels by 2038. In reaching the carbon intensity reduction of 20 percent below 2017 levels by 2038, Ecology's rules were required to reduce the carbon intensity of transportation fuels each year relative to the previous year of the CFP by no more than:

- 0.5 percent in 2023 and 2024;
- 1 percent in 2025, 2026, 2027;
- 1.5 percent in 2028, 2029, 2030, 2031; and

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- no reduction in 2032 and 2033.

In addition, Ecology is prohibited from increasing the carbon intensity reductions required under the CFP by more than 10 percent until:

- there is at least a 15 percent net increase in in-state liquid biofuel production and the use of foodstocks grown or produced in Washington;
- at least one new or expanded biofuel production facility representing at least 60 million gallons of biofuel production or production capacity per year has received all siting, operating, and environmental permits and any timely and applicable appeals of such permits have concluded—at least one new facility producing at least 10 million gallons of biofuel production or production capacity must be part of achieving this threshold—; and
- a Joint Legislature Audit and Review Committee (JLARC) report on the first five years of program operations has been completed, and the 2033 regular legislative session has adjourned.

Rules adopted by Ecology to implement these requirements have established cumulative carbon intensity reductions relative to 2017 levels as follows:

- 2023: 0.5 percent;
- 2024: 1 percent;
- 2025: 2 percent;
- 2026: 3 percent;
- 2027: 4 percent;
- 2028: 5.5 percent;
- 2029: 7 percent;
- 2030: 8.5 percent;
- 2031, 2032, 2033: 10 percent; and
- 2034, 2035, 2036, 2037, 2038: 20 percent.

Ecology's rules establish a process 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 rules require the carbon intensity assigned to a fuel pathway based on this lifecycle analysis must be third-party verified.

Ecology's CFP rules establish registration and reporting requirements for producers and importers of transportation fuels, including processes for assigning and verifying bankable, tradeable credits for the transportation fuels with carbon intensities lower than the carbon intensity standard. Regulated entities that produce deficit-generating fuels above the carbon intensity standard must retire credits in an amount equal to its compliance obligation, which is based on the number of deficits generated by the regulated entity. Ecology's rules establish a credit clearance market, in which regulated parties that have a net deficit balance at the end of a compliance period must participate. The credit clearance market provides an opportunity for

regulated parties to purchase credits pledged by credit sellers at no more than a maximum price of \$200 in 2018 dollars for 2023, adjusted for inflation.

The CFP rules establish methods for determining 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. Electricity is not required to have a carbon intensity of zero in order to be eligible to generate credits. The CFP rules also are required to establish mechanisms that allow for the assignment of credits to an electric utility for residential electric vehicle charging or fueling. 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.
- For the other 50 percent of revenues, each electric utility must spend revenues on programs or projects selected from a list developed jointly by Ecology and the Department of Transportation. The list must be developed based on GHG emission impacts and transportation sector decarbonization potential, and must include at least four categories of projects or programs, including the provision of zero emission vehicles at no cost or a discount to certain entities and grid capacity expansions to enable transportation electrification investments.

Violations of the CFP requirements are subject to the following civil and criminal penalties under state Clean Air Act authority:

- Knowing violations of the CFP requirements subject a person to a gross misdemeanor, punishable upon conviction by a fine of up to \$10,000 or imprisonment in the county jail for one year or both.
- Persons that violate the CFP requirements may incur a civil penalty of up to \$10,000 per day for each violation.

Civil penalties under the Clean Air Act, including the CFP penalties, are appealable to the Pollution Control Hearings Board (PCHB). Penalties collected from the CFP violations must be deposited into the Clean Fuels Program Account, used to implement the CFP.

The 2021 Climate Commitment Act created a number of accounts to receive Cap-and-Invest Program revenues. Among the Climate Commitment Act accounts is the Carbon Emissions Reduction Account, which is used for specified types of transportation uses.

### **Summary of Bill:**

Ecology's CFP rules must reduce the carbon intensity of transportation fuels by 20 percent below 2017 levels by no earlier than January 1, 2034. The annual schedule of carbon intensity reductions is amended to require the following cumulative carbon intensity reductions by January 1 of each of the following years:

- Six percent by 2027;
- Eight percent by 2028;
- 10 percent by 2029;
- 12 percent by 2030;
- 14 percent by 2031;
- 16 percent by 2032;
- 18 percent by 2033; and
- 20 percent by 2034.

Clean Air Act civil and criminal penalties no longer apply to violations of the CFP requirements. Instead, Ecology may issue the following penalties for violations of the CFP:

- A penalty of up to four times the maximum price of the most recent credit clearance market may be issued for each deficit that is not retired at the end of a compliance period, unless the registered party participates in the credit clearance market.
- A penalty may be issued for misreporting that results in the undue claim of credits for failure to report a deficit of up to \$1,000 per credit or deficit. A penalty may not be issued for misreporting that is corrected by the end of a quarter's reporting period.
- A penalty of up to \$10,000 per day may be issued for each day a regulated entity or credit generator does not submit a required report.
- A penalty of up to \$1,000 per credit may be issued for each illegitimate credit generated that exceeds the Ecology-adopted carbon intensity standard.
- A penalty of up to \$25,000 per month may be issued for a deficit generator's failure to register with Ecology.
- A penalty may be issued to an electric utility of up to four times the credit revenue improperly spent by the utility.
- A penalty of up to \$50,000, or \$10,000 per day may be issued for third-party verification requirements for fuel pathway carbon intensity, as required by Ecology rules.
- A penalty of up to \$10,000 per day may be issued for other violations by a deficit or credit generator of the CFP requirements or orders.

Electric utilities must notify retail customers in published form within three months of paying a CFP penalty.

The CFP penalties are appealable to the PCHB and collected penalties must be deposited in the Carbon Emissions Reduction Account.

All regulated parties and credit generators are required to submit reports in a timely manner to meet compliance obligations, and must comply with requirements for recordkeeping, reporting,

transacting credits, obtaining a carbon intensity calculation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.