HOUSE BILL REPORT
HB 1409

As Reported by House Committee On:
Environment & Energy
Appropriations

Title: An act relating to the clean fuels program.

Brief Description: Concerning the clean fuels program.

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

Brief History:

Committee Activity:

Environment & Energy: 1/28/25, 2/17/25 [DPS];
Appropriations: 2/24/25, 2/27/25 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Doglio, Chair; Hunt, Vice Chair; Berry, Duerr, Fey, Fitzgibbon, Kloba, Mena, Ramel, Stearns, Street and Wylie.

Minority Report: Do not pass. Signed by 7 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Abbarno, Barnard, Ley, Mendoza and Stuebe.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Ybarra.

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
- 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 (CCA) created a number of accounts to receive Cap-and-Invest Program revenues. Among the CCA accounts is the Carbon Emissions Reduction Account, which is used for specified types of transportation uses.

Summary of Substitute 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:

- 11 percent by 2027;
- 15 percent by 2028;
- 19 percent by 2029;
- 23 percent by 2030;
- 27 percent by 2031;
- 31 percent by 2032;
- 35 percent by 2033;
- 39 percent by 2034;
- 43 percent by 2035;
- 47 percent by 2036;
- 51 percent by 2037; and
- 55 percent by 2038.

The reduction in the carbon intensity standard is no longer delayed pending the Legislative consideration of the JLARC study or the achievement of biofuel facility and production thresholds. Ecology must provide analysis and forecasts of the CFP credit markets, including credit prices, supply and demand trends, market activities categorized by type of participant, and trends in in-state biofuel feedstock production. Ecology must consider this analysis in adopting rules and otherwise implementing the CFP.

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, and obtaining a carbon intensity calculation. Ecology is authorized to issue corrective action orders for noncompliance with CFP requirements.

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 issued by Ecology.

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.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute:

- changes the carbon intensity standard for the CFP to 55 percent below 2017 levels by no earlier than January 1, 2038, by reducing the carbon intensity of the program by 8 percent on January 1, 2027, and by 4 percent each year afterwards through January 1, 2038;
- authorizes Ecology to issue corrective action orders to persons not in compliance with CFP requirements;
- requires Ecology to provide analysis and forecasts of the CFP credit markets, and to consider the analysis in adopting rules and implementing the CFP requirements;
- adds a conforming amendment to clarify that penalties from the CFP requirements are to be deposited in the Carbon Emissions Reduction Account rather than the Clean

Fuels Program Account used for Ecology's implementation of the CFP; and
- adds a severability clause.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The current CFP law does not provide sufficient stability and certainty to producers of low-carbon fuels because the compliance trajectory is not aggressive enough at the start of the program, and lumpy in how it changes from year to year. Prices in the CFP market have been too low to incentivize enough low-carbon fuel production, and have dropped from nearly $100 to $26 per credit. All jurisdictions on the West Coast have CFPs in place, but Washington's program has the least stringent carbon intensity standards. Carbon reduction goals in the CFP should be based on research and data. The longer-term trajectory of the carbon intensity standard is uncertain because it is dependent on the siting of a biofuel production facility, and the CFP's uncertainty and anemic standard makes other businesses hesitant to make low-carbon fuel investments. The existing penalty structure for the CFP, which relies on the Clean Air Act, is a blunt instrument and includes criminal penalties that are not well tailored to potential violations of the CFP. The CFP is a huge priority of the conservation community, and has been a successful program. Low-carbon electricity, renewable natural gas, and renewable diesel used as a transportation fuel are all incentivized by the CFP, and would be more widely adopted with a stronger program.

(Opposed) Increasing the stringency of the CFP will make transportation fuel more expensive. This program has already lead to higher fuel prices, even though proponents claimed it would not. Reforms of the CCA should be adopted alongside any changes to the CFP. The design of the CCA is at odds with the CFP, and certain biofuels fuels encouraged under the CFP are penalized under the CCA. The changes to the penalty structure are concerning, and raise the question of whether a fuel company should be punished if clean fuels credits are unavailable for them to purchase. Removing the existing biofuel production facility requirement in order for the CFP to become more stringent will have negative effects on job creation. The CFP should be audited, as planned, before the program's stringency is allowed to increase. Climate change is past the tipping point, so don't look up. Washington should have only one program for reducing GHG emissions, and policymakers should consider the cost burdens from environmental policy on its poorest residents. Biofuels are not necessarily lower-emitting than fossil fuels. Criminal penalties for CFP violations should be retained.

(Other) Under the CFP, it is Ecology's obligation to maintain a healthy credit market. There is currently an oversupply of credits, which reduces decarbonization investment incentives. Other states with similar programs have much stronger decarbonization targets, which better encourage investments. The CFP's enforcement provisions need to be clarified. The penalties for noncompliance should distinguish between accidental reporting errors and accidental omissions or misreporting. Regulators should be flexible in assessing penalties. If the biofuel production threshold requirement is going to be removed from the CFP law, policymakers should identify an alternative mechanism to increase in-state biofuel production capacity. The CFP does not contribute meaningfully to the state's decarbonization efforts in the context of what other programs are accomplishing. The CFP relies on arbitrary targets that are based on inaccurate predictions of market forces.

Persons Testifying: (In support) Representative Joe Fitzgibbon, prime sponsor; Leah Missik, Climate Solutions; Clifford Traisman, Washington Conservation Action; Justin Leighton, Washington State Transit Association; Aimee Higby, Tacoma Public Utilities/Tacoma Power; Michael Breish, Seattle City Light/City of Seattle; Robin Vercruse, Low Carbon Fuels Coalition; Scott Richards, Clean Fuels Alliance America; Cory-Ann Wind, Clean Fuels Alliance America; Sam Wade, Coalition for Renewable Natural Gas; Dean Taylor, Dean Taylor Consulting; Kent Hartwig, I am an official representative of Gevo; and Jonathan Harding, American Biogas Council.

(Opposed) Jodie Muller, WSPA; Ben Buchholz, NW Agricultural Cooperative Council, WA Friends of Farms and Forests, Far West Agribusiness Association; Jeff Pack, Me; Peter Godlewski, Association of Washington Business; and Arthur West.

(Other) Tom Wolf, bp America; Joel Creswell, Washington State Department of Ecology; and Todd Myers.

Persons Signed In To Testify But Not Testifying: None.

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 19 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Bergquist, Callan, Cortes, Doglio, Fitzgibbon, Leavitt, Lekanoff, Peterson, Pollet, Ryu, Springer, Stonier, Street, Thai and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Burnett, Caldier, Corry, Dye, Keaton, Manjarrez, Marshall and Rude.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:

The second substitute bill amends the carbon intensity standard for the Clean Fuels Program (CFP) by:

- specifying a statutory 5 percent reduction in 2026 and a 4 percent reduction in 2027; and
- directing the Department of Ecology (Ecology) to determine by rule whether to reduce the carbon intensity by an additional 3 or 4 percent each year from 2028 to 2038.

The second substitute bill also reduces the target carbon intensity standard for 2038 from 55 percent to 45 percent, unless, taking effect no earlier than 2032, Ecology determines that:

- Ecology's Zero-Emission Vehicle (ZEV) program is not being implemented as of January 1, 2030; or
- based on 2030 transportation emissions data reported to Ecology under the Clean Air Act, a 55 percent reduction is necessary for transportation emissions subject to the CFP to achieve a 70 percent reduction in greenhouse gas emissions by 2040, consistent with state emission limits.

The second substitute bill also:

- authorizes Ecology to lighten the carbon intensity standard by 2 percent in a calendar year, relative to the standard that would otherwise apply to that calendar year, based on consideration of fuel supply forecasts as necessary to avoid issuing a forecast deferral of CFP requirements;
- prohibits Ecology from increasing the carbon intensity standards beyond 20 percent beginning in 2030 unless Ecology determines that one new or expanded biofuel production facility has received a siting, operating, or environmental permit after January 1, 2025;
- prohibits Ecology from issuing penalties to a CFP participant based on a violation demonstrated to be due to an error by a third-party verifier; and
- amends the CFP credit market analysis requirements, including by requiring the analysis to be published on Ecology's website, requiring the analysis to include price analysis of Washington compared to other jurisdictions' clean fuels program markets, and focusing analysis of credit and deficit generation by fuel type, rather than by type of CFP program participant.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The initial years of the Clean Fuels Program (CFP) have been successful, but more work needs to be done to ensure the policy reduces greenhouse gas impacts in the transportation sector. The cost of the bill is small. The CFP represents an important tool in accelerating the decarbonization of the state's transportation sector, while at the same time improving local air quality and respiratory health. Strengthening the CFP standards will mean more incentives for and investments in clean fuels, including investments in electric vehicle infrastructure and utilities. The accelerated carbon intensity reduction timeline and updated enforcement mechanisms will help ensure the CFP achieves its goals.

(Opposed) Increasing CFP stringency affects fuel affordability, and this bill could add between 7 and 20 cents per gallon of gas. Increased fuel prices impact the state budget, including fleet operations, law enforcement, emergency services, and school districts. Rising fuel prices also impact food prices and transportation costs and disproportionately affect both low- and middle-income households. The removal of language related to siting a state biodiesel refinery facility is concerning.

(Other) The clean fuels market is struggling, and reform is needed. The trigger related to a state biodiesel refinery should be added back in.

Persons Testifying: (In support) Representative Joe Fitzgibbon, prime sponsor; Dean Taylor, Seattle City Light; Clifford Traisman, Washington Conservation Action; Leah Missik, Climate Solutions; Scott Richards, Clean Fuels Alliance America; and Yanni Psareas, The Coalition for Renewable Natural Gas.

(Opposed) Jessica Spiegel, WSPA; and Peter Godlewski, Association of Washington Business.

(Other) Isaac Kastama, Clean and Prosperous Washington.

Persons Signed In To Testify But Not Testifying: None.