HOUSE BILL REPORT
HB 1912

As Reported by House Committee On:
Environment & Energy

Title: An act relating to the exemption for fuels used for agricultural purposes in the climate commitment act.

Brief Description: Concerning the exemption for fuels used for agricultural purposes in the climate commitment act.

Sponsors: Representatives Dent, Reeves, Schmick, Springer, Orcutt, Nance, McClintock, Morgan, Engell, Paul, Mendoza, Bernbaum, Barnard, Richards, Eslick, Manjarrez, Dufault, Shavers, Burnett, Timmons, Abell, Thai, Barkis, Davis, Connors and Hill.

Brief History:
Committee Activity:
Environment & Energy: 2/13/25, 2/20/25 [DPS].

Brief Summary of Substitute Bill

- Requires fuel sellers to track and report sales of agricultural fuels that are exempt from Climate Commitment Act compliance obligations.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Doglio, Chair; Hunt, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Abell, Barnard, Berry, Fey, Fitzgibbon, Kloba, Ley, Mena, Mendoza, Stearns, Street, Stuebe and Wylie.

Minority Report: Do not pass. Signed by 1 member: Representative Ybarra.

Minority Report: Without recommendation. Signed by 3 members: Representatives Abbarno, Duerr and Ramel.

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.

Staff: Jacob Lipson (786-7196).

Background:

Under the federal Clean Air Act, green house 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 the Department of Ecology (Ecology) under the state Clean Air Act. This state law requires fuel suppliers and facilities whose emissions exceed 10,000 metric tons of CO2e each year to report their annual emissions to Ecology.

Under the 2021 Climate Commitment Act (CCA), in order to ensure that GHG emissions are reduced consistent with the state's 2030, 2040, and 2050 emissions limits, Ecology must implement a cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, which include allowances or eligible offset credits. The Cap-and-Invest Program (Program) commenced on January 1, 2023.

The Program:

- establishes annual allowance budgets that limit emissions from covered entities;
- defines those entities covered by the Program (covered entities), those entities that may voluntarily opt into coverage under the Program (opt-in entities), and other persons that participate in auctions or allowance markets by purchasing, holding, selling, or voluntarily retiring compliance instruments (general market participants);
- provides for the distribution of emissions allowances at no cost to certain covered entities, or by purchase at auction;
- provides for offset credits as a method for meeting compliance obligations;
- defines the compliance obligations of covered entities;
- provides for the transfer of allowances and recognition of compliance instruments, including those issued by jurisdictions with which Washington may have linkage agreements in the future; and
- provides monitoring and oversight of the sale and transfer of allowances.

Except for directly distributed, no-cost allowances allocated to certain entities, allowances must be distributed via allowance auctions. Auctions are open to covered entities, opt-in entities, and general market participants that are registered entities in good standing.

Seven categories of emissions are exempt from coverage under the Program, regardless of emission level, including certain biofuels and the following types of agriculture-related emissions. These include emissions from motor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user. This exemption is available only if a buyer of fuel provides a seller with an exemption certificate developed by Ecology, and

is available only to the agricultural purposes and farm fuel users that are also exempt from state retail sales tax on fuel purchases.

Fuels used for transporting agricultural products on public highways are also exempt from a CCA compliance obligation. Ecology must determine a method for implementing this exemption, and must maintain it for five years.

Ecology has issued interim guidance regarding the implementation of the agricultural exemptions and other CCA emission exemptions, has convened a workgroup of stakeholders in 2023 to address the issue and complete a report on exemption implementation, and has developed an exemption certificate for purposes of implementing these exemptions. Fuel users and covered entities are not required to use the exemption certificate developed by Ecology. With certain exceptions, violations of CCA requirements are subject to penalties of up to $10,000 per day per violation.

In the 2024 Supplemental Operating Budget, the Legislature also allocated $30 million of CCA revenues to the Department of Licensing (DOL) to implement a program to provide payments to exempt farm fuel users and transporters who purchased fuel for agricultural purposes. Under this program, the DOL provides payments based on a tiered system which is structured according to the volume of agricultural farm fuel used for which the exempt user was charged a surcharge, due to the price impacts on fuel of the CCA.

Summary of Substitute Bill:

New tracking and reporting requirements are established for sales of fuel that is exempt from CCA compliance obligations due to its use for agricultural purposes by a farm fuel user or due to its use to transport agricultural products on public highways (exempt agricultural fuel). The new requirements apply to sales of exempt fuel occurring on or after January 1, 2026.

The new tracking and reporting requirements differ depending on a fuel seller's role within the fuel supply chain as either a retail fuel seller, a fuel seller that does not sell at retail, or a fuel supplier that is also a covered or opt-in entity subject to CCA compliance obligations (CCA covered entities).

Retail fuel sellers may elect to sell exempt agricultural fuels and must register with Ecology by December 15 of each year beginning in 2025 to be eligible to sell exempt fuels during the following calendar year. Retail fuel sellers electing to sell exempt agricultural fuels must track and report exempt agricultural fuel sale volumes upon request and at least quarterly to the fuel seller that supplied the exempt agricultural fuel or the CCA covered entity with a compliance obligation associated with the fuel. Retail fuel sellers must accept the certificate developed by Ecology to implement the CCA's agricultural fuels exemption. Retail fuel sellers that do not register with Ecology may not sell exempt fuels or report the

sale of fuels as exempt to other fuel suppliers. Fuel sellers that are not retail sellers or CCA covered entities must register with Ecology within 30 days of receipt of a request to do so from a person that sold fuel to the fuel seller or from a CCA covered entity with a compliance obligation associated with the fuel. Fuel sellers required to register with Ecology must track and report volumes of exempt agricultural fuel sales to the requester no less often than quarterly. Fuel suppliers that are CCA covered entities and that report GHG emissions to Ecology must annually report volumes of exempt agricultural fuel sales reported to it by retail fuel sellers and other fuel sellers, and must do so as a separate and distinct portion of GHG emission reports submitted to Ecology. Ecology may require a CCA covered entity to submit data or documentation related to exempt agricultural fuels. CCA covered entities may not claim exemptions for fuel sales by retail fuel sellers that do not register with Ecology.

Climate Commitment Act covered entities, fuel sellers, and retail fuel sellers registered to sell exempt agricultural fuels all must make available exempt agricultural fuel for purchase at a differential rate that reflects the differential rate charged by the CCA covered entity associated with the fuel, or must credit the fuel purchaser in a manner than compensates the fuel purchaser consistent with that differential rate. The obligations of a fuel seller or retail fuel seller with respect to exempt agricultural fuel sellers do not make such fuel sellers CCA covered entities.

Registrations by fuel sellers with Ecology must include certain specified information regarding the location and contact information of the exempt fuel seller. Ecology must post and periodically update a list of retail fuel sellers of exempt agricultural fuels.

Ecology may adopt rules, and may require a fuel seller that is required to track and report information to provide Ecology documentation of tracked or reported exempt agricultural fuel sales within14 business days. Violations of registration, tracking, and reporting requirements are subject to penalties under the CCA.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill:

- restores the temporary status of the exemption from CCA compliance obligations for fuel used to transport agricultural products on public highways by non-farm fuel users, but retains the permanent exemption from CCA compliance obligations for fuel used to transport agricultural products on public highways by farm fuel users; and
- eliminates the remittance program to be implemented by Ecology, and instead provides for additional tracking of exempt fuel sales through the fuel supply chain, by:
    - providing an option for retail fuel sellers to elect to register with Ecology as an exempt fuel retailer that must accept the Ecology-developed certificate for exempt agricultural fuel, and requiring those retail fuel sellers to track and report exempt fuel sales volumes to either the person that supplied the fuel or to

the entity with a CCA compliance obligation for the fuel;
- requiring fuel sellers, other than those who are retail fuel sellers or have a CCA compliance obligation, to register with Ecology upon request by a person that sold fuel to the fuel seller or by the person with the CCA compliance obligation for the fuel, and requires those fuel sellers to make available exempt fuel for purchase at a differential rate or to credit the fuel purchaser in a manner that compensates the fuel purchaser consistent with that differential rate;
- requiring fuel suppliers that have a CCA compliance obligation for fuel to report exempt fuel sales and associated GHG emissions to Ecology as a separate and distinct portion of their existing GHG emission reports to Ecology under the Clean Air Act, based on the reports received of exempt fuel sales by retail sellers of exempt fuel, and requiring these fuel sellers to make available exempt fuel for purchase at a differential rate that reflects the lack of associated CCA compliance costs;
- requiring fuel sellers to register with Ecology by December 15, 2025, for exempt fuel sales tracking beginning in 2026;
- requiring Ecology to maintain a list of exempt retail fuel sellers;
- authorizing Ecology to adopt rules;
- authorizing Ecology to require fuel sellers to provide documentation of tracked or reported exempt fuels sales within 14 days;
- providing for CCA penalties of up to $10,000 per day to apply for violations of reporting and tracking requirements; and
- specifying that an obligation to track fuel sales does not make an entity a covered or opt-in entity for CCA compliance purposes.

Appropriation: None.

Fiscal Note: Requested on February 20, 2025.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) When the CCA was enacted, the agricultural community was promised an exemption that has been complicated to administer in practice, and has not been successfully carried out. The exemption for agricultural fuels is challenging to implement because the CCA does not result in a uniform compliance cost for regulated entities, and fuel supply chains are complex and involve parties that don't directly participate in the Cap-and-Invest program. The Departments of Ecology and Licensing have gone to great lengths to implement the 2021 CCA law as written. The exemption for fuel used to transport agricultural products to market should be made permanent. The current proposal may not be a perfect solution to a complicated problem, but should instead be viewed as the first step

in a process of making the agricultural fuel exemption workable.

(Opposed) Farmers deserve the fuel exemption under the CCA. Oil marketers support the intent of the bill, but are concerned about becoming newly regulated under the CCA, and bearing the CCA compliance obligations that should instead apply to refineries. Oil distributors operate in a competitive, rising-cost environment, and cannot take on increased costs. A rebate program based on direct payments from Ecology to exempt fuel users is the simplest way to administer the agricultural fuel exemption.

(Other) The bill, as introduced, will be challenging for Ecology to implement, but Ecology wants to find a workable solution to this issue. Different fuel suppliers have different costs of compliance under the CCA, but this proposal would presume that everyone has the same compliance costs, and would limit the price signal to fuel suppliers that would incentivize them to reduce their greenhouse gas emissions. It will be administratively burdensome to issue remittances to exempt fuel users. The existing system should be allowed to continue to work, in cases where the exemption is successfully being passed through the fuel supply chain. Remittances should go to exempt farm fuel users, not to fuel suppliers that are CCA covered entities. The environmental community supports the agriculture fuel exemption and the rebate program that has been implemented via the budget proviso from 2024. The expansion of the temporary exemption for fuels used to transport products is concerning. The current proposal is flawed, but is highlighting an important issue that is important to resolve.

Persons Testifying: (In support) Representative Tom Dent, prime sponsor; Mark Streuli, WA Potato and Onion Assoc, WA Assoc of Wheat Growers, WA Cattlemen Assoc; Ben Buchholz, NW Agricultural Cooperative Council; David Ducharme, Washington State Tree Fruit Association; Jay Gordon, Washington State Dairy Federation; and Kate Brouns, Governor Ferguson's Policy Office.

(Opposed) Diana Carlen, Washington Oil Marketers Association; Laura Yellig, PetroCard; Marcus Mosley, Co-Energy; and Carson Williquette, Wilcox and Flegel.

(Other) Breanne Elsey, WA Farm Bureau; Leah Missik, Climate Solutions; Clifford Traisman, Washington Conservation Action; David Mendoza, The Nature Conservancy; Isaac Kastama, Clean and Prosperous Washington; and Joel Creswell, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.