HOUSE BILL REPORT
E2SHB 1912

As Amended by the Senate

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: House Committee on Appropriations (originally sponsored by 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];
Appropriations: 2/26/25, 2/28/25 [DP2S(w/o sub ENVI)].

Floor Activity:

Passed House: 3/12/25, 93-4.
Senate Amended.
Passed Senate: 4/16/25, 49-0.

Brief Summary of Engrossed Second Substitute Bill

- Requires the Department of Ecology to post and periodically update on its website a directory tool of retail fuel sellers of agricultural fuel that is exempt from a Climate Commitment Act (CCA) compliance obligation.
- Extends by two years the temporary exemption from CCA compliance obligations for fuels used to transport agricultural products on public highways.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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.

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.

Staff: Jacob Lipson (786-7196).

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 26 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Penner, Assistant Ranking Minority Member; Berg, Bergquist, Burnett, Caldier, Corry, Cortes, Doglio, Fitzgibbon, Keaton, Leavitt, Lekanoff, Manjarrez, Marshall, Peterson, Pollet, Rude, Ryu, Springer, Stonier, Street, Thai and Tharinger.

Minority Report: Without recommendation. Signed by 4 members: Representatives Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Dye.

Staff: Dan Jones (786-7118).

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 Engrossed Second Substitute Bill:

Retail fuel sellers 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) may voluntarily notify Ecology of locations where exempt fuel is available for purchase.

Ecology must post and periodically update on its website a directory tool of retail fuel sellers that have voluntarily notified Ecology that they sell exempt agricultural fuel at a price that is different than fuel that is not exempt from CCA compliance obligations. This directory must be posted by October 1, 2025, and must list the name, address, county, and, if applicable, city of each exempt retail fuel seller listed on the directory. The directory must include retail fuel sellers that rely on a cardholder or membership program and exempt fuel purchase aggregators that have procedures for verifying the exempt status of fuel and for tracking and reporting volumes of exempt fuel to entities with a CCA compliance obligation.

By October 1, Ecology must publish on its website a guide for potentially eligible users of exempt agricultural fuels that describes the mechanisms by which an exempt fuel user may purchase exempt fuel and, in consultation with the Department of Licensing, mechanisms for obtaining a remittance for exempt fuel. A legislative intent is declared to continue, through the 2025-2027 biennium, the remittance program for exempt agricultural fuel implemented by the Department of Licensing using unexpended funds appropriated in the 2024 Supplemental Operating Budget.

Subject to appropriation, the Department of Commerce must provide financial incentives or remove financial barriers to retail fuel sellers making exempt agricultural fuel available for purchase at a price that is different than non-exempt fuel, including by providing financial assistance to make cardholder or membership-based payment options available for use at the retail fuel seller.

The temporary CCA exemption for fuels used to transport agricultural products on public highways is extended by two years, and made to expire on December 31, 2029.

EFFECT OF SENATE AMENDMENT(S):

<u>The Senate amendment:</u>

- <u>eliminates the new requirement that the Department of Commerce provide financial incentives or remove financial barriers to retail fuel sellers making exempt agricultural fuel available for purchase at a differential price relative to fuel that is not exempt from a Climate Commitment Act (CCA) compliance obligation;</u>

- eliminates the statement of legislative intent to fund the Department of Licensing's agricultural fuels remittance program with all unexpended funds appropriated to that program in the 2024 supplemental omnibus operating appropriations;
- adds a statement of legislative intent that the Department of Licensing's agricultural fuels remittance program include payments to farm fuel users who purchase kerosene or natural gas for agricultural purposes;
- provides that the CCA exemption for fuels used for agricultural purposes is available through December 31, 2029, regardless of whether the fuels are used to propel a motor vehicle;
- provides, beginning January 1, 2030, that the CCA exemption for fuels used for agricultural purposes applies only to fuels that a farm fuel user uses to propel a motor vehicle; and
- specifies that the special fuels covered by the CCA exemption for fuels used for agricultural purposes applies only to diesel, biodiesel, and liquid petroleum gas (propane).

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment & Energy):

(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.

Staff Summary of Public Testimony (Appropriations):

(In support) The fact that an exemption for agricultural fuel was put into the Climate Commitment Act in the first place is appreciated. The Department of Licensing (DOL) is doing a great job with their rebates for exempt fuel, and it would great if they could continue that work. There is no need to recreate the wheel here. The $4,500 cap on the rebates is preventing some farmers from getting back what they spent on fuel. The bill should continue to be worked on to ensure that promises to the state's farmers are fulfilled. Costs associated with this bill could potentially be drawn from unspent funds provided to the DOL. The exemption for on-highway fuel should be permanent.

(Opposed) Most farmers are already receiving exempt fuel at this time, it is just a small subset of those using retail gas stations that are not. There is no need for a costly new regulatory program when the current system is working. The bill would require distributors and retail outlets to report gallons to suppliers, which in some cases are direct competitors.

(Other) Most agricultural fuels are already being addressed. Stakeholders should be a part of finding a solution. Given the supply chain complexities, it is not fair to press the Department of Ecology on these exemptions.

Persons Testifying (Environment & Energy): (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 Testifying (Appropriations): (In support) Kate Brouns, Governor's Office; Mark Streuli, Washington Potato and Onion Assoc., Washington Assoc of Wheat Growers, Washington Cattlemen's Assoc; and Ben Buchholz, NW Ag Cooperative Council, WA Friends of Farms and Forests, Far West Agribusiness, NW Grain Growers.

(Opposed) Diana Carlen, Washington Oil Marketers Association; and Travis Coulter.

(Other) Jessica Spiegel, WSPA.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

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