SENATE BILL REPORT
2SHB 1409

As of March 19, 2025

Title: An act relating to the clean fuels program.

Brief Description: Concerning the clean fuels program.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Doglio, Berry, Duerr, Parshley, Reed, Ormsby, Hill and Macri).

Brief History: Passed House: 3/10/25, 54-41.
Committee Activity: Environment, Energy & Technology: 3/19/25.

Brief Summary of Bill

- Modifies the carbon intensity requirements for transportation fuels under the Clean Fuels Program (CFP).
- Removes violations of CFP from civil and criminal penalty statutes in the Washington Clean Air Act and instead, establishes CFP-specific enforcement and penalties.
- Requires the Department of Ecology to publish specified information on its website, including an analysis and forecasts of CFP credit markets.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Matt Shepard-Koningsor (786-7627)

Background: Greenhouse Gases and State Emission Limits. The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to EPA, the global warming potential of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays

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in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the global warming potential of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (CO2e).

Since 2008 state law has established limits on the emissions of GHGs in Washington. Ecology is responsible for monitoring and tracking the state's progress in achieving the emissions limits. 2020 legislation updated the statewide emissions limits as follows:

- by 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 million metric tons of CO2e (MMT CO2e);
- by 2030, reduce overall emissions of GHGs in the state to 45 percent below 1990 levels, or 50 MMT CO2e;
- by 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990 levels, or 27 MMT CO2e; and
- by 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT CO2e, and achieve net-zero GHG emissions.

<u>Clean Fuels Program.</u> *Carbon Intensity Reduction Schedule and Clean Fuels Program—Generally.* Legislation enacted in 2021 required Ecology to establish a program aimed at reducing the lifecycle GHG emissions associated with each unit of transportation fuel, or carbon intensity (CI), expressed in grams of CO2e emissions per megajoule. In 2023 Ecology established the Clean Fuels Program (CFP), which requires fuel suppliers to gradually reduce the CI of regulated transportation fuels to 20 percent below 2017 levels by 2038 in accordance with the following maximum annual reductions:

- no more than 0.5 percent each year in 2023 and 2024;
- no more than an additional 1 percent each year in 2025-2027;
- no more than an additional 1.5 percent each year in 2028-2031; and
- no change in 2032 and 2033.

Ecology may not increase the CI reductions beyond a cumulative 10 percent reduction until:

- there is at least a 15 percent net increase in the volume of in-state liquid biofuel production and the use of feedstocks grown or produced in-state relative to the start of the program;
- there is at least one new or expanded biofuel production facility producing more than 60 million gallons of biofuels per year that has received all necessary siting, operating, and environmental permits;
    1. at least one new facility producing at least ten million gallons of biofuels per year must have received all applicable permits as part of this threshold;
- a Joint Legislative Audit and Review Committee report on the first five years of program implementation has been completed; and
- the 2033 regular legislative session has adjourned.

CFP regulations include the following CI reductions for gasoline, diesel, and their substitutes, relative to the 2017 baseline:

- 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;
- 2031-2033—10 percent; and
- 2034-2038—20 percent.

Ecology determines a regulated fuel's carbon intensity based on a lifecycle analysis of the fuel's pathway, or its GHG emissions per unit of fuel from the point of production through combustion. Fuels with a CI above the annual standard generate deficits in CFP, which must be reconciled by retiring a sufficient number of credits during the annual compliance period. Fuels with a CI below the annual standard may generate credits, which can be sold to deficit generators and other participants. Credits and deficits are expressed in metric tons of CO2e, where one credit or deficit equals one metric ton of CO2e. CFP requires certain regulated parties, credit generators, and other participants to register with Ecology and comply with several specified recordkeeping and reporting requirements.

Compliance Obligation and Credit Clearance Market. A regulated party's compliance obligation is the sum of the deficits generated in the current compliance period and the deficits carried over from the previous compliance period. At the end of a compliance period, a regulated party with a net deficit balance may carry over, to the following compliance period, no more than 5 percent of the total amount of deficits generated in the compliance period. A regulated party with deficits exceeding the allowable 5 percent carry-over must participate in a credit clearance market, administered by Ecology. Ecology must set a maximum price for credits in the credit clearance market in a given year, based on the previous year's maximum price adjusted for inflation.

Electric Utility Participation in the Clean Fuels Program. As an opt-in fuel, electricity used as a transportation fuel may participate and earn credits in CFP. An electric utility may earn credits for electricity used within its utility service area, including for residential electric vehicle charging. Electric utilities must use certain revenues generated in CFP as follows:

- 50 percent of the revenues generated by an electric utility from credits earned from electricity supplied to retail customers must be used by the electric utility on transportation electrification projects;
    1. of this 50 percent of revenues, 60 percent must be used on transportation electrification projects within or directly benefitting certain nonattainment or maintenance areas for air pollution, or a disproportionately impacted community, if the area or community is within the utility's service territory;
- the other 50 percent of the revenues must be used for transportation electrification

projects selected from a list prepared jointly by Ecology and the Washington State Department of Transportation.

Electric utilities participating in CFP must provide annual information to Ecology regarding revenue expenditures from CFP credits.

Third-Party Verification. CFP contains several provisions related to third-party verification, including third-party verifications for certain fuel pathways approved in other states with clean fuels programs to verify the CI of fuel pathways.

Fuel Supply Forecast and Forecast Deferral. The Department of Commerce, in consultation with Ecology, the Utilities and Transportation Commission, and the Department of Agriculture, must develop a periodic fuel supply forecast to project the availability of fuels to Washington necessary for compliance with CFP. In accordance with a specified process, Ecology must issue an order declaring a forecast deferral if the fuel supply forecast projects that the amount of credits that will be available during the forecast compliance period will be less than 100 percent of the credits projected as necessary for compliance. The forecast deferral may, among other things, temporarily adjust the CI standard, require regulated parties comply with a CI standard before the forecast compliance period, or suspend deficit accrual for some or all of the forecast deferral period.

Washington Clean Air Act Penalties. The Washington Clean Air Act (WCAA) contains civil and criminal penalties for certain violations of WCAA, motor vehicle emission control statutes, refrigerant management statutes, and CFP. Any person who knowingly violates any provision of CFP or any ordinance, resolution, or regulation adopted under CFP is guilty of a gross misdemeanor, which is punishable by a maximum fine of $10,000, imprisonment for up to 364 days, or both, for each separate violation. Any person who violates any provision of CFP or any rules adopted under CFP may incur a maximum civil penalty of $10,000 per day for each violation.

Clean Fuels Program Account. Ecology charges an annual participation fee to regulated parties in CFP, which must be set to equal but not exceed the projected costs to implement the program. Fees and penalties received under CFP must be deposited into the Clean Fuels Program Account, which may spent only after legislative appropriation.

<u>Federal and State Vehicle Emissions Standards.</u> The federal Clean Air Act (CAA) preempts state governments from adopting their own air pollutant emission standards for new motor vehicles and engines; however, the CAA expressly permits the state of California to apply to EPA for a preemption waiver. In recent years, EPA granted California waivers to, among others, implement its Advanced Clean Cars II (ACC II), Advanced Clean Trucks (ACT), and Heavy-Duty Omnibus Low NOx (Omnibus) rules. The CAA permits other states to either adopt the federal vehicle emissions standards or adopt California's, under certain conditions. To date, 17 states, including Washington, have adopted at least some of California's vehicle emissions standards.

California's vehicle emissions standards include low-emission vehicle requirements and zero-emission vehicle (ZEV) requirements. ZEVs, including battery-electric vehicles and hydrogen fuel cell engine vehicles, must produce zero exhaust emissions of air pollutants and GHGs. ZEV requirements specify that a certain percentage of vehicles delivered for sale in the state by manufacturers must be ZEVs. Manufacturers must either deliver the required ZEV percentage or obtain credits. Credits may be earned by either delivering ZEVs for sale in the state, purchasing ZEV credits from another manufacturer, or delivering ZEVs in other states with similar mandates. Manufacturers may receive partial credit by producing transitional ZEVs, which include plug-in hybrid vehicles.

Carbon Emission Reductions Account. The 2021 Climate Commitment Act created several accounts to receive revenues from the Cap-and-Invest Program. One of these accounts is the Carbon Emissions Reduction Account, which must be used for specified transportation purposes.

Pollution Control Hearings Board. The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary of Bill: Carbon Intensity Standard and Reduction Schedule. The CI reduction schedule in CFP is modified to require Ecology reduce the CI of transportation fuels by 45 percent below 2017 levels by January 1, 2038, according to the following intermediate target adjustments beginning in 2026:
- beginning January 1, 2026, by an additional 5 percent;
- beginning January 1, 2027, by an additional 4 percent; and
- between January 1, 2028, and January 1, 2038, no less than an additional 3 percent and no more than an additional 4 percent, as determined by rule.

No earlier than January 1, 2032, Ecology may adjust the CI standard to require a 55 percent reduction by January 1, 2038, and may adjust the intermediate targets between 2032 and 2037, if it determines:
- the ZEV program was not being implemented as of January 1, 2030; or
- based on GHG emissions data reported for calendar year 2030, that transportation emissions from motor vehicles covered by CFP have not achieved a 45 percent reduction in GHG emissions consistent with the state limits, and an increased CI intensity standard to 55 percent is necessary for transportation emissions covered by CFP to achieve a 70 percent reduction in GHG emissions in calendar year 2040.

Ecology may, after considering the fuel supply forecasts, adjust the CI standard for a calendar year to be 2 percent below the CI standard for that year, if it is necessary to avoid issuing a forecast deferral.

Beginning in calendar year 2030, Ecology may not increase the CI reductions beyond a 20 percent reduction until it demonstrates that at least one new or expanded biofuel production facility has received a siting, operating, or environmental permit after January 1, 2025. Limitations in existing law relating to maximum CI reductions conditioned upon the completion of a Joint Legislative Audit and Review Committee Report and adjournment of the 2033 regular legislative session are removed.

Enforcement and Penalties. Ecology may issue a corrective action order to a person that does not comply with a CFP requirement. WCAA civil and criminal penalties no longer apply to violations of CFP and instead, Ecology may issue the following penalties for certain violations of CFP:
- a penalty of up to four times the maximum credit clearance market price for each deficit a regulated party or credit generator (registered party) does not retire a corresponding credit at the end of a compliance period, unless the registered party participates in a credit clearance market;
- a penalty of up to $1,000 per credit or deficit for certain misreporting, unless the error is corrected by the end of the quarter's reporting period;
- a penalty of up to $10,000 per day for each day a registered party fails to submit a required CFP report beyond the deadline;
- a penalty of up to $1,000 per credit for each illegitimate credit generated as a result of an incorrect CI score;
- a penalty of up to $25,000 per month where a regulated party is not registered with Ecology;
- a penalty of up to four times the credit revenue improperly spent by a participating electric utility in violation of requirements relating to using certain credit revenues for transportation electrification projects;
- a penalty of up to $50,000 or $10,000 per day for a violation of the third-party verification requirements adopted by Ecology rules for as long as the registered party remains out of compliance, except where the error is attributable to the third-party verifier; and
- a penalty of up to $10,000 per day per violation for each day any registered party violates CFP provisions or an issued order.

An electric utility must notify its retail customers within three months of paying a monetary penalty. Penalties are appealable to PCHB, and must be deposited into the Carbon Emission Reductions Account.

Credit Markets Analysis. Ecology must publish on its website analysis and forecasts of CFP credit markets, including:
- the prices of credits in Washington and comparing those prices to other jurisdictions with clean fuels policies;
- trends in credit supply and demand;
- activities in the credit markets, including volume of credits transferred and price per credit, categorized by fuel type;

- the share of deficits and credits generated by fuel type; and
- trends in in-state biofuel feedstock production types and volumes.

Ecology must consider this analysis when adopting CFP rules.

Other. The legislation contains a state severability clause.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: Washington would benefit from a more tailored enforcement structure rather than relying on the WCAA, which includes criminal penalties. The penalties in the bill are tailored to the violation and I think they are more appropriate. There is an issue in current law, where if very specific requirements for biofuel production are not met, then the standard stops being increased over time. This reduces certainty for market participants by creating a big question mark over whether it will be implemented. We do, however, want to see in-state biofuel production but with greater certainty for market participants. The program is not driving the kinds of emissions reductions that we have seen in other jurisdictions because credit prices are so low.

While the entire West Coast has clean fuels programs, Washington's is an outlier and it is actually behind. The bill before you would strengthen our market, align with our climate targets, and spur investments in clean fuels and electric vehicles. This bill will allow Washington to compete for clean fuels. The proposed CI standards will bring Washington in-line with California, Oregon, and soon, New Mexico. This bill stabilizes credit prices and gives utilities the certainty to move forward with critical projects. The credit prices have been low recently and it is negatively affecting our members.

CON: Changes to diesel fuel have already doubled the price I have to pay. We told you these policies would impact fuel prices. This bill is yet another blow against affordability in the state. We are concerned this bill will impact the price of fuels. The program is still new and its impact on transportation fuels has been minimal. We do appreciate the study language. We estimate this bill will add $0.04 to $0.25 to the price of a gallon of fuel, but it is hard to estimate. It is important to look at affordability and take responsibility for all of the decisions you are making.

OTHER: This makes the current statute messier. This bill does nothing to reduce CO2 emissions, it just mandates reductions in a particular and expensive way. The bill breaks promises to farmers and biofuel workers. Ecology is obligated under the program to maintain a healthy credit market, and this bill helps to do that. A stronger CI standard allows the program to better incentivize the transition to low carbon transportation fuels and better support the state in meeting its GHG limits.

Persons Testifying: PRO: Representative Joe Fitzgibbon, Prime Sponsor; Justin Leighton, Washington State Transit Association; Leah Missik, Climate Solutions; Scott Richards, Clean Fuels Alliance America; Logan Bahr, Tacoma Public Utilities.

CON: Jeff Pack, Washington Citizens Against Unfair Taxes; Jessica Spiegel, WSPA; Peter Godlewski, Association of Washington Business.

OTHER: Todd Myers, Washington Policy Center; Joel Creswell, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.