

# SENATE BILL REPORT

## E2SHB 1110

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As of April 3, 2019

**Title:** An act relating to reducing the greenhouse gas emissions associated with transportation fuels.

**Brief Description:** Reducing the greenhouse gas emissions associated with transportation fuels.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Slatter, Kloba, Peterson, Tharinger, Jenkins, Macri, Cody, Bergquist, Doglio, Robinson, Pollet, Stanford and Frame).

**Brief History:** Passed House: 3/12/19, 53-43.

**Committee Activity:** Environment, Energy & Technology: 3/19/19, 3/21/19 [DPA-TRAN, w/oRec, DNP].

Transportation: 4/04/19.

### Brief Summary of Bill

- Directs the Department of Ecology (Ecology) to adopt a rule establishing a Clean Fuels Program (Program) to limit greenhouse gas emissions per unit of transportation fuel energy to 10 percent below 2017 levels by 2028 and 20 percent below 2017 levels by 2035.
- Excludes exported fuel, electricity, fuel used by vessels, railroad locomotives, and aircraft, and certain other categories of transportation fuel from the Program's requirements.
- Requires the Program to include processes for tracking compliance obligations and bankable, tradeable credits.
- Requires annual reporting by Ecology on the Program, as well as an analysis of the Program's first five years by the Joint Legislative Audit and Review Committee.
- Retains the current revenue distribution under the 2015 Transportation revenue package, eliminating changes that would have been triggered as a result of the establishment of a Program.
- Establishes an alternative assessment fee in lieu of compliance with the Clean Fuels Program.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Specifies that the alternative assessment will be \$6 per metric ton of carbon dioxide emissions of transportation fuels for calendar year 2021 through 2028 and subject to rates specified in subsequent legislation after that time period.
- Imposes a five cent per gallon tax on the bio-portion of a biofuel blended fuel for calendar years 2021 through 2028.

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** Do pass as amended and be referred to Committee on Transportation.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Lias, McCoy, Nguyen and Wellman.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Sheldon, Assistant Ranking Member, Energy & Technology.

**Minority Report:** Do not pass.

Signed by Senators Fortunato, Assistant Ranking Member, Environment; Brown and Short.

**Staff:** Kimberly Cushing (786-7421)

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## SENATE COMMITTEE ON TRANSPORTATION

**Staff:** Bryon Moore (786-7726)

**Background:** Greenhouse Gas Reporting Requirements. Under the federal Clean Air Act, greenhouse 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 (CO<sub>2</sub>e) report their emissions to the EPA. At the state level, greenhouse gas (GHG) reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of CO<sub>2</sub>e each year to report their annual emissions to Ecology.

Ecology and the Department of Commerce (Commerce) must report the total GHG emissions, by source sector, in Washington State. According to the most recent report submitted to the Legislature in December 2018, as of 2015 the total annual GHG emissions in Washington State were estimated at 97.4 million metric tons (MMT) of CO<sub>2</sub>e. Of these emissions, 42.5 percent were attributable to transportation sources, of which on-road gasoline accounted for 21.42 MMT CO<sub>2</sub>e and on-road diesel accounted for 8.15 MMT CO<sub>2</sub>e.

Clean Air Rule. In September 2016, Ecology adopted a rule citing the state Clean Air Act authority (Clean Air Rule) to limit emissions of GHGs from certain stationary emissions sources, petroleum product producers and importers, and natural gas distributors.

In March 2018, the Thurston County Superior Court ruled parts of the Clean Air Rule are invalid. The superior court's ruling prevents Ecology from implementing Clean Air Rule regulations that cap and gradually reduce major sources of carbon pollution. Compliance with the rule is currently suspended. On May 14, 2018, Ecology filed an appeal with the Washington State Supreme Court.

Clean Fuel Programs in Other States. California and Oregon have each instituted policies requiring reductions in GHG emissions associated with transportation fuels, as measured against a standard unit of fuel energy (carbon intensity). California's program, which began in 2010, requires a 10 percent reduction by 2020 and a 20 percent reduction by 2030 in the carbon intensity of gasoline and diesel fuel, in conjunction with the use of fuels serving as substitutes for those fuels. Oregon's program, which began in 2015, requires a 10 percent reduction by 2025 in the carbon intensity of transportation fuels.

2015 Transportation Revenue Package. In 2015, the Legislature enacted a bill that raised revenue for transportation purposes from a variety of transportation-related sources (transportation revenue package). Among other sources of revenue, the transportation revenue package generated revenue by increasing fees for:

- enhanced and commercial driver's licenses; and
- vehicle weight fees that apply to passenger vehicles and motor homes.

In general, the enhanced and commercial driver's license fees are deposited into the Highway Safety Fund—used for driver's license implementation, driver improvement, and financial responsibility, among other programs—and vehicle weight fees are deposited into a combination of the Multimodal Transportation Account—used for transportation purposes—and the Freight Mobility Multimodal Account—used for certain freight mobility projects.

Under the transportation revenue package, if a clean fuel standard policy is adopted by rule or otherwise initiated by a state agency prior to July 1, 2023, additional revenue raised from the driver's license and vehicle weight fee increases would be redirected from the Highway Safety Fund, Multimodal Transportation Account, and Freight Mobility Multimodal Account, and instead deposited into the Connecting Washington Account. This account is located in the Motor Vehicle Fund and is used for highway projects that have been identified in a transportation appropriations act as Connecting Washington projects or improvements.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Striking Amendment):** Clean Fuels Program. Ecology is directed to adopt rules establishing a Program limiting GHG emissions attributable to each unit of transportation fuel energy (carbon intensity) to 10 percent below 2017 levels by 2028 and 20 percent below 2017 levels by 2035. The Program must start no later than January 1, 2021.

Transportation fuel means electricity and any liquid or gaseous fuel sold, supplied, offered for sale, or used to propel motor vehicles or intended for transportation purposes.

Exempt Fuels. Excluded from the carbon intensity reduction requirements under the Program are the following:

- transportation fuel exported or otherwise not used in Washington State;
- electricity;
- transportation fuel used for the propulsion of all aircraft, vessels, or railroad locomotives;
- military tactical vehicles and tactical support equipment;
- transportation fuels used in volumes below thresholds adopted by rule; and
- any other fuels Ecology may exempt by rule in order to avoid mismatched incentives in similar GHG or low carbon fuel programs, fuel shifting between markets, or other outcomes counter to the intent of this Program.

Until January 1, 2028, the following fuels are also exempt from the Clean Fuels Program's carbon intensity reduction requirements:

- special fuel used off-road in vehicles used primarily to transport logs;
- dyed special fuel used in vehicles that are not designed to transport persons or property, not designed to be operated on highways, and that are used primarily for construction work, including timber harvest and mining; and
- dyed special fuel used for agricultural purposes that are exempt from state fuel taxation.

Implementation of the Clean Fuels Program. The rules adopted by Ecology to implement the Program are as follow.

- Standards 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. Hydroelectricity must be attributed zero associated lifecycle GHG emissions. Ecology must establish separate carbon intensity standards for gasoline and its substitutes and diesel and its substitutes.
- Processes for assigning and verifying bankable, tradeable credits for fuels produced, imported, or dispensed for use in Washington State with associated lifecycle GHG emissions that are less than 80 percent of the 2017 baseline carbon intensity levels; or when other specified activities are undertaken that support reducing GHG emissions associated with transportation in Washington State.
- A determination of the carbon intensity of electricity supplied by electric utilities participating in the Program based on the mix of generating resources used by each electric utility.
- A requirement to register in the Program for producers or importers of transportation fuels that are ineligible to generate credits.
- The option to register and participate in the Program for persons associated with transportation fuels with a carbon intensity below the carbon intensity standard, and persons associated with exempt transportation fuels.
- Cost containment mechanisms.

Ecology's rules may allow the generation of credits from specified activities associated with the reduction of greenhouse gas emissions associated with transportation, including:

- specified carbon capture and sequestration projects;

- fueling electric vehicles directly with zero-carbon electricity or through the retirement of renewable energy credits associated with the electricity;
- the provision of zero emission vehicle infrastructure;
- investments in renewable natural gas or renewable hydrogen production projects; and
- using smart vehicle charging technology that results in electric vehicle fueling during times of comparatively low carbon intensity of the electric grid.

Transportation fuels derived from palm oil are ineligible for credit generation, and Ecology must consider land use changes in determining the carbon intensity of transportation fuels made from sugar cane.

Except where inconsistent with specific statutory direction from the Legislature, Ecology's rule establishing the Program should seek to harmonize with similar programs adopted by other states with significant amounts of transportation fuel supplied to or from Washington State. In adopting the rule for the Program, Ecology must consider whether GHG emission reduction units earned under the Clean Air Rule are eligible for credit under the Program, and vice-versa.

Ecology may require electric utilities and transportation fuel suppliers to submit GHG emissions data and information different from the types of data currently submitted to the state by those entities.

Ecology may also require periodic reporting on Program activities from producers and importers of transportation fuels. Transactions transferring ownership of fuels in the Program must be accompanied by documentation assigning compliance responsibility for the fuels. To the extent practicable, Ecology's reporting rules for persons associated with transportation fuels supply chains must be consistent with the reporting procedures of similar clean fuels programs and programs requiring similar information to be reported by regulated parties in other states, including electric utilities.

To the extent the Program conflicts with the state Motor Fuel Quality Act, the Program's requirements supersede.

The requirement that Ecology limit the carbon intensity of transportation fuel is declared not to acknowledge, deny, or limit any authority that existed prior to the bill to adopt rules related to the GHG emissions intensity of fuel under the Clean Air Act.

Public Reporting Requirements. Beginning December 1, 2022, Ecology must annually submit recommendations for any draft legislation to more efficiently achieve the GHG emission reduction goals of the Program. Additionally, beginning May 1, 2023, Ecology must annually post on its website certain information regarding the previous year's Program, including credits and deficits generated, volumes of transportation fuels, and total GHG emissions reductions attributable to the Program. Ecology must contract with an independent consultant to determine the best estimate or range in probable costs or cost savings per gallon of gasoline and per gallon of diesel attributable to the Program.

Commerce must develop a periodic fuel supply forecast to project the availability of fuels and credits necessary for compliance with Program requirements. This forecast must be finalized no later than 90 days before the start of a compliance period.

By December 1, 2027, the Joint Legislative Audit and Review Committee is required to perform an analysis of the first five years of the Program and report to the Legislature. This analysis must include the costs and benefits of the Program, using specific metrics, an evaluation of the information summarized by Ecology in their annual reports, and the total statewide costs of the Program per ton of GHG emissions reductions achieved.

Clean Fuels Program Account and Fee. Ecology may require persons electing or required to participate in the Program to pay a fee to cover Ecology's direct and indirect costs for development and implementation. If Ecology elects to require Program participants to pay a fee, it must adopt rules to set a payment schedule and the amount of the fee. Fees are deposited into a Clean Fuels Program Account (account) used to carry out the Program.

Violations of Program requirements are subject to civil penalties under the state Clean Air Act. Penalties collected from Program violations must be deposited into the account.

Electric Utility Revenues. Fifty percent of revenues earned by electric utilities from electricity supplied to retail customers to generate credits under the Program must be used for transportation electrification projects. Of this 50 percent, 60 percent of the transportation electrification projects must be located in or directly benefit federal Clean Air Act maintenance or nonattainment areas or areas at risk of maintenance or nonattainment designation, if such areas are within the service area of the utility.

Ecology, in partnership with electric utilities, may develop guidelines for voluntary carbon reduction projects, including those that may be available to a utility within its service area to use of the remaining 50 percent of revenues.

The Utilities and Transportation Commission, for investor-owned utilities, or a governing board, for consumer-owned utilities, may approve expenditures to meet up to the remaining 50 percent of revenues generated from credits for the following: carbon reduction projects; investments in activities to reduce GHG emissions associated with transportation pursuant to Ecology's rules; to offset fuel cost increases; or up to 10 percent of the revenues generated by credits may be spent for low-income assistance.

Transportation Fees. The current distribution is retained for revenues granted by the 2015 Transportation revenue package, eliminating changes that would have been triggered as a result of the establishment of a clean fuels standard.

Alternative Assessment Payment. In lieu of compliance with the Clean Fuels Program, an alternative assessment is established. Entities electing to participate would pay a per ton charge based on the carbon dioxide emissions of transportation fuels that are sold or used within the state of Washington, similar to a carbon fee. For calendar years 2021 through 2028, the alternative assessment is imposed at a rate of six dollars per metric ton of carbon dioxide emissions of transportation fuels. For calendar years 2029 through 2035, the rate would be specified in subsequent legislation based on further evaluation of the Clean Fuels

Program. Fifty percent of the revenue generated from the alternative assessment is deposited in the Motor Vehicle Fund and 50 percent of the revenue is deposited in the Multimodal Transportation Account.

An entity electing to pay the alternative assessment, in lieu of complying with the Clean Fuels Program, must elect to do so by January 1, 2022. If the entity has not elected to start paying the alternative assessment by January 1, 2022 with a commitment to continue paying the alternative assessment, then the entity is precluded from selecting the alternative assessment until at least January 1, 2029, and must comply with all the Clean Fuels Program provisions until at least that date.

Fuels Exempt from the Alternative Assessment. Exemptions from the alternative assessment, similar to the exemptions from the Clean Fuels Program, are provided, including:

- transportation fuel exported or otherwise not used in Washington State;
- electricity;
- transportation fuel used for the propulsion of all aircraft, vessels, or railroad locomotives;
- military tactical vehicles and tactical support equipment; and
- transportation fuels used in volumes below certain thresholds.

Until January 1, 2028, the following fuels are also exempt from the alternative assessment requirements:

- special fuel used off-road in vehicles used primarily to transport logs;
- dyed special fuel used in vehicles that are not designed to transport persons or property, not designed to be operated on highways, and are used primarily for construction work, including timber harvest and mining; and
- dyed special fuel used for agricultural purposes that are exempt from state fuel taxation.

Other Alternative Assessment Provisions. The Department of Revenue, with the assistance of the Department of Licensing and the Department of Commerce, must adopt rules deemed necessary to administer the alternative assessment provisions, including potentially establishing other exemptions. The Department of Revenue is directed to develop and make available worksheets, fee tables, and guidance documents to compare compliance with the clean alternative fuel policy and the alternative assessment.

Biofuel Tax. For calendar years 2021 through 2028, a five cent per gallon tax is imposed on the bio-portion of a biofuel blended fuel. This tax would exclude the petroleum portion of the biofuel blended fuel.

Null and Void Provision. A section specific null and void clause is included requiring funding in the omnibus transportation appropriations act by June 30, 2019 or section 3 of the act is null and void.

## **EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):**

- Includes investments in renewable natural gas or renewable hydrogen production projects in the list of activities that support the reduction of GHG emissions associated with transportation in Washington that may be allowed for the generation of credits.
- Directs the Department of Ecology, in partnership with electric utilities, to develop guidelines for voluntary carbon reduction projects, including those that may be available to a utility within its service area.
- Allows the UTC for investor-owned utilities or a governing board for consumer-owned utilities to approve expenditures to meet up to the remaining 50 percent of revenues generated from credits for the following: Carbon reduction projects; investments in activities to reduce GHG emissions associated with transportation pursuant to Ecology's rules; to offset fuel cost increases; or for low-income assistance only up to 10 percent of the revenues generated by credits.
- Adds the definition of renewable natural gas.
- Makes technical corrections.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available. New fiscal note requested on March 13, 2019.

**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 on Engrossed Second Substitute House Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: A Clean Fuel Standard (CFS) is a program that requires producers of transportation fuels to gradually reduce the GHG and intensity of those fuels over time and they can do that in a number of ways—including by producing cleaner fuels such as biofuels which have a lower carbon intensity than petroleum based fuels or by acquiring credits from other producers of clean fuels. Rather than picking winners and losers we are establishing a policy to reduce GHG intensity of transportation fuels which are by far the largest source of GHG emissions in this state. California, Oregon, and British Columbia have comparable programs. Canada is about to implement a program nationwide. Europe has a similar program. From these experiences, we've seen significant investments in the production of cleaner fuels. Washington has abundant farms and forests to provide feedstock for the production of these clean fuels. The Port of Seattle has set aggressive goals for reducing carbon emissions and is implementing sustainable aviation fuels. Sustainable aviation fuel has reduced particulate emissions. A low carbon fuel standard (LCFS) in other states is pushing production of alternative fuels from Washington to Oregon and California because of their markets are more lucrative. Citizens are pushing for more climate action. Cities cannot meet their GHG emissions reduction goals without state action. In Oregon, the impact on gas prices has been negligible. Providing support for transit agencies for transforming their transit fleet is key. Low carbon fuels need to be more widely available to meet climate goals. Cleaner fuels will improve health in all communities, particularly vulnerable communities. The sale of electricity to electric vehicles would generate credit. The revenue from the credits can be used for a variety of activities and will benefit ratepayers



across the state. This is a comprehensive way to reduce transportation carbon and opportunity to leverage EV rollouts with funding for infrastructure. The Puget Sound Clean Air Agency is looking at picking up this tool if the Legislature does not. Air pollution effects patients who struggle with asthma and chronic lung disease, as well as infants, elderly, and low-income people in communities with increased pollutants. Medical issues are expensive. What we breathe and put into our lungs matters. We have a choice as a state as to what we put into our air. Renewable diesel acts like fossil counterparts. Renewable natural gas is the lowest cost alternative available today. Oil prices are impacted by the global market, and the best way to insulate from this is to use alternative fuels. I would happily pay a little more for gasoline if it prevents burning down my house—we are already paying the cost of climate change. We need many different polices to impact the building, transportation, and electricity sectors. CFS is one way. There is not one single magic bullet policy. This is an economically efficient policy and technology agnostic. Transportation is not the lowest cost place to get emissions reductions, but we need to get reductions in transportation sector. CFS will create opportunities to transform waste streams, enable development of low carbon fuel production facilities, and create long-term good jobs. CFS will save Washington consumers by creating competition and enabling lower cost per mile vehicles and fuels.

CON: The advanced biofuels are not market ready to make this program work. Most costs are passed on to consumers in form of higher gas prices. Incredibly price-sensitive products such as food do not have a lot of room for cost increases. Distributors drive many miles. Fuel costs go into food costs and impact lower and middle-income families. People on fixed incomes will not be rushing out to buy EVs. There are no buses in rural Washington. According to the California Energy Commission, the price increase will be \$0.16 per gallon. A LCFS is a hidden gas tax and is regressive. The increase in the price of tax will not go toward transportation projects. If gas prices increase, it should be because of a gas tax. For trucking, fuel is one of the top two operating costs. Trucks burn more alternative fuel. This will increase the cost in consumer goods. Other innovations are coming.

OTHER: Modifications are need to ensure all alternative fuel can generate credits like electricity. All alternative fuels should be explicitly excluded from the carbon intensity reduction requirements. The carbon intensity for liquid fuel should be determined on a plant by plant basis. The provision limiting how utilities may spend revenues earned through the selling of credits intrudes on the responsibility of the public utility district commissioners to develop and oversee budgets.

**Persons Testifying (Environment, Energy & Technology):** PRO: Representative Joe Fitzgibbon, Prime Sponsor; Ryan Calkins, Port of Seattle; Bruce Basset, Mercer Island, K4C; Celia Jackson, King County; Bryce Yadon, Transportation Choices Coalition; Curt Augustine, Alliance of Automobile Manufacturers; Vicki Christophersen, Washington Refuse and Recycling Association; Michael Transue, Global Automakers; Michael Mann, Forth; Carrie Nyssen, American Lung Association; Craig Kenworthy, Puget Sound Clean Air Agency; Dr. Margaret Kitchell, citizen; Mary Solecki, World Energy; Pat Gruber, Gevo; Kent Hartwig, Renewable Energy Group; Nina Kapoor, Renewable Natural Gas Coalition; Graham Noyes, Low Carbon Fuels Coalition; Clifford Traisman, Washington Environmental Council, Washington Conservation Voters; Vlad Gutman-Britten, Climate Solutions; Dave Warren, Klickitat PUD, Renewable Hydrogen Alliance; Rhonda Hunter, citizen; Kelly Thompson, JUJustice Washington; Asha Hendrickson, Stevens Elementary; Eli Huschle,

citizen; Jeff Bissonnette, Union of Concerned Scientists; Greg Rock, Carbon Washington.

CON: Michael Ennis, Association of Washington Business; Carolyn Logue, Washington Food Industry Association; Howard Briggs, citizen; Jessica Spiegel, WSPA; Dave Ducharme, Washington Oil Marketers Association; Ben Buchholz, Food Northwest and Northwest Agricultural Cooperative Council; Sheri Call, Washington Trucking Associations; Jerry Vanderwood, AGC of Washington.

OTHER: Tom McBride, Growth Energy; Shai Sahay, Poet; Nicolas Garcia, Washington PUD Association.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):**

PRO: Reed Schuler, Governor's Office; Mendy Droke, Seattle City Light; Stu Clark, Department of Ecology.