SENATE BILL REPORT
SB 5971

As of April 25, 2019

Title: An act relating to transportation funding.

Brief Description: Concerning transportation funding.

Sponsors: Senators Hobbs, Saldaña, Sheldon, Cleveland, Randall, Palumbo, Takko, Nguyen, Mullet, Liias, Lovelett and Conway.

Brief History:
Committee Activity: Transportation: 2/28/19, 3/06/19 [DPS, w/oRec, DNP].
Ways & Means: 4/26/19.

Brief Summary of Proposed Second Substitute Bill

- Imposes a $0.05 gas tax phased-in over five years at $0.01 per year.
- Directs the Department of Ecology (Ecology) to adopt a rule establishing a Clean Fuels Program (CFP) to limit greenhouse gas emissions per unit of transportation fuel energy to 13 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 CFP requirements.
- Requires the CFP to include processes for tracking compliance obligations and bankable, tradeable credits.
- Specifies that those required to register under legislation will be required to meet at least 30 percent of the obligation for any deficits generated under the clean fuels program in each year by paying a transportation compliance fee.
- Requires annual reporting by Ecology on the CFP, as well as an analysis of the CFP 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.
- Implements a $0.06 tax on the biofuel portion of blended fuels.

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.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5971 be substituted therefor, and the substitute bill do pass.
Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; Sheldon, Assistant Ranking Member; Cleveland, Das, Lovelett, Randall and Wilson, C..

Minority Report: That it be referred without recommendation.
Signed by Senator Nguyen.

Minority Report: Do not pass.
Signed by Senators King, Ranking Member; Fortunato, O'Ban, Padden, Takko and Zeiger.

Staff: Bryon Moore (786-7726), Kimberly Cushing (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jeffrey Mitchell (786-7438)

Background: The 18th Amendment and Fuel Taxes. Since 1921, the state of Washington has levied a motor vehicle fuel tax (MVFT). The current state MVFT is $0.494 per gallon and is distributed amongst state highway programs, the state ferry system, and local governments. The state highway programs include revenue packages, such as the 2003 Transportation Nickel package, the 2005 Transportation Partnership, and the Connecting Washington package that the Legislature passed in 2015.

The 18th Amendment to the Washington Constitution requires that the state's MVFT, vehicle licensing fees, and all other state revenue intended to be used for highway purposes be deposited into the Motor Vehicle Fund. Monies in that fund may only be spent for highway purposes, which are defined to include expenditures on construction, preservation, maintenance, operation, and administration of highways and ferries.

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 (CO2e) 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 CO2e 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 CO2e. Of these emissions, 42.5 percent were attributable to transportation sources, of which on-road gasoline accounted for 21.42 MMT CO2e and on-road diesel accounted for 8.15 MMT CO2e.

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 (First Substitute): The bill as referred to committee not considered.

Summary of Bill (Proposed Second Substitute): 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 13 percent below 2017 levels by 2035. The Program must start no later than July 1, 2023.

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.

Transportation Compliance Fee. As part of the compliance with the Program, those required to register under legislation will be required to meet at least 30 percent of the obligation for any deficits generated under the clean fuels program in each year by paying a transportation compliance fee. Each year, the transportation compliance fee rate will be determined based on a minimum of 90 percent of the estimated cost for compliance with the Program. Revenue generated from the transportation compliance fee must be deposited in the Motor Vehicle Fund until July 1, 2032. After this point, the fee revenue will be deposited into the Multimodal Transportation Account.

Implementation of the Clean Fuels Program. The rules adopted by Ecology to implement the Program are as follows:
- 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 supplied as transportation fuel by a nonutility generator of 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. The Utilities and Transportation Commission, for investor-owned utilities, or the governing board of a consumer-owned utility, must review and approval all expenditures from the revenues generated by credits earned, using standard practices and procedures. 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.

Expenditures to meet up to the remaining 50 percent of revenues generated from credits must be spent 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.

Fuel Taxes. Beginning July 1, 2019, a $0.05 increase in the motor vehicle fuel tax is phased-in over five years at $0.01 per year. Revenue from the motor vehicle fuel tax increase will be deposited into the Motor Vehicle Fund.

Biofuel Tax. Beginning July 1, 2023, a $0.06 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.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (First Substitute):

- Reduces the carbon pollution fee to $10 per metric ton for utilities. All other entities remain at $15 per metric ton as in the original bill.
- Designates a variety of industries as energy-intensive and trade-exposed (EITE) for purposes of determining EITE exemption without having to necessarily meet the Department of Commerce EITE criteria.
- Allows the carbon pollution fee to be included in any negotiated tribal fuel tax compacts.
- Makes other changes to bring the EITE definition closer to the one included in Initiative 1631.
- Lowers the increase in electric vehicle renewal fee from $200 to $150.
- Imposes a $50 registration fee on hybrid vehicle renewals.
- Makes clarifying changes to the types of vehicles that are subject to the $5 increase in the standard vehicle registration fee.
- Provides a contingent change for the freight project fee dealing with the passage of SB 5830 (vehicle combinations).

Appropriation: None.

Fiscal Note: Requested on February 23, 2019.

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

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019, except for section 107 which has a contingent effective date.

Staff Summary of Public Testimony on Original Bill (Transportation): *The committee recommended a different version of the bill than what was heard.* Please refer to the February 28, 2019 recording of the public hearing on the Senate AV Capture All website at http://leg.wa.gov/Senate/Committees/Pages/avcaaudio.aspx

Persons Testifying (Transportation): PRO: Senator Steve Hobbs, Prime Sponsor; Ashley Probart, Transportation Improvement Board; Heather Kurtenbach, Iron Workers Local 86; Brian Enslow, City of Vancouver; Ron Arp, Identity Clark County; Matt Ransom, SWRTC; Russell Wiita, City of Sultan, Council Member; Sean Eagan, The Northwest Seaport Alliance; Mark Riker, Washington State Building and Construction Trades Council; Dawn Vyvyan, Sauk-Suiattle Tribe; Chris Herman, Washington Public Ports Association; Isaac Kastama, Low Carbon Prosperity Institute.

CON: Lisa Thatcher, Clark Public Utilities; Tim Boyd, Alliance of Western Energy Consumers; Chris McCabe, Northwest Pulp and Paper Association; Tim Eyman, $30 Tabs Initiative; Craig Kenworthy, Puget Sound Clean Air Agency; Mike Ennis, Association of Washington Business; Sheri Call, Washington Trucking Associations; Steve Gano, Building Industry Association of Washington; Arthur West, citizen.

OTHER: Bryce Yadon, Transportation Choices Coalition; Leah Missik, Climate Solutions; Adam Maxwell, Audubon; Cliff Traisman, Washington Environmental Council, Washington Conservation Voters; Scott Hazlegrove, Washington State Auto Dealers Association; Jessica Spiegel, Western States Petroleum Association; Amber Carter, Portland Vancouver Junction Railroad; Clif Swiggett, Carbon Washington; Alex Alston, Washington Bikes, Safe Routes to School National Partnership; Vic Colman, Childhood Obesity Prevention Coalition; Brad Boswell, Nucor Steel; Michael Transue, Tacoma Pierce County Chamber.

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