SENATE BILL REPORT
SB 5842

As of January 26, 2022

Title: An act relating to state laws that address climate change.

Brief Description: Concerning state laws that address climate change.

Sponsors: Senators Carlyle, Liias, Das, Nguyen and Nobles.

Brief History:
Committee Activity: Environment, Energy & Technology: 1/26/22.

Brief Summary of Bill

- Establishes an Executive Office of Climate Policy & Accountability within the Department of Ecology by July 1, 2022, to support Washington state's commitment to reduce greenhouse gas (GHG) emissions, provide accountability to achieve the statutory GHG limits, and provide an accurate GHG inventory.
- Provides provisions relating to compliance instruments under the Cap and Invest Program (Program), including requiring covered or opt-in entities to annually transfer a percentage of compliance instruments in order to smooth their compliance obligation for each four-year compliance period.
- Revises the dates of the emissions baseline data to 2015-2019 from 2023-2025 for new covered entities in the second compliance period under the Program.
- Directs that specific information required under the Program is confidential and exempt from public disclosure.
- Directs that no state agency may adopt or enforce a GHG pricing or market-based emissions cap and reduce program for stationary sources or emissions limitations on GHG emissions from stationary sources except as provided under the Program, by state statute, or required to

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implement federal law.

- Makes technical corrections to the Program statutes.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Kimberly Cushing (786-7421)

Background: Greenhouse Gas Emissions. In 2020, the Legislature updated statewide greenhouse gas (GHG) emissions reduction limits to 45 percent below 1990 levels by 2030, 70 percent below 1990 levels by 2040, and 95 percent below 1990 levels, as well as net zero emissions, by 2050.

Cap and Invest Program. In 2021, the Legislature directed the Department of Ecology (Ecology) to implement a cap and invest program (Program), also known as the Climate Commitment Act, to reduce greenhouse gas (GHG) emissions consistent with the statewide statutory emissions limits. Starting on January 1, 2023, the Program will cover industrial facilities, certain fuel suppliers, in-state electricity generators, electricity importers, and natural gas distributors with annual greenhouse gas emissions above 25,000 metric tons of carbon dioxide equivalent (CO2e).

Covered entities must either reduce their emissions, or obtain allowances to cover any remaining emissions. The total number of allowances will decrease over time to meet statutory limits. Some utilities and industries will be issued free allowances; other allowances will be auctioned. The Program must track, verify, and enforce compliance through the use of compliance instruments. A compliance instrument is an allowance or offset credit issued by Ecology or a trading program that has linked with Washington's Program. One compliance instrument is equal to one metric ton of CO2e.

Compliance Periods. A compliance period is four years, and the first compliance period is January 2023 through December 2026. By October 1, 2022, Ecology must adopt annual allowance budgets for the first compliance period of the Program. Data reported from 2015 through 2019 is sufficient for adopting annual allowance budgets and demonstrating compliance for the first compliance period. The second compliance period is January 2027 through December 2030. By October 1, 2026, Ecology must add to its emissions baseline by incorporating the proportionate share the total GHG emissions of new covered entities in the second compliance period bear to the total anthropogenic GHG emissions in the state during 2023 through 2025.

Compliance Obligations. Covered and opt-in entities must use the following two accounts: a compliance account to transfer allowances to Ecology to retire; and a holding account for allowances to be bought, sold, or traded. Ecology must maintain an account for retired allowances transferred by registered entities and from the voluntary renewable reserve account. If a covered or opt-in entity fails to submit sufficient compliance instruments to meet its compliance obligations by the specified transfer dates, it must submit a penalty of four allowances for every one allowance that is missing within six months. Civil penalties are levied if a covered or opt-in entity fails to submit penalty allowances.

Auctions. Ecology must distribute allowances through a maximum of four auctions annually, plus any necessary reserve auctions. Ecology must engage a qualified, independent contractor to run the auctions. Ecology must engage a qualified financial services administrator to hold and evaluate bid guarantees and to inform Ecology of the value of the bid guarantees when the bids are accepted. Ecology must adopt rules to guard against bidder collusion and minimize the potential for market manipulation. Proceeds from the auction of allowances must be used for clean energy transition and assistance, clean transportation, and climate resiliency projects that promote climate justice.

Allowance Price Containment Reserve. The allowance price containment reserve is an account maintained by Ecology with allowances available for sale through separate reserve auctions at predefined prices to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments

Preemption. Under current law, a city, town, county, township, or other subdivision or municipal corporation of the state is prohibited from implementing a charge or tax based exclusively on the quantity of GHG emissions. No state agency may adopt or enforce a program that regulates GHG emissions for a stationary source except as authorized under the Program. The Program preempts the the Clean Air Rule.

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

Summary of Bill (Proposed Substitute): Executive Office of Climate Policy and Accountability. An Executive Office of Climate Policy and Accountability (Office) is established within Ecology by July 1, 2022. The Office must report to Ecology's director. Staffing transfers must be complete by July 1, 2023.

The primary purpose of the Office is to support Washington State's commitment to reduce GHG emissions, provide accountability to achieve the statutory GHG limits, and provide an accurate GHG inventory. The Office must aggressively implement laws and policies to achieve those limits including, but not limited to, the Program. The Office is expected to represent the state on national and international GHG emissions reduction policies.

By January 31, 2024, the the Office must develop and present to the Legislature a strategic climate work plan with performance milestones and accountability measures. Beginning January 31, 2025, and every two years thereafter, the Office must submit a progress report on the climate work plan.

Compliance Obligations. Ecology must require by rule that covered or opt-in entities annually transfer a percentage of compliance instruments in order to smooth their compliance obligation, but must fully satisfy their compliance obligation for each four-year compliance period, in a manner similar to GHG emissions trading programs in other jurisdictions.

Compliance occurs through the transfer of compliance instruments or price ceiling units from the holding account to the compliance account of the covered or opt-in entity on or before the transfer date. A covered or opt-in entity that submits insufficient compliance instruments is subject to a penalty. Older vintage allowances must be retired before newer vintage allowances. Once a covered or opt-in entity transfers compliance instruments to meet its compliance obligation, Ecology must retire the allowances or offset credits.

<u>Baseline Data.</u> In the second compliance period of the Program, Ecology must add to its emissions baseline by incorporating the proportionate share that the total GHG emissions of new covered entities bear to the total anthropogenic GHG emissions in the state during 2015 through 2019, rather than 2023 through 2025.

<u>Public Disclosure.</u> Records containing the following information are confidential and exempt from public disclosure:
- bidding information identified by rule;
- information contained in the secure, online electronic tracking system that Ecology must establish for the Program;
- financial, proprietary, and other market sensitive information determined by Ecology that is submitted to Ecology or the independent contractor or financial services administrator engaged by Ecology to run auctions for the Program; and
- financial, proprietary, and other market sensitive information determined by Ecology submitted to a jurisdiction with a linkage agreement with the Program.

<u>Preemption.</u> No state agency may adopt or enforce a GHG pricing or market-based emissions cap and reduce program for stationary sources or emissions limitations on GHG emissions from stationary sources except as provided under the Program, by state statute, or required to implement a federal statute, rule, or program.

<u>Auction Floor Price.</u> The term "auction ceiling price" is replaced with "reserve auction floor price" to clarify it is the reserve auction floor price that triggers the release and auctioning of allowances in the allowance price containment reserve.

<u>Technical Corrections</u>. Other technical corrections are made to the Program statutes, including updating references to 2021 session laws.

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 On Proposed Substitute: PRO: The goal is not to add duplication but to add definition to last year's bill. Last year the Legislature passed the landmark Climate Commitment Act (CCA), and since its passage Ecology has worked to set up the program. Many of the technical changes in this bill resolve important conflicts in the existing law and will enable Ecology to effectively implement the law. Exempting sensitive market information from public disclosure will protect the emissions allowance marketplace from manipulation and is vital to link with California and other jurisdictions. Modifying existing preemption language will resolve conflict with federal law and allow Ecology to maintain its federally delegated authority under the Clean Air Act. The new office will elevate the prominence of climate change and GHG reduction governance. The bill makes helpful clarifications consistent with the underlying law. We would like to focus on a deeper analysis and monitor these markets under the CCA and Clean Fuel Standard. The office has a role in engaging with other markets. There still needs to be work done on emissions intensive trade exposed businesses. We would like an additional provision to improve the bill for Washington offset projects. The work to make the CCA work is just beginning. The office's internal coordination and external reference for contact will help ensure the state government is fulfilling its commitment. We need to do more to prevent climate change, reduce wildfires, and reduce carbon emissions. The technical changes will help make implementation go better. Elevating the authority in executive branch is a good thing for public participation and process.

CON: Section 5 is unnecessary and duplicative. There is nothing that this proposed office's authority would do that Ecology cannot already do. The office would elevate greenhouse gas emissions reduction over wastewater and clean water. It is an unnecessary layer of bureaucracy.

OTHER: There is uncertainty with the office's authority and the directive to aggressively implement laws and policies to meet the state's emissions targets. We want to include a minor technical adjustment for the annual reporting of GHG emissions data. The data is not available for electric power entities by March 31. June 1 is a more feasible deadline to provide more complete GHG emissions data. We appreciate removing the seven-year expiration on allowances. For the smoothing provisions for annual allowance transfers, Washington should take into account unique reliance on hydro and allow flexibility for surrendering full complement of allowances. We like the confidentiality language. We have concerns around the allocation of price ceiling units, which limits the guarantee of these units to covered entities with facilities. The bill changes the exemptions for other agencies to reduce emissions, which was negotiated last year.

Persons Testifying: PRO: Senator Reuven Carlyle, Prime Sponsor; Kathy Taylor, Washington Department of Ecology; Isaac Kastama, Clean & Prosperous Washington; Tom

Wolf, bp America; Kelly Hall, Climate Solutions; Clifford Traisman, Washington Conservation Voters/Washington Environmental Council; David Mendoza, The Nature Conservancy; Joe A Kunzler, None.

CON: Peter Godlewski, Association of Washington Business.

OTHER: Kent Lopez, Washington Rural Electric Cooperative Association; John Rothlin; Jessica Spiegel, WSPA; Brandon Houskeeper, Alliance of Western Energy Consumers; Steve Taylor, Cowlitz PUD.

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