

# HOUSE BILL REPORT

## E2SHB 2401

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**As Passed House:**

February 9, 2024

**Title:** An act relating to providing for the responsible management of refrigerant gases with a higher global warming potential than carbon dioxide that are used in appliances or other infrastructure.

**Brief Description:** Providing for the responsible management of refrigerant gases with a higher global warming potential than carbon dioxide that are used in appliances or other infrastructure.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Duerr, Doglio, Berry, Fitzgibbon, Ramel and Pollet).

**Brief History:**

**Committee Activity:**

Environment & Energy: 1/22/24, 1/29/24 [DPS];

Appropriations: 2/3/24, 2/5/24 [DP2S(w/o sub ENVI)].

**Floor Activity:**

Passed House: 2/9/24, 57-40.

**Brief Summary of Engrossed Second Substitute Bill**

- Requires producers of bulk refrigerants and precharged appliances to participate in and implement a refrigerant gas stewardship program.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Abbarno, Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Ybarra, Assistant Ranking Minority Member; Barnard, Goehner and Sandlin.

**Staff:** Jacob Lipson (786-7196).

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## 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 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Rude, Sandlin, Schmick, Stokesbary and Wilcox.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Dye.

**Staff:** Dan Jones (786-7118).

### **Background:**

#### Extended Producer Responsibility and Product Stewardship Programs.

The Legislature has enacted laws that require the establishment of product stewardship programs for the management of five types of products: (1) electronic products; (2) light bulbs that contain mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; and (5) paint.

In general, the state's product stewardship programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered products. The Department of Ecology (Ecology) is responsible for the oversight of the state's product stewardship programs, with the exception of the Pharmaceutical Stewardship Program, which is overseen by the Department of Health.

#### Hydrofluorocarbon and Refrigerant Regulations.

Hydrofluorocarbons (HFCs) are a category of gases used primarily as refrigerants in a variety of commercial and industrial applications. Hydrofluorocarbons are among the greenhouse gases (GHGs) identified by the United States Environmental Protection Agency (EPA) and Ecology as a result of their capacity to trap heat in the earth's atmosphere.

According to the EPA, the global warming potential (GWP) of HFCs and other GHGs is measured as a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of GHGs are measured in terms of their equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe.

In recent years, the Legislature has established a number of new regulatory programs to restrict emissions of HFCs and other refrigerants. Refrigerant emission restrictions include:

- a requirement that repair or disposal services of refrigeration equipment use refrigerant extraction equipment to recover unused refrigerants;
- prohibiting the willful release of refrigerants from air conditioning, heating and refrigeration systems, and consumer appliances;
- establishing a maximum global warming potential for refrigerants in numerous categories of uses, including foam-blowing agents like polyurethane or spray foam, refrigeration equipment, and air conditioning equipment; and
- establishing a refrigerant management program to reduce refrigerant emissions from larger stationary refrigeration systems and larger commercial air conditioning systems.

Ecology has adopted rules to implement many of these requirements, including establishing required service practices for persons performing the installation, maintenance, service, repair, or disposal of a refrigeration or air conditioning system with a charge of at least 50 pounds and that uses a refrigerant with a GWP of at least 150.

As a result of legislation enacted in 2021 Ecology submitted a report to the Legislature that provided recommendations on the design of a program to address end-of-life management and disposal of refrigerants. Ecology determined in its report that a more extensive stakeholder process would be needed in order to develop recommendations for an optimal design for an end-of-life refrigerant management program. Ecology also recommended that an end-of-life refrigerant management program be based on a number of enumerated principles, including that the program address refrigerants as well as refrigerant-containing equipment and appliances.

#### Other.

In December 2020 the United States Congress enacted the American Innovation and Manufacturing Act of 2020 (AIM Act) establishing federal restrictions on HFCs. The AIM Act, and EPA rules to implement it, establish a phase-down of the production and consumption of HFCs in the United States to 15 percent of baseline levels by 2036, with reductions to 60 percent of baseline levels taking effect in 2024, reductions to 30 percent of baseline levels taking effect in 2029, and reductions to 20 percent of baseline levels taking effect in 2034. In addition to the overall phase-down of HFCs, the EPA is authorized to adopt regulations to facilitate sector-based transitions to lower-GWP technologies,

including through restrictions on the use of certain HFCs, and to adopt regulations to maximize reclamation and minimize releases of HFCs.

Under the Federal Clean Air Act, the EPA has adopted regulations to maximize the recapture and recycling of refrigerants during the maintenance, service, repair, and disposal of appliances and motor vehicle air conditioning systems. The EPA regulations require the certification of technicians that service, repair, or dispose of equipment that could release refrigerants, who must pass a test to become certified.

Washington imposes a Business and Occupation tax (B&O tax) on the gross receipts of business activities conducted within the state. Business and Occupation tax revenues are deposited into the State General Fund. There are several categories of B&O tax rates that apply to businesses engaged in different activities. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference.

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 Engrossed Second Substitute Bill:**

#### Refrigerant Stewardship Organization Participation and Plan Submission Requirements.

Producers who sell or otherwise enter into commerce bulk covered refrigerants or equipment, including air conditioning, refrigeration, and heat pump equipment, containing a covered refrigerant (precharged equipment) join a refrigerant stewardship organization (RSO) or serve as its own RSO by directly implementing a stewardship plan for covered refrigerants. Key terms establishing the parameters for RSO activities include:

- Covered refrigerants are defined as fluorinated refrigerant gases that are regulated under other state law restrictions on refrigerants, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).
- The producer of a bulk refrigerant is the person who is the first point of sale of the refrigerant in or into Washington.
- Producers of precharged equipment are defined as a manufacturer, brand owner, licensee of a brand or trademark, importer, or distributor of the precharged equipment.
- A person that is identified as the producer of bulk gas or precharged equipment may mutually sign an agreement with another person that contractually assigns responsibility for RSO participation to that other person.

Significant implementation deadlines applicable to a refrigerant stewardship organization include:

- by January 1, 2025, registration with the Department of Ecology (Ecology) through an RSO, and participation in and funding of the operations of an RSO;
- beginning July 1, 2025, producers that do not participate in an RSO are prohibited from selling bulk covered refrigerants or precharged equipment in or into Washington;
- by December 1, 2027, entities that are not producers but that sell, distribute, or enter into commerce bulk covered refrigerants after an initial point of sale in Washington must register with an RSO to be eligible for financial incentive payments from the RSO. These partner participants may include distributors, wholesalers, reclaimers, and service technicians;
- by May 1, 2027, the RSO must submit a plan to Ecology for approval; and
- by January 1, 2028, producers through the RSO must implement an Ecology-approved plan.

Ecology may approve an RSO plan that addresses specified components. Ecology may also amend a plan submitted for approval to render it in compliance with a significant requirement and require an RSO to implement the amended plan. Timelines and processes for the submission to Ecology and approval of RSO plans are specified. Plans must be updated no less than every five years, or when required by Ecology upon certain significant changes, including a change to the method of financing plan implementation.

If multiple RSO plans are approved, the RSOs must coordinate on specified aspects of plan implementation, including education and outreach and on the reimbursement of RSOs to avoid inequitable subsidization of one RSO by another RSO.

#### Charges to Fund Program Costs and Financial Incentives for Refrigerant Recovery.

The RSO must ensure that adequate funding is available to fully implement its stewardship plan, including all costs of collection, education, administration, and agency reimbursement. The RSO must reimburse collection site costs associated with the program.

The RSO must develop and implement a system to collect charges from participating producers to cover the costs of plan implementation in an equitable, environmentally sound, and socially just manner. The system of charges must use a standard per-mass unit assessment applied based on the volume of covered refrigerants introduced into Washington, as bulk refrigerants or in precharged equipment. After proposing an initial per-pound charge in the RSO plan submitted to Ecology for the first year of program implementation, in subsequent years, the RSO may propose an adjustment of this amount to Ecology for approval, or Ecology may adjust the per-producer rate based on its assessment of refrigerant recovery rates achieved by the program.

The system of charges may rely on estimations of refrigerant volumes in precharged equipment. To allow the RSO to develop an equitable system of charges and to calculate recovery rate performance targets, the RSO may require producers to provide product specifications and sale and distribution volumes in or into Washington. Beginning in 2031 the standard per-mass unit assessment may be converted by the RSO or Ecology to an assessment weighted based on the global warming potential of introduced gases. The system of charges to producers must also use eco-modulated fees to encourage lower environmental impacts of covered refrigerants.

The RSO must propose in its plan and carry out a financial incentive for each mass unit of refrigerant furnished to the program for management by persons with EPA refrigerant certifications. This financial incentive may be of a different value than the per-mass unit charge to producers. The RSO must demonstrate that the financial incentive will be sufficient to incentivize use of the program by service technicians and to discourage illegal dumping or venting. The financial incentive payment must be made, where appropriate, to the employer of a person furnishing refrigerant to the program, so long as the employer provides at least 90 percent of the value of the incentive to the person furnishing the incentive. If the RSO fails to achieve performance targets, Ecology may require the RSO to increase the value of the financial incentive. The financial incentive payment may vary, and may consider the volume of refrigerant furnished to the program, the type and purity of recovered refrigerants, and whether it is furnished in a manner that facilitates reuse of the refrigerant rather than its destruction. The program may retain a cash reserve to pay financial incentives in future years.

Partner participants may not be required to fund the RSO, but may receive financial incentives aimed at enhancing refrigerant recovery.

#### Program Performance Goals, Collection and Management, and Education and Outreach Requirements.

The RSO must set binding annual performance targets, subject to approval by Ecology. These targets must include a target for the RSO to achieve a 70 percent annual recovery rate of covered refrigerants by 2032. Ecology must review annual recovery rate and other performance targets, and may adjust the annual recovery rates in years subsequent to 2032 with a goal of optimizing refrigerant recovery and end-of-life management outcomes. Ecology must publish an annual report assessing the performance of the RSO in October of each year, following the submission of an annual report to Ecology by the RSO. The RSO is not authorized to cease collection activities based on the achievement of the performance target.

The RSO must provide for the collection of covered refrigerants without charging a fee when refrigerants are returned for program collection, but with the payment of the required financial incentives to service technicians. At minimum, collection must occur through:

- at least one permanent collection site in each county, unless Ecology grants an

- infeasibility waiver based on the RSO determining that no distributor, wholesaler, or service provider exists to provide a collection site, and no local government or retail establishments will voluntarily serve as a collection site, in which case a county may be served by at least two collection events each year; and
- existing commercial sites operated by distributors and wholesalers of covered refrigerants who participate in the RSO. Distributors and wholesalers must offer sites as program collection sites for recovered bulk covered refrigerants.

In addition, retail establishments that sell precharged equipment, and local government and nonprofit household hazardous waste facilities may serve as collection locations, but are not required to do so. Retail establishments may not sell precharged equipment unless the producer responsible for the precharged equipment is a member of the RSO.

The RSO and its contractors must manage covered refrigerants in a manner consistent with best practices consistent with the United States Environmental Protection Agency's refrigerant management regulations and Ecology-adopted rules governing refrigerant service practices.

The goal of the program must not be to incentivize refrigerant destruction, but as the use of hydrofluorocarbon refrigerants phases down under the 2020 American Innovation and Manufacturing Act and similar state programs, beginning in 2035 Ecology may by rule set an incentive for the destruction of covered refrigerants.

The RSO must carry out specified promotional activities in support of plan implementation, such as educational materials for service technicians and to be used at the point of sale for precharged equipment. Retail establishments must provide information to customers regarding the available end-of-life management options for refrigerants. The RSO must provide educational materials to retail establishments for their use. The RSO must carry out an awareness survey of the program's partner participants, and must share the results with Ecology.

#### Other.

Beginning in 2029 the RSO must submit an annual report to Ecology containing specified information about program implementation, including whether performance targets have been achieved. Ecology must review annual reports and determine whether to approve the annual report as complete. Refrigerant distributors and wholesalers must report specified information to the RSO, once a plan is being implemented by the RSO. Partner participants must maintain records needed by the RSO to fulfill annual reporting requirements. The RSO must also submit a quarterly list of participating producers to Ecology.

Ecology must implement, administer, and enforce requirements related to RSO operations. Ecology must adopt rules to implement requirements by December 31, 2026. Beginning in 2027 Ecology must identify projected annual costs related to RSO oversight and

enforcement, and must notify the RSO of fee amounts due each year to Ecology for oversight and enforcement.

Ecology may impose civil penalties of up to \$1,000 per day for initial violations, or \$10,000 per day for subsequent violations. Prior to imposing penalties, Ecology must provide a written warning and a 30-day period to come into compliance. Ecology may take actions additional to the issuance of penalties, such as the issuance of corrective action orders or the revocation of an RSO's plan approval, if an RSO fails to meet a significant requirement. Penalties and Ecology-issued orders are appealable to the Pollution Control Hearings Board. Penalties are to be deposited in the Climate Commitment Account.

An RSO may not use collected funds to pay an administrative penalty or appeal an order or penalty for litigation against Washington, to compensate lobbyists, or for paid advertisements encouraging a position on legislation during a previous, current, or upcoming legislative session.

Receipts of an RSO from charges to participating producers, charges to producers by an RSO, and financial incentive payments by an RSO are not subject to the state's business and occupation tax (B&O tax). A tax preference performance statement is not required to be prepared for the B&O tax preference.

Producers and RSOs are granted immunity from state antitrust laws in establishing the stewardship program.

Refrigerant stewardship organizations that submit information may request that information or records be kept confidential, and Ecology must grant that request consistent with existing procedures related to confidential information if the action is not detrimental to the public interest.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 7, 2024.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Environment & Energy):**

(In support) Refrigerants are essential to maintaining a high quality of life, but also have a high global warming potential (GWP). Many refrigeration systems with high-GWP refrigerants will be operating for many years into the future, and it is important to recover the gases from those systems, even as infrastructure transitions to lower-GWP alternatives.



The Environmental Protection Agency (EPA) currently estimates that less than a quarter of refrigerant gas is recovered in the United States; Australia pays a bounty for the return of covered refrigerants and achieves a 65 percent recovery rate. No other states currently have a program designed like this, but other jurisdictions worldwide have been successfully implementing similar programs. It is currently illegal to vent refrigerant gases, but the reality is that illegal venting is cheaper, easier, and hard to enforce, and so happens frequently. A financial incentive for the return of covered refrigerants is needed to change the calculus for service technicians to spend their time managing the refrigerant responsibly. A financial benefit for recovery will ensure that service technicians will do the right thing. Under federal law, in 2029 there will be a 30 percent reduction in new hydrofluorocarbons available, and recovered and reclaimed gases will be needed and valuable to allow existing equipment to continue to be used. This policy could be paired with a requirement to use reclaimed refrigerants. The timeline to set up and implement the stewardship program for refrigerant gases should be expedited. Appliances are often illegally dumped; if the gas contained in appliances has a financial value, it might increase recycling rates for the equipment itself too. The costs of a \$7 per pound of refrigerant payment by producers could increase the costs of a typical heat pump between \$1 and \$40, but the cost of the program will be an insignificant percentage of the overall cost of the appliances.

(Opposed) None.

(Other) The Department of Ecology (Ecology) supports well-designed producer takeback programs. The proposal needs to adjust how performance targets will be measured and achieved. The financial incentive for recovery and reclamation will improve refrigerant management. The refrigerants collected under this bill will not be covered by Ecology's existing refrigerant management program. Focusing on a bulk refrigerant program, rather than precharged appliances, would help stand up the program effectively. Heating and cooling contractors have concerns about how a new financial incentive program would work relative to new EPA regulations that may take effect soon. Overlapping state and federal layers of requirements could cause complications. Requiring producers to pay for a system could make heat pumps and other equipment less affordable, if the costs of the program are embedded in the price of covered products.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) Refrigerant gases are essential for heat pumps, air conditioning, and other uses, but are also a potent greenhouse gas. It is important to recycle and reuse refrigerant gases, and this bill would incentivize reuse. This bill aligns with climate policy and industry needs. The United States is only recycling 18 percent of existing refrigerant gases. The bill incentivizes heating, ventilation, and air conditioning technicians to do the right thing and reuse refrigerant gases. More refrigerant gas needs to be reclaimed, or there could be shortages. A similar program in California has been successful.

(Opposed) This program includes non-producers as well as producers, which is unusual. There is already a lot of federal law regulating refrigerant gases. There are rules on refrigerant gas in our state that have only just gone into place. This bill raises questions about business and occupation tax and other topics. It should be clarified whether precharged equipment is covered by this bill.

**Persons Testifying (Environment & Energy):** (In support) Representative Davina Duerr, prime sponsor; Richie Kaur, Natural Resources Defense Council; Bobby Farris, Total Reclaim, Incorporated; Mike Armstrong, A-Gas; Heather Trim, Zero Waste Washington; Ruth Ivory-Moore, Hudson Technologies; and Christina Starr, Environmental Investigation Agency.

(Other) Peter Lyon, Department of Ecology; and Carolyn Logue, Washington Air Conditioning Contractors Association.

**Persons Testifying (Appropriations):** (In support) Heather Trim, Zero Waste Washington; Kate White Tudor, Natural Resources Defense Council; and Mike Armstrong, A-Gas.

(Opposed) Jacob Cassidy, Association of Home Appliance Manufacturers; and Carolyn Logue, Washington Air Conditioning Contractors Association.

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

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