
Environment & Energy Committee

E2SSB 6092

Brief Description: Concerning disclosure of greenhouse gas emissions.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Shewmake and Nguyen).

Brief Summary of Engrossed Second Substitute Bill

- Requires the Department of Ecology (Ecology) to research and follow developments on the Security and Exchange Commission's (SEC) Climate Change Disclosure proposed rule, and, by 18 months after the SEC's final rule, deliver a report to the Legislature with recommendations for climate-related disclosure requirements in Washington.
- Directs Ecology to include in its report specific recommendations, including how Washington law can align with the SEC's final rule, and whether the scope 1, scope 2, and scope 3 disclosure requirements in the SEC's proposed rule are sufficient to track emissions for the purposes of compliance with the Climate Commitment Act, the Clean Fuels Program, and the state's greenhouse gas emissions reductions reporting requirements.

Hearing Date: 2/19/24

Staff: Megan McPhaden (786-7114).

Background:

State Greenhouse Gas Emission Limits.

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.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is 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 a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO₂e).

Since 2008 state law has established limits on the emission of GHGs in Washington. Ecology is responsible for monitoring and tracking the state's progress in achieving these emissions limits. In 2020 additional legislation was enacted to update the statewide emissions limits to the following:

- by 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 million metric tons of carbon dioxide equivalents (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.

Greenhouse Gas Emission Reporting.

Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 MMT CO₂e report their emissions to the EPA. At the state level, GHG reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities and fuel suppliers, including suppliers of fossil fuels and electricity, whose emissions exceed 10,000 MMT CO₂e each year to report their annual emissions to Ecology.

Climate Commitment Act.

Under the 2021 Climate Commitment Act (CCA), in order to ensure that GHG emissions are reduced consistent with the state's 2030, 2040, and 2050 emissions limits, Ecology must implement a cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, which include allowances or eligible offset credits. Entities with emissions equivalent to 25,000 MMT CO₂e may be required to participate. Under the CCA, annual allowance budgets are set at a level to achieve the share of reductions by covered entities necessary to achieve the state's 2030, 2040, and 2050 emissions limits. Covered entities must obtain, by no-cost allocation from Ecology, purchase at auction, or purchases from other parties, compliance instruments in a timely manner and in an amount

necessary to meet the compliance obligations associated with their emissions.

Clean Fuels Program.

As of January 2023, Ecology adopted rules and began implementing a Clean Fuels Program (CFP) limiting the GHG emissions attributable to each unit of transportation fuel (carbon intensity) to 20 percent below 2017 levels by 2038. The rule must reduce the overall, aggregate carbon intensity of transportation fuels used in Washington. Electricity and liquid and gaseous fuels are within the scope of the CFP, so long as the fuels or electricity are used to propel motor vehicles or are intended for transportation purposes.

The CFP establishes standards for assigning 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. It also includes a determination of the carbon intensity of electricity supplied by electric utilities participating in the CFP based on the mix of generating resources used by each electric utility.

The CFP functions by assigning bankable, tradeable credits for the production, import, or dispensation for use of transportation fuels with associated lifecycle GHG emissions that are less than the 2017 baseline carbon intensity levels for gasoline or diesel established by Ecology, or when other specified activities are undertaken that support the reduction of GHG emissions associated with transportation in Washington.

Securities and Exchange Commission Climate Change Disclosure Proposed Rule.

The Securities and Exchange Commission (SEC) requires businesses that offer and sell financial instruments such as stocks and bonds to register with the SEC and file disclosures related to their financial activity and operations to provide transparency and identify risks for investors. According to the SEC, investors are interested in understanding more climate risks that affect the public companies they own, and thus the SEC proposed a rule (87 FR 21334) that creates new climate-related disclosure requirements.

This proposed rule would require SEC registrants to include certain climate-related information in registration statements and reports, including the actual or likely material impacts of climate-related risks on the business and the registrant's GHG emissions, which the SEC states is a commonly used metric to assess a registrant's exposure to climate risks. Registrants would be required to disclose information about direct GHG emissions (scope 1 emissions), indirect GHG emissions from electricity or other energy (scope 2 emissions), and, if material to the business or if the registrant has a target or goal that includes them, GHG emissions from upstream and downstream activities in its value chain (scope 3 emissions).

The President's current regulatory agenda shows that the SEC plans to release its final Climate Change Disclosure rule in April 2024.

Summary of Bill:

Scope 1, 2, and 3 Greenhouse Gas Emissions.

Scope 1 emissions are all direct greenhouse gas (GHG) emissions from sources owned or directly controlled by a business required to report emissions under Washington law (reporting entity), regardless of location. Scope 1 emissions include fuel combustion activities.

Scope 2 emissions are indirect GHG emissions from electricity purchased and used by a reporting entity, regardless of location.

Scope 3 emissions are additional indirect GHG emissions from sources that a reporting entity does not own or directly control. Scope 3 emissions include, but are not limited to, emissions associated with supply chain, business travel, employee commutes, procurement, waste, and water use, regardless of location. Additionally, scope 3 emissions include emissions from the use of products sold by reporting entities in the oil, gas, coal, and natural gas industries.

Climate-Related Disclosure Recommendations and Report.

The Department of Ecology (Ecology) is directed to develop policy recommendations for the design and implementation of climate-related disclosure requirements in Washington. Climate-related disclosures are voluntary or mandatory reports concerning operations information from reporting entities. The purpose of these disclosures is to evaluate a reporting entity's GHG emissions, overall environmental impact, investment, and activities related to mitigating environmental impact, and any relevant financial activity.

When developing policy recommendations, Ecology must research and follow developments in the climate-related disclosure requirements administered by the Securities and Exchange Commission (SEC), including those in the final version of the SEC's proposed rule.

No later than 18 months after the SEC final rule is adopted, Ecology must deliver a report to the Legislature with findings and recommendations including: how Washington law can align, to the extent practicable, with the climate-related disclosure requirements administered by the SEC and described in SEC final rule; the use of consistent reporting methods and definitions; and how disclosures are filed, accepted, and made available to the public, including the possibility for acceptance of disclosures filed under other federal or state programs.

Ecology must also include in its report whether the disclosures required under the SEC's proposed rule are sufficient to track emissions for the purposes of compliance with the Climate Commitment Act, the Clean Fuels Program, and the GHG emissions reporting requirements. Ecology must give special consideration to determining:

- whether disclosure requirements for scope 1, scope 2, and scope 3 emissions are adequately designed to track a reporting entity's GHG emissions and are feasible for entities to comply with;

- which persons or entities should be required to file climate-related disclosures; and
- the extent to which additional reporting may cause entities or downstream entities in the supply chain to incur financial costs.

Appropriation: None.

Fiscal Note: Requested on February 14, 2024.

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