SENATE BILL REPORT
SB 5766

As of April 7, 2023

Title: An act relating to improving the administrability of emissions exemptions and business practices under the climate commitment act.

Brief Description: Improving the administrability of emissions exemptions and business practices under the climate commitment act.

Sponsors: Senators Mullet and Nguyen.

Brief History:

Committee Activity: Ways & Means: 4/10/23.

Brief Summary of Bill

- Creates a remittance program for emissions exemptions under the Climate Commitment Act (CCA) for farm fuel users and businesses transporting agricultural products.
- Creates a new CCA remittance account to process remittance claims.
- Deposits $50 million in fiscal year 2024 into the CCA remittance account and requires the omnibus appropriations act to specify deposits into the account in future years.
- Prohibits separate charges on billing statements related to the CCA and makes violations a consumer protection act violation.
- Creates a work group to review rules and processes that are developed to implement the CCA emissions exemptions and develop recommendations for changes to laws, rules, policies, and practices to ensure the full use and benefit of the exemptions.

SENATE COMMITTEE ON WAYS & MEANS

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.

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Background: Climate Commitment Act. In 2021, the Climate Commitment Act (CCA) directed the Department of Ecology (Ecology) to implement a cap and invest program to reduce greenhouse gas (GHG) emissions consistent with the statewide statutory emissions limits. Starting on January 1, 2023, the cap and invest 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 cap and invest 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 cap and invest program. One compliance instrument is equal to one metric ton of CO2e.

Except for directly distributed, no-cost allowances allocated to certain entities, allowances under the cap and invest program must be distributed through auctions. Ecology must hold a maximum of four auctions each year, plus any necessary reserve auctions. An auction may include allowances from the annual allowance budget of the current year and allowances from the annual allowances budgets of prior years that remain to be distributed.

Upon completion and verification of auction results, the auction proceeds must be transferred to the state treasurer for specific deposits first to the Carbon Emissions Reduction Account (CERA) and the remaining auction proceeds to the Climate Investment Account and Air Quality and Health Disparities Improvement Account. The deposits to CERA are as follows:
- $127,341,000 for fiscal year (FY) 2023;
- $356,697,000 for FY 2024;
- $366,558,000 for FY 2025; and
- $359,117,000 each year for fiscal years 2026 through 2037.

The deposits into CERA must not exceed $5.2 billion over the first 16 years. For FY 2038 and each year thereafter, 50 percent of the proceeds must be deposited to CERA and 50 percent to the Climate Investment Account and Air Quality and Health Disparities Improvement Account.

Expenditures from CERA may only be used for transportation carbon emissions reducing purposes, including investments in alternatives and reductions to single occupancy passenger vehicle use through alternative fuel infrastructure and incentives, and emission reduction programs for freight, ferries, and port activities. Expenditure may not be used for

18th amendment highway purposes, other than as specified in the account.

Under the CCA, certain entities are identified as emissions-intensive and trade-exposed (EITE) industries. EITE facilities receive no cost allowance that decline over time depending on the compliance obligation time period.

In addition to no cost allowances, the CCA exempts certain emissions from coverage requirements, including emissions from:

- the combustion of aviation fuels;
- watercraft fuels supplied in Washington that are combusted outside of Washington;
- coal-fired electric generation facility exempted from additional GHG limitations, requirements, or performance standards under RCW 80.80.110;
- the combustion of certain biomass or biofuels;
- motor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user, and Ecology is required to determine a method for expanding the farm fuel user exemption to include fuels used for transporting agricultural products on public highways for a period of five years, to provide the agricultural sector with a feasible transition period;
- facilities with North American industry classification system code 92811 (national security); and
- municipal solid waste landfills subject to, and in compliance with landfill methane emissions law.

<u>Consumer Protection Act</u>. The CPA prohibits unfair or deceptive practices in trade or commerce, and the formation of contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies. Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees. If the state is injured by a violation of the CPA, the state can bring a civil action to recover actual damages, costs, and attorney's fees.

Summary of Bill: <u>Remittance Program for Farm and Agriculture.</u> By January 1, 2024, Ecology must establish a remittance program for farm fuel users and freight haulers of agricultural products consuming fuels whose emissions are exempted from coverage under the CCA The remittance program must include a climate commitment act remittance portal that allows farm fuel users and freight haulers of agricultural products to electronically submit, on a quarterly basis, an application for remittance and supporting documentation. An approved application for remittance is eligible for a remittance equal to the auction settlement price in effect for the calendar quarter in which the fuel was purchased multiplied by eight-tenths of 1 percent and the number of gallons in the remittance application.

To fund the remittance program, in fiscal year 2024, after CERA is fully funded, $50 million will be deposited in a new Climate Commitment Act Remittance Account (CCARA). In future years, the operating budget will specify the amount of CCA funds to be deposited in CCARA after CERA is funded under current law. CCARA is an appropriated account to be used exclusively for the remittance program and administrative costs are limited to 10 percent.

Prohibition on Climate Commitment Act Billing Statement Surcharges. A business may not include a separate charge or separate cost on any invoice or other billing statement indicating that the charge or cost is imposed or collected in relation to the CCA. A violation would be considered an unfair or deceptive act and a violation of the CPA.

Work Group. Ecology will convene a work group to review rules and processes developed to implement the CCA emissions exemptions and develop recommendations for changes to laws, rules, policies, and practices to ensure the full use and benefit of the exemptions. The work group will make recommendations on the following topics:
- whether exemption processes have been responsive to how markets have reacted to the greenhouse gas emissions cap and invest program;
- whether exemption processes can be improved or alternatives developed to reduce the burdens on those seeking an exemption;
- the adequacy of current guidance and tools to report exemptions;
- whether changes are necessary related to the remittance program created in the bill; and
- other issues and topics the work group determines are necessary to review the full use and enjoyment of the exemptions provided under the CCA.

Ecology must submit a report containing its review and recommendations to the appropriate committees of the Legislature by November 1, 2023.

Appropriation: None.

Fiscal Note: Requested on March 31, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.