

Referendum No. 94

Referendum on
portions of E3SHB1091
(portions identified
by marking
in boxed areas)

CERTIFICATION OF ENROLLMENT

ENGROSSED THIRD SUBSTITUTE HOUSE BILL 1091

Chapter 317, Laws of 2021

(partial veto)

67th Legislature
2021 Regular Session

TRANSPORTATION FUEL—CLEAN FUELS PROGRAM

EFFECTIVE DATE: July 25, 2021

Passed by the House April 25, 2021
Yeas 54 Nays 43

LAURIE JINKINS

Speaker of the House of
Representatives

Passed by the Senate April 25, 2021
Yeas 26 Nays 23

DENNY HECK

President of the Senate

Approved May 17, 2021 2:53 PM with
the exception of section 3(8), which
is vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the
House of Representatives of the
State of Washington, do hereby
certify that the attached is
ENGROSSED THIRD SUBSTITUTE HOUSE
BILL 1091 as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 18, 2021

Secretary of State
State of Washington

RECEIVED
MAY 28 2021
SECRETARY OF STATE
STATE OF WASHINGTON

ENGROSSED THIRD SUBSTITUTE HOUSE BILL 1091

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By House Transportation (originally sponsored by Representatives Fitzgibbon, Slatter, Berry, Dolan, Bateman, Ramos, Simmons, Ramel, Senn, Peterson, Duerr, Ryu, Valdez, Callan, Kloba, Chopp, Ormsby, Frame, Macri, Pollet, Goodman, and Bergquist; by request of Office of the Governor)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to reducing greenhouse gas emissions by reducing
2 the carbon intensity of transportation fuel; amending RCW 80.50.060,
3 46.17.365, 46.25.100, 46.20.202, 46.25.052, 46.25.060, 70A.15.3150,
4 70A.15.3160, 19.112.110, and 19.112.120; reenacting and amending RCW
5 80.50.020; adding a new section to chapter 82.04 RCW; adding a new
6 section to chapter 43.21A RCW; adding a new chapter to Title 70A RCW;
7 creating new sections; prescribing penalties; and providing
8 expiration dates.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. Sec. 1. (1) The legislature finds that rapid
11 innovations in low carbon transportation technologies, including
12 electric vehicles and clean transportation fuels, are at the
13 threshold of widespread commercial deployment. In order to help
14 prompt the use of clean fuels, other states have successfully
15 implemented programs that reduce the carbon intensity of their
16 transportation fuels. California and Oregon have both implemented low
17 carbon fuel standards that are similar to the program created in this
18 act, and both states have experienced biofuel sector growth and have
19 successfully sited large biofuel projects that had originally been
20 planned for Washington. Washington state has extensively studied the
21 potential impact of a clean fuels program, and most projections show

1 that a low carbon fuel standard would decrease greenhouse gas and
2 conventional air pollutant emissions, while positively impacting the
3 state's economy.

4 (2) The legislature further finds that the health and welfare of
5 the people of the state of Washington is threatened by the prospect
6 of crumbling or swamped coastlines, rising water, and more intense
7 forest fires caused by higher temperatures and related droughts, all
8 of which are intensified and made more frequent by the volume of
9 greenhouse gas emissions. As of 2017, the transportation sector
10 contributes 45 percent of Washington's greenhouse gas emissions, and
11 the legislature's interest in the life cycle of the fuels used in the
12 state arises from a concern for the effects of the production and use
13 of these fuels on Washington's environment and public health,
14 including its air quality, snowpack, and coastline.

15 (3) Therefore, it is the intent of the legislature to support the
16 deployment of clean transportation fuel technologies through a
17 carefully designed program that reduces the carbon intensity of fuel
18 used in Washington, in order to:

19 (a) Reduce levels of conventional air pollutants from diesel and
20 gasoline that are harmful to public health;

21 (b) Reduce greenhouse gas emissions associated with
22 transportation fuels, which are the state's largest source of
23 greenhouse gas emissions; and

24 (c) Create jobs and spur economic development based on innovative
25 clean fuel technologies.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly indicates
28 otherwise.

29 (1) "Carbon dioxide equivalents" has the same meaning as defined
30 in RCW 70A.45.010.

31 (2) "Carbon intensity" means the quantity of life-cycle
32 greenhouse gas emissions, per unit of fuel energy, expressed in grams
33 of carbon dioxide equivalent per megajoule (gCO₂e/MJ).

34 (3) "Clean fuels program" means the requirements established
35 under this chapter.

36 (4) "Cost" means an expense connected to the manufacture,
37 distribution, or other aspects of the provision of a transportation
38 fuel product.

1 (5) "Credit" means a unit of measure generated when a
2 transportation fuel with a carbon intensity that is less than the
3 applicable standard adopted by the department under section 3 of this
4 act is produced, imported, or dispensed for use in Washington, such
5 that one credit is equal to one metric ton of carbon dioxide
6 equivalents. A credit may also be generated through other activities
7 consistent with this chapter.

8 (6) "Deficit" means a unit of measure generated when a
9 transportation fuel with a carbon intensity that is greater than the
10 applicable standard adopted by the department under section 3 of this
11 act is produced, imported, or dispensed for use in Washington, such
12 that one deficit is equal to one metric ton of carbon dioxide
13 equivalents.

14 (7) "Department" means the department of ecology.

15 (8) "Electric utility" means a consumer-owned utility or
16 investor-owned utility, as those terms are defined in RCW 19.29A.010.

17 (9) "Greenhouse gas" has the same meaning as defined in RCW
18 70A.45.010.

19 (10) "Military tactical vehicle" means a motor vehicle owned by
20 the United States department of defense or the United States military
21 services and that is used in combat, combat support, combat service
22 support, tactical or relief operations, or training for such
23 operations.

24 (11) "Motor vehicle" has the same meaning as defined in RCW
25 46.04.320.

26 (12) "Price" means the amount of payment or compensation provided
27 as consideration for a specified quantity of transportation fuel by a
28 consumer or end user of the transportation fuel.

29 (13) "Regulated party" means a producer or importer of any amount
30 of a transportation fuel that is ineligible to generate credits under
31 this chapter.

32 (14)(a) "Tactical support equipment" means equipment using a
33 portable engine, including turbines, that meets military
34 specifications, owned by the United States military services or its
35 allies, and that is used in combat, combat support, combat service
36 support, tactical or relief operations, or training for such
37 operations.

38 (b) "Tactical support equipment" includes, but is not limited to,
39 engines associated with portable generators, aircraft start carts,
40 heaters, and lighting carts.

1 (15) "Transportation fuel" means electricity and any liquid or
2 gaseous fuel sold, supplied, offered for sale, or used for the
3 propulsion of a motor vehicle or that is intended for use for
4 transportation purposes.

5 *NEW SECTION. **Sec. 3.** (1) The department shall adopt rules that
6 establish standards that reduce carbon intensity in transportation
7 fuels used in Washington. The standards established by the rules must
8 be based on the carbon intensity of gasoline and gasoline substitutes
9 and the carbon intensity of diesel and diesel substitutes. The
10 standards:

11 (a) Must reduce the overall, aggregate carbon intensity of
12 transportation fuels used in Washington;

13 (b) May only require carbon intensity reductions at the aggregate
14 level of all transportation fuels and may not require a reduction in
15 carbon intensity to be achieved by any individual type of
16 transportation fuel;

17 (c) Must assign a compliance obligation to fuels whose carbon
18 intensity exceeds the standards adopted by the department, consistent
19 with the requirements of section 4 of this act; and

20 (d) Must assign credits that can be used to satisfy or offset
21 compliance obligations to fuels whose carbon intensity is below the
22 standards adopted by the department and that elect to participate in
23 the program, consistent with the requirements of section 4 of this
24 act.

25 (2) The clean fuels program adopted by the department must be
26 designed such that:

27 (a) Regulated parties generate deficits and may reconcile the
28 deficits, and thus comply with the clean fuels program standards for
29 a compliance period, by obtaining and retiring credits;

30 (b) Regulated parties and credit generators may generate credits
31 for fuels used as substitutes or alternatives for gasoline or diesel;

32 (c) Regulated parties, credit generators, and credit aggregators
33 shall have opportunities to trade credits; and

34 (d) Regulated parties shall be allowed to carry over to the next
35 compliance period a small deficit without penalty.

36 (3) The department shall, throughout a compliance period,
37 regularly monitor the availability of fuels needed for compliance
38 with the clean fuels program.

1 (4) (a) Under the clean fuels program, the department shall
2 monthly calculate the volume-weighted average price of credits and,
3 no later than the last day of the month immediately following the
4 month for which the calculation is completed, post the formula and
5 the nonaggregated data the department used for the calculation and
6 the results of the calculation on the department's website.

7 (b) In completing the calculation required by this subsection,
8 the department may exclude from the data set credit transfers without
9 a price or other credit transfers made for a price that falls two
10 standard deviations outside of the mean credit price for the month.
11 Data posted on the department's website under this section may not
12 include any individually identifiable information or information that
13 would constitute a trade secret.

14 (5) (a) Except as provided in this section, the rules adopted
15 under this section must reduce the greenhouse gas emissions
16 attributable to each unit of the fuels to 20 percent below 2017
17 levels by 2038 based on the following schedule:

18 (i) No more than 0.5 percent each year in 2023 and 2024;

19 (ii) No more than an additional one percent each year beginning
20 in 2025 through 2027;

21 (iii) No more than an additional 1.5 percent each year beginning
22 in 2028 through 2031; and

23 (iv) No change in 2032 and 2033.

24 (b) The rules must establish a start date for the clean fuels
25 program of no later than January 1, 2023, except as provided in
26 subsection (8) of this section.

27 (6) Beginning with the program year beginning in calendar year
28 2028, the department may not increase the carbon intensity reductions
29 required by the applicable clean fuels program standard adopted by
30 the department under subsection (5) of this section beyond a 10
31 percent reduction in carbon intensity until the department
32 demonstrates that the following have occurred:

33 (a) At least a 15 percent net increase in the volume of in-state
34 liquid biofuel production and the use of feedstocks grown or produced
35 within the state relative to the start of the program; and

36 (b) At least one new or expanded biofuel production facility
37 representing an increase in production capacity or producing, in
38 total, in excess of 60,000,000 gallons of biofuels per year has or
39 have received after July 1, 2021, all necessary siting, operating,
40 and environmental permits post all timely and applicable appeals. As

1 part of the threshold of 60,000,000 gallons of biofuel under this
2 subsection, at least one new facility producing at least 10,000,000
3 gallons per year must have received all necessary siting, operating,
4 and environmental permits. Timely and applicable appeals must be
5 determined by the attorney general's office.

6 (7) Beginning with the program year beginning in calendar year
7 2031, the department may not increase the carbon intensity reductions
8 required by the applicable clean fuels program standard adopted by
9 the department under subsection (5) of this section beyond a 10
10 percent reduction in carbon intensity until the:

11 (a) Joint legislative audit and review committee report required
12 in section 15 of this act has been completed; and

13 (b) 2033 regular legislative session has adjourned, in order to
14 allow an opportunity for the legislature to amend the requirements of
15 this chapter in light of the report required in (a) of this
16 subsection.

17 (8) (a) In order to coordinate and synchronize the clean fuels
18 program with other transportation-related investments, the department
19 may not assign compliance obligations or allow the generation of
20 credits under this chapter until a separate additive transportation
21 revenue act becomes law, at which time the department of licensing
22 must provide written notice to the chief clerk of the house of
23 representatives, the secretary of the senate, and the office of the
24 code reviser.

25 (b) For the purposes of this subsection, "additive transportation
26 revenue act" means an act enacted after April 1, 2021, in which the
27 state fuel tax under RCW 82.38.030 is increased by an additional and
28 cumulative tax rate of at least five cents per gallon of fuel.

29 (9) Transportation fuels exported from Washington are not subject
30 to the greenhouse gas emissions reduction requirements in this
31 section.

32 (10) To the extent the requirements of this chapter conflict with
33 the requirements of chapter 19.112 RCW, the requirements of this
34 chapter prevail.

**Sec. 3 is partially vetoed. See message at end of chapter.*

35 NEW SECTION. Sec. 4. The rules adopted by the department to
36 achieve the greenhouse gas emissions reductions per unit of fuel
37 energy specified in section 3 of this act must include, but are not
38 limited to, the following:

1 (1) Standards for greenhouse gas emissions attributable to the
2 transportation fuels throughout their life cycles, including but not
3 limited to emissions from the production, storage, transportation,
4 and combustion of transportation fuels and from changes in land use
5 associated with transportation fuels and any permanent greenhouse gas
6 sequestration activities.

7 (a) The rules adopted by the department under this subsection (1)
8 may:

9 (i) Include provisions to address the efficiency of a fuel as
10 used in a powertrain as compared to a reference fuel;

11 (ii) Consider carbon intensity calculations for transportation
12 fuels developed by national laboratories or used by similar programs
13 in other states; and

14 (iii) Consider changes in land use and any permanent greenhouse
15 gas sequestration activities associated with the production of any
16 type of transportation fuel.

17 (b) The rules adopted by the department under this subsection (1)
18 must:

19 (i) Neutrally consider the life-cycle emissions associated with
20 transportation fuels with respect to the political jurisdiction in
21 which the fuels originated and may not discriminate against fuels on
22 the basis of having originated in another state or jurisdiction.
23 Nothing in this subsection may be construed to prohibit inclusion or
24 assessment of emissions related to fuel production, storage,
25 transportation, or combustion or associated changes in land use in
26 determining the carbon intensity of a fuel;

27 (ii) Measure greenhouse gas emissions associated with electricity
28 and hydrogen based on a mix of generation resources specific to each
29 electric utility participating in the clean fuels program. The
30 department may apply an asset-controlling supplier emission factor
31 certified or approved by a similar program to reduce the greenhouse
32 gas emissions associated with transportation fuels in another state;

33 (iii) Include mechanisms for certifying electricity that has a
34 carbon intensity of zero. This electricity must include, at minimum,
35 electricity:

36 (A) For which a renewable energy credit or other environmental
37 attribute has been retired or used; and

38 (B) Produced using a zero emission resource including, but not
39 limited to, solar, wind, geothermal, or the industrial combustion of
40 biomass consistent with RCW 70A.45.020(3), that is directly supplied

1 as a transportation fuel by the generator of the electricity to a
2 metered customer for electric vehicle charging or refueling;

3 (iv) Allow the generation of credits associated with electricity
4 with a carbon intensity lower than that of standard adopted by the
5 department. The department may not require electricity to have a
6 carbon intensity of zero in order to be eligible to generate credits
7 from use as a transportation fuel; and

8 (v) Include procedures for setting and adjusting the amounts of
9 greenhouse gas emissions per unit of fuel energy that is assigned to
10 transportation fuels under this subsection.

11 (c) If the department determines that it is necessary for
12 purposes of accurately measuring greenhouse gas emissions associated
13 with transportation fuels, the department may require transportation
14 fuel suppliers to submit data or information to be used for purposes
15 of calculating greenhouse gas emissions that is different from or
16 additional to the greenhouse gas emissions data reported under RCW
17 70A.15.2200(5)(a)(iii).

18 (d) If the department determines that it is necessary for
19 purposes of accurately measuring greenhouse gas emissions associated
20 with electricity supplied to retail customers or hydrogen production
21 facilities by an electric utility, the department may require
22 electric utilities participating in the clean fuels program to submit
23 data or information to be used for purposes of calculating greenhouse
24 gas emissions that is different from or additional to the fuel mix
25 disclosure information submitted under chapter 19.29A RCW. To the
26 extent practicable, rules adopted by the department may allow data
27 requested of utilities to be submitted in a form and manner
28 consistent with other required state or federal data submissions;

29 (2) Provisions allowing for the achievement of limits on the
30 greenhouse gas emissions intensity of transportation fuels in section
31 3 of this act to be achieved by any combination of credit generating
32 activities capable of meeting such standards. Where such provisions
33 would not produce results counter to the emission reduction goals of
34 the program or prove administratively burdensome for the department,
35 the rules should provide each participant in the clean fuels program
36 with the opportunity to demonstrate appropriate carbon intensity
37 values taking into account both emissions from production facilities
38 and elsewhere in the production cycle, including changes in land use
39 and permanent greenhouse gas sequestration activities;

1 (3) (a) Methods for assigning compliance obligations and methods
2 for tracking tradable credits. The department may assign the
3 generation of a credit when a fuel with associated life-cycle
4 greenhouse gas emissions that are lower than the applicable per-unit
5 standard adopted by the department under section 3 of this act is
6 produced, imported, or dispensed for use in Washington, or when
7 specified activities are undertaken that support the reduction of
8 greenhouse gas emissions associated with transportation in
9 Washington;

10 (b) Mechanisms that allow credits to be traded and to be banked
11 for future compliance periods; and

12 (c) Procedures for verifying the validity of credits and deficits
13 generated under the clean fuels program;

14 (4) Mechanisms to elect to participate in the clean fuels program
15 for persons associated with the supply chains of transportation fuels
16 that are eligible to generate credits consistent with subsection (3)
17 of this section, including producers, importers, distributors, users,
18 or retailers of such fuels, and electric vehicle manufacturers;

19 (5) Mechanisms for persons associated with the supply chains of
20 transportation fuels that are used for purposes that are exempt from
21 the clean fuels program compliance obligations including, but not
22 limited to, fuels used by aircraft, vessels, railroad locomotives,
23 and other exempt fuels specified in section 5 of this act, to elect
24 to participate in the clean fuels program by earning credits for the
25 production, import, distribution, use, or retail of exempt fuels with
26 associated life-cycle greenhouse gas emissions lower than the per-
27 unit standard established in section 3 of this act;

28 (6) Mechanisms that allow for the assignment of credits to an
29 electric utility for electricity used within its utility service
30 area, at minimum, for residential electric vehicle charging or
31 fueling;

32 (7) Cost containment mechanisms.

33 (a) Cost containment mechanisms must include the credit clearance
34 market specified in subsection (8) of this section and may also
35 include, but are not limited to:

36 (i) Procedures similar to the credit clearance market required in
37 subsection (8) of this section that provide a means of compliance
38 with the clean fuels program requirements in the event that a
39 regulated person has not been able to acquire sufficient volumes of
40 credits at the end of a compliance period; or

1 (ii) Similar procedures that ensure that credit prices do not
2 significantly exceed credit prices in other jurisdictions that have
3 adopted similar programs to reduce the carbon intensity of
4 transportation fuels.

5 (b) Any cost containment mechanisms must be designed to provide
6 financial disincentive for regulated persons to rely on the cost
7 containment mechanism for purposes of program compliance instead of
8 seeking to generate or acquire sufficient credits under the program.

9 (c) The department shall harmonize the program's cost containment
10 mechanisms with the cost containment rules in the states specified in
11 section 7(1) of this act.

12 (d) The department shall consider mechanisms such as the
13 establishment of a credit price cap or other alternative cost
14 containment measures if deemed necessary to harmonize market credit
15 costs with those in the states specified in section 7(1) of this act;

16 (8) (a) (i) A credit clearance market for any compliance period in
17 which at least one regulated party reports that the regulated party
18 has a net deficit balance at the end of the compliance period, after
19 retirement of all credits held by the regulated party, that is
20 greater than a small deficit. A regulated party described by this
21 subsection is required to participate in the credit clearance market.

22 (ii) If a regulated party has a small deficit at the end of a
23 compliance period, the regulated party shall notify the department
24 that it will achieve compliance with the clean fuels program during
25 the compliance period by either: (A) Participating in a credit
26 clearance market; or (B) carrying forward the small deficit.

27 (b) For the purposes of administering a credit clearance market
28 required by this section, the department shall:

29 (i) Allow any regulated party, credit generator, or credit
30 aggregator that holds excess credits at the end of the compliance
31 period to voluntarily participate in the credit clearance market as a
32 seller by pledging a specified number of credits for sale in the
33 market;

34 (ii) Require each regulated party participating in the credit
35 clearance market as purchaser of credits to:

36 (A) Have retired all credits in the regulated party's possession
37 prior to participating in the credit clearance market; and

38 (B) Purchase the specified number of the total pledged credits
39 that the department has determined are that regulated party's pro
40 rata share of the pledged credits;

(iii) Require all sellers to:

(A) Agree to sell pledged credits at a price no higher than a maximum price for credits;

(B) Accept all offers to purchase pledged credits at the maximum price for credits; and

(C) Agree to withhold any pledged credits from sale in any transaction outside of the credit clearance market until the end of the credit clearance market, or if no credit clearance market is held in a given year, then until the date on which the department announces it will not be held.

(c) (i) The department shall set a maximum price for credits in a credit clearance market, consistent with states that have adopted similar clean fuels programs, not to exceed \$200 in 2018 dollars for 2023.

(ii) For 2024 and subsequent years, the maximum price may exceed \$200 in 2018 dollars, but only to the extent that a greater maximum price for credits is necessary to annually adjust for inflation, beginning on January 1, 2024, pursuant to the increase, if any, from the preceding calendar year in the consumer price index for all urban consumers, west region (all items), as published by the bureau of labor statistics of the United States department of labor.

(d) A regulated party that has a net deficit balance after the close of a credit clearance market:

(i) Must carry over the remaining deficits into the next compliance period; and

(ii) May not be subject to interest greater than five percent, penalties, or assertions of noncompliance that accrue based on the carryover of deficits under this subsection.

(e) If a regulated party has been required under (a) of this subsection to participate as a purchaser in two consecutive credit clearance markets and continues to have a net deficit balance after the close of the second consecutive credit clearance market, the department shall complete, no later than two months after the close of the second credit clearance market, an analysis of the root cause of an inability of the regulated party to retire the remaining deficits. The department may recommend and implement any remedy that the department determines is necessary to address the root cause identified in the analysis including, but not limited to, issuing a deferral, provided that the remedy implemented does not:

1 (i) Require a regulated party to purchase credits for an amount
2 that exceeds the maximum price for credits in the most recent credit
3 clearance market; or

4 (ii) Compel a person to sell credits.

5 (f) If credits sold in a credit clearance market are subsequently
6 invalidated as a result of fraud or any other form of noncompliance
7 on the part of the generator of the credit, the department may not
8 pursue civil penalties against, or require credit replacement by, the
9 regulated party that purchased the credits unless the regulated party
10 was a party to the fraud or other form of noncompliance.

11 (g) The department may not disclose the deficit balances or pro
12 rata share purchase requirements of a regulated party that
13 participates in the credit clearance market;

14 (9) Authority for the department to designate an entity to
15 aggregate and use unclaimed credits associated with persons that
16 elect not to participate in the clean fuels program under subsection
17 (4) of this section.

18 NEW SECTION. Sec. 5. (1) The rules adopted under sections 3 and
19 4 of this act must include exemptions for, at minimum, the following
20 transportation fuels:

21 (a) Fuels used in volumes below thresholds adopted by the
22 department;

23 (b) Fuels used for the propulsion of all aircraft, vessels, and
24 railroad locomotives; and

25 (c) Fuels used for the operation of military tactical vehicles
26 and tactical support equipment.

27 (2) (a) The rules adopted under sections 3 and 4 of this act must
28 exempt the following transportation fuels from greenhouse gas
29 emission intensity reduction requirements until January 1, 2028:

30 (i) Special fuel used off-road in vehicles used primarily to
31 transport logs;

32 (ii) Dyed special fuel used in vehicles that are not designed
33 primarily to transport persons or property, that are not designed to
34 be primarily operated on highways, and that are used primarily for
35 construction work including, but not limited to, mining and timber
36 harvest operations; and

37 (iii) Dyed special fuel used for agricultural purposes exempt
38 from chapter 82.38 RCW.

(b) Prior to January 1, 2028, fuels identified in this subsection (2) are eligible to generate credits, consistent with subsection (5) of this section. Beginning January 1, 2028, the fuels identified in this subsection (2) are subject to the greenhouse gas emission intensity reduction requirements applicable to transportation fuels specified in section 3 of this act.

(3) The department may adopt rules to specify the standards for persons to qualify for the exemptions provided in this section. The department may implement the exemptions under subsection (2) of this section to align with the implementation of exemptions for similar fuels exempt from chapter 82.38 RCW.

(4) The rules adopted under sections 3 and 4 of this act may include exemptions in addition to those described in subsections (1) and (2) of this section, but only if such exemptions are necessary, with respect to the relationship between the program and similar greenhouse gas emissions requirements or low carbon fuel standards, in order to avoid:

(a) Mismatched incentives across programs;

(b) Fuel shifting between markets; or

(c) Other results that are counter to the intent of this chapter.

(5) Nothing in this chapter precludes the department from adopting rules under sections 3 and 4 of this act that allow the generation of credits associated with electric or alternative transportation infrastructure that existed prior to the effective date of this section or to the start date of program requirements. The department must apply the same baseline years to credits associated with electric or alternative transportation infrastructure that apply to gasoline and diesel liquid fuels in any market-based program enacted by the legislature that establishes a cap on greenhouse gas emissions.

NEW SECTION. **Sec. 6.** (1) The rules adopted under sections 3 and 4 of this act may allow the generation of credits from activities that support the reduction of greenhouse gas emissions associated with transportation in Washington, including but not limited to:

(a) Carbon capture and sequestration projects, including but not limited to:

(i) Innovative crude oil production projects that include carbon capture and sequestration;

1 (ii) Project-based refinery greenhouse gas mitigation including,
2 but not limited to, process improvements, renewable hydrogen use, and
3 carbon capture and sequestration; or

4 (iii) Direct air capture projects;

5 (b) Investments and activities that support deployment of
6 machinery and equipment used to produce gaseous and liquid fuels from
7 nonfossil feedstocks, and derivatives thereof;

8 (c) The fueling of battery or fuel cell electric vehicles by a
9 commercial, nonprofit, or public entity that is not an electric
10 utility, which may include, but is not limited to, the fueling of
11 vehicles using electricity certified by the department to have a
12 carbon intensity of zero; and

13 (d) The use of smart vehicle charging technology that results in
14 the fueling of an electric vehicle during times when the carbon
15 intensity of grid electricity is comparatively low.

16 (2) (a) The rules adopted under sections 3 and 4 of this act must
17 allow the generation of credits based on capacity for zero emission
18 vehicle refueling infrastructure, including DC fast charging
19 infrastructure and hydrogen refueling infrastructure.

20 (b) The rules adopted under sections 3 and 4 of this act may
21 allow the generation of credits from the provision of low carbon fuel
22 infrastructure not specified in (a) of this subsection.

23 (3) The rules adopted under sections 3 and 4 of this act must
24 allow the generation of credits from state transportation investments
25 funded in an omnibus transportation appropriations act for activities
26 and projects that reduce greenhouse gas emissions and decarbonize the
27 transportation sector. These include, but are not limited to: (a)
28 Electrical grid and hydrogen fueling infrastructure investments; (b)
29 ferry operating and capital investments; (c) electrification of the
30 state ferry fleet; (d) alternative fuel vehicle rebate programs; (e)
31 transit grants; (f) infrastructure and other costs associated with
32 the adoption of alternative fuel use by transit agencies; (g) bike
33 and pedestrian grant programs and other activities; (h) complete
34 streets and safe walking grants and allocations; (i) rail funding;
35 and (j) multimodal investments.

36 (4) The rules adopted by the department may establish limits for
37 the number of credits that may be earned each year by persons
38 participating in the program for some or all of the activities
39 specified in subsections (1) and (2) of this section. The department
40 must limit the number of credits that may be earned each year under

1 subsection (3) of this section to 10 percent of the total program
2 credits. Any limits established under this subsection must take into
3 consideration the return on investment required in order for an
4 activity specified in subsection (2) of this section to be
5 financially viable.

6 NEW SECTION. **Sec. 7.** (1) Except where otherwise provided in
7 this chapter, the department shall seek to adopt rules that are
8 harmonized with the regulatory standards, exemptions, reporting
9 obligations, and other clean fuels program compliance requirements
10 and methods for credit generation of other states that:

11 (a) Have adopted low carbon fuel standards or similar greenhouse
12 gas emissions requirements applicable specifically to transportation
13 fuels; and

14 (b)(i) Supply, or have the potential to supply, significant
15 quantities of transportation fuel to Washington markets; or

16 (ii) To which Washington supplies, or has the potential to
17 supply, significant quantities of transportation fuel.

18 (2) The department must establish and periodically consult a
19 stakeholder advisory panel, including representatives of forestland
20 and agricultural landowners, for purposes of soliciting input on how
21 to best incentivize and allot credits for the sequestration of
22 greenhouse gases through activities on agricultural and forestlands
23 in a manner that is consistent with the goals and requirements of
24 this chapter.

25 (3) The department must conduct a biennial review of innovative
26 technologies and pathways that reduce carbon and increase credit
27 generation opportunities and must modify rules or guidance as needed
28 to maintain stable credit markets.

29 (4) In any reports to the legislature under section 10 of this
30 act, on the department's website, or in other public documents or
31 communications that refer to assumed public health benefits
32 associated with the program created in this chapter, the department
33 must distinguish between public health benefits from small
34 particulate matter and other conventional pollutant reductions
35 achieved primarily as a result of vehicle emission standards
36 established under chapter 70A.30 RCW, and the incremental benefits to
37 air pollution attributable to the program created under this chapter.

1 NEW SECTION. **Sec. 8.** (1)(a) Each producer or importer of any
2 amount of a transportation fuel that is ineligible to generate
3 credits consistent with the requirements of section 4(3) of this act
4 must register with the department.

5 (b) Electric vehicle manufacturers and producers, importers,
6 distributors, users, and retailers of transportation fuels that are
7 eligible to generate credits consistent with section 4(3) of this act
8 must register with the department if they elect to participate in the
9 clean fuels program.

10 (c) Other persons must register with the department to generate
11 credits from other activities that support the reduction of
12 greenhouse gas emissions associated with transportation in
13 Washington.

14 (2) Each transaction transferring ownership of transportation
15 fuels for which clean fuels program participation is mandated must be
16 accompanied by documentation, in a format approved by the department,
17 that assigns the clean fuels program compliance responsibility
18 associated with the fuels, including the assignment of associated
19 credits. The department may also require documentation assigning
20 clean fuels program compliance responsibility associated with fuels
21 for which program participation has been elected.

22 (3) The department may adopt rules requiring the periodic
23 reporting of information to the department by persons associated with
24 the supply chains of transportation fuels participating in the clean
25 fuels program. To the extent practicable, the rules must establish
26 reporting procedures and timelines that are consistent with similar
27 programs in other states that reduce the greenhouse gas emission
28 intensity of transportation fuel and with procedures and timelines of
29 state programs requiring similar information to be reported by
30 regulated parties, including electric utilities.

31 (4) RCW 70A.15.2510 applies to records or information submitted
32 to the department under this chapter.

33 NEW SECTION. **Sec. 9.** (1)(a) Fifty percent of the revenues
34 generated by an electric utility from credits earned from the
35 electricity supplied to retail customers by an electric utility under
36 the clean fuels program must be expended by the electric utility on
37 transportation electrification projects, which may include projects
38 to support the production and provision of hydrogen and other gaseous

1 fuels produced from nonfossil feedstocks, and derivatives thereof as
2 a transportation fuel.

3 (b) Sixty percent of the revenues described in (a) of this
4 subsection, or 30 percent of the revenues generated by an electric
5 utility from credits earned from the electricity supplied to retail
6 customers by an electric utility under the clean fuels program, must
7 be expended by the electric utility on transportation electrification
8 projects, which may include projects to support the production and
9 provision of hydrogen and other gaseous fuels produced from nonfossil
10 feedstocks, and derivatives thereof as a transportation fuel, located
11 within or directly benefiting a federally designated nonattainment or
12 maintenance area, a federally designated nonattainment or maintenance
13 area that existed as of January 1, 2021, a disproportionately
14 impacted community identified by the department of health, or an area
15 designated by the department as being at risk of nonattainment, if
16 such a nonattainment or maintenance area or disproportionately
17 impacted community is within the service area of the utility.

18 (2)(a) Each electric utility must spend 50 percent of revenues
19 not subject to the requirements of subsection (1) of this section on
20 one or more transportation electrification programs or projects it
21 selects from a list of types of programs and projects jointly
22 developed by the department and the Washington state department of
23 transportation. The department and the Washington state department of
24 transportation must develop the list based on those with the highest
25 impact on reducing greenhouse gas emissions and decarbonizing the
26 transportation sector. The types of transportation electrification
27 projects or programs placed on the list must include, but are not
28 limited to:

29 (i) Provision of new or used zero emissions vehicles at no cost
30 or at a discount to nonprofit service providers, transit agencies, or
31 public fleets for the purpose of providing transportation services
32 for low-income or vulnerable populations or to reduce transportation
33 costs for the nonprofits, transit agencies, or public fleets serving
34 low-income or vulnerable populations;

35 (ii) Construction, operation, or maintenance of, or funding for
36 charging infrastructure, including smart charging infrastructure, or
37 hydrogen fueling infrastructure;

38 (iii) Expanding grid capacity to enable transportation
39 electrification investments directly associated with expenditures
40 permitted by this chapter; and

1 (iv) Partnership programs with public and private vehicle fleet
2 owners to enable increased electrification of transportation.

3 (b) Under (a) of this subsection, electric utilities should
4 consider programs or projects that expand low and moderate-income
5 customer access to zero emissions transportation, when prioritizing
6 program expenditures.

7 (3) Electric utilities that participate in the clean fuels
8 program must annually provide information to the department
9 accounting for and briefly describing all expenditures of revenues
10 generated from credits earned under the clean fuels program.

11 NEW SECTION. Sec. 10. (1) Beginning May 1, 2025, and each May
12 1st thereafter, the department must post a report on the department's
13 website that includes the following information regarding the
14 previous calendar year of clean fuels program activities:

15 (a) The program-wide number of credits and deficits generated by
16 entities participating in the clean fuels program;

17 (b) The volumes of each transportation fuel and average price per
18 credit used to comply with the requirements of the clean fuels
19 program;

20 (c) The best estimate or range in probable costs or cost savings
21 attributable to the clean fuels program per gallon of gasoline and
22 per gallon of diesel, as determined by an independent consultant
23 whose services the department has contracted. The estimate or range
24 in probable costs or cost savings from the independent consultant
25 must be announced in a press release to the news media at the time
26 that the report under this subsection (1) is posted to the
27 department's website, and must be simultaneously reported to the
28 transportation committees of the house of representatives and the
29 senate;

30 (d) The total greenhouse gas emissions reductions attributable to
31 the clean fuels program isolated from the greenhouse gas emissions
32 reductions attributable to other state and national programs on the
33 same fuels; and

34 (e) The range in the probable cost per ton of greenhouse gas
35 emissions reductions attributable to fuels supported by the clean
36 fuels program, taking into account the information in (c) and (d) of
37 this subsection.

1 (2) Nothing in this section prohibits the department from posting
2 information described in subsection (1) of this section on a more
3 frequent basis than once per year.

4 (3) By May 1, 2025, and each May 1st thereafter, the department
5 must submit the report required under subsection (1) of this section
6 to the appropriate committees of the house of representatives and
7 senate.

8 (4) The department must contract for a one-time ex ante
9 independent analysis of the information specified in subsection
10 (1)(c) of this section covering each year of the program through
11 2038. The analysis must be informed by input from stakeholders,
12 including regulated industries, and informed by experience from other
13 jurisdictions. The analysis must impute price impacts using multiple
14 analytical methodologies and must make clear how the assumptions or
15 factors considered differed in each methodology used and price impact
16 imputed. The analysis required in this subsection must be completed
17 and submitted to the appropriate committees of the legislature by
18 July 1, 2022.

19 NEW SECTION. **Sec. 11.** (1) In consultation with the department,
20 the utilities and transportation commission, and the department of
21 agriculture, the department of commerce must develop a periodic fuel
22 supply forecast to project the availability of fuels to Washington
23 necessary for compliance with clean fuels program requirements.

24 (2) Based upon the estimates in subsection (3) of this section,
25 the fuel supply forecast must include a prediction by the department
26 of commerce regarding whether sufficient credits will be available to
27 comply with clean fuels program requirements.

28 (3) The fuel supply forecast for each upcoming compliance period
29 must include, but is not limited to, the following:

30 (a) An estimate of the potential volumes of gasoline, gasoline
31 substitutes, and gasoline alternatives, and diesel, diesel
32 substitutes, and diesel alternatives available to Washington. In
33 developing this estimate, the department of commerce must consider,
34 but is not limited to considering:

35 (i) The existing and future vehicle fleet in Washington; and
36 (ii) Any constraints that might be preventing access to available
37 and cost-effective low carbon fuels by Washington, such as geographic
38 and logistical factors, and alleviating factors to the constraints;

1 (b) An estimate of the total banked credits and carried over
2 deficits held by regulated parties, credit generators, and credit
3 aggregators at the beginning of the compliance period, and an
4 estimate of the total credits attributable to fuels described in (a)
5 of this subsection;

6 (c) An estimate of the number of credits needed to meet the
7 applicable clean fuels program requirements during the forecasted
8 compliance period; and

9 (d) A comparison in the estimates of (a) and (b) of this
10 subsection with the estimate in (c) of this subsection, for the
11 purpose of indicating the availability of fuels and banked credits
12 needed for compliance with the requirements of this chapter.

13 (4) The department of commerce, in coordination with the
14 department, may appoint a forecast review team of relevant experts to
15 participate in the fuel supply forecast or examination of data
16 required by this section. The department of commerce must finalize a
17 fuel supply forecast for an upcoming compliance period by no later
18 than 90 days prior to the start of the compliance period.

19 NEW SECTION. **Sec. 12.** (1) No later than 30 calendar days before
20 the commencement of a compliance period, the department shall issue
21 an order declaring a forecast deferral if the fuel supply forecast
22 under section 11 of this act projects that the amount of credits that
23 will be available during the forecast compliance period will be less
24 than 100 percent of the credits projected to be necessary for
25 regulated parties to comply with the scheduled applicable clean fuels
26 program standard adopted by the department for the forecast
27 compliance period.

28 (2) An order declaring a forecast deferral under this section
29 must set forth:

30 (a) The duration of the forecast deferral;

31 (b) The types of fuel to which the forecast deferral applies; and

32 (c) Which of the following methods the department has selected
33 for deferring compliance with the scheduled applicable clean fuels
34 program standard during the forecast deferral:

35 (i) Temporarily adjusting the scheduled applicable clean fuels
36 program standard to a standard identified in the order that better
37 reflects the forecast availability of credits during the forecast
38 compliance period and requiring regulated parties to comply with the
39 temporary standard;

1 (ii) Requiring regulated parties to comply only with the clean
2 fuels program standard applicable during the compliance period prior
3 to the forecast compliance period; or

4 (iii) Suspending deficit accrual for part or all of the forecast
5 deferral period.

6 (3)(a) In implementing a forecast deferral, the department may
7 take an action for deferring compliance with the clean fuels program
8 standard other than, or in addition to, selecting a method under
9 subsection (2)(c) of this section only if the department determines
10 that none of the methods under subsection (2)(c) of this section will
11 provide a sufficient mechanism for containing the costs of compliance
12 with the clean fuels program standards during the forecast deferral.

13 (b) If the department makes the determination specified in (a) of
14 this subsection, the department shall:

15 (i) Include in the order declaring a forecast deferral the
16 determination and the action to be taken; and

17 (ii) Provide written notification and justification of the
18 determination and the action to:

19 (A) The governor;

20 (B) The president of the senate;

21 (C) The speaker of the house of representatives;

22 (D) The majority and minority leaders of the senate; and

23 (E) The majority and minority leaders of the house of
24 representatives.

25 (4) The duration of a forecast deferral may not be less than one
26 calendar quarter or longer than one compliance period. Only the
27 department may terminate, by order, a forecast deferral before the
28 expiration date of the forecast deferral. Termination of a forecast
29 deferral is effective on the first day of the next calendar quarter
30 after the date that the order declaring the termination is adopted.

31 NEW SECTION. **Sec. 13.** (1) The director of the department may
32 issue an order declaring an emergency deferral of compliance with the
33 carbon intensity standard established under section 3 of this act no
34 later than 15 calendar days after the date the department determines,
35 in consultation with the governor's office and the department of
36 commerce, that:

37 (a) Extreme and unusual circumstances exist that prevent the
38 distribution of an adequate supply of renewable fuels needed for
39 regulated parties to comply with the clean fuels program taking into

1 consideration all available methods of obtaining sufficient credits
2 to comply with the standard;

3 (b) The extreme and unusual circumstances are the result of a
4 natural disaster, an act of God, a significant supply chain
5 disruption or production facility equipment failure, or another event
6 that could not reasonably have been foreseen or prevented and not the
7 lack of prudent planning on the part of the suppliers of the fuels to
8 the state; and

9 (c) It is in the public interest to grant the deferral such as
10 when a deferral is necessary to meet projected temporary shortfalls
11 in the supply of the renewable fuel in the state and that other
12 methods of obtaining compliance credits are unavailable to compensate
13 for the shortage of renewable fuel supply.

14 (2) If the director of the department makes the determination
15 required under subsection (1) of this section, such a temporary
16 extreme and unusual deferral is permitted only if:

17 (a) The deferral applies only for the shortest time necessary to
18 address the extreme and unusual circumstances;

19 (b) The deferral is effective for the shortest practicable time
20 period the director of the department determines necessary to permit
21 the correction of the extreme and unusual circumstances; and

22 (c) The director has given public notice of a proposed deferral.

23 (3) An order declaring an emergency deferral under this section
24 must set forth:

25 (a) The duration of the emergency deferral;

26 (b) The types of fuel to which the emergency deferral applies;

27 (c) Which of the following methods the department has selected
28 for deferring compliance with the clean fuels program during the
29 emergency deferral:

30 (i) Temporarily adjusting the scheduled applicable carbon
31 intensity standard to a standard identified in the order that better
32 reflects the availability of credits during the emergency deferral
33 and requiring regulated parties to comply with the temporary
34 standard;

35 (ii) Allowing for the carryover of deficits accrued during the
36 emergency deferral into the next compliance period without penalty;
37 or

38 (iii) Suspending deficit accrual during the emergency deferral
39 period.

1 (4) An emergency deferral may be terminated prior to the
2 expiration date of the emergency deferral if new information becomes
3 available indicating that the shortage that provided the basis for
4 the emergency deferral has ended. The director of the department
5 shall consult with the department of commerce and the governor's
6 office in making an early termination decision. Termination of an
7 emergency deferral is effective 15 calendar days after the date that
8 the order declaring the termination is adopted.

9 (5)(a) In addition to the emergency deferral specified in
10 subsection (1) of this section, the department may issue a full or
11 partial deferral for one calendar quarter of a person's obligation to
12 furnish credits for compliance under section 4 of this act if it
13 finds that the person is unable to comply with the requirements of
14 this chapter due to reasons beyond the person's reasonable control.
15 The department may initiate a deferral under this subsection at its
16 own discretion or at the request of a person regulated under this
17 chapter. The department may renew issued deferrals. In evaluating
18 whether to issue a deferral under this subsection, the department may
19 consider the results of the fuel supply forecast in section 11 of
20 this act, but is not bound in its decision-making discretion by the
21 results of the forecast.

22 (b) If the department issues a deferral pursuant to this
23 subsection, the department may:

24 (i) Direct the person subject to the deferral to file a progress
25 report on achieving full compliance with the requirements of this
26 chapter within an amount of time determined to be reasonable by the
27 department; and

28 (ii) Direct the person to take specific actions to achieve full
29 compliance with the requirements of this chapter.

30 (c) The issuance of a deferral under this subsection does not
31 permanently relieve the deferral recipient of the obligation to
32 comply with the requirements of this chapter.

33 NEW SECTION. **Sec. 14.** (1) The department may require that
34 persons that are required or elect to register or report under this
35 chapter pay a fee. If the department elects to require program
36 participants to pay a fee, the department must, after an opportunity
37 for public review and comment, adopt rules to establish a process to
38 determine the payment schedule and the amount of the fee charged. The
39 amount of the fee must be set so as to equal but not exceed the

1 projected direct and indirect costs to the department for developing
2 and implementing the program and the projected direct and indirect
3 costs to the department of commerce to carry out its responsibilities
4 under section 11 of this act. The department and the department of
5 commerce must prepare a biennial workload analysis and provide an
6 opportunity for public review of and comment on the workload
7 analysis. The department shall enter into an interagency agreement
8 with the department of commerce to implement this section.

9 (2) The clean fuels program account is created in the state
10 treasury. All receipts from fees and penalties received under the
11 program created in this chapter must be deposited into the account.
12 Moneys in the account may be spent only after appropriation. The
13 department may only use expenditures from the account for carrying
14 out the program created in this chapter.

15 (3) All rule making authorized under this act must be conducted
16 according to the standards for significant legislative rules provided
17 in RCW 34.05.328.

18 NEW SECTION. **Sec. 15.** (1) By December 1, 2030, the joint
19 legislative audit and review committee must analyze the impacts of
20 the initial five years of clean fuels program implementation and must
21 submit a report summarizing the analysis to the legislature. The
22 analysis must include, at minimum, the following components:

23 (a) Costs and benefits, including environmental and public health
24 costs and benefits, associated with this chapter for categories of
25 persons participating in the clean fuels program or that are most
26 impacted by air pollution, as defined in consultation with the
27 departments of ecology and health and as measured on a census tract
28 scale. This component of the analysis must, at minimum, assess the
29 costs and benefits of changes in the following metrics since the
30 start of the program:

31 (i) Levels of greenhouse gas emissions and criteria air
32 pollutants for which the United States environmental protection
33 agency has established national ambient air quality standards;

34 (ii) Fuel prices; and

35 (iii) Total employment in categories of industries generating
36 credits or deficits. The categories of industries assessed must
37 include but are not limited to electric utilities, oil refineries,
38 and other industries involved in the production of high carbon fuels,
39 industries involved in the delivery and sale of high carbon fuels,

1 biofuel refineries, and industries involved in the delivery and sale
2 of low carbon fuels;

3 (b) An evaluation of the information calculated and provided by
4 the department under section 10(1) of this act;

5 (c) A summary of the estimated total statewide costs and benefits
6 attributable to the clean fuels program, including state agency
7 administrative costs and regulated entity compliance costs. For
8 purposes of calculating the benefits of the program, the summary may
9 rely, in part, on a constant value of the social costs attributable
10 to greenhouse gas emissions, as identified in contemporary
11 internationally accepted estimates of such global social cost. This
12 summary must include an estimate of the total statewide costs of the
13 program per ton of greenhouse gas emissions reductions achieved by
14 the clean fuels program;

15 (d) An evaluation of the impacts of the program on low-income
16 households; and

17 (e) The outcomes of proposals to site biofuel facilities through
18 the energy facility site evaluation council review process that is
19 allowed by RCW 80.50.060(2).

20 (2) This section expires June 30, 2030.

21 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04
22 RCW to read as follows:

23 (1) This chapter does not apply to amounts received from the
24 generation, purchase, sale, transfer, or retirement of credits under
25 chapter 70A.--- RCW (the new chapter created in section 29 of this
26 act).

27 (2) The provisions of RCW 82.32.805 and 82.32.808 do not apply to
28 subsection (1) of this section.

29 **Sec. 17.** RCW 80.50.020 and 2010 c 152 s 1 are each reenacted and
30 amended to read as follows:

31 The definitions in this section apply throughout this chapter
32 unless the context clearly requires otherwise.

33 (1) "Alternative energy resource" includes energy facilities of
34 the following types: (a) Wind; (b) solar energy; (c) geothermal
35 energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass
36 energy based on solid organic fuels from wood, forest, or field
37 residues, or dedicated energy crops that do not include wood pieces

1 that have been treated with chemical preservatives such as creosote,
2 pentachlorophenol, or copper-chrome-arsenic.

3 (2) "Applicant" means any person who makes application for a site
4 certification pursuant to the provisions of this chapter.

5 (3) "Application" means any request for approval of a particular
6 site or sites filed in accordance with the procedures established
7 pursuant to this chapter, unless the context otherwise requires.

8 (4) "Associated facilities" means storage, transmission,
9 handling, or other related and supporting facilities connecting an
10 energy plant with the existing energy supply, processing, or
11 distribution system, including, but not limited to, communications,
12 controls, mobilizing or maintenance equipment, instrumentation, and
13 other types of ancillary transmission equipment, off-line storage or
14 venting required for efficient operation or safety of the
15 transmission system and overhead, and surface or subsurface lines of
16 physical access for the inspection, maintenance, and safe operations
17 of the transmission facility and new transmission lines constructed
18 to operate at nominal voltages of at least 115,000 volts to connect a
19 thermal power plant or alternative energy facilities to the northwest
20 power grid. However, common carrier railroads or motor vehicles shall
21 not be included.

22 (5) "Biofuel" (~~has the same meaning as defined in RCW~~
23 ~~43.325.010~~) means a liquid or gaseous fuel derived from organic
24 matter intended for use as a transportation fuel including, but not
25 limited to, biodiesel, renewable diesel, ethanol, renewable natural
26 gas, and renewable propane.

27 (6) "Certification" means a binding agreement between an
28 applicant and the state which shall embody compliance to the siting
29 guidelines, in effect as of the date of certification, which have
30 been adopted pursuant to RCW 80.50.040 as now or hereafter amended as
31 conditions to be met prior to or concurrent with the construction or
32 operation of any energy facility.

33 (7) "Construction" means on-site improvements, excluding
34 exploratory work, which cost in excess of two hundred fifty thousand
35 dollars.

36 (8) "Council" means the energy facility site evaluation council
37 created by RCW 80.50.030.

38 (9) "Counsel for the environment" means an assistant attorney
39 general or a special assistant attorney general who shall represent
40 the public in accordance with RCW 80.50.080.

1 (10) "Electrical transmission facilities" means electrical power
2 lines and related equipment.

3 (11) "Energy facility" means an energy plant or transmission
4 facilities: PROVIDED, That the following are excluded from the
5 provisions of this chapter:

6 (a) Facilities for the extraction, conversion, transmission or
7 storage of water, other than water specifically consumed or
8 discharged by energy production or conversion for energy purposes;
9 and

10 (b) Facilities operated by and for the armed services for
11 military purposes or by other federal authority for the national
12 defense.

13 (12) "Energy plant" means the following facilities together with
14 their associated facilities:

15 (a) Any nuclear power facility where the primary purpose is to
16 produce and sell electricity;

17 (b) Any nonnuclear stationary thermal power plant with generating
18 capacity of three hundred fifty thousand kilowatts or more, measured
19 using maximum continuous electric generating capacity, less minimum
20 auxiliary load, at average ambient temperature and pressure, and
21 floating thermal power plants of one hundred thousand kilowatts or
22 more suspended on the surface of water by means of a barge, vessel,
23 or other floating platform;

24 (c) Facilities which will have the capacity to receive liquefied
25 natural gas in the equivalent of more than one hundred million
26 standard cubic feet of natural gas per day, which has been
27 transported over marine waters;

28 (d) Facilities which will have the capacity to receive more than
29 an average of fifty thousand barrels per day of crude or refined
30 petroleum or liquefied petroleum gas which has been or will be
31 transported over marine waters, except that the provisions of this
32 chapter shall not apply to storage facilities unless occasioned by
33 such new facility construction;

34 (e) Any underground reservoir for receipt and storage of natural
35 gas as defined in RCW 80.40.010 capable of delivering an average of
36 more than one hundred million standard cubic feet of natural gas per
37 day; ((and))

38 (f) Facilities capable of processing more than twenty-five
39 thousand barrels per day of petroleum or biofuel into refined

1 products except where such biofuel production is undertaken at
2 existing industrial facilities; and

3 (g) Facilities capable of producing more than one thousand five
4 hundred barrels per day of refined biofuel but less than twenty-five
5 thousand barrels of refined biofuel.

6 (13) "Independent consultants" means those persons who have no
7 financial interest in the applicant's proposals and who are retained
8 by the council to evaluate the applicant's proposals, supporting
9 studies, or to conduct additional studies.

10 (14) "Land use plan" means a comprehensive plan or land use
11 element thereof adopted by a unit of local government pursuant to
12 chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise
13 designated by chapter 325, Laws of 2007.

14 (15) "Person" means an individual, partnership, joint venture,
15 private or public corporation, association, firm, public service
16 company, political subdivision, municipal corporation, government
17 agency, public utility district, or any other entity, public or
18 private, however organized.

19 (16) "Preapplicant" means a person considering applying for a
20 site certificate agreement for any transmission facility.

21 (17) "Preapplication process" means the process which is
22 initiated by written correspondence from the preapplicant to the
23 council, and includes the process adopted by the council for
24 consulting with the preapplicant and with cities, towns, and counties
25 prior to accepting applications for all transmission facilities.

26 (18) "Secretary" means the secretary of the United States
27 department of energy.

28 (19) "Site" means any proposed or approved location of an energy
29 facility, alternative energy resource, or electrical transmission
30 facility.

31 (20) "Thermal power plant" means, for the purpose of
32 certification, any electrical generating facility using any fuel for
33 distribution of electricity by electric utilities.

34 (21) "Transmission facility" means any of the following together
35 with their associated facilities:

36 (a) Crude or refined petroleum or liquid petroleum product
37 transmission pipeline of the following dimensions: A pipeline larger
38 than six inches minimum inside diameter between valves for the
39 transmission of these products with a total length of at least
40 fifteen miles;

1 (b) Natural gas, synthetic fuel gas, or liquefied petroleum gas
2 transmission pipeline of the following dimensions: A pipeline larger
3 than fourteen inches minimum inside diameter between valves, for the
4 transmission of these products, with a total length of at least
5 fifteen miles for the purpose of delivering gas to a distribution
6 facility, except an interstate natural gas pipeline regulated by the
7 United States federal power commission.

8 (22) "Zoning ordinance" means an ordinance of a unit of local
9 government regulating the use of land and adopted pursuant to chapter
10 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state
11 Constitution, or as otherwise designated by chapter 325, Laws of
12 2007.

13 **Sec. 18.** RCW 80.50.060 and 2007 c 325 s 2 are each amended to
14 read as follows:

15 (1) (~~The~~) Except for biofuel refineries specified in RCW
16 80.50.020(12)(g), the provisions of this chapter apply to the
17 construction of energy facilities which includes the new construction
18 of energy facilities and the reconstruction or enlargement of
19 existing energy facilities where the net increase in physical
20 capacity or dimensions resulting from such reconstruction or
21 enlargement meets or exceeds those capacities or dimensions set forth
22 in RCW 80.50.020 (~~(7)~~) (12) and (~~(15)~~) (21). No construction of
23 such energy facilities may be undertaken, except as otherwise
24 provided in this chapter, after July 15, 1977, without first
25 obtaining certification in the manner provided in this chapter.

26 (2) The provisions of this chapter apply to the construction,
27 reconstruction, or enlargement of a new or existing biofuel refinery
28 specified in RCW 80.50.020(12)(g) or a new or existing energy
29 facility that exclusively uses alternative energy resources and
30 chooses to receive certification under this chapter, regardless of
31 the generating capacity of the project.

32 (3)(a) The provisions of this chapter apply to the construction,
33 reconstruction, or modification of electrical transmission facilities
34 when:

35 (i) The facilities are located in a national interest electric
36 transmission corridor as specified in RCW 80.50.045;

37 (ii) An applicant chooses to receive certification under this
38 chapter, and the facilities are: (A) Of a nominal voltage of at least
39 one hundred fifteen thousand volts and are located in a completely

1 new corridor, except for the terminus of the new facility or
2 interconnection of the new facility with the existing grid, and the
3 corridor is not otherwise used for electrical transmission
4 facilities; and (B) located in more than one jurisdiction that has
5 promulgated land use plans or zoning ordinances; or

6 (iii) An applicant chooses to receive certification under this
7 chapter, and the facilities are: (A) Of a nominal voltage in excess
8 of one hundred fifteen thousand volts; and (B) located outside an
9 electrical transmission corridor identified in (a)(i) and (ii) of
10 this subsection (3).

11 (b) For the purposes of this subsection, "modify" means a
12 significant change to an electrical transmission facility and does
13 not include the following: (i) Minor improvements such as the
14 replacement of existing transmission line facilities or supporting
15 structures with equivalent facilities or structures; (ii) the
16 relocation of existing electrical transmission line facilities; (iii)
17 the conversion of existing overhead lines to underground; or (iv) the
18 placing of new or additional conductors, supporting structures,
19 insulators, or their accessories on or replacement of supporting
20 structures already built.

21 (4) The provisions of this chapter shall not apply to normal
22 maintenance and repairs which do not increase the capacity or
23 dimensions beyond those set forth in RCW 80.50.020 (~~((7))~~) (12) and
24 (~~((15))~~) (21).

25 (5) Applications for certification of energy facilities made
26 prior to July 15, 1977, shall continue to be governed by the
27 applicable provisions of law in effect on the day immediately
28 preceding July 15, 1977, with the exceptions of RCW 80.50.190 and
29 80.50.071 which shall apply to such prior applications and to site
30 certifications prospectively from July 15, 1977.

31 (6) Applications for certification shall be upon forms prescribed
32 by the council and shall be supported by such information and
33 technical studies as the council may require.

34 **Sec. 19.** RCW 46.17.365 and 2015 3rd sp.s. c 44 s 202 are each
35 amended to read as follows:

36 (1) A person applying for a motor vehicle registration and paying
37 the vehicle license fee required in RCW 46.17.350(1) (a), (d), (e),
38 (h), (j), (n), and (o) shall pay a motor vehicle weight fee in
39 addition to all other fees and taxes required by law.

(a) For vehicle registrations that are due or become due before July 1, 2016, the motor vehicle weight fee:

(i) Must be based on the motor vehicle scale weight;

(ii) Is the difference determined by subtracting the vehicle license fee required in RCW 46.17.350 from the license fee in Schedule B of RCW 46.17.355, plus two dollars; and

(iii) Must be distributed under RCW 46.68.415.

(b) For vehicle registrations that are due or become due on or after July 1, 2016, the motor vehicle weight fee:

(i) Must be based on the motor vehicle scale weight as follows:

WEIGHT	FEE
4,000 pounds	\$ 25.00
6,000 pounds	\$ 45.00
8,000 pounds	\$ 65.00
16,000 pounds and over	\$ 72.00;

(ii) If the resultant motor vehicle scale weight is not listed in the table provided in (b)(i) of this subsection, must be increased to the next highest weight; and

(iii) Must be distributed under RCW 46.68.415 unless prior to July 1, 2023, the actions described in (b)(iii)(A) or (B) of this subsection occur, in which case the portion of the revenue that is the result of the fee increased in this subsection must be distributed to the connecting Washington account created under RCW 46.68.395.

(A) Any state agency files a notice of rule making under chapter 34.05 RCW, absent explicit legislative authorization enacted subsequent to July 1, 2015, for a rule regarding a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(B) Any state agency otherwise enacts, adopts, orders, or in any way implements a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard, without explicit legislative authorization enacted subsequent to July 1, 2015.

(C) Nothing in this subsection acknowledges, establishes, or creates legal authority for the department of ecology or any other state agency to enact, adopt, order, or in any way implement a fuel

1 standard based upon or defined by the carbon intensity of fuel,
2 including a low carbon fuel standard or clean fuel standard.

3 (2) A person applying for a motor home vehicle registration
4 shall, in lieu of the motor vehicle weight fee required in subsection
5 (1) of this section, pay a motor home vehicle weight fee of seventy-
6 five dollars in addition to all other fees and taxes required by law.
7 The motor home vehicle weight fee must be distributed under RCW
8 46.68.415.

9 (3) Beginning July 1, 2022, in addition to the motor vehicle
10 weight fee as provided in subsection (1) of this section, the
11 department, county auditor or other agent, or subagent appointed by
12 the director must require an applicant to pay an additional weight
13 fee of ten dollars, which must be distributed to the multimodal
14 transportation account under RCW 47.66.070 unless prior to July 1,
15 2023, the actions described in (a) or (b) of this subsection occur,
16 in which case the portion of the revenue that is the result of the
17 fee increased in this subsection must be distributed to the
18 connecting Washington account created under RCW 46.68.395.

19 (a) Any state agency files a notice of rule making under chapter
20 34.05 RCW, absent explicit legislative authorization enacted
21 subsequent to July 1, 2015, for a rule regarding a fuel standard
22 based upon or defined by the carbon intensity of fuel, including a
23 low carbon fuel standard or clean fuel standard.

24 (b) Any state agency otherwise enacts, adopts, orders, or in any
25 way implements a fuel standard based upon or defined by the carbon
26 intensity of fuel, including a low carbon fuel standard or clean fuel
27 standard, without explicit legislative authorization enacted
28 subsequent to July 1, 2015.

29 (c) Nothing in this subsection acknowledges, establishes, or
30 creates legal authority for the department of ecology or any other
31 state agency to enact, adopt, order, or in any way implement a fuel
32 standard based upon or defined by the carbon intensity of fuel,
33 including a low carbon fuel standard or clean fuel standard.

34 (4) The department shall:

35 (a) Rely on motor vehicle empty scale weights provided by vehicle
36 manufacturers, or other sources defined by the department, to
37 determine the weight of each motor vehicle; and

38 (b) Adopt rules for determining weight for vehicles without
39 manufacturer empty scale weights.

1 **Sec. 20.** RCW 46.25.100 and 2015 3rd sp.s. c 44 s 208 are each
2 amended to read as follows:

3 (1) When a person has been disqualified from operating a
4 commercial motor vehicle, the person is not entitled to have the
5 commercial driver's license or commercial learner's permit restored
6 until after the expiration of the appropriate disqualification period
7 required under RCW 46.25.090 or until the department has received a
8 drug and alcohol assessment and evidence is presented of satisfactory
9 participation in or completion of any required drug or alcohol
10 treatment program for ending the disqualification under RCW
11 46.25.090(7). After expiration of the appropriate period and upon
12 payment of a requalification fee of twenty dollars until June 30,
13 2016, and thirty-five dollars beginning July 1, 2016, or one hundred
14 fifty dollars if the person has been disqualified under RCW
15 46.25.090(7), the person may apply for a new, duplicate, or renewal
16 commercial driver's license or commercial learner's permit as
17 provided by law. If the person has been disqualified for a period of
18 one year or more, the person shall demonstrate that he or she meets
19 the commercial driver's license or commercial learner's permit
20 qualification standards specified in RCW 46.25.060.

21 (2) The fees under this section must be deposited into the
22 highway safety fund unless prior to July 1, 2023, the actions
23 described in (a) or (b) of this subsection occur, in which case the
24 portion of the revenue that is the result of the fee increased in
25 section 208, chapter 44, Laws of 2015 3rd sp. sess. must be
26 distributed to the connecting Washington account created under RCW
27 46.68.395.

28 (a) Any state agency files a notice of rule making under chapter
29 34.05 RCW, absent explicit legislative authorization enacted
30 subsequent to July 1, 2015, for a rule regarding a fuel standard
31 based upon or defined by the carbon intensity of fuel, including a
32 low carbon fuel standard or clean fuel standard.

33 (b) Any state agency otherwise enacts, adopts, orders, or in any
34 way implements a fuel standard based upon or defined by the carbon
35 intensity of fuel, including a low carbon fuel standard or clean fuel
36 standard, without explicit legislative authorization enacted
37 subsequent to July 1, 2015.

38 (c) Nothing in this subsection acknowledges, establishes, or
39 creates legal authority for the department of ecology or any other
40 state agency to enact, adopt, order, or in any way implement a fuel

1 standard based upon or defined by the carbon intensity of fuel,
2 including a low carbon fuel standard or clean fuel standard.

3 **Sec. 21.** RCW 46.20.202 and 2017 c 310 s 3 are each amended to
4 read as follows:

5 (1) The department may enter into a memorandum of understanding
6 with any federal agency for the purposes of facilitating the crossing
7 of the border between the state of Washington and the Canadian
8 province of British Columbia.

9 (2) The department may enter into an agreement with the Canadian
10 province of British Columbia for the purposes of implementing a
11 border-crossing initiative.

12 (3) (a) The department may issue an enhanced driver's license or
13 identicard for the purposes of crossing the border between the state
14 of Washington and the Canadian province of British Columbia to an
15 applicant who provides the department with proof of: United States
16 citizenship, identity, and state residency. The department shall
17 continue to offer a standard driver's license and identicard. If the
18 department chooses to issue an enhanced driver's license, the
19 department must allow each applicant to choose between a standard
20 driver's license or identicard, or an enhanced driver's license or
21 identicard.

22 (b) The department shall implement a one-to-many biometric
23 matching system for the enhanced driver's license or identicard. An
24 applicant for an enhanced driver's license or identicard shall submit
25 a biometric identifier as designated by the department. The biometric
26 identifier must be used solely for the purpose of verifying the
27 identity of the holders and for any purpose set out in RCW 46.20.037.
28 Applicants are required to sign a declaration acknowledging their
29 understanding of the one-to-many biometric match.

30 (c) The enhanced driver's license or identicard must include
31 reasonable security measures to protect the privacy of Washington
32 state residents, including reasonable safeguards to protect against
33 unauthorized disclosure of data about Washington state residents. If
34 the enhanced driver's license or identicard includes a radio
35 frequency identification chip, or similar technology, the department
36 shall ensure that the technology is encrypted or otherwise secure
37 from unauthorized data access.

38 (d) The requirements of this subsection are in addition to the
39 requirements otherwise imposed on applicants for a driver's license

1 or identicard. The department shall adopt such rules as necessary to
2 meet the requirements of this subsection. From time to time the
3 department shall review technological innovations related to the
4 security of identity cards and amend the rules related to enhanced
5 driver's licenses and identicards as the director deems consistent
6 with this section and appropriate to protect the privacy of
7 Washington state residents.

8 (e) Notwithstanding RCW 46.20.118, the department may make images
9 associated with enhanced drivers' licenses or identicards from the
10 negative file available to United States customs and border agents
11 for the purposes of verifying identity.

12 (4) Beginning on July 23, 2017, the fee for an enhanced driver's
13 license or enhanced identicard is twenty-four dollars, which is in
14 addition to the fees for any regular driver's license or identicard.
15 If the enhanced driver's license or enhanced identicard is issued,
16 renewed, or extended for a period other than six years, the fee for
17 each class is four dollars for each year that the enhanced driver's
18 license or enhanced identicard is issued, renewed, or extended.

19 (5) The enhanced driver's license and enhanced identicard fee
20 under this section must be deposited into the highway safety fund
21 unless prior to July 1, 2023, the actions described in (a) or (b) of
22 this subsection occur, in which case the portion of the revenue that
23 is the result of the fee increased in section 209, chapter 44, Laws
24 of 2015 3rd sp. sess. must be distributed to the connecting
25 Washington account created under RCW 46.68.395.

26 (a) Any state agency files a notice of rule making under chapter
27 34.05 RCW, absent explicit legislative authorization enacted
28 subsequent to July 1, 2015, for a rule regarding a fuel standard
29 based upon or defined by the carbon intensity of fuel, including a
30 low carbon fuel standard or clean fuel standard.

31 (b) Any state agency otherwise enacts, adopts, orders, or in any
32 way implements a fuel standard based upon or defined by the carbon
33 intensity of fuel, including a low carbon fuel standard or clean fuel
34 standard, without explicit legislative authorization enacted
35 subsequent to July 1, 2015.

36 (c) Nothing in this subsection acknowledges, establishes, or
37 creates legal authority for the department of ecology or any other
38 state agency to enact, adopt, order, or in any way implement a fuel
39 standard based upon or defined by the carbon intensity of fuel,
40 including a low carbon fuel standard or clean fuel standard.

1 **Sec. 22.** RCW 46.25.052 and 2015 3rd sp.s. c 44 s 206 are each
2 amended to read as follows:

3 (1) The department may issue a CLP to an applicant who is at
4 least eighteen years of age and holds a valid Washington state
5 driver's license and who has:

6 (a) Submitted an application on a form or in a format provided by
7 the department;

8 (b) Passed the general knowledge examination required for
9 issuance of a CDL under RCW 46.25.060 for the commercial motor
10 vehicle classification in which the applicant operates or expects to
11 operate; and

12 (c) Paid the appropriate examination fee or fees and an
13 application fee of ten dollars until June 30, 2016, and forty dollars
14 beginning July 1, 2016.

15 (2) A CLP must be marked "commercial learner's permit" or "CLP,"
16 and must be, to the maximum extent practicable, tamperproof. Other
17 than a photograph of the applicant, it must include, but not be
18 limited to, the information required on a CDL under RCW 46.25.080(1).

19 (3) The holder of a CLP may drive a commercial motor vehicle on a
20 highway only when in possession of a valid driver's license and
21 accompanied by the holder of a valid CDL who has the proper CDL
22 classification and endorsement or endorsements necessary to operate
23 the commercial motor vehicle. The CDL holder must at all times be
24 physically present in the front seat of the vehicle next to the CLP
25 holder or, in the case of a passenger vehicle, directly behind or in
26 the first row behind the driver and must have the CLP holder under
27 observation and direct supervision.

28 (4) A CLP may be classified in the same manner as a CDL under RCW
29 46.25.080(2)(a).

30 (5) CLPs may be issued with only P, S, or N endorsements as
31 described in RCW 46.25.080(2)(b).

32 (a) The holder of a CLP with a P endorsement must have taken and
33 passed the P endorsement knowledge examination. The holder of a CLP
34 with a P endorsement is prohibited from operating a commercial motor
35 vehicle carrying passengers other than authorized employees or
36 representatives of the department and the federal motor carrier
37 safety administration, examiners, other trainees, and the CDL holder
38 accompanying the CLP holder as required under subsection (2) of this
39 section. The P endorsement must be class specific.

1 (b) The holder of a CLP with an S endorsement must have taken and
2 passed the S endorsement knowledge examination. The holder of a CLP
3 with an S endorsement is prohibited from operating a school bus with
4 passengers other than authorized employees or representatives of the
5 department and the federal motor carrier safety administration,
6 examiners, other trainees, and the CDL holder accompanying the CLP
7 holder as required under subsection (2) of this section.

8 (c) The holder of a CLP with an N endorsement must have taken and
9 passed the N endorsement knowledge examination. The holder of a CLP
10 with an N endorsement may only operate an empty tank vehicle and is
11 prohibited from operating any tank vehicle that previously contained
12 hazardous materials and has not been purged of any residue.

13 (6) A CLP may be issued with appropriate restrictions as
14 described in RCW 46.25.080(2)(c). In addition, a CLP may be issued
15 with the following restrictions:

16 (a) "P" restricts the driver from operating a bus with
17 passengers;

18 (b) "X" restricts the driver from operating a tank vehicle that
19 contains cargo; and

20 (c) Any restriction as established by rule of the department.

21 (7) The holder of a CLP is not authorized to operate a commercial
22 motor vehicle transporting hazardous materials.

23 (8) A CLP may not be issued for a period to exceed one hundred
24 eighty days. The department may renew the CLP for one additional one
25 hundred eighty-day period without requiring the CLP holder to retake
26 the general and endorsement knowledge examinations.

27 (9) The department must transmit the fees collected for CLPs to
28 the state treasurer for deposit in the highway safety fund unless
29 prior to July 1, 2023, the actions described in (a) or (b) of this
30 subsection occur, in which case the portion of the revenue that is
31 the result of the fee increased in section 206, chapter 44, Laws of
32 2015 3rd sp. sess. must be distributed to the connecting Washington
33 account created under RCW 46.68.395.

34 (a) Any state agency files a notice of rule making under chapter
35 34.05 RCW, absent explicit legislative authorization enacted
36 subsequent to July 1, 2015, for a rule regarding a fuel standard
37 based upon or defined by the carbon intensity of fuel, including a
38 low carbon fuel standard or clean fuel standard.

39 (b) Any state agency otherwise enacts, adopts, orders, or in any
40 way implements a fuel standard based upon or defined by the carbon

1 intensity of fuel, including a low carbon fuel standard or clean fuel
2 standard, without explicit legislative authorization enacted
3 subsequent to July 1, 2015.

4 (c) Nothing in this subsection acknowledges, establishes, or
5 creates legal authority for the department of ecology or any other
6 state agency to enact, adopt, order, or in any way implement a fuel
7 standard based upon or defined by the carbon intensity of fuel,
8 including a low carbon fuel standard or clean fuel standard.

9 **Sec. 23.** RCW 46.25.060 and 2020 c 78 s 2 are each amended to
10 read as follows:

11 (1)(a) No person may be issued a commercial driver's license
12 unless that person:

13 (i) Is a resident of this state;

14 (ii) Has successfully completed a course of instruction in the
15 operation of a commercial motor vehicle that has been approved by the
16 director or has been certified by an employer as having the skills
17 and training necessary to operate a commercial motor vehicle safely;

18 (iii) If he or she does not hold a valid commercial driver's
19 license of the appropriate classification, has been issued a
20 commercial learner's permit under RCW 46.25.052; and

21 (iv) Has passed a knowledge and skills examination for driving a
22 commercial motor vehicle that complies with minimum federal standards
23 established by federal regulation enumerated in 49 C.F.R. Part 383,
24 subparts F, G, and H, in addition to other requirements imposed by
25 state law or federal regulation. The department may not allow the
26 person to take the skills examination during the first fourteen days
27 after initial issuance of the person's commercial learner's permit.
28 The examinations must be prescribed and conducted by the department.

29 (b) In addition to the fee charged for issuance or renewal of any
30 license, the applicant shall pay a fee of no more than ten dollars
31 until June 30, 2016, and thirty-five dollars beginning July 1, 2016,
32 for the classified knowledge examination, classified endorsement
33 knowledge examination, or any combination of classified license and
34 endorsement knowledge examinations. The applicant shall pay a fee of
35 no more than one hundred dollars until June 30, 2016, and two hundred
36 fifty dollars beginning July 1, 2016, for each classified skill
37 examination or combination of classified skill examinations conducted
38 by the department.

1 (c) The department may authorize a person, including an agency of
2 this or another state, an employer, a private driver training
3 facility, or other private institution, or a department, agency, or
4 instrumentality of local government, to administer the skills
5 examination specified by this section under the following conditions:

6 (i) The examination is the same which would otherwise be
7 administered by the state;

8 (ii) The third party has entered into an agreement with the state
9 that complies with the requirements of 49 C.F.R. Sec. 383.75; and

10 (iii) The director has adopted rules as to the third party
11 testing program and the development and justification for fees
12 charged by any third party.

13 (d) If the applicant's primary use of a commercial driver's
14 license is for any of the following, then the applicant shall pay a
15 fee of no more than seventy-five dollars until June 30, 2016, and two
16 hundred twenty-five dollars beginning July 1, 2016, for the
17 classified skill examination or combination of classified skill
18 examinations whether conducted by the department or a third-party
19 tester:

20 (i) Public benefit not-for-profit corporations that are federally
21 supported head start programs; or

22 (ii) Public benefit not-for-profit corporations that support
23 early childhood education and assistance programs as described in RCW
24 43.216.505.

25 (e) Beginning July 1, 2016, if the applicant's primary use of a
26 commercial driver's license is to drive a school bus, the applicant
27 shall pay a fee of no more than one hundred dollars for the
28 classified skill examination or combination of classified skill
29 examinations conducted by the department.

30 (f) Beginning July 1, 2016, payment of the examination fees under
31 this subsection entitles the applicant to take the examination up to
32 two times in order to pass.

33 (2)(a) The department may waive the skills examination and the
34 requirement for completion of a course of instruction in the
35 operation of a commercial motor vehicle specified in this section for
36 a commercial driver's license applicant who meets the requirements of
37 49 C.F.R. Sec. 383.77. For current or former military service members
38 that meet the requirements of 49 C.F.R. Sec. 383.77, the department
39 may also waive the requirements for a knowledge test for commercial
40 driver's license applicants. Beginning December 1, 2021, the

1 department shall provide an annual report to the house and senate
2 transportation committees and the joint committee on veterans' and
3 military affairs of the legislature on the number and types of
4 waivers granted pursuant to this subsection.

5 (b) An applicant who operates a commercial motor vehicle for
6 agribusiness purposes is exempt from the course of instruction
7 completion and employer skills and training certification
8 requirements under this section. By January 1, 2010, the department
9 shall submit recommendations regarding the continuance of this
10 exemption to the transportation committees of the legislature. For
11 purposes of this subsection (2)(b), "agribusiness" means a private
12 carrier who in the normal course of business primarily transports:

13 (i) Farm machinery, farm equipment, implements of husbandry, farm
14 supplies, and materials used in farming;

15 (ii) Agricultural inputs, such as seed, feed, fertilizer, and
16 crop protection products;

17 (iii) Unprocessed agricultural commodities, as defined in RCW
18 17.21.020, where such commodities are produced by farmers, ranchers,
19 vineyardists, or orchardists; or

20 (iv) Any combination of (b)(i) through (iii) of this subsection.

21 The department shall notify the transportation committees of the
22 legislature if the federal government takes action affecting the
23 exemption provided in this subsection (2)(b).

24 (3) A commercial driver's license or commercial learner's permit
25 may not be issued to a person while the person is subject to a
26 disqualification from driving a commercial motor vehicle, or while
27 the person's driver's license is suspended, revoked, or canceled in
28 any state, nor may a commercial driver's license be issued to a
29 person who has a commercial driver's license issued by any other
30 state unless the person first surrenders all such licenses, which
31 must be returned to the issuing state for cancellation.

32 (4) The fees under this section must be deposited into the
33 highway safety fund unless prior to July 1, 2023, the actions
34 described in (a) or (b) of this subsection occur, in which case the
35 portion of the revenue that is the result of the fee increased in
36 section 207, chapter 44, Laws of 2015 3rd sp. sess. must be
37 distributed to the connecting Washington account created under RCW
38 46.68.395.

39 (a) Any state agency files a notice of rule making under chapter
40 34.05 RCW, absent explicit legislative authorization enacted

1 subsequent to July 1, 2015, for a rule regarding a fuel standard
2 based upon or defined by the carbon intensity of fuel, including a
3 low carbon fuel standard or clean fuel standard.

4 (b) Any state agency otherwise enacts, adopts, orders, or in any
5 way implements a fuel standard based upon or defined by the carbon
6 intensity of fuel, including a low carbon fuel standard or clean fuel
7 standard, without explicit legislative authorization enacted
8 subsequent to July 1, 2015.

9 (c) Nothing in this subsection acknowledges, establishes, or
10 creates legal authority for the department of ecology or any other
11 state agency to enact, adopt, order, or in any way implement a fuel
12 standard based upon or defined by the carbon intensity of fuel,
13 including a low carbon fuel standard or clean fuel standard.

14 **Sec. 24.** RCW 70A.15.3150 and 2020 c 20 s 1111 are each amended
15 to read as follows:

16 (1) Any person who knowingly violates any of the provisions of
17 this chapter (~~(of)~~), chapter 70A.25 or 70A.--- (the new chapter
18 created in section 29 of this act) RCW, RCW 70A.45.080, or any
19 ordinance, resolution, or regulation in force pursuant thereto is
20 guilty of a gross misdemeanor and upon conviction thereof shall be
21 punished by a fine of not more than ten thousand dollars, or by
22 imprisonment in the county jail for up to three hundred sixty-four
23 days, or by both for each separate violation.

24 (2) Any person who negligently releases into the ambient air any
25 substance listed by the department of ecology as a hazardous air
26 pollutant, other than in compliance with the terms of an applicable
27 permit or emission limit, and who at the time negligently places
28 another person in imminent danger of death or substantial bodily harm
29 is guilty of a gross misdemeanor and shall, upon conviction, be
30 punished by a fine of not more than ten thousand dollars, or by
31 imprisonment for up to three hundred sixty-four days, or both.

32 (3) Any person who knowingly releases into the ambient air any
33 substance listed by the department of ecology as a hazardous air
34 pollutant, other than in compliance with the terms of an applicable
35 permit or emission limit, and who knows at the time that he or she
36 thereby places another person in imminent danger of death or
37 substantial bodily harm, is guilty of a class C felony and shall,
38 upon conviction, be punished by a fine of not less than fifty

1 thousand dollars, or by imprisonment for not more than five years, or
2 both.

3 (4) Any person who knowingly fails to disclose a potential
4 conflict of interest under RCW 70A.15.2000 is guilty of a gross
5 misdemeanor, and upon conviction thereof shall be punished by a fine
6 of not more than five thousand dollars.

7 **Sec. 25.** RCW 70A.15.3160 and 2020 c 20 s 1112 are each amended
8 to read as follows:

9 (1) (a) Except as provided in RCW 43.05.060 through 43.05.080 and
10 43.05.150, and in addition to or as an alternate to any other penalty
11 provided by law, any person who violates any of the provisions of
12 this chapter, chapter 70A.25 (~~(or)~~), 70A.450, or 70A.--- (the new
13 chapter created in section 29 of this act) RCW, RCW 70A.45.080, or
14 any of the rules in force under such chapters or section may incur a
15 civil penalty in an amount not to exceed ten thousand dollars per day
16 for each violation. Each such violation shall be a separate and
17 distinct offense, and in case of a continuing violation, each day's
18 continuance shall be a separate and distinct violation.

19 (b) Any person who fails to take action as specified by an order
20 issued pursuant to this chapter shall be liable for a civil penalty
21 of not more than ten thousand dollars for each day of continued
22 noncompliance.

23 (2) (a) Penalties incurred but not paid shall accrue interest,
24 beginning on the ninety-first day following the date that the penalty
25 becomes due and payable, at the highest rate allowed by RCW 19.52.020
26 on the date that the penalty becomes due and payable. If violations
27 or penalties are appealed, interest shall not begin to accrue until
28 the thirty-first day following final resolution of the appeal.

29 (b) The maximum penalty amounts established in this section may
30 be increased annually to account for inflation as determined by the
31 state office of the economic and revenue forecast council.

32 (3) Each act of commission or omission which procures, aids or
33 abets in the violation shall be considered a violation under the
34 provisions of this section and subject to the same penalty. The
35 penalties provided in this section shall be imposed pursuant to RCW
36 43.21B.300.

37 (4) All penalties recovered under this section by the department
38 shall be paid into the state treasury and credited to the air
39 pollution control account established in RCW 70A.15.1010 or, if

1 recovered by the authority, shall be paid into the treasury of the
2 authority and credited to its funds. If a prior penalty for the same
3 violation has been paid to a local authority, the penalty imposed by
4 the department under subsection (1) of this section shall be reduced
5 by the amount of the payment.

6 (5) To secure the penalty incurred under this section, the state
7 or the authority shall have a lien on any vessel used or operated in
8 violation of this chapter which shall be enforced as provided in RCW
9 60.36.050.

10 (6) Public or private entities that are recipients or potential
11 recipients of department grants, whether for air quality related
12 activities or not, may have such grants rescinded or withheld by the
13 department for failure to comply with provisions of this chapter.

14 (7) In addition to other penalties provided by this chapter,
15 persons knowingly under-reporting emissions or other information used
16 to set fees, or persons required to pay emission or permit fees who
17 are more than ninety days late with such payments may be subject to a
18 penalty equal to three times the amount of the original fee owed.

19 (8) The department shall develop rules for excusing excess
20 emissions from enforcement action if such excess emissions are
21 unavoidable. The rules shall specify the criteria and procedures for
22 the department and local air authorities to determine whether a
23 period of excess emissions is excusable in accordance with the state
24 implementation plan.

25 **Sec. 26.** RCW 19.112.110 and 2013 c 225 s 601 are each amended to
26 read as follows:

27 (1) Special fuel licensees under chapter 82.38 RCW, as determined
28 by the department of licensing, must provide evidence to the
29 department of licensing that at least two percent of the total annual
30 diesel fuel sold in Washington is biodiesel or renewable diesel fuel,
31 following the earlier of: (a) November 30, 2008; or (b) when a
32 determination is made by the director, published in the Washington
33 State Register, that feedstock grown in Washington state can satisfy
34 a two-percent requirement.

35 (2) Special fuel licensees under chapter 82.38 RCW, as determined
36 by the department of licensing, must provide evidence to the
37 department of licensing that at least five percent of total annual
38 diesel fuel sold in Washington is biodiesel or renewable diesel fuel,
39 when the director determines, and publishes this determination in the

1 Washington State Register, that both in-state oil seed crushing
2 capacity and feedstock grown in Washington state can satisfy a
3 three-percent requirement.

4 (3) The requirements of subsections (1) and (2) of this section
5 may take effect no sooner than one hundred eighty days after the
6 determination has been published in the Washington State Register.

7 (4) The director and the director of licensing must each adopt
8 rules, in coordination with each other, for enforcing and carrying
9 out the purposes of this section.

10 (5) To the extent that the requirements of this section conflict
11 with the requirements of chapter 70A.--- (the new chapter created in
12 section 29 of this act) RCW, the requirements of chapter 70A.--- (the
13 new chapter created in section 29 of this act) RCW prevail.

14 **Sec. 27.** RCW 19.112.120 and 2013 c 225 s 602 are each amended to
15 read as follows:

16 (1) By December 1, 2008, motor vehicle fuel licensees under
17 chapter 82.38 RCW, as determined by the department of licensing, must
18 provide evidence to the department of licensing that at least two
19 percent of total gasoline sold in Washington, measured on a quarterly
20 basis, is denatured ethanol.

21 (2) If the director of ecology determines that ethanol content
22 greater than two percent of the total gasoline sold in Washington
23 will not jeopardize continued attainment of the federal clean air
24 act's national ambient air quality standard for ozone pollution in
25 Washington and the director of agriculture determines and publishes
26 this determination in the Washington State Register that sufficient
27 raw materials are available within Washington to support economical
28 production of ethanol at higher levels, the director of agriculture
29 may require by rule that licensees provide evidence to the department
30 of licensing that denatured ethanol comprises between two percent and
31 at least ten percent of total gasoline sold in Washington, measured
32 on a quarterly basis.

33 (3) The requirements of subsections (1) and (2) of this section
34 may take effect no sooner than one hundred eighty days after the
35 determination has been published in the Washington State Register.

36 (4) The director and the director of licensing must each adopt
37 rules, in coordination with each other, for enforcing and carrying
38 out the purposes of this section.

1 (5) Nothing in this section is intended to prohibit the
2 production, sale, or use of motor fuel for use in federally
3 designated flexibly fueled vehicles capable of using E85 motor fuel.
4 Nothing in this section is intended to limit the use of high octane
5 gasoline not blended with ethanol for use in aircraft.

6 (6) To the extent that the requirements of this section conflict
7 with the requirements of chapter 70A.--- (the new chapter created in
8 section 29 of this act) RCW, the requirements of chapter 70A.--- (the
9 new chapter created in section 29 of this act) RCW prevail.

10 NEW SECTION. **Sec. 28.** A new section is added to chapter 43.21A
11 RCW to read as follows:

12 (1) The department, in coordination with the department of
13 commerce and other agencies as appropriate, must develop
14 recommendations for potential improvements to the permitting
15 processes for industrial projects and facilities in Washington that
16 would contribute to achieving greenhouse gas emissions limits
17 established under RCW 70A.45.020 while maintaining standards for the
18 protection of the environment and the preservation of tribal
19 consultation and treaty rights. The department must provide increased
20 clarity on areas in the state that may be suitable for siting
21 projects that have a lower potential for negative environmental
22 impacts, especially to highly impacted communities as defined in RCW
23 19.405.020 and identify strategies for minimizing and mitigating
24 negative environmental impacts where possible. The department must
25 provide clear guidance and direction intended to improve project
26 proposals, recommend policy and administrative improvements necessary
27 to improve the permitting process, and recommend any additional
28 studies needed. The department shall convene businesses, local
29 governments, community organizations, and environmental and labor
30 stakeholders, and consult with tribes.

31 (2) The department and the department of commerce shall produce
32 and submit to the governor and the legislature an interim progress
33 report with initial policy proposal recommendations for the 2022
34 legislative session by December 1, 2021, and a final report including
35 findings, recommendations, and further policy proposals by December
36 1, 2022.

37 (3) This section expires June 30, 2023.

1 NEW SECTION. **Sec. 29.** Sections 1 through 15 of this act
2 constitute a new chapter in Title 70A RCW.

3 NEW SECTION. **Sec. 30.** If specific funding for the purposes of
4 this act, referencing this act by bill or chapter number, is not
5 provided by June 30, 2021, in the omnibus appropriations act, this
6 act is null and void.

7 NEW SECTION. **Sec. 31.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected. In the event that there is
11 litigation on the provisions of section 3(6) of this act or any other
12 provision of this act, it is the intent of the legislature that the
13 remainder of the act shall continue to be enforced and if such
14 provisions are held invalid, the remainder of the act shall not be
15 affected.

 Passed by the House April 25, 2021.

 Passed by the Senate April 25, 2021.

 Approved by the Governor May 17, 2021, with the exception of
 certain items that were vetoed.

 Filed in Office of Secretary of State May 18, 2021.

 Note: Governor's explanation of partial veto is as follows:

 "I am returning herewith, without my approval as to Section 3(8),
 Engrossed Third Substitute House Bill No. 1091 entitled:

 "AN ACT Relating to reducing greenhouse gas emissions by
 reducing the carbon intensity of transportation fuel."

 Subsection (8) of Section 3 operates to delay the assignment of
 compliance obligations or the generation of credits "under this
 chapter" until a separate additive transportation revenue act becomes
 law. Although a governor is generally limited to full section vetoes
 in policy bills, and our courts generally defer to the Legislature's
 designation of full sections, this deference is not without limits.
 The Legislature may not design or construct a section for the
 purpose, or with the effect, of circumventing a governor's veto
 authority. In this case, subsection (8), the delayed effective date,
 is embedded in Section 3, a section that primarily directs the
 Department of Ecology to adopt rules and establish standards.
 However, the delayed effective date in subsection (8) reaches far
 beyond Section 3 by delaying the Department's authority to assign
 compliance obligations or allow the generation of credits "under this
 chapter". Several other sections of the bill address both compliance
 obligations and the generation of credits, such as Sections 4, 5, 6,
 7 and 8. Additionally, other sections impose obligations on the
 department that relate to compliance obligations and credits.
 Effective dates are typically standalone sections when they impact
 more than one section of a bill. This delayed effective date impacts
 many sections of the bill, perhaps the entire act, but it is embedded

in a single section to prevent a veto. It strains the imagination to discern any reason for embedding into a single section a delayed effective date that impacts not just that one section but also multiple additional sections, unless that reason is to prevent it from being vetoed. This type of legislative drafting demonstrates manipulation and is a palpable attempt at dissimulation, which our Supreme Court in *Legislature v. Lowry*, 131 Wn.2d 309 (1997), has ruled will not stand. As a result, I am vetoing Section 3(8) as a de facto section. I applaud the extraordinary efforts of the Legislature in moving this policy forward, but we cannot delay its implementation until some unknown time in the future—the crisis is now, and we must act now.

For these reasons I have vetoed Section 3(8) of Engrossed Third Substitute House Bill No. 1091.

With the exception of Section 3(8), Engrossed Third Substitute House Bill No. 1091 is approved."

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