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LEGISLATIVE MEMO

HB 1409 – Making the state's low-carbon fuel standard more expensive

By Todd Myers, Senior Vice President for Research February 2025

Key Findings

1. **Washington's low-carbon fuel standard has only been in effect for two years but legislators already admit it is not working as intended.**

2. **The proposed legislation would remove promises that the LCFS would not become more strict until certain in-state crop and biofuel production targets are met.**

3. **The bill would accelerate the reductions in carbon-intensity of fuel to increase the cost to drivers and increase revenue to government and credit producers like BP oil.**

4. **Even with increased cost, the LCFS would do nothing to reduce statewide CO2 emissions but would simply require reductions occur in a way that benefits particular political allies.**

5. **Rather than make the LCFS more expensive for Washington residents, the wasteful LCFS should be eliminated.**

Introduction

Just four years ago, the legislature adopted HB 1091 to impose a low-carbon fuel standard (LCFS) in Washington state. At the time, the bill included several caveats designed to earn political support for the law, including a promise that the law would not take effect until passage of a gas tax to fund transportation. It also included requirements that the LCFS use feedstocks grown in Washington and that a biofuel refinery be built in the state as part of the promise the law would create jobs in the state.

In 2022, the legislature removed the first requirement, allowing the LCFS to take effect in 2023 even without additional transportation funding. Now a new proposal, HB 1409, would remove the other two promises and tighten the goals with the express purpose of increasing the cost for Washington residents.

The reason given by bill supporters is that so much has changed in just the last two years that the bill is now out of date. Bill sponsor Rep. Joe Fitzgibbon, who was also the sponsor of the original LCFS legislation, told legislators at the hearing, "We adopted it in 2021 and with the benefit of hindsight it is now time for us to look at how the program can be improved." Leah Missik of Climate Solutions, who also supported the original bill, said, "The landscape has changed," and the legislation "could stand an update." Finally, Joe Creswell of the Department of Ecology told legislators, "Fuel technologies have changed faster than the legislature anticipated."

The fact that bill supporters were so wrong about the impact of the LCFS is just two years after it began implementation, should call into question their ability to make the program work effectively. Yet, the people who now admit they were wrong argue that this time the legislation will work as planned.

If legislators adopt HB 1409, the original promises will all have been broken. The legislation will turn the LCFS into little more than a new tax on fuel with the express purpose of increasing the cost to consumers, sending those dollars to companies like oil giant BP and government.

The best approach would be to recognize that further arbitrary tinkering is unlikely to make the problems better as it increases costs to Washington residents. Rather than making the LCFS more restrictive and expensive, it should be eliminated altogether.

How HB 1409 modifies the LCFS

When it was adopted, the argument for the LCFS was that Washington needed strategies to reduce transportation-related CO2 emissions

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since they account for the largest category of emissions in the state. Similar to policies adopted by California and Oregon, the LCFS requires fuel suppliers to purchase credits that, in the aggregate, reduce the carbon intensity of fuel by an increasing amount, up to 20 percent by 2038. Credits are created by generating low-carbon fuels like renewable diesel or installing EV charging stations.

During the first year of the LCFS in Washington, the credit price was relatively high at $91.23 per metric ton of CO2. That is more than double the current price of CO2 allowances in Washington's cap-and-trade system. The LCFS price collapsed in 2024 as the market was flooded with renewable diesel and other fuels. Rather than cheering the reduction in the cost of compliance – reducing the costs passed along to Washington drivers – local governments, environmental groups and credit generators like the oil company BP complained that the prices were too low.

For example, a representative of Seattle City Light testified that credit "Prices are so low that the program is unable to achieve the ambitious investment" plan the utility has due to a lack of expected revenue. A representative of Tacoma Power admitted, "we are still considering how best to use funding from the program," but argued the city utility needed more money.

To increase prices, the bill does two key things.

First, the bill accelerates implementation of the LCFS targets. Previously, the carbon intensity of fuels had to be reduced by 10 percent by 2031. The new legislation would move that target to 2029. The bill would also require an additional two percent reduction in carbon intensity of fuels each year until 2034, when a 20 percent reduction would be required.

Second, it would eliminate requirements that the carbon intensity requirements could not exceed 10 percent until certain biofuel feedstock and production targets were met. In testimony, Rep. Fitzgibbon admitted that the state would not meet those goals, so he wants them eliminated.

If the legislature passes HB 1049, it is likely that prices for Washington residents will increase, but it will not reduce CO2 emissions or create jobs in Washington state.

Impacts of HB 1409

One of the main claims about the LCFS is that it helps Washington state meet its climate goals. In testimony, Leah Missik told the committee "We need it to meet our climate targets." Joel Creswell claimed that the state's cap on CO2 emissions and the LCFS support each other, saying a study by the Department of Ecology found that "these programs are complementary."

Both of those claims are false. The LCFS adds nothing to the state's CO2 reduction. It only requires that a portion of the state's emissions reduction occur in a particular, restrictive way. If the LCFS was canceled, Washington state would meet the exact same CO2 target because all fuels covered by the LCFS are also covered by the CO2 cap.

Contrary to Joel Creswell's implication, the study he cites about the LCFS agrees that some goals of the policy, like CO2 reduction, would occur without that policy. Creswell misleadingly quotes just one word from that study: "complementary," implying the LCFS and CO2 cap work together. But he gets the implication entirely backward. The actual, full quote is, "Several other Washington and federal policies are complementary to the goals of the CFS and will help defray some costs and ensure that certain benefits of the CFS will occur even absent the policy." The report says that programs like the state's CO2 cap defray the costs of the LCFS and that benefits, such as CO2-reduction, would occur without the requirement.

Despite the fact that the legislation does nothing to increase total CO2 emissions, the fiscal note for the bill shows it would add about $1 million in new government expenditures. That funding could be used to offset the CO2 emissions of about 25,000 cars for one year. Instead of yielding real-world CO2 emission reductions, the legislation will simply increase the cost of managing a system that yields no additional CO2 reductions.

Although the LCFS doesn't contribute to meeting the state's CO2 emission targets, supporters of the original bill argued that it would help Washington participate in the clean energy economy. The current law caps the growth of the LCFS requirements until two requirements are met:

1. At least a 15 percent net increase in the volume of in-state liquid biofuel production and the use of feedstocks grown or produced within the state relative to the start of the program

2. At least one new or expanded biofuel production facility representing an increase in production capacity or producing, in total, in excess of 60,000,000 gallons of biofuels per year has or have received after July 1, 2021, all necessary siting, operating, and environmental permits post all timely and applicable appeals. As part of the threshold of 60,000,000 gallons of biofuel under this subsection, at least one new facility producing at least 10,000,000 gallons per year must have received all necessary siting, operating, and environmental permits.

These two requirements are specifically highlighted by the Department of Ecology on its web page about the "Benefits of the Clean Fuel Standard." Citing those two provisions, Ecology's web page claims, "The Clean Fuel Standard will spur economic development in producing and supplying low carbon fuels. This means technological innovation, job growth, and opportunities for Washington businesses."

Similar claims were made just a few years ago by other advocates of the LCFS. Climate Solutions said, "By transitioning to clean fuels we can keep this money in state." Without the requirement for in-state production, as proposed by HB 1409 that is no longer true.

And just over two years ago, Washington Conservation Voters claimed the bill would "support rural economic development by using local fuels...while simultaneously growing the clean energy job market." They now support eliminating both of those promises. In testimony on HB 1409, the lobbyist for the environmental group told the committee they now "support removing in-state biofuel production requirements that would serve to unnecessarily limit the continued effectiveness of the program."

The claim that forcing Washington drivers to buy more renewable fuels would create jobs in Washington was always dubious. As we noted in 2021 when the original bill was being debated, this was unlikely to occur. At the time we pointed to research from the Puget Sound Clean Air Agency saying the policy would not support a biofuel industry in the state. Their report on the potential impacts of an LCFS noted, "It is unlikely that the introduction of a low carbon fuel standard in the study region will induce investment into these projects." That report also said the LCFS was unlikely to help Washington farmers, noting, "a low carbon fuel policy is unlikely to induce more consumption of canola oil as a biodiesel feedstock." Both of those turned out to be accurate. In the face of economic reality, the legislature now proposes to break promises they made just a few years ago.

Conclusion

The short history of Washington's LCFS has been a string of broken promises and failed predictions. After the requirement to help fund roads was removed in 2022, supporters now propose removing promises about job creation and hope to make the law more restrictive to increase the cost to Washington residents.

Supporters predicted that the LCFS would reduce CO2 emissions. They claimed it would create jobs and help farmers. They now admit it doesn't do any of those things.

Instead of learning from that pattern of errors, some legislators still believe the LCFS is good policy. Their focus now is only on increasing the cost of the regulation so that credit producers like BP oil and government agencies can benefit. The goals of CO2 reduction and job creation have been sacrificed to the sole goal of increasing revenue.

Rather than making the LCFS more restrictive and costly, it should be eliminated entirely.

Todd Myers is the Senior Vice President for Research at WPC.

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