Summary of Initiative 1631

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1631. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Imposes an escalating pollution fee (fee) on the carbon content of fossil fuels and electricity from fossil fuels, beginning July 1, 2020, at a rate of $15 per ton of carbon dioxide equivalent emissions;
- Distributes money from the fee to programs, activities, and projects that reduce air pollution, assist with economic transitions to clean energy, improve the resiliency to climate change of waters and forests, or increase community preparedness for climate change;
- Assigns responsibilities to specified state agencies and entities in imposing the fee and implementing programs funded by the fee; and
- Establishes an oversight board and three advisory panels to oversee implementation of the fee and programs funded by the fee.

BACKGROUND

Initiative 1631

Initiative 1631 was certified to the ballot on August 2, 2018. The ballot title and ballot measure summary prepared by the Attorney General are as follows:

> **Ballot Title**
> Statement of Subject: Initiative Measure No. 1631 concerns pollution
> This measure would charge "pollution fees" on sources of greenhouse gas pollutants and use the revenue to reduce pollution, promote renewable energy, and address climate change impacts, under oversight of a public board.
>
> Should this measure be enacted into law? Yes [ ] No [ ]

Ballot Measure Summary

This measure would impose pollution fees on certain large emitters of greenhouse gas pollutants based on rules determining carbon content, starting in 2020. A public board would supervise spending the revenues on reducing pollution, promoting clean energy, and addressing climate impacts to the environment and communities. Utilities could receive credits for approved investments. Indian tribes would consult on projects directly impacting their land. There would be periodic reporting on the measure's effectiveness.

Federal and State Regulation of Greenhouse Gases

The United States Environmental Protection Agency (EPA) and the Washington State Department of Ecology (ECY) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured by the equivalence, over a 100-year timeframe, to the emission of an identical volume of carbon dioxide (carbon dioxide equivalent).

Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to certain air regulations administered by the EPA. These federal regulations require facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of carbon dioxide equivalent report their emissions to the EPA.

At the state level, GHGs are regulated by the ECY under the state Clean Air Act. The act requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of carbon dioxide equivalent each year to report their annual emissions to the ECY or to the local air pollution control authority that helps implement the state Clean Air Act. The ECY rules specify the GHG emissions calculation methodology for covered facilities and suppliers of motor vehicle fuel, special fuel, and aircraft fuel. According to the ECY's most recent report submitted to the Legislature in December 2016, the total annual GHG emissions in Washington from all sources as of 2013 were estimated at 94.4 million metric tons of carbon dioxide equivalent.

State Clean Air Rule

In September 2016, the ECY adopted a rule under state Clean Air Act authority (the Clean Air Rule) to limit emissions of GHGs from certain stationary emission sources, petroleum product producers and importers, and natural gas distributors. Under the Clean Air Rule, most covered parties must reduce their GHG emissions by 1.7 percent per year relative to the baseline emissions levels of the covered party, or acquire equivalent amounts of emission reduction units, which can be generated from external carbon markets or emission reduction projects, programs, or activities. In addition, the Clean Air Rule defines 23 categories of manufacturing businesses as energy intense trade-exposed parties (EITE), and provides emission reduction obligations for EITEs that may differ relative to other parties covered under the rule.

In December 2017, a Thurston County Superior Court ruled that the ECY exceeded its statutory authority in adopting the Clean Air Rule. In May 2018, the ECY appealed this ruling to the Washington State Supreme Court.

State Greenhouse Gas Limits

Since 2008, state law has established limits of overall GHG emissions to achieve the following GHG emission reductions:

- By 2020, to 1990 levels;
- By 2035, to 25 percent below 1990 levels; and
- By 2050, to 50 percent below 1990 levels, or 70 percent below the state's expected emissions for that year.

The law does not specify how the state must achieve the established limits, nor which entities or types of entities must reduce emissions to achieve the statutory limits.

State Utility and Fuel Taxes

The Public Utility Tax (PUT) is applied to gross income derived from the operation of public and privately owned utilities, including the general categories of transportation, communications, and the supply of energy and water. The applicable PUT rate depends upon the specific utility activity.

State fuel taxes are levied on aircraft fuels, and motor vehicle (predominantly gasoline) and special (predominantly diesel) fuels, which include vessel fuels. Fuels used for certain purposes, such as fuel used on a farm or fuel used for public transportation, are exempt from state fuel taxes.

State Relationships with Indian Tribes

The Centennial Accord, signed in 1989, and subsequent agreements entered into by the state recognize the sovereignty of each federally-recognized Indian tribe in Washington and include commitments to the implementation of a government-to-government relationship. Since 2012, state agencies have been required to make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian tribes, as well as to develop and use a consultation process for issues involving specific Indian tribes.

SUMMARY

Pollution Fee: Amount and Scope

Beginning January 1, 2020, a pollution fee of $15 per metric ton of carbon content is imposed on fossil fuels sold or used in Washington and electricity generated within or imported for consumption in Washington. Fossil fuels are defined to include specified petroleum products, natural gas, and coal. The fee increases by $2 per ton every January 1 starting in 2021, and also adjusts for inflation

each year. The annual $2-increases in the fee, but not the inflation adjustments, cease when the state's 2035 GHG reduction goal is met and the state's emissions are on a trajectory to likely meet the state's 2050 GHG reduction goal, as determined by an oversight board (See Pollution Fee and Pollution Fee Oversight below).

The Department of Ecology must adopt emergency rules for calculating the carbon content in fossil fuels and electricity. Electricity generated or imported from unspecified sources must be assigned an emissions factor that maximizes the incentive for source specification without unduly burdening electricity purchases. Power generated from or imported by the Bonneville Power Administration is also assigned an emissions factor.

The fee must be levied only once on a particular unit of fossil fuels or electricity. The Department of Revenue collects the fee from the following entities:

- For electricity, the fee is collected from importers of electricity, or from power plants that generate electricity from fossil fuels. However, responsibility for paying the fee may instead be assumed by a light and power business when it purchases electricity from a party that would otherwise owe the fee.
- For gasoline, diesel, and similar fuels used to propel vehicles, the fee is collected from the same entities responsible for paying the motor vehicle and special fuel taxes;
- For natural gas, the fee is collected from entities required to pay the PUT or the brokered natural gas use tax (which is an equivalent use tax on natural gas that applies in instances where the PUT is not paid on natural gas);
- For other petroleum products, the fee is collected from persons designated by a rule to be adopted by the Department of Revenue;
- For other fossil fuels and fossil fuels sold for combined heat and power use, the fee is collected from sellers of the fossil fuels to end users or consumers; and
- For crude oil and other fossil fuels consumed in or by a refinery facility, the fee is collected from the refinery facility.

Pollution Fee: Exemptions and Credits

The fee does not apply to:

- fossil fuels brought into Washington in a fuel supply tank;
- fossil fuels exported from Washington;
- fossil fuels directly or eventually supplied for purposes of generating electricity (for which the tax is instead applied to the electricity rather than the fossil fuels);
- gasoline, diesel, and other motor vehicle fuel in instances where those fuels are exempt from state fuel taxes;
- fossil fuels and electricity used onsite by an EITE facility that has been designated as such in the Clean Air Rule or by the Department of Commerce;
- aircraft and maritime fuels;
- Indian tribe property or activities exempt from state taxation;

- diesel, biodiesel, or aircraft fuel used for agricultural purposes by farm fuel users; and
- emissions from a facility that generates electricity from coal combustion and that is legally bound to either close by December 31, 2025, or meet certain emissions performance requirements.

Fossil fuels or electricity, including electricity generated in Washington, that are subject to both the fee and a similar fee on carbon content imposed by another jurisdiction, are eligible for credit against Washington's fee, upon Department of Commerce approval.

Light and power businesses and gas distribution businesses are eligible to claim credits against fees owed for up to the full value of their fees, if investor-owned utilities have received the Utilities and Transportation Commission's approval of an investment plan for use of the credited fee revenues, or if consumer-owned utilities or gas distribution businesses have received analogous Department of Commerce approval. Plans for the use of claimed credits must meet specified criteria, including:

- requirements related to public outreach during the plan development process;
- identification of eligible investments, which limit the proportion of fee credits that may be invested in certain types of activities; and
- identification of investments sufficient to eliminate net energy burden increases on low-income persons, investments that benefit tribal areas and pollution and health action areas identified by the Department of Health, and investments that have been prioritized consistent with certain requirements applicable to fee revenues.

Money set aside in an amount equal to the credits claimed by light and power businesses or gas distribution businesses must be expended within three years after the year in which revenues were collected, after which any remaining amounts must be remitted to the state for use in energy and air investments. Investment plans must be updated and re-approved every two years, and annual reports must be filed. Light and power businesses and gas distribution businesses may not earn a rate of return from investments paid for by fee credits, and credits may not be used to supplant existing funding.

Allocation Requirements for Fee Revenues

All revenues from the fees are deposited into a newly-created Clean Up Pollution Fund (Fund). The Department of Revenue is authorized to create subfunds or subaccounts to facilitate the implementation of the fee and programs funded by the fee. The state may issue general obligation or revenue bonds for the Initiative's purposes, and may use fee revenues to pay debt service on those bonds.

After reasonable administrative costs and upon appropriation, money in the Fund must be spent on investments in three broad categories of programs, activities, or projects:

- Energy and air (70 percent);
- Water and forests (25 percent); and
- Communities (5 percent).

Within each of these categories, a variety of specific uses of fee revenues are authorized (see Authorized Uses of Revenues to the Fund below). If there are an insufficient number of eligible proposals for funding or if deviation is critically important to achieving the Initiative's purposes, deviations from the allocation of revenues to these categories may be authorized by an oversight board (see Pollution Fee and Pollution Fee Program Oversight below). Compliance with the percentages assigned to these categories is measured based on expenditures over any four-year period. Non-profit private, for-profit private, and public entities are eligible to receive investment funds. For each of these categories, specified state agencies must develop procedures, guidelines, and rules; however, final authority to adopt these policies is reserved to the oversight board.

Apart from the percentages of fee revenues in the Fund that must be spent on these categories, investments are subject to the following additional requirements:

- Direct and Meaningful Benefit Requirement: At least 35 percent of investments must provide direct and meaningful benefits to census tracts that are fully or partly in Indian Country (tribal reservations and land held in trust for a tribe or by a tribal member) or in pollution and health action areas designated by the Department of Health;
- Locational Requirement: At least 10 percent of investments must fund programs, activities, or projects located within the boundaries of these same areas, and that provide direct and meaningful benefits to these areas. Investments that meet the requisite criteria may count towards fulfillment of both this 10 percent locational requirement category and the 35 percent direct and meaningful benefit requirement category; and
- Tribe-Supported Project Requirement: At least 10 percent of investments must be for programs, activities, or projects supported by a resolution of a federally-recognized Indian tribe located in Washington or with treaty-reserved rights within Washington. Priority for this category of projects is given to projects proposed or administered by an Indian tribe. Investments that meet the requisite criteria may count towards fulfillment of both this 10 percent tribe-supported project requirement category and the 35 percent direct and meaningful benefit requirement category, but may not count towards the fulfillment of both the tribe-supported project requirement and the locational requirement.

In addition, preference must be given to investments that meet one of four investment criteria: (1) use of low-carbon materials and content; (2) support certain labor standards; (3) reduce worker or public exposure to pollutants regulated under state air, water, or hazardous substance cleanup laws; or (4) reduce pollution by reducing vehicle miles traveled. Preference is given first to projects that meet multiple of these four criteria.

Authorized Uses of Revenues to the Fund

Clean Air and Clean Energy: A Clean Air and Clean Energy Account (CACEA) is created to receive money directed to it from the Clean Up Pollution Fund, to be used for eight non-exclusive categories of programs, activities, or projects that result in verifiable pollution reductions or assist affected workers or low-income persons with transitioning to a clean energy economy. These eight categories include investments in:

- renewable energy;
- energy efficiency or emission reduction at industrial facilities;
- energy efficiency in new or existing buildings;
- reducing transportation-related emissions;
- electricity demand-side management;
- replacing natural gas use with non-fossil fuel use;
- grid modernization; and
- carbon sequestration, to be achieved through a blue carbon program developed by the Department of Natural Resources, a soil sequestration program developed by the Department of Agriculture, and a ranked, prioritized grant program developed by the Recreation and Conservation Office addressing multiple aspects of forest and natural habitat land management.

The Department of Commerce must develop investment plans and propose rules to the oversight board for the disbursement of funds from the CACEA. Investments from the CACEA must be additive to existing funding for programs, and may not be used for activities mandated by other laws. The investment plans must result in a balanced portfolio of investments that reduce the state's carbon emissions from 2018 levels by at least 20 million metric tons by 2035 and at least 50 million metric tons by 2050.

At least 15 percent of the CACEA is for investments that directly reduce the energy burden for low-income persons, and sufficient investments must be made from the CACEA to prevent or eliminate increased energy burdens for low-income persons, to be achieved under plans approved by the oversight board.

Before 2022, at least $50 million from the CACEA must be set aside, maintained, and replenished for a worker-support program for certain fossil fuel workers affected by the transition away from fossil fuels. This program's worker support investments must be detailed in a plan approved by the oversight board.

Clean Water and Healthy Forests: A Clean Water and Healthy Forests Account (CWHFA) is created to receive money directed to it from the Clean Up Pollution Fund, to be used for water and forest projects that increase state water and forest resiliency to climate change impacts. Investments from the CWHFA must be additive to existing funding for programs, and may not be used for projects that violate tribal treaty rights or that result in significant long-term damage to critical habitat or ecological functions.

- Five categories of qualifying water projects are described, including investments in ocean acidification adaptation, flood risk reduction, sustainable water supply, estuary, fishery, and shoreline protection, and stormwater infrastructure in urban areas. Water project funding must be reviewed by the Puget Sound Partnership, and is subject to procedures, criteria, and rules developed jointly by five state agencies.
- Two categories of qualifying forest projects are described, including investments in wildfire resilience and in forest health. The Department of Natural Resources may consider

supporting certain timber technologies and is required to develop procedures, criteria, and rules for forest program funding that give priority to forest health projects using existing statutory prioritization structures.

Healthy Communities: A Healthy Communities Account (HCA) is created to receive money directed to it from the Clean Up Pollution Fund, to be used for investments to prepare communities for challenges of climate change and avoid certain populations bearing disproportionate impacts from climate change. Investments may not supplant federal funding or federal obligations. Prioritized investments include community wildfire preparedness enhancement, tribal community wildfire impact reduction, and the relocation of communities on tribal lands. Public school climate change and pollution reduction education programs are also eligible, but of lower priority for funding.

The Department of Natural Resources and the Superintendent of Public Instruction are required to develop procedures, criteria, and rules to implement programs funded by the HCA. Twenty percent of the HCA must be reserved for developing community participation capacity in the implementation of the fee and programs, to be allocated through a competitive process. Preference must be given for certain projects and up to $200,000 per year must be distributed to each Indian tribe that applies for funds to increase tribal participation capacity.

Pollution Fee and Pollution Fee Program Oversight

A public oversight board (oversight board) is created in the Governor's Office to oversee implementation of the pollution fee (fee) and the programs funded by the fee. The oversight board consists of 15 voting members: (a) a full-time staff person who chairs the board; (b) four at-large members appointed by the Governor; (c) six Governor-appointed representatives of specified interests or entities; and (d) the leaders of four state agencies. Three other state agencies are nonvoting members of the board. The oversight board has rulemaking authority and its responsibilities include:

- Developing budget recommendations for fee revenues under the state agency budget development process overseen by the Office of Financial Management;
- Working with state agencies to use existing programs, where feasible, to deliver fee funding; and
- Evaluating state agency and advisory panel recommendations, and providing final approval of funding for programs and projects.

In addition to the oversight board, three advisory panels comprised of Governor-appointed members are formed to advise the oversight board and state agencies on fee and fee program implementation. Criteria for the chairmanship and the composition of each advisory panel is specified. One advisory panel is tasked with making funding and program implementation recommendations for clean air and energy investments of fee revenues. The second advisory panel has similar responsibilities for making funding and program recommendations for water and forest investments of fee revenues. The third advisory panel has similar recommendation responsibilities for investments in preparing communities for climate change challenges and to ensure that climate change does not

disproportionately impact certain populations. The third panel also has responsibility for reviewing proposals affecting low-income persons, affected workers, vulnerable populations, and pollution and health action areas. Pollution and health action areas are defined as being on tribal lands or in tracts to be designated by the Department of Health by July 31, 2019, based on a cumulative impact analysis of vulnerable populations and environmental burdens conducted by the University of Washington.

Indian Tribe Consultation Requirements

State agencies that receive fee revenues or that otherwise act to implement the fee or its programs must consult with federally-recognized Indian tribes located within Washington or that have treaty-reserved rights within Washington on all decisions that may directly affect Indian tribes and tribal lands, including rulemaking activities. Prior to the approval of the disbursement of funds by the oversight board, project proposals that impact tribal lands or usual and accustomed fishing areas must be subject to a formal consultation with Indian tribes that follows specified protocols. For programs, activities, and projects that directly impact tribal lands, this process concludes when the tribal government provides the oversight board with a written resolution. If consultation requirements have not been followed, upon a request by an Indian tribe, all action on projects that directly impact tribal lands must cease until the completion of consultation.

Reporting Requirements

The Joint Legislative Audit and Review Committee (JLARC) must develop a schedule with the oversight board for the periodic review of the implementation of the fee and investments of fee revenues.

Every four years, starting in December 2022, the Department of Commerce must submit a draft report of the effectiveness of the fee and associated programs for approval by the oversight board. The report must include information regarding the progress made towards achieving state carbon reduction goals and the impacts of the fee and fee programs on specified economic indicators and population groups. The report must also include recommendations for fee and fee investment improvements.

Other Implementation Provisions

Specified state agencies are authorized to adopt rules, develop guidance, and create documents to carry out the fee and programs funded by the fee.

The ECY may not enforce the Clean Air Rule; however if the fee created by the Initiative is invalidated, the ECY is directed to enforce the Clean Air Rule.

The Initiative's provisions are to be liberally construed. A severability clause is included. The people make findings and declarations regarding the intent and purpose of the Initiative.

The carbon pollution fee is declared to not be a tax; however, if a court of final jurisdiction declares that the fee is a tax, then the tax is deemed authorized and imposed.

Effective Date: The initiative takes effect 30 days after the election at which it is approved.

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