Comparison of House, Senate, and Proposed Conference Committee Version of E3SHB 1091

TOPIC	HOUSE (E3SHB 1091)	SENATE (S2397.E) (As Passed Senate, 4/8/21)	PROPOSED CONFERENECE STRIKING AMENDMENT (S-3083.4)
Sec. 2. Definitions			
"Credit"	Defines "credit." Sec. 2(5)	House language retained.	Adds: "A credit may also be generated through other activities consistent with this chapter."
"Regulated party"	Not included.	Defines "Regulated Party" Sec. 2(13)	Senate language retained.
Sec. 3. Clean Fuels Program (CFP)			
Program design generally	Not addressed specifically.	CFP must be designed so that: regulated parties generate deficits and may reconcile deficits by obtaining and retiring credits and are allowed to carry over a small deficit without penalty to the next compliance period; the point of compliance for motor vehicle fuel is the same as described in chapter 82.38 RCW; regulated parties and credit generators may generate credits for fuels used as substitutes or alternatives for gasoline or diesel; and regulated parties, credit generators, and credit aggregators must have opportunities to trade credits. The Department of Ecology (Ecology) must regularly monitor the availability of fuels needed for compliance and calculate the monthly volume-weighted average price of credits and post it on its website. Sec. 3(2)	Senate language retained, except removes the sentence that the point of compliance for motor vehicle fuel is the same as described in chapter 82.38 RCW. Sec. 3(2)
Trajectory of the clean fuel standard	10% below 2017 levels by 2028 and 20% by 2035. Sec. 3(2)	20% below 2017 levels by 2035. Up to 0.5% each year in 2023 and 2024; 1.0% each year 2025-2027; 1.5% each year 2028-2031; and 2.5% each year 2032-2034. Requires explicit legislative authorization prior to Jan 1, 2029, to go above 10%. Sec. 3(5)	Senate language retained and revised to the following: 20% below 2017 levels by 2038. Up to 0.5% each year in 2023 and 2024; 1.0% each year 2025-2027; 1.5% each year 2028-2031; and no change in 2032 and 2033. Sec. 3(5) The explicit legislative authorization provision is removed.

2031-2050 update of clean fuel standard	By December 31, 2031, Ecology must update its CFP rules to reduce the carbon intensity of transportation fuel for each year through 2050, so total emissions from transportation sources in 2050 are consistent with reaching the 2050 statewide emissions limits. Sec. 3 (2)(c)	Not included.	Senate language retained.
Linkage to transportation revenue package	Not included.	Ecology must not assign compliance obligations or allow any actual credit generation until a separate additive transportation funding act generating more than $500 million per biennium in revenue becomes law. Sec. 3(6)	Ecology may not assign compliance obligations or allow the generation of credits until a separate additive transportation revenue act is enacted after April 1, 2021, in which the state fuel tax is increased by at least an additional 5 cents. Sec. 3(8)
In-state liquid biofuel and agricultural feedstocks	Not included.	Beginning January 1, 2026, Ecology must not further increase the standard unless it can demonstrate at least 25% net increase in the volume of in-state liquid biofuel production and use of agricultural feedstocks grown within the state relative to the start of the program. Sec. 3(7)(a)	Beginning January 1, 2028, Ecology must not increase the carbon intensity (CI) reductions required by the standard beyond a 10 percent reduction until 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 CFP. Sec. 3(6)
Biofuel production facility	Not included.	Beginning January 1, 2026, Ecology must not further increase the standard unless it can demonstrate at least one new biofuels production facility producing 60 million gallons of biofuels per year must have received all necessary permits. Sec. 3(7)(b) Beginning January 1, 2028, Ecology must not further increase the standard unless it can demonstrate at least one new biofuels production facility producing 60 million gallons of biofuels per year must have received all necessary permits. Sec. 3(8) Legislature intends to site best in class biofuel facilities to achieve state's GHG limits. SEPA analyses must evaluate the net cumulative GHG emissions from the facility, including netting its direct emissions with reductions associated with use of its fuel products. The state GHG limits may not be the basis for denial of a	Beginning January 1, 2028, Ecology must not increase the CI reductions required by the standard beyond a 10 percent reduction until it can demonstrate that at least one new or expanded biofuel production facility representing an increase in production capacity or producing in total over 60 million gallons of biofuels per year has or have received all necessary permits post all timely and applicable appeals. Timely and applicable appeals must be determined by the attorney general's office. As part of the 60 million gallons threshold, at least one new facility producing at least 10 million gallons must have received all necessary permits. Sec. 3(6)

		permit application or judicial review of grant of a permit for a new or expanded facility. Sec. 4(10)	
Program pause	Not included.	Requires explicit legislative authorization prior to Jan 1, 2029, to go above 10%. Sec. 3(5)	Beginning in 2031, Ecology must not increase the CI reductions required by the standard beyond a 10% reduction until: (1) The 2030 JLARC review of the Clean Fuels Program has been completed (Sec. 15); and (2) the 2033 Legislative session has adjourned. Sec. 3(7)
Sec. 4. Program Rules			
Credit clearance market	Implementation rules must contain cost containment mechanisms, which may include cost containment mechanisms that include but are not limited to a credit clearance market (CCM) to make credits available for sale at an Ecology-determined price, after conclusion of a compliance period. Cost containment mechanisms must be harmonized with jurisdictions having similar programs. Sec. 4(7)	Implementing rules must include a CCM for any compliance period in which at least one regulatory party has more than a small deficit. Procedures are set out detailing notice to Ecology and whether the party will eliminate it by participating in a CCM or carrying forward the deficit. Requirements are set out for participating in the CCM. If a regulated party has a deficit after two CCMs, Ecology must complete a root cause analysis of the reasons, and may recommend any remedy necessary to address the root cause, including a deferral, but cannot require purchase of credits above price cap or compel a generator to sell credits. Sec. 4(8)	Combines House and Senate language, including by requiring a CCM.
Credit price caps	Ecology must consider credit price caps or other alternative cost containment measures if necessary, to harmonize credit costs with other jurisdictions with similar programs. Sec. 4(7)(d)	Ecology must set a price cap for credits in a CCM that may not exceed $200 for 2028. After 2028, the price cap may exceed $200 but not beyond CPI inflation for urban consumers, west region (all items). Sec. 4(8)(c)	Ecology must set a price cap for credits in a CCM that may not exceed $200 in 2018 dollars for 2023. For 2024 and subsequent years, the price cap may exceed $200 in 2018 dollars, but not beyond CPI inflation for urban consumers, west region (all items). Sec. 4(8)(c)
Sec. 6. Alternative Credit Generation			
Broadband	Credits may be generated through infrastructure investments in broadband that facilitate remote work and reduce transportation emissions. Ecology must establish a metric for allocation of credits that varies by technology type. Sec. 6 (1)	Not included.	Senate language retained.

Generation from state transportation investments	Not specifically included.	The rules for the CFP must allow the generation of credits from state transportation investments funded in an omnibus transportation appropriations act for activities and projects that reduce GHG emissions and decarbonize the transportation sector. Sec. 6 (3)	Senate language retained and adds Ecology must limit the number of credits that may be earned each year from state transportation investments to 10 percent of the total program credits.
Sec. 9. Revenues from Electric Utility Credits			
Uses of Revenues by Electric Utilities other than the 50% dedicated to Transportation Electrification	Ecology, in consultation with the Utilities and Transportation Commission (UTC), must adopt requirements for spending the other 50 percent of revenues earned by electric utilities from participating in the CFP. Ecology must establish and fund a statewide Clean Fuel Reward Program to provide light duty vehicle consumers with reasonable purchase incentives on electric vehicles at the time of purchase or lease, and must require some portion of this 50 percent of revenues to be contributed by each electric utility to this program. Sec. 9(2)	The other 50 percent of revenues earned by electric utilities from participating in the CFP must be used for activities and projects jointly determined by Ecology and the Washington State Department of Transportation that have the highest impact on reducing greenhouse gas emissions and decarbonizing the transportation sector. Sec. 9(2)	Each electric utility must spend the other 50 percent of the revenues earned by electric utilities from participating in the CFP on one or more transportation electrification program or projects from a list jointly developed by Ecology and the Washington State Department of transportation, based on projects or programs with the highest impact on reducing greenhouse gas emissions and decarbonizing the transportation sector. Projects and programs that must be authorized for expenditures are specified. Utilities should consider programs or projects that expand low and moderate-income customer access to zero emissions transportation when prioritizing program expenditures. Sec. 9(2)
Forecasts & Forecast Deferral			
Forecasts	The Department of Commerce (Commerce) must develop a periodic fuel supply forecast to project the availability of fuels and credits necessary for compliance with CFP requirements. This forecast must be finalized no later than 90 days before the start of a CFP compliance period. Sec. 11	House language retained and adds detail on the required information to be included, such as considering the vehicle fleet in Washington, constraints on accessing low carbon fuels in Washington, and credits that may be banked, carried over, and held by credit aggregators. A forecast review team of relevant experts may be appointed by Commerce to assist in developing the fuel supply forecast. Sec. 11	Senate language retained.
Forecast deferral	Not included.	Ecology must issue an order declaring a forecast deferral if the fuel supply forecast projects that the amount of credits available during the compliance	Senate language retained.

		period will be less than 100 percent of the credits projected to be necessary to comply with the CFP. Forecast deferrals may not be less than one calendar quarter or longer than one compliance period. Sec. 12	
Emergency Deferral			
Emergency deferral	Ecology must issue an emergency deferral of the CFP in the event of a low carbon fuel shortage of at least 5 percent of the amount forecasted to be available during the effective compliance period, or upon the issuance of a Governor's declaration of an energy emergency under existing statutory processes. Emergency deferrals may last no less than either 30 days, or a calendar quarter, depending on the type of emergency deferral ordered by Ecology. Sec. 12	Ecology must issue an emergency deferral of the CFP in extreme and unusual circumstances which prevent the distribution of an adequate supply of renewable fuels needed to comply with the program and are the result of a natural disaster, act of God, a significant supply chain disruption, or another event that could not reasonably have been foreseen or prevented, and is in the public interest to grant the deferral. The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances. Sec. 13	Senate language retained.
Deferral for individual's inability to comply	Not included.	Ecology may issue a full or partial deferral for a calendar quarter to a regulated party unable to comply due to reasons beyond the person's reasonable control. Requirements address the use fuel supply forecasts, renewal of the deferral, and progress reporting. Sec 13(5)	Senate language retained.
Project Siting			
Least conflict priority clean energy siting program	Requires WSU Energy Program, in coordination with specified state agencies, to initiate a program to identify least conflict priority sites for clean energy projects with the potential to produce significant volumes of low carbon transportation fuel. Sec. 25	House language retained. Sec 26	Ecology, in coordination with the department of Commerce, must develop recommendations for potential improvements to the permitting processes for industrial projects and facilities in Washington that would contribute to achieving greenhouse gas limits while maintaining standards for the protection of the environmental and the preservation of tribal consolation and treaty rights. The agencies must produce and submit an interim progress report with initial policy proposal
Mitigation of significant likely environmental impacts -	Requires Ecology to periodically convene specified stakeholders to identify and discuss mitigation of significant likely environmental impacts associated with these same types of clean energy projects to produce low carbon transportation fuel, or that	House language retained. Sec 27	

stakeholder group	support the production of such transportation fuel, in Washington. Sec. 26		recommendations by December 1, 2021, and a final report with further policy proposals by December 1, 2022, to the Governor and Legislature. Sec. 31
RCW 80.50.020 - EFSEC definitions	Not included.	Not included.	Amends the definition of "biofuel" under RCW 80.50.020.
RCW 80.50.060 - Energy facilities to which chapter applies-- Applications for certification…	Not included.	Not included.	Facilities capable of producing more than 1,500 barrels but less than 25,000 barrels per day of refined biofuel may choose to receive Energy Facility Site Evaluation Council (EFSEC) certification for construction, reconstruction, or enlargement of their facility.
Misc.			
Significant legislative rules	Not included.	All rule making authorized under this act must be conducted according to the standards for significant legislative rules provided in RCW 34.05.328. Sec. 14 (3)	Senate language retained.
JLARC Analysis	By December 1, 2029, the Joint Legislative Audit and Review Committee is required to perform an analysis of the first five years of the CFP. This analysis must include the costs and benefits of the program using specific metrics, an evaluation of the information summarized by Ecology in their annual reports, and the total statewide costs of the CFP per ton of GHG emissions reductions achieved. Sec. 15	House language retained.	House language retained, but the deadline for completing the report is delayed until 2030 and the JLARC analysis must additionally include • an evaluation of the impacts of the program on low-income households; and • the outcomes of the proposals to site biofuel facilities through EFSEC.
Severability Clause	Included.	Included.	Retains severability clause and adds "In the event that there is litigation on the provisions of section 3(6) of this act or any other provision of this act, it is the intent of the legislature that the remainder of the act shall continue to be enforced and if such provisions are held invalid, the remainder of the act shall not be affected."