

## WASHINGTON *Independent Energy Distributors Report*

### Marketers Struggle with Cap and Invest Implementation and Exemptions



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*Since January 1st* when the State of Washington launched the Climate Commitment Act, which required an immediate implementation of LCFS and Cap and Invest, there have been extensive problems, little understanding of how a gallon of fuel travels through a system, and even less relief from the Department

of Ecology and State Legislature to fix the problems.

The largest topic of contention is exemptions of CAR (Cap and the Rack) to Agriculture, Aviation and Maritime industries. The hardest of the three to provide relief to is the Agriculture Community, as distributors have very few mechanisms to offer fuel without the CAR fee, which as of this week was trending at \$.57 a gallon.

The Association has worked tirelessly to educate the Department of Ecology, Legislators, and the Governor's office on our distribution system, the critical infrastructure that we serve, and WHY this is going to cost just the Ag community \$50 million in surcharge directed by this program just in 2023.

We have been met with some of the most illogical responses, and without question shows the lack of understanding of the consequences this program created, without even understanding what they created.

Major Oil Producers were regulated and mandated to comply with the program beginning January 1st, but the first Carbon Credit Auction was not offered until February 28th. And as a result, those who support this program pointed price gouging fingers at the Major Oil companies, saying, "They don't even have to buy credits yet." Anyone in business realizes that you can't just generate \$.44 to \$.57 cents a gallon in the past tense, and yet our industry was publicly criticized for increasing prices beginning January 1st. Our industry is "profiteering" and preying on consumers of Washington. More on that later ...

Our Association has offered several solutions to help both Maritime and Agriculture sectors, and all ideas have been shot down, quieted, or told that Democrats and the Governor's office "don't have the appetite to open this legislation this year," even if it means to fix the problem they created.

The most reasonable solution is a Rebate Program that customers exempted from CAR could submit forms to the state and receive a refund within a reasonable time period, but the State says they don't want to administer such a program because the Major Oil companies are the ones charging the surcharge. Again, with the lack of logic ...

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The Climate Commitment Act gave Department of Ecology more than 40 FTE's, and the State is budgeted to earn \$1.7 billion dollars in the biennium. But they do not have the resources to support the agricultural and maritime industries that bring key foods to market and implement a mechanism to exempt those industries THEY mandated be exempted. Again, with the logic...

So, here we are, approaching the final days of the Legislative Session and still no answer. After our Day on the Hill, where we gained some momentum from Republicans to try to do "something" this session, we thought we may get a budget Proviso that could help develop a rebate program as we believe it's the strongest and cleanest solution. Sadly, it was voted down. Just last week, Democrats offered a bill that has good bones, but bad intentions. A piece of the bill requires that oil suppliers NOT LINE ITEM the current cost of CAR and LCFS, and states that it's a violation of the Consumer Protection Act! This would be the one place where the end users could actually know how much to apply for a rebate for, and know what the program is actually costing. Seems to me that the State of Washington may actually be embarrassed as to the actual cost, and doesn't want consumers to KNOW WHAT THEY ARE PAYING! While we are required to be transparent in all of our transactions, it appears this bill is trying to intentionally hide the true cost of carbon credits to the consumer. Super disappointing.

As of the writing of this article, there is no answer to the exemption issue. This will develop and move at the speed of light until the end of session, and then likely fall silent until next year. If in fact we close the session without a solid and agreeable solution for all parties, I've heard rumblings of a class action lawsuit against the State of Washington. I'm grabbing a bag of popcorn for this one.

## Who are the real profiteers of the Climate Commitment Act?

*Since January 1st*, when the CCA started its regulatory period, our industry has been under fire for price gouging and profiteering. Key members from the Department of Ecology stood in front of a Senate Committee and stated that Major Oil Suppliers were profiteers and price gougers as they were "assumed to absorb the cost of the program." That was an incorrect assumption.

Let's take an HONEST LOOK at who is truly profiteering on a gallon of fuel. The State of Washington charges the following taxes on a gallon of fuel:

- Washington State Special Fuel Tax at .001/cents per gallon
- Washington Petroleum Prod Tax at 0.150%
- Washington Hazardous Substance Tax at .028571/cents per gallon
- Washington Cap at the Rack at .57/cents per gallon
- Washington Low Carbon Fuel Standard at .015/cents per gallon

At current prices, this calculates to 33% of the cost of fuel is being sent to the STATE OF WASHINGTON, making them the largest

profiteer of a gallon of fuel. And yet our industry continues to be under heavy artillery fire for being the bad guys.

Efforts are underway to launch a consumer education campaign to share the reality of the costs of this program and where the money goes. This is the classic definition of oxymoron.

## Legislative Update:

*The WIED Association* is proud and happy to have Diana Carlen as our new Lobbyist and counsel in Olympia, WA. Diana has been incredible with the challenges we have faced this year, and has stepped up communication to membership. Below is the latest version of our Legislative Efforts.

### WIED Update – April 16, 2023

Today marks the ninety-ninth day of the legislative session. Just seven days remain in the 2023 legislative session. April 12 was the deadline to pass bills from the opposite chamber, except for budgets and bills necessary to implement the budget.

Over the next week, the Legislature will continue to focus on reconciling differences between each chamber's budget proposals, bills that are necessary to implement the budget, and bills on the Concurrence Calendar. As a reminder, the Concurrence Calendar is a list of bills that have passed out of both chambers, but were amended in the second chamber. In order for a bill to pass the Legislature, the differences in the two versions of the bill approved by each chamber need to be reconciled.

Once a bill passes the Legislature, it is delivered to the Governor to be signed into law, vetoed, or partially vetoed (the Governor has the authority to remove entire sections of a bill, but not specific sentences). The Governor has five days, excluding Sundays, to take action on bills, unless the Legislature is within five days of adjournment, in which case the Governor has twenty days to take action. The final day of the 2023 Legislative Session is Sunday, April 23rd.

### New Tax Increase Proposals Under Consideration

While the original budget proposals rolled out this session did not propose any tax increases, two new tax increase proposals have emerged as we approach the end of the session.

**2SHB 1628** passed out of the House Finance Committee on Friday with all Republicans on the committee voting against the proposal with one Democrat joining. This legislation would increase both state and local real estate excise taxes. Proceeds would be spent on affordable housing.

**SB 5770** was introduced in the Senate on Wednesday. It would raise the cap on increases in state and local property taxes from 1% to 3% per year. The bill was introduced just outside the window requiring a 2/3rds vote of the legislature. The bill has 20 Senate Democrat sponsors. The bill has not yet been scheduled for a public hearing.

### Notable Bills that Passed the Opposite Chamber This Past Week:

**PLIA Reform (HB 1175)** is WIED priority legislation to modernize PLIA which is also supported by WSPA. The bill passed the Senate on April 11 by a vote of 35-14. The bill will next be delivered to the Governor for his signature.

**Industrial Insurance Duties (SHB 1521)**, sponsored by Rep. Dan Bronoske (D- Lakewood), would create a new legal obligation for employers that fund their own workers' comp programs and those that handle worker claims. Under the bill, employers would have a duty of good faith and fair dealing to workers with respect to all aspects of workers' compensation. The bill as passed by the Senate narrowed the legislation to apply only to municipal self-insured employers and their third-party administrators. Changes additionally clarified that they bill is not intended to create or imply a private right of action outside the workers' compensation system to enforce the new duty it creates. On Thursday, the House refused to concur with the Senate amendments and asked the Senate to recede their amendments.

**Climate-Ready Communities (2SHB 1176)**, sponsored by Rep. Vandana Slatter (D- Bellevue), is Governor request legislation. The bill would establish the Washington Climate Corps, administered by Serve Washington, to provide climate related service opportunities for young adults and veterans. The bill also puts in place the Clean Energy Technology Workforce Advisory Committee. The Committee would be responsible for reviewing workforce and business issues in the energy sector and the impacts of the energy transition as well as recommending strategies to prevent workforce displacement and support job creation in clean energy. On Wednesday, the bill passed the Senate by a vote of 31-18.

**Unemployment Voluntary Quits (ESHB 1106)**, sponsored by Rep. Mary Fosse (D- Everett), would expand the list of unemployment qualifications for voluntary quits. The bill would allow individuals to qualify for unemployment insurance (UI) in certain circumstances if they must quit because they are unable to access care for a child or a vulnerable adult or because of the death, illness, or disability of a family member. Additionally, the bill allows individuals to qualify for UI should they leave work to relocate to follow a minor child that moved or for scenarios in which an employer changes regularly scheduled shift start or end times by more than six hours on a permanent basis. On Friday, the House concurred with previous changes made and the bill will be delivered to the Governor to sign.

**Wage Complaints (HB 1217)**, sponsored by Rep. Lillian Ortiz-Self (D-Mukilteo), was amended to require wage complaint settlements to include interest on amounts owed, with the option for an employee to request a waiver or reduction of interest as part of the settlement process. On Wednesday, the amended bill passed the Senate by a vote of 33-16. Amendments include clarifying that the requirement for certain wage complaint settlements to include interest on amounts owed only applies to complaints filed after January 1, 2024. On Friday, the House concurred with Senate amendments. The bill will next be delivered to the Governor for bill action.



## Notable Bills that

### Failed to Make Opposite Chamber Cutoff:

**Clean Energy (HB 1589)** would have provided a pathway for Puget Sound Energy (PSE), the largest private utility in the state, to discontinue retail natural gas service beginning July of 2023, although there was an exemption for certain manufacturing facilities. The legislation would have also authorized PSE to recover the costs of the existing gas system more quickly as customers shift from gas-fired furnaces and water heaters to heat pumps which meant higher costs for ratepayers. The bill was not brought up for a vote by the Senate.

**Labor Practices Penalties (SSB 5110)** sponsored by Sen. Karen Keiser (D- Kent), would have created a private right of action for all actions under 49.44 RCW (prohibited practices for certain labor violations). The bill was amended to only apply to provisions in the statute that have no criminal or civil penalties available. The bill would have allowed the court to award injunctive relief, actual damages, and a penalty of no less than \$500 and no more than \$1,000. The bill was not passed by the opposite chamber deadline.

### Senate Budget Proposal Includes Study on Fuel Pricing in Washington State

The Senate also released their proposed transportation budget this past week. Included in the budget is \$150,000 for the antitrust division of the attorney general's office to convene a work group to examine consumer fuel pricing in Washington state. The work group must review issues to include, but are not limited to: (a) Previous studies and evaluations of fuel pricing in Washington state; (b) Trends in fuel pricing in Washington state; (c) Factors causing fuel prices in Washington state to be higher than the national average and how these factors have changed over time; (d) Margins and profits at the fuel production, distribution, and retail levels; (e) State tax policies and regulatory factors that may impact fuel pricing and make the state's fuel marketplace more or less competitive; and (f) Potential reporting and audit requirements that would make fuel pricing more transparent to Washington state consumers. The attorney general's office must report its findings and recommendations to the governor's office and the appropriate policy and fiscal committees of the legislature by November 30, 2023.

### Update on Exempt Fuel Issue

Both the Senate and House fiscal committees rejected amendments to the budget this past week by Republicans to provide immediate relief by allocating \$50 million to reimburse farmers who paid fuel surcharges under the Climate Commitment Act. The House, however, adopted an amendment to their proposed budget to provide \$500,000 to the Department of Agriculture to contract with a neutral, third-party facilitator to convene an advisory process. The purpose of the advisory process is to make recommendations to the legislature on a logistically practicable long-term process to ensure that exempt fuel users are in fact exempt from paying the costs embedded in exempt fuel prices that are attributable to the Climate Commitment Act allowance price.

In early April, two Senate Democrats (Senator Mark Mullet and Senator Joe Nguyen) introduced legislation dealing with the exempt fuel issue. SB 5766 would require Ecology to create a refund portal by January 1, 2024 to implement the farmer fuel exemption and provides \$50 million to fund the program that year. It also calculates the refund amount based on eight-tenths of one percent of the most recent auction settlement price multiplied by the number gallons used by the farmer or agricultural transporter. The agricultural exemption must be administered through the remittance program meaning it could not be taken at point of sale. In addition, businesses would be prohibited from listing the Climate Commitment Act surcharge on billing statements and makes it a violation of the Consumer Protection Act if a business lists this surcharge on a billing statement. Finally, the bill creates a task force to broadly look at efforts and processes to implement the emission exemptions under the Climate Commitment Act.

Due to opposition from various group, SB 5766 was pulled from the hearing calendar and will not be addressed this session. So we are effectively back to square one on this issue, with only a few days left in session.

### Ecology Confirms State Received Just Shy of \$300 Million from First Auction

On March 28, Ecology confirmed that the state raised \$299,983,267 through the sale of carbon allowances at the state's first cap-and-invest auction that was held on February 28. Funds have been deposited in the state treasury. Ecology announced the results in their Public Proceeds Report.

The results of the auction were released earlier this month in an Auction Summary Report. All 6,185,222 available allowances were sold at a final settlement price of \$48.50. The report, which is posted to Ecology's Auctions and Trading webpage, also included other information about market security and eligible participants.

The revenue raised is subject to appropriation by the Legislature, and will be used to fund climate projects focused on clean transportation, clean energy, climate resiliency, and environmental justice initiatives.

More information about how auction funding will be used is available on Ecology's Auction Proceeds webpage. The webpage includes detailed information about the different accounts established by law to house auction funding, and the specific climate goals each is designed to address.

Thank you for all the efforts and support of our Marketer Membership in helping get through the complications our industry has been facing. This has been a monumental year, and we could use your help with our PAC Fund! We will be asking for your support!

Very kindly, *Lea N. McCullough, Executive Director*  
and *Diana Carlen, Lobbyist*

### Navigating a Carbon Free Future

