

JAY INSLEE
Governor



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May 17, 2021

To the Honorable Speaker and Members,
The House of Representatives of the State of Washington

Ladies and Gentlemen:

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.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jay Inslee", is positioned above the printed name. The signature is fluid and cursive.

Jay Inslee
Governor