

# HOUSE BILL NO. 5083

October 03, 2023, Introduced by Reps. Andrews, Conlin, Brixie, Hoskins, Byrnes, Rheingans, Dievendorf, Arbit, Price, Hill, Churches, Puri and Pohutsky and referred to the Committee on Government Operations.

A bill to establish a standard to reduce the carbon intensity of transportation fuels; to establish a market for trading carbon intensity credits; and to provide for the powers and duties of state and local governmental entities.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 1. As used in this act:
- 2           (a) "Clean fuel" means a transportation fuel that has a carbon
- 3 intensity level that is below the current clean fuels standard.
- 4           (b) "Credit" means a measure, in metric tons of carbon dioxide

1 equivalent, of the amount by which the carbon intensity of a clean  
2 fuel provider's transportation fuel volume produced or imported for  
3 use in this state is exceeded by the carbon intensity of the  
4 current clean fuels standard.

5 (c) "Credit generator" means a person that produces or imports  
6 a clean fuel for use in this state, which in the case of  
7 electricity used as a transportation fuel could include, but is not  
8 limited to, automakers, electric charging providers, electric  
9 utilities, and electric vehicle fleet operators.

10 (d) "Deficit" means a measure, in metric tons of carbon  
11 dioxide equivalent, of the degree to which the carbon intensity of  
12 a fuel provider's transportation fuel volume produced or imported  
13 for use in this state exceeds the carbon intensity of the  
14 applicable annual clean fuels standard.

15 (e) "Deficit generator" means a fuel provider that generates  
16 deficits and that first produces or imports a transportation fuel  
17 for use in this state.

18 (f) "Department" means the department of environment, Great  
19 Lakes, and energy.

20 (g) "Fuel pathway" means a detailed description of all stages  
21 of a transportation fuel's production and use, including  
22 extraction, processing, transportation, distribution, and  
23 combustion or use by an end user.

24 (h) "Fuel provider" means a person that produces or imports a  
25 transportation fuel for use in this state.

26 (i) "Greenhouse gas" means carbon dioxide, methane, nitrous  
27 oxide, hydrofluorocarbons, perfluorocarbons, or sulfur  
28 hexafluoride.

29 (j) "GREET model" means the Argonne National Laboratory's most

1 recent Greenhouse Gases, Regulated Emissions, and Energy Use in  
2 Transportation model.

3 (k) "MDOT" means the state transportation department.

4 (l) "Motor vehicle" means an automobile, motorcycle, truck,  
5 train, light rail vehicle, ship, aircraft, forklift, or other road  
6 or nonroad vehicle.

7 (m) "Office" means the Michigan economic development  
8 corporation's office of future mobility and electrification.

9 (n) "Person" means an individual or a partnership,  
10 corporation, limited liability company, association, governmental  
11 entity, or other legal entity.

12 (o) "Petroleum-only portion of transportation fuels" means the  
13 component of gasoline or diesel fuel before blending with ethanol,  
14 biodiesel, biofuel, or other low-carbon-intensity fuel.

15 (p) "Transportation fuel" means fuel, including, but not  
16 limited to, electricity, gasoline, diesel, ethanol, biodiesel,  
17 renewable diesel, propane, renewable propane, natural gas,  
18 renewable natural gas, hydrogen, aviation fuel, and biomethane,  
19 that is both of the following:

20 (i) Blended, sold, supplied, offered for sale, and used to  
21 operate or propel a motor vehicle.

22 (ii) Compliant with applicable standards, specifications, and  
23 testing requirements under this act and rules promulgated under  
24 this act.

25 Sec. 3. The department shall calculate the baseline carbon  
26 intensity of the petroleum-only portion of all transportation fuel  
27 produced or imported in 2019 for use in this state by doing both of  
28 the following:

29 (a) Reviewing and considering the best available applicable

1 scientific data and calculations.

2 (b) Using a life-cycle emissions performance-based approach  
3 that is technology and feedstock neutral.

4 Sec. 5. (1) Beginning December 31, 2035, as an overall clean  
5 fuels standard, the carbon intensity of all transportation fuel  
6 produced or imported for use in this state shall be reduced to and  
7 maintained at levels at least 35% below the 2019 baseline level, as  
8 determined under section 3. The carbon intensity of the overall  
9 clean fuels standard is subject to further reduction by the  
10 department based on all of the following:

11 (a) The cost of compliance.

12 (b) Advances in technology available to fuel providers to  
13 achieve the further reduction.

14 (c) The need to maintain fuel quality and availability.

15 (d) The goals of the department's MI Healthy Climate Plan.

16 (2) The department, in consultation with MDOT, shall establish  
17 a schedule of annual clean fuels standards to progressively meet  
18 the overall clean fuels standard. In establishing the schedule, the  
19 department shall consider the cost of compliance, the technologies  
20 available to fuel providers to achieve the annual standards, and  
21 the need to maintain fuel quality and availability.

22 (3) The department shall develop a mechanism that  
23 automatically increases the stringency of the schedule of annual  
24 clean fuels standards if there is a sustained oversupply of credits  
25 for 2 years.

26 (4) The department may, by rule, do both of the following:

27 (a) Increase the stringency of the 2035 carbon intensity  
28 reduction target and intermediate annual reduction targets.

29 (b) Set clean fuel standards for 2040 and 2050.

1           Sec. 7. (1) The department shall establish a process to review  
2 fuel pathways submitted by credit generators. Fuel pathways shall  
3 be calculated using the GREET model. The fuel pathway review  
4 process shall meet all of the following requirements:

5           (a) Be consistent for all fuel types.

6           (b) Be science- and engineering-based.

7           (c) Reflect differences in motor vehicle fuel efficiency and  
8 drive trains.

9           (2) The department shall consult with MDOT and the office to  
10 determine fuel pathways and may coordinate with third-party  
11 entities or other states to review and approve pathways.

12           Sec. 9. (1) The department shall establish a fair and  
13 reasonable program for tradable credits and deficits. The  
14 generation of credits shall use a life-cycle emissions performance-  
15 based approach that is technology and feedstock neutral to achieve  
16 fuel decarbonization. The program shall include the following:

17           (a) A market mechanism that allows credits to be traded or  
18 banked for future use.

19           (b) Transaction fees associated with the credit market that  
20 are paid primarily by deficit generators to cover the  
21 administrative costs of the program.

22           (c) Procedures to verify the validity of credits and deficits.

23           (d) The ability to carry over up to 5% of deficits each year  
24 if credits are unavailable under section 11.

25           (2) The department shall allow the generation of credits  
26 associated with the clean fuel or infrastructure that existed  
27 before the effective date of this section or the start date of  
28 program requirements.

29           (3) Aviation fuels are exempt from the clean fuels standard.

1 However, sustainable aviation fuel is eligible to generate credits  
2 on an opt-in basis.

3 Sec. 11. (1) A fuel provider that is a deficit generator  
4 during a year shall eliminate the deficit by doing either or both  
5 of the following:

6 (a) Producing or importing transportation fuels whose carbon  
7 intensity is at or below the level of that year's annual clean  
8 fuels standard.

9 (b) Purchasing credits to offset the deficit.

10 (2) A fuel provider that violates subsection (1) may be  
11 ordered to pay a civil fine of 200% of the value of the credits  
12 needed to offset the violation. The civil violation may be  
13 prosecuted by the prosecutor of the county in which the violation  
14 occurred or by the attorney general.

15 Sec. 13. The department shall collaborate with MDOT and the  
16 office to develop a compliance reporting process, including forms,  
17 for credit generators and deficit generators. The department shall  
18 regularly post on the department's website data on deficit and  
19 credit generation and credit prices.

20 Sec. 15. (1) By 1 year after the effective date of this act,  
21 the department shall promulgate rules under the administrative  
22 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to  
23 implement this act.

24 (2) In developing the rules, the department shall do all of  
25 the following:

26 (a) Consult with MDOT and the office.

27 (b) Solicit input from stakeholders, including, but not  
28 limited to, fuel providers; consumers; rural, urban, and tribal  
29 communities; agricultural organizations; environmental and

1 environmental justice organizations; and technology providers,  
2 through a task force, working groups, public meetings, and other  
3 means.

4 (c) Endeavor to do all of the following:

5 (i) Support the growth and creation of high-paying jobs in the  
6 clean fuels and automotive industries in this state.

7 (ii) Ensure transparency and fair competition.

8 (iii) Complement and further both of the following:

9 (A) Existing state and federal fuel, transit and mobility,  
10 transportation decarbonization, infrastructure, and greenhouse gas  
11 emissions policies and programs.

12 (B) Existing efforts by the agricultural sector to increase  
13 the adoption of practices that improve soil health and water  
14 quality.

15 (iv) Recognize voluntary farm emissions reductions that  
16 contribute to the reduced carbon intensity of fuels by allowing  
17 credit generators to choose between a credit premium or  
18 individualized farm-level carbon intensity scoring for approved  
19 sustainable agricultural practices.

20 (v) Until farm-specific practices are added to the GREET model  
21 full life-cycle accounting, allow an additional credit premium for  
22 cropland-derived biofuels produced on either of the following:

23 (A) Acreages that use soil-health farming practices and  
24 fertilizer best management practices provided by the Michigan  
25 agriculture environmental assurance program, soil conservation  
26 staff, or standards from the United States Department of  
27 Agriculture.

28 (B) Acreages that use continuous living cover cropping systems  
29 or other practices that show an increase in carbon capture compared

1 to traditional cropping methods that can be proven by best  
2 available research and verified by the department or a land grant  
3 university. The department shall develop a methodology for  
4 calculating, monitoring, and third-party auditing and verifying of  
5 on-farm practices to ensure accuracy of the carbon capture results.

6 (vi) Identify safeguards and incentives to protect  
7 biodiversity, reduce potential land use impacts, consider  
8 unintended consequences at scale, safeguard customer privacy, and  
9 promote equity.

10 (vii) Require an agricultural livestock production facility  
11 that participates in the clean fuel standard to provide to the  
12 department periodic certification that the facility has not and  
13 will not increase the number of animal units at the facility for  
14 the sole or primary purpose of producing or increasing the  
15 production of biogas that is derived from the anaerobic digestion  
16 of manure at the facility.

17 (d) Develop procedures to allow credit generators to generate  
18 credits for electric vehicle charging that occurs at residences.  
19 The department shall set a goal for the percent of credit revenue  
20 generated under this subdivision to be spent in support of  
21 transportation electrification and transportation emission  
22 reduction programs for the primary benefit of disadvantaged  
23 communities, low-income communities, or rural communities. The  
24 department shall develop projects and identify goals under this  
25 subdivision in consultation with credit generators, communities,  
26 community leaders, and environmental justice advocates, including  
27 members of the Michigan advisory council on environmental justice.

28 Sec. 17. By 2 years after the effective date of rules  
29 promulgated under section 15, the department shall submit a report

1 detailing program implementation to the senate and house committees  
2 responsible for transportation, energy, and natural resources  
3 legislation. The department shall make summary information on the  
4 program available to the public.