
HOUSE BILL 2421

State of Washington

64th Legislature

2016 Regular Session

By Representatives Pike, Vick, Blake, Manweller, Harris, Wilson, Shea, Taylor, and Dent

1 AN ACT Relating to directing that the state may not regulate
2 greenhouse gas emissions beyond the requirements established by
3 federal law; amending RCW 70.94.151; adding a new section to chapter
4 70.94 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The stable, reliable, and low-cost
7 supply of power has historically attracted many job-creating
8 industries to Washington, such as the semiconductor industry that has
9 chosen to locate in Clark county. Retaining low-cost and reliable
10 access to this power supply is critical to the survival and expansion
11 of many sectors of Washington's economy.

12 (2) Washington's sources of electricity feature low levels of
13 greenhouse gas emissions. In addition to the zero-emission
14 hydroelectric power that supplies the majority of the state's power
15 supply needs, many of the state's natural gas power plants, such as
16 the river road gas fired plant operated by Clark public utility
17 district, operate far more efficiently than is required by either
18 federal or state emissions regulations. By ensuring that Washington
19 manufacturing remains economically viable and that industries will
20 continue to rely on Washington's comparatively clean electricity,
21 overall global greenhouse gas emissions remain lower than if jobs and

1 production were to move to less-intensively regulated jurisdictions
2 where production of the same amount of manufactured product would be
3 accompanied by far greater emissions of greenhouse gases.

4 (3) Therefore, it is the intent of the legislature to ensure that
5 state restrictions on greenhouse gas emissions are no more stringent
6 than restrictions established by federal law.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94
8 RCW to read as follows:

9 (1) The department is designated as the state agency responsible
10 for submitting the state plan to the United States environmental
11 protection agency consistent with the federal rule relating to
12 greenhouse gas emissions from electric utility generating units,
13 published in the federal register on October 23, 2015; 80 C.F.R. Sec.
14 64966 (2015).

15 (2) The plan submitted by the department under subsection (1) of
16 this section may not limit or otherwise provide for the regulation of
17 the greenhouse gas emissions of electric generation units that
18 operate at a lower emissions rate than the final rate-based objective
19 for average emissions associated with fossil fuel-fired electric
20 generation in Washington that is established by the federal rule
21 published in the federal register on October 23, 2015; 80 C.F.R. Sec.
22 64662 (2015).

23 (3) Under the authority of this chapter, the department may not
24 adopt rules to limit or otherwise regulate greenhouse gas emissions
25 that are more stringent than any requirements necessary for the state
26 plan submitted pursuant to subsection (1) of this section to meet the
27 minimum requirements necessary to comply with the federal rule
28 published in the federal register on October 23, 2015; 80 C.F.R. Sec.
29 64966 (2015).

30 **Sec. 3.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to
31 read as follows:

32 (1)(a) The board of any activated authority or the department,
33 may classify air contaminant sources, by ordinance, resolution, rule
34 or regulation, which in its judgment may cause or contribute to air
35 pollution, according to levels and types of emissions and other
36 characteristics which cause or contribute to air pollution(~~(, and)~~).

37 (b) Except as provided in (c) of this subsection, the board of
38 any authority or the department may require registration or reporting

1 or both for any ((such)) class or classes of air contaminant sources
2 or levels and types or other characteristics of emissions.

3 (c) The department shall adopt rules requiring the reporting of
4 the emissions of greenhouse gases, as defined in RCW 70.235.010.
5 However, except as provided in section 2 of this act, the department
6 or board of any authority may not limit or otherwise regulate
7 emissions of greenhouse gases under the authority of this chapter.

8 (d) Classifications made pursuant to this section may be for
9 application to the area of jurisdiction of such authority, or the
10 state as a whole or to any designated area within the jurisdiction,
11 and shall be made with special reference to effects on health,
12 economic and social factors, and physical effects on property.

13 (2) Except as provided in subsection (3) of this section, any
14 person operating or responsible for the operation of air contaminant
15 sources of any class for which the ordinances, resolutions, rules or
16 regulations of the department or board of the authority, require
17 registration or reporting shall register therewith and make reports
18 containing information as may be required by such department or board
19 concerning location, size and height of contaminant outlets,
20 processes employed, nature of the contaminant emission and such other
21 information as is relevant to air pollution and available or
22 reasonably capable of being assembled. (~~In the case of emissions of~~
23 ~~greenhouse gases as defined in RCW 70.235.010 the department shall~~
24 ~~adopt rules requiring reporting of those emissions.)) The department
25 or board may require that such registration or reporting be
26 accompanied by a fee, and may determine the amount of such fee for
27 such class or classes: PROVIDED, That the amount of the fee shall
28 only be to compensate for the costs of administering such
29 registration or reporting program which shall be defined as initial
30 registration and annual or other periodic reports from the source
31 owner providing information directly related to air pollution
32 registration, on-site inspections necessary to verify compliance with
33 registration requirements, data storage and retrieval systems
34 necessary for support of the registration program, emission inventory
35 reports and emission reduction credits computed from information
36 provided by sources pursuant to registration program requirements,
37 staff review, including engineering or other reliable analysis for
38 accuracy and currentness, of information provided by sources pursuant
39 to registration program requirements, clerical and other office
40 support provided in direct furtherance of the registration program,~~

1 and administrative support provided in directly carrying out the
2 registration program: PROVIDED FURTHER, That any such registration
3 made with either the board or the department shall preclude a further
4 registration and reporting with any other board or the department,
5 except that emissions of greenhouse gases as defined in RCW
6 70.235.010 must be reported as required under subsection (5) of this
7 section.

8 All registration program and reporting fees collected by the
9 department shall be deposited in the air pollution control account.
10 All registration program fees collected by the local air authorities
11 shall be deposited in their respective treasuries.

12 (3) If a registration or report has been filed for a grain
13 warehouse or grain elevator as required under this section,
14 registration, reporting, or a registration program fee shall not,
15 after January 1, 1997, again be required under this section for the
16 warehouse or elevator unless the capacity of the warehouse or
17 elevator as listed as part of the license issued for the facility has
18 been increased since the date the registration or reporting was last
19 made. If the capacity of the warehouse or elevator listed as part of
20 the license is increased, any registration or reporting required for
21 the warehouse or elevator under this section must be made by the date
22 the warehouse or elevator receives grain from the first harvest
23 season that occurs after the increase in its capacity is listed in
24 the license.

25 This subsection does not apply to a grain warehouse or grain
26 elevator if the warehouse or elevator handles more than ten million
27 bushels of grain annually.

28 (4) For the purposes of subsection (3) of this section:

29 (a) A "grain warehouse" or "grain elevator" is an establishment
30 classified in standard industrial classification (SIC) code 5153 for
31 wholesale trade for which a license is required and includes, but is
32 not limited to, such a licensed facility that also conducts cleaning
33 operations for grain;

34 (b) A "license" is a license issued by the department of
35 agriculture licensing a facility as a grain warehouse or grain
36 elevator under chapter 22.09 RCW or a license issued by the federal
37 government licensing a facility as a grain warehouse or grain
38 elevator for purposes similar to those of licensure for the facility
39 under chapter 22.09 RCW; and

40 (c) "Grain" means a grain or a pulse.

1 (5)(a) The department shall adopt rules requiring persons to
2 report emissions of greenhouse gases as defined in RCW 70.235.010
3 where those emissions from a single facility, source, or site, or
4 from fossil fuels sold in Washington by a single supplier meet or
5 exceed ten thousand metric tons of carbon dioxide equivalent
6 annually. The department may phase in the requirement to report
7 greenhouse gas emissions until the reporting threshold in this
8 subsection is met, which must occur by January 1, 2012. In addition,
9 the rules must require that:

10 (i) Emissions of greenhouse gases resulting from the combustion
11 of fossil fuels be reported separately from emissions of greenhouse
12 gases resulting from the combustion of biomass;

13 (ii) Reporting will start in 2010 for 2009 emissions. Each annual
14 report must include emissions data for the preceding calendar year
15 and must be submitted to the department by October 31st of the year
16 in which the report is due. However, starting in 2011, a person who
17 is required to report greenhouse gas emissions to the United States
18 environmental protection agency under 40 C.F.R. Part 98, as adopted
19 on September 22, 2009, must submit the report required under this
20 section to the department concurrent with the submission to the
21 United States environmental protection agency. Except as otherwise
22 provided in this section, the data for emissions in Washington and
23 any corrections thereto that are reported to the United States
24 environmental protection agency must be the emissions data reported
25 to the department; and

26 (iii) Emissions of carbon dioxide associated with the complete
27 combustion or oxidation of liquid motor vehicle fuel, special fuel,
28 or aircraft fuel that is sold in Washington where the annual
29 emissions associated with that combustion or oxidation equal or
30 exceed ten thousand metric tons be reported to the department. Each
31 person who is required to file periodic tax reports of motor vehicle
32 fuel sales under RCW 82.36.031 or special fuel sales under RCW
33 82.38.150, or each distributor of aircraft fuel required to file
34 periodic tax reports under RCW 82.42.040 must report to the
35 department the annual emissions of carbon dioxide from the complete
36 combustion or oxidation of the fuels listed in those reports as sold
37 in the state of Washington. The department shall not require
38 suppliers to use additional data to calculate greenhouse gas
39 emissions other than the data the suppliers report to the department
40 of licensing. The rules may allow this information to be aggregated

1 when reported to the department. The department and the department of
2 licensing shall enter into an interagency agreement to ensure
3 proprietary and confidential information is protected if the
4 departments share reported information. Any proprietary or
5 confidential information exempt from disclosure when reported to the
6 department of licensing is exempt from disclosure when shared by the
7 department of licensing with the department under this provision.

8 (b)(i) Except as otherwise provided in this subsection, the rules
9 adopted by the department under (a) of this subsection must be
10 consistent with the regulations adopted by the United States
11 environmental protection agency in 40 C.F.R. Part 98 on September 22,
12 2009.

13 (ii) The department may by rule include additional gases to the
14 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
15 been designated as a greenhouse gas by the United States congress or
16 by the United States environmental protection agency. Prior to
17 including additional gases to the definition of "greenhouse gas" in
18 RCW 70.235.010, the department shall notify the appropriate
19 committees of the legislature. Decisions to amend the rule to include
20 additional gases must be made prior to December 1st of any year and
21 the amended rule may not take effect before the end of the regular
22 legislative session in the next year.

23 (iii) The department may by rule exempt persons who are required
24 to report greenhouse gas emissions to the United States environmental
25 protection agency and who emit less than ten thousand metric tons
26 carbon dioxide equivalent annually.

27 (iv) The department must establish a methodology for persons who
28 are not required to report under this section to voluntarily report
29 their greenhouse gas emissions.

30 (c) The department shall review and if necessary update its rules
31 whenever the United States environmental protection agency adopts
32 final amendments to 40 C.F.R. Part 98 to ensure consistency with
33 federal reporting requirements for emissions of greenhouse gases.
34 However, the department shall not amend its rules in a manner that
35 conflicts with (a) of this subsection.

36 (d) The department shall share any reporting information reported
37 to it with the local air authority in which the person reporting
38 under the rules adopted by the department operates.

39 (e) The fee provisions in subsection (2) of this section apply to
40 reporting of emissions of greenhouse gases. Persons required to

1 report under (a) of this subsection who fail to report or pay the fee
2 required in subsection (2) of this section are subject to enforcement
3 penalties under this chapter. The department shall enforce the
4 reporting rule requirements unless it approves a local air
5 authority's request to enforce the requirements for persons operating
6 within the authority's jurisdiction. However, neither the department
7 nor a local air authority approved under this section are authorized
8 to assess enforcement penalties on persons required to report under
9 (a) of this subsection until six months after the department adopts
10 its reporting rule in 2010.

11 (f) The energy facility site evaluation council shall,
12 simultaneously with the department, adopt rules that impose
13 greenhouse gas reporting requirements in site certifications on
14 owners or operators of a facility permitted by the energy facility
15 site evaluation council. The greenhouse gas reporting requirements
16 imposed by the energy facility site evaluation council must be the
17 same as the greenhouse gas reporting requirements imposed by the
18 department. The department shall share any information reported to it
19 from facilities permitted by the energy facility site evaluation
20 council with the council, including notice of a facility that has
21 failed to report as required. The energy facility site evaluation
22 council shall contract with the department to monitor the reporting
23 requirements adopted under this section.

24 (g) The inclusion or failure to include any person, source,
25 classes of persons or sources, or types of emissions of greenhouse
26 gases into the department's rules for reporting under this section
27 does not indicate whether such a person, source, or category is
28 appropriate for inclusion in state, regional, or national greenhouse
29 gas reduction programs or strategies. Furthermore, aircraft fuel
30 purchased in the state may not be considered equivalent to aircraft
31 fuel combusted in the state.

32 (h)(i) The definitions in RCW 70.235.010 apply throughout this
33 subsection (5) unless the context clearly requires otherwise.

34 (ii) For the purpose of this subsection (5), the term "supplier"
35 includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel
36 importer, as those terms are defined in RCW 82.36.010; (B) a special
37 fuel supplier or a special fuel importer, as those terms are defined
38 in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those
39 terms are defined in RCW 82.42.010.

1 (iii) For the purpose of this subsection (5), the term "person"
2 includes: (A) An owner or operator, as those terms are defined by the
3 United States environmental protection agency in its mandatory
4 greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted
5 on September 22, 2009; and (B) a supplier.

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