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**HOUSE BILL 2892**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representative Fitzgibbon; by request of Office of the Governor

1 AN ACT Relating to authorizing the department of ecology to  
2 regulate greenhouse gas emissions associated with persons who produce  
3 or distribute fossil fuel products that emit greenhouse gases in  
4 Washington; and amending RCW 70.94.030 and 70.94.331.

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

6 **Sec. 1.** RCW 70.94.030 and 2005 c 197 s 2 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Air contaminant" means dust, fumes, mist, smoke, other  
11 particulate matter, vapor, gas, odorous substance, or any combination  
12 thereof.

13 (2) "Air pollution" is presence in the outdoor atmosphere of one  
14 or more air contaminants in sufficient quantities and of such  
15 characteristics and duration as is, or is likely to be, injurious to  
16 human health, plant or animal life, or property, or which  
17 unreasonably interfere with enjoyment of life and property. For the  
18 purpose of this chapter, air pollution shall not include air  
19 contaminants emitted in compliance with chapter 17.21 RCW.

1 (3) "Air quality standard" means an established concentration,  
2 exposure time, and frequency of occurrence of an air contaminant or  
3 multiple contaminants in the ambient air which shall not be exceeded.

4 (4) "Ambient air" means the surrounding outside air.

5 (5) "Authority" means any air pollution control agency whose  
6 jurisdictional boundaries are coextensive with the boundaries of one  
7 or more counties.

8 (6) "Best available control technology" (BACT) means an emission  
9 limitation based on the maximum degree of reduction for each air  
10 pollutant subject to regulation under this chapter emitted from or  
11 that results from any new or modified stationary source, that the  
12 permitting authority, on a case-by-case basis, taking into account  
13 energy, environmental, and economic impacts and other costs,  
14 determines is achievable for such a source or modification through  
15 application of production processes and available methods, systems,  
16 and techniques, including fuel cleaning, clean fuels, or treatment or  
17 innovative fuel combustion techniques for control of each such a  
18 pollutant. In no event shall application of "best available control  
19 technology" result in emissions of any pollutants that will exceed  
20 the emissions allowed by any applicable standard under 40 C.F.R. Part  
21 60 and Part 61, as they exist on July 25, 1993, or their later  
22 enactments as adopted by reference by the director by rule. Emissions  
23 from any source utilizing clean fuels, or any other means, to comply  
24 with this subsection shall not be allowed to increase above levels  
25 that would have been required under the definition of BACT as it  
26 existed prior to enactment of the federal clean air act amendments of  
27 1990.

28 (7) "Best available retrofit technology" (BART) means an emission  
29 limitation based on the degree of reduction achievable through the  
30 application of the best system of continuous emission reduction for  
31 each pollutant that is emitted by an existing stationary facility.  
32 The emission limitation must be established, on a case-by-case basis,  
33 taking into consideration the technology available, the costs of  
34 compliance, the energy and nonair quality environmental impacts of  
35 compliance, any pollution control equipment in use or in existence at  
36 the source, the remaining useful life of the source, and the degree  
37 of improvement in visibility that might reasonably be anticipated to  
38 result from the use of the technology.

39 (8) "Board" means the board of directors of an authority.

1 (9) "Control officer" means the air pollution control officer of  
2 any authority.

3 (10) "Department" or "ecology" means the department of ecology.

4 (11) "Emission" means a direct or indirect release of air  
5 contaminants into the ambient air.

6 (12) "Emission standard" and "emission limitation" mean a  
7 requirement established under the federal clean air act or this  
8 chapter that limits the quantity, rate, or concentration of direct or  
9 indirect emissions of air contaminants on a continuous basis,  
10 including any requirement relating to the operation or maintenance of  
11 a source to assure continuous emission reduction, and any design,  
12 equipment, work practice, or operational standard adopted under the  
13 federal clean air act or this chapter.

14 (13) "Fine particulate" means particulates with a diameter of two  
15 and one-half microns and smaller.

16 (14) "Lowest achievable emission rate" (LAER) means for any  
17 source that rate of emissions that reflects:

18 (a) The most stringent emission limitation that is contained in  
19 the implementation plan of any state for such class or category of  
20 source, unless the owner or operator of the proposed source  
21 demonstrates that such limitations are not achievable; or

22 (b) The most stringent emission limitation that is achieved in  
23 practice by such class or category of source, whichever is more  
24 stringent.

25 In no event shall the application of this term permit a proposed  
26 new or modified source to emit any pollutant in excess of the amount  
27 allowable under applicable new source performance standards.

28 (15) "Modification" means any physical change in, or change in  
29 the method of operation of, a stationary source that increases the  
30 amount of any air contaminant emitted by such source or that results  
31 in the emission of any air contaminant not previously emitted. The  
32 term modification shall be construed consistent with the definition  
33 of modification in Section 7411, Title 42, United States Code, and  
34 with rules implementing that section.

35 (16) "Multicounty authority" means an authority which consists of  
36 two or more counties.

37 (17) "New source" means (a) the construction or modification of a  
38 stationary source that increases the amount of any air contaminant  
39 emitted by such source or that results in the emission of any air

1 contaminant not previously emitted, and (b) any other project that  
2 constitutes a new source under the federal clean air act.

3 (18) "Permit program source" means a source required to apply for  
4 or to maintain an operating permit under RCW 70.94.161.

5 (19) "Person" means an individual, firm, public or private  
6 corporation, association, partnership, political subdivision of the  
7 state, municipality, or governmental agency.

8 (20) "Reasonably available control technology" (RACT) means the  
9 lowest emission limit that a particular source or source category is  
10 capable of meeting by the application of control technology that is  
11 reasonably available considering technological and economic  
12 feasibility. RACT is determined on a case-by-case basis for an  
13 individual source or source category taking into account the impact  
14 of the source upon air quality, the availability of additional  
15 controls, the emission reduction to be achieved by additional  
16 controls, the impact of additional controls on air quality, and the  
17 capital and operating costs of the additional controls. RACT  
18 requirements for a source or source category shall be adopted only  
19 after notice and opportunity for comment are afforded.

20 (21) "Silvicultural burning" means burning of wood fiber on  
21 forestland consistent with the provisions of RCW (~~70.94.660~~)  
22 70.94.6534.

23 (22) "Source" means all of the emissions units including  
24 quantifiable fugitive emissions, that are located on one or more  
25 contiguous or adjacent properties, and are under the control of the  
26 same person, or persons under common control, whose activities are  
27 ancillary to the production of a single product or functionally  
28 related group of products.

29 (23) "Stationary source" means any building, structure, facility,  
30 or installation that emits or may emit any air contaminant.

31 (24) "Trigger level" means the ambient level of fine  
32 particulates, measured in micrograms per cubic meter, that must be  
33 detected prior to initiating a first or second stage of impaired air  
34 quality under RCW 70.94.473.

35 **Sec. 2.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to  
36 read as follows:

37 (1) The department shall have all the powers as provided in RCW  
38 70.94.141.

1 (2) The department, in addition to any other powers vested in it  
2 by law after consideration at a public hearing held in accordance  
3 with chapters 42.30 and 34.05 RCW shall:

4 (a) Adopt rules establishing air quality objectives and air  
5 quality standards;

6 (b) Adopt emission standards which shall constitute minimum  
7 emission standards throughout the state. An authority may enact more  
8 stringent emission standards, except for emission performance  
9 standards for new woodstoves and opacity levels for residential solid  
10 fuel burning devices which shall be statewide, but in no event may  
11 less stringent standards be enacted by an authority without the prior  
12 approval of the department after public hearing and due notice to  
13 interested parties;

14 (c) Adopt by rule air quality standards and emission standards  
15 for the control or prohibition of emissions to the outdoor atmosphere  
16 of radionuclides, dust, fumes, mist, smoke, other particulate matter,  
17 vapor, gas, odorous substances, or any combination thereof. Such  
18 requirements may be based upon a system of classification by types of  
19 emissions or types of sources of emissions, or combinations thereof,  
20 which it determines most feasible for the purposes of this chapter.  
21 The department may require persons who produce or distribute fossil  
22 fuels or other products that emit greenhouse gases in Washington to  
23 comply with air quality standards, emission standards, or emission  
24 limits on emissions of greenhouse gases. However, an industry, or the  
25 air pollution control authority having jurisdiction, can choose,  
26 subject to the submittal of appropriate data that the industry has  
27 quantified, to have any limit on the opacity of emissions from a  
28 source whose emission standard is stated in terms of a weight of  
29 particulate per unit volume of air (e.g., grains per dry standard  
30 cubic foot) be based on the applicable particulate emission standard  
31 for that source, such that any violation of the opacity limit  
32 accurately indicates a violation of the applicable particulate  
33 emission standard. Any alternative opacity limit provided by this  
34 section that would result in increasing air contaminants emissions in  
35 any nonattainment area shall only be granted if equal or greater  
36 emission reductions are provided for by the same source obtaining the  
37 revised opacity limit. A reasonable fee may be assessed to the  
38 industry to which the alternate opacity standard would apply. The fee  
39 shall cover only those costs to the air pollution control authority  
40 which are directly related to the determination on the acceptability

1 of the alternate opacity standard, including testing, oversight and  
2 review of data.

3 (3) The air quality standards and emission standards may be for  
4 the state as a whole or may vary from area to area or source to  
5 source, except that emission performance standards for new woodstoves  
6 and opacity levels for residential solid fuel burning devices shall  
7 be statewide, as may be appropriate to facilitate the accomplishment  
8 of the objectives of this chapter and to take necessary or desirable  
9 account of varying local conditions of population concentration, the  
10 existence of actual or reasonably foreseeable air pollution,  
11 topographic and meteorologic conditions and other pertinent  
12 variables.

13 (4) The department is directed to cooperate with the appropriate  
14 agencies of the United States or other states or any interstate  
15 agencies or international agencies with respect to the control of air  
16 pollution and air contamination, or for the formulation for the  
17 submission to the legislature of interstate air pollution control  
18 compacts or agreements.

19 (5) The department is directed to conduct or cause to be  
20 conducted a continuous surveillance program to monitor the quality of  
21 the ambient atmosphere as to concentrations and movements of air  
22 contaminants and conduct or cause to be conducted a program to  
23 determine the quantity of emissions to the atmosphere.

24 (6) The department shall enforce the air quality standards and  
25 emission standards throughout the state except where a local  
26 authority is enforcing the state regulations or its own regulations  
27 which are more stringent than those of the state.

28 (7) The department shall encourage local units of government to  
29 handle air pollution problems within their respective jurisdictions;  
30 and, on a cooperative basis provide technical and consultative  
31 assistance therefor.

32 (8) The department shall have the power to require the addition  
33 to or deletion of a county or counties from an existing authority in  
34 order to carry out the purposes of this chapter. No such addition or  
35 deletion shall be made without the concurrence of any existing  
36 authority involved. Such action shall only be taken after a public  
37 hearing held pursuant to the provisions of chapter 34.05 RCW.

38 (9) The department shall establish rules requiring sources or  
39 source categories to apply reasonable and available control methods.  
40 Such rules shall apply to those sources or source categories that

1 individually or collectively contribute the majority of statewide air  
2 emissions of each regulated pollutant. The department shall review,  
3 and if necessary, update its rules every five years to ensure  
4 consistency with current reasonable and available control methods.  
5 The department shall have adopted rules required under this  
6 subsection for all sources by July 1, 1996.

7 For the purposes of this section, "reasonable and available  
8 control methods" shall include but not be limited to, changes in  
9 technology, processes, or other control strategies.

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