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**HOUSE BILL 2957**

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**State of Washington****66th Legislature****2020 Regular Session****By** Representative Fitzgibbon

1       AN ACT Relating to reducing greenhouse gas emissions by providing  
2 authority for the regulation of indirect sources under the clean air  
3 act and implementing standards and programs that reduce emissions  
4 associated with buildings; amending RCW 70.94.030, 70.94.331,  
5 70.94.151, and 70.94.015; adding new sections to chapter 70.94 RCW;  
6 adding a new section to chapter 70.235 RCW; adding a new section to  
7 chapter 80.28 RCW; adding a new section to chapter 19.27A RCW; and  
8 creating a new section.

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

10       NEW SECTION.   **Sec. 1.**   The legislature finds that in *Association*  
11 *of Washington Business v. Washington Department of Ecology* (No.  
12 95885-8, January 16, 2020), the Washington supreme court held that  
13 certain regulations establishing emission standards for producers and  
14 distributors of fossil fuels were invalid because the department of  
15 ecology lacked sufficient statutory authority. The legislature  
16 intends by this act to expressly provide such authority under chapter  
17 70.94 RCW, the clean air act.

18       **Sec. 2.**   RCW 70.94.030 and 2005 c 197 s 2 are each amended to  
19 read as follows:

1       The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

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

6       (2) "Air pollution" is presence in the outdoor atmosphere of one  
7 or more air contaminants in sufficient quantities and of such  
8 characteristics and duration as is, or is likely to be, injurious to  
9 human health, plant or animal life, or property, or which  
10 unreasonably interfere with enjoyment of life and property. For the  
11 purpose of this chapter, air pollution shall not include air  
12 contaminants emitted in compliance with chapter 17.21 RCW.

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

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

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

20       (6) "Best available control technology" (BACT) means an emission  
21 limitation based on the maximum degree of reduction for each air  
22 pollutant subject to regulation under this chapter emitted from or  
23 that results from any new or modified stationary source, that the  
24 permitting authority, on a case-by-case basis, taking into account  
25 energy, environmental, and economic impacts and other costs,  
26 determines is achievable for such a source or modification through  
27 application of production processes and available methods, systems,  
28 and techniques, including fuel cleaning, clean fuels, or treatment or  
29 innovative fuel combustion techniques for control of each such a  
30 pollutant. In no event shall application of "best available control  
31 technology" result in emissions of any pollutants that will exceed  
32 the emissions allowed by any applicable standard under 40 C.F.R. Part  
33 60 and Part 61, as they exist on July 25, 1993, or their later  
34 enactments as adopted by reference by the director by rule. Emissions  
35 from any source utilizing clean fuels, or any other means, to comply  
36 with this subsection shall not be allowed to increase above levels  
37 that would have been required under the definition of BACT as it  
38 existed prior to enactment of the federal clean air act amendments of  
39 1990.

1       (7) "Best available retrofit technology" (BART) means an emission  
2 limitation based on the degree of reduction achievable through the  
3 application of the best system of continuous emission reduction for  
4 each pollutant that is emitted by an existing stationary facility.  
5 The emission limitation must be established, on a case-by-case basis,  
6 taking into consideration the technology available, the costs of  
7 compliance, the energy and nonair quality environmental impacts of  
8 compliance, any pollution control equipment in use or in existence at  
9 the source, the remaining useful life of the source, and the degree  
10 of improvement in visibility that might reasonably be anticipated to  
11 result from the use of the technology.

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

13      (9) "Control officer" means the air pollution control officer of  
14 any authority.

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

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

18      (12) "Emission standard" and "emission limitation" mean a  
19 requirement established under the federal clean air act or this  
20 chapter that limits the quantity, rate, or concentration of direct or  
21 indirect emissions of air contaminants on a continuous basis,  
22 including any requirement relating to the operation or maintenance of  
23 a source to assure continuous emission reduction, and any design,  
24 equipment, work practice, or operational standard adopted under the  
25 federal clean air act or this chapter.

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

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

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

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

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

1       (15) "Modification" means any physical change in, or change in  
2 the method of operation of, a stationary source that increases the  
3 amount of any air contaminant emitted by such source or that results  
4 in the emission of any air contaminant not previously emitted. The  
5 term modification shall be construed consistent with the definition  
6 of modification in Section 7411, Title 42, United States Code, and  
7 with rules implementing that section.

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

10       (17) "New source" means (a) the construction or modification of a  
11 stationary source that increases the amount of any air contaminant  
12 emitted by such source or that results in the emission of any air  
13 contaminant not previously emitted, and (b) any other project that  
14 constitutes a new source under the federal clean air act.

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

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

20       (20) "Reasonably available control technology" (RACT) means the  
21 lowest emission limit that a particular source or source category is  
22 capable of meeting by the application of control technology that is  
23 reasonably available considering technological and economic  
24 feasibility. RACT is determined on a case-by-case basis for an  
25 individual source or source category taking into account the impact  
26 of the source upon air quality, the availability of additional  
27 controls, the emission reduction to be achieved by additional  
28 controls, the impact of additional controls on air quality, and the  
29 capital and operating costs of the additional controls. RACT  
30 requirements for a source or source category shall be adopted only  
31 after notice and opportunity for comment are afforded.

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

35       (22) "Source" means all of the emissions units including  
36 quantifiable fugitive emissions, that are located on one or more  
37 contiguous or adjacent properties, and are under the control of the  
38 same person, or persons under common control, whose activities are  
39 ancillary to the production of a single product or functionally  
40 related group of products.

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

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

7       **Sec. 3.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to  
8 read as follows:

9           (1) The department shall have all the powers as provided in RCW  
10 70.94.141.

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

14           (a) Adopt rules establishing air quality objectives and air  
15 quality standards;

16           (b) Adopt emission standards which shall constitute minimum  
17 emission standards throughout the state. An authority may enact more  
18 stringent emission standards, except for emission performance  
19 standards for new woodstoves and opacity levels for residential solid  
20 fuel burning devices which shall be statewide, but in no event may  
21 less stringent standards be enacted by an authority without the prior  
22 approval of the department after public hearing and due notice to  
23 interested parties;

24           (c) Adopt by rule air quality standards and emission standards  
25 for the control or prohibition of emissions to the outdoor atmosphere  
26 of radionuclides, dust, fumes, mist, smoke, other particulate matter,  
27 vapor, gas, odorous substances, or any combination thereof. Such  
28 requirements may be based upon a system of classification by types of  
29 emissions or types of sources of emissions, or combinations thereof,  
30 which it determines most feasible for the purposes of this chapter.

31 The department or authority may require persons who produce or  
32 distribute fossil fuels or other products that emit greenhouse gases  
33 in Washington to comply with air quality standards, emission  
34 standards, or emission limits on emissions of greenhouse gases.

35 However, an industry, or the air pollution control authority having  
36 jurisdiction, can choose, subject to the submittal of appropriate  
37 data that the industry has quantified, to have any limit on the  
38 opacity of emissions from a source whose emission standard is stated  
39 in terms of a weight of particulate per unit volume of air (e.g.,

1 grains per dry standard cubic foot) be based on the applicable  
2 particulate emission standard for that source, such that any  
3 violation of the opacity limit accurately indicates a violation of  
4 the applicable particulate emission standard. Any alternative opacity  
5 limit provided by this section that would result in increasing air  
6 contaminants emissions in any nonattainment area shall only be  
7 granted if equal or greater emission reductions are provided for by  
8 the same source obtaining the revised opacity limit. A reasonable fee  
9 may be assessed to the industry to which the alternate opacity  
10 standard would apply. The fee shall cover only those costs to the air  
11 pollution control authority which are directly related to the  
12 determination on the acceptability of the alternate opacity standard,  
13 including testing, oversight and review of data.

14 (3) The air quality standards and emission standards may be for  
15 the state as a whole or may vary from area to area or source to  
16 source, except that emission performance standards for new woodstoves  
17 and opacity levels for residential solid fuel burning devices shall  
18 be statewide, as may be appropriate to facilitate the accomplishment  
19 of the objectives of this chapter and to take necessary or desirable  
20 account of varying local conditions of population concentration, the  
21 existence of actual or reasonably foreseeable air pollution,  
22 topographic and meteorologic conditions and other pertinent  
23 variables.

24 (4) The department is directed to cooperate with the appropriate  
25 agencies of the United States or other states or any interstate  
26 agencies or international agencies with respect to the control of air  
27 pollution and air contamination, or for the formulation for the  
28 submission to the legislature of interstate air pollution control  
29 compacts or agreements.

30 (5) The department is directed to conduct or cause to be  
31 conducted a continuous surveillance program to monitor the quality of  
32 the ambient atmosphere as to concentrations and movements of air  
33 contaminants and conduct or cause to be conducted a program to  
34 determine the quantity of emissions to the atmosphere.

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

39 (7) The department shall encourage local units of government to  
40 handle air pollution problems within their respective jurisdictions;

1 and, on a cooperative basis provide technical and consultative  
2 assistance therefor.

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

9 (9) The department shall establish rules requiring sources or  
10 source categories to apply reasonable and available control methods.  
11 Such rules shall apply to those sources or source categories that  
12 individually or collectively contribute the majority of statewide air  
13 emissions of each regulated pollutant. The department shall review,  
14 and if necessary, update its rules every five years to ensure  
15 consistency with current reasonable and available control methods.  
16 The department shall have adopted rules required under this  
17 subsection for all sources by July 1, 1996.

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

21 **Sec. 4.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to  
22 read as follows:

23 (1) The board of any activated authority or the department, may  
24 classify air contaminant sources, by ordinance, resolution, rule or  
25 regulation, which in its judgment may cause or contribute to air  
26 pollution, according to levels and types of emissions and other  
27 characteristics which cause or contribute to air pollution, and may  
28 require registration or reporting or both for any such class or  
29 classes. Classifications made pursuant to this section may be for  
30 application to the area of jurisdiction of such authority, or the  
31 state as a whole or to any designated area within the jurisdiction,  
32 and shall be made with special reference to effects on health,  
33 economic and social factors, and physical effects on property.

34 (2) Except as provided in subsection (3) of this section, any  
35 person operating or responsible for the operation of air contaminant  
36 sources of any class for which the ordinances, resolutions, rules or  
37 regulations of the department or board of the authority, require  
38 registration or reporting shall register therewith and make reports  
39 containing information as may be required by such department or board

1 concerning location, size and height of contaminant outlets,  
2 processes employed, nature of the contaminant emission and such other  
3 information as is relevant to air pollution and available or  
4 reasonably capable of being assembled. In the case of emissions of  
5 greenhouse gases as defined in RCW 70.235.010 the department shall  
6 adopt rules requiring reporting of those emissions. The department or  
7 board may require that such registration or reporting be accompanied  
8 by a fee, and may determine the amount of such fee for such class or  
9 classes: PROVIDED, That the amount of the fee shall only be to  
10 compensate for the costs of administering such registration or  
11 reporting program which shall be defined as initial registration and  
12 annual or other periodic reports from the source owner providing  
13 information directly related to air pollution registration, on-site  
14 inspections necessary to verify compliance with registration  
15 requirements, data storage and retrieval systems necessary for  
16 support of the registration program, emission inventory reports and  
17 emission reduction credits computed from information provided by  
18 sources pursuant to registration program requirements, staff review,  
19 including engineering or other reliable analysis for accuracy and  
20 currentness, of information provided by sources pursuant to  
21 registration program requirements, clerical and other office support  
22 provided in direct furtherance of the registration program, and  
23 administrative support provided in directly carrying out the  
24 registration program: PROVIDED FURTHER, That any such registration  
25 made with either the board or the department shall preclude a further  
26 registration and reporting with any other board or the department,  
27 except that emissions of greenhouse gases as defined in RCW  
28 70.235.010 must be reported as required under subsection (5) of this  
29 section.

30 All registration program and reporting fees collected by the  
31 department shall be deposited in the air pollution control account.  
32 All registration program fees collected by the local air authorities  
33 shall be deposited in their respective treasuries.

34 (3) If a registration or report has been filed for a grain  
35 warehouse or grain elevator as required under this section,  
36 registration, reporting, or a registration program fee shall not,  
37 after January 1, 1997, again be required under this section for the  
38 warehouse or elevator unless the capacity of the warehouse or  
39 elevator as listed as part of the license issued for the facility has  
40 been increased since the date the registration or reporting was last

1 made. If the capacity of the warehouse or elevator listed as part of  
2 the license is increased, any registration or reporting required for  
3 the warehouse or elevator under this section must be made by the date  
4 the warehouse or elevator receives grain from the first harvest  
5 season that occurs after the increase in its capacity is listed in  
6 the license.

7 This subsection does not apply to a grain warehouse or grain  
8 elevator if the warehouse or elevator handles more than ten million  
9 bushels of grain annually.

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

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

16 (b) A "license" is a license issued by the department of  
17 agriculture licensing a facility as a grain warehouse or grain  
18 elevator under chapter 22.09 RCW or a license issued by the federal  
19 government licensing a facility as a grain warehouse or grain  
20 elevator for purposes similar to those of licensure for the facility  
21 under chapter 22.09 RCW; and

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

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

32 (i) Emissions of greenhouse gases resulting from the combustion  
33 of fossil fuels be reported separately from emissions of greenhouse  
34 gases resulting from the combustion of biomass;

35 (ii) ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each  
36 annual report must include emissions data for the preceding calendar  
37 year and must be submitted to the department by ~~((October))~~ March  
38 31st of the year in which the report is due. ~~((However, starting in  
39 2011, a person who is required to report greenhouse gas emissions to  
40 the United States environmental protection agency under 40 C.F.R.~~

1 Part 98, as adopted on September 22, 2009, must submit the report  
2 required under this section to the department concurrent with the  
3 submission to the United States environmental protection agency.) )

4 Except as otherwise provided in this section, the data for emissions  
5 in Washington and any corrections thereto that are reported to the  
6 United States environmental protection agency must be the emissions  
7 data reported to the department; and

8 (iii) Emissions of carbon dioxide associated with the complete  
9 combustion or oxidation of liquid motor vehicle fuel, special fuel,  
10 or aircraft fuel that is sold in Washington where the annual  
11 emissions associated with that combustion or oxidation equal or  
12 exceed ten thousand metric tons be reported to the department. Each  
13 person who is required to file periodic tax reports of motor vehicle  
14 fuel sales under RCW 82.36.031 or special fuel sales under RCW  
15 82.38.150, or each distributor of aircraft fuel required to file  
16 periodic tax reports under RCW 82.42.040 must report to the  
17 department the annual emissions of carbon dioxide from the complete  
18 combustion or oxidation of the fuels listed in those reports as sold  
19 in the state of Washington. The department shall not require  
20 suppliers to use additional data to calculate greenhouse gas  
21 emissions other than the data the suppliers report to the department  
22 of licensing. The rules may allow this information to be aggregated  
23 when reported to the department. The department and the department of  
24 licensing shall enter into an interagency agreement to ensure  
25 proprietary and confidential information is protected if the  
26 departments share reported information. Any proprietary or  
27 confidential information exempt from disclosure when reported to the  
28 department of licensing is exempt from disclosure when shared by the  
29 department of licensing with the department under this provision.

30 (b) (i) Except as otherwise provided in this subsection, the rules  
31 adopted by the department under (a) of this subsection must be  
32 consistent with the regulations adopted by the United States  
33 environmental protection agency in 40 C.F.R. Part 98 as it existed on  
34 ((September 22, 2009)) January 1, 2020.

35 (ii) The department may by rule include additional gases to the  
36 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has  
37 been designated as a greenhouse gas by the United States congress or  
38 by the United States environmental protection agency. Prior to  
39 including additional gases to the definition of "greenhouse gas" in  
40 RCW 70.235.010, the department shall notify the appropriate

1 committees of the legislature. Decisions to amend the rule to include  
2 additional gases must be made prior to December 1st of any year and  
3 the amended rule may not take effect before the end of the regular  
4 legislative session in the next year.

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

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

12 (v) The department may by rule modify methodologies established  
13 in 40 C.F.R. Part 98.

14 (vi) The department may by rule require a person to use a  
15 specific method established in 40 C.F.R. Part 98 to complete their  
16 report to the department.

17 (c) The department shall review and if necessary update its rules  
18 whenever the United States environmental protection agency adopts  
19 final amendments to 40 C.F.R. Part 98 to ensure consistency with  
20 federal reporting requirements for emissions of greenhouse gases.  
21 However, the department shall not amend its rules in a manner that  
22 conflicts with (a) or (b) of this subsection.

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

26 (e) The fee provisions in subsection (2) of this section apply to  
27 reporting of emissions of greenhouse gases. Persons required to  
28 report under (a) of this subsection who fail to report or pay the fee  
29 required in subsection (2) of this section are subject to enforcement  
30 penalties under this chapter. The department shall enforce the  
31 reporting rule requirements unless it approves a local air  
32 authority's request to enforce the requirements for persons operating  
33 within the authority's jurisdiction. ((However, neither the  
34 department nor a local air authority approved under this section are  
35 authorized to assess enforcement penalties on persons required to  
36 report under (a) of this subsection until six months after the  
37 department adopts its reporting rule in 2010.))

38 (f) The energy facility site evaluation council shall,  
39 simultaneously with the department, adopt rules that impose  
40 greenhouse gas reporting requirements in site certifications on

1 owners or operators of a facility permitted by the energy facility  
2 site evaluation council. The greenhouse gas reporting requirements  
3 imposed by the energy facility site evaluation council must be the  
4 same as the greenhouse gas reporting requirements imposed by the  
5 department. The department shall share any information reported to it  
6 from facilities permitted by the energy facility site evaluation  
7 council with the council, including notice of a facility that has  
8 failed to report as required. The energy facility site evaluation  
9 council shall contract with the department to monitor the reporting  
10 requirements adopted under this section.

11 (g) The inclusion or failure to include any person, source,  
12 classes of persons or sources, or types of emissions of greenhouse  
13 gases into the department's rules for reporting under this section  
14 does not indicate whether such a person, source, or category is  
15 appropriate for inclusion in state, regional, or national greenhouse  
16 gas reduction programs or strategies. ~~((Furthermore, aircraft fuel  
17 purchased in the state may not be considered equivalent to aircraft  
18 fuel combusted in the state.))~~

19 (h) The department may by rule require persons to have a third  
20 party verify their report to the department. The department retains  
21 final authority when determining the accuracy of reports submitted to  
22 the department.

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

25 (ii) For the purpose of this subsection (5), the term "supplier"  
26 includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel  
27 importer, as those terms are defined in RCW 82.36.010; (B) a special  
28 fuel supplier or a special fuel importer, as those terms are defined  
29 in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those  
30 terms are defined in RCW 82.42.010.

31 (iii) For the purpose of this subsection (5), the term "person"  
32 ~~((includes))~~ means: (A) An owner or operator, as those terms are  
33 defined by the United States environmental protection agency in its  
34 mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98,  
35 as adopted on September 22, 2009; and (B) a supplier. However, the  
36 department may adopt rules that amend these United States  
37 environmental protection agency definitions to address differences in  
38 state and federal boundaries.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 70.94

2    RCW to read as follows:

3        (1) (a) The department must adopt rules under this chapter to  
4    regulate greenhouse gases as defined in RCW 70.235.010.

5        (b) The rules may not be adopted before May 1, 2021, and may not  
6    take effect before October 1, 2021.

7        (c) In the exercise of authority granted under this section and  
8    sections 2 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of  
9    this act), if the rule applies to sources of direct or indirect  
10   emissions other than transportation fuels alone, the department may  
11   not regulate entities that emit less than twenty-five thousand metric  
12   tons per year. For the purposes of assessing whether an entity  
13   exceeds this threshold, the department may average emission reported  
14   for recent years for which such data is available, or may use other  
15   reasonable methods of determining whether an entity may be assumed to  
16   emit at least twenty-five thousand metric tons per year, and  
17   therefore may be covered by regulatory requirements consistent with  
18   this section and sections 2 and 3, chapter . . ., Laws of 2020  
19   (sections 2 and 3 of this act).

20        (2) (a) For the purposes of any rules adopted by the department to  
21   regulate greenhouse gases under this chapter, the department must,  
22   for biofuels, allow credits against compliance obligations, the  
23   generation of emission reduction units, or other regulatory or  
24   market-based mechanisms in an amount proportional to the difference  
25   in lifecycle emissions attributable to:

26            (i) The biofuel; and

27            (ii) The fossil fuel including, but not limited to, gasoline,  
28   diesel, or heating oil, reasonably assumed to be displaced by the use  
29   of the biofuel.

30        (b) For the purposes of this subsection, "biofuel" means a liquid  
31   or gaseous fuel derived from organic matter including, but not  
32   limited to, biodiesel, renewable diesel, ethanol, renewable natural  
33   gas, and renewable propane.

34        (3) For the purposes of any rules adopted by the department to  
35   regulate greenhouse gases under this chapter, the department may:

36            (a) Determine, assess, and collect annual fees from persons  
37   subject to the rules in an amount sufficient to cover the direct and  
38   indirect costs of administering and enforcing the requirements of the  
39   rules;

1       (b) Rely upon market-based mechanisms, including bankable,  
2 tradeable credits or emission reduction units to achieve greenhouse  
3 gas emission reductions, as long as such mechanisms are not auctioned  
4 or sold by the state to persons subject to the rules; and

5       (c) Identify and give special consideration to energy-intensive  
6 and trade-exposed facilities only to the extent necessary in order to  
7 address leakage.

8       (4) For the purposes of this section, "leakage" means a reduction  
9 in emissions of greenhouse gases within the state that is offset by  
10 an increase in emissions of greenhouse gas emissions outside the  
11 state.

12       (5) By January 20, 2021, the house of representatives environment  
13 and energy committee and the senate environment, energy, and  
14 technology committee must hold at least one joint meeting at which  
15 the department must present an update on the progress of rule making  
16 authorized by this act.

17       NEW SECTION. **Sec. 6.** A new section is added to chapter 70.94  
18 RCW to read as follows:

19       (1) The legislature intends to support and enhance the state's  
20 ability to continue to sequester carbon through natural and working  
21 forestlands and forest products, and to promote and invest in  
22 industry sectors that act as sequesters of carbon. Among the measures  
23 that maintain and enhance carbon sequestration are maintaining and  
24 expanding the forestland base, reducing emissions from land  
25 conversion to nonforest uses, increasing forest resiliency to reduce  
26 the risk of carbon releases from disturbances such as wildfire, pest  
27 infestation, and disease, and applying sustainable forest management  
28 techniques to maintain or enhance forest carbon stocks and forest  
29 carbon sinks, including through the transference of carbon to wood  
30 products.

31       (2) In adopting rules to exercise the authority granted under  
32 sections 2 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of  
33 this act), and section 5 of this act, if the rule applies to sources  
34 of direct or indirect emissions other than transportation fuels  
35 alone, the department must provide for substantial emission reduction  
36 credits or offsets to be recognized in the sequestration of carbon in  
37 working and natural lands forests and the forest products sector. The  
38 standards for qualifying projects and activities must be consistent

1 with protocols and verification standards adopted by other  
2 jurisdictions and nongovernmental carbon offset organizations.

3       **NEW SECTION.**   **Sec. 7.**   A new section is added to chapter 70.235  
4 RCW to read as follows:

5       In exercising the authority provided under sections 2 and 3,  
6 chapter . . ., Laws of 2020 (sections 2 and 3 of this act), and  
7 section 5 of this act, the department, consistent with the  
8 requirements of chapter 34.05 RCW and in the context of cost-benefit  
9 and least burdensome analyses, must seek to integrate new state  
10 greenhouse gas requirements with existing requirements and rules. The  
11 department must seek to design new requirements in a way that helps  
12 regulated entities achieve emission reduction requirements  
13 simultaneously with other regulatory obligations at the lowest  
14 compliance cost possible.

15       **Sec. 8.**   RCW 70.94.015 and 2019 c 284 s 6 are each amended to  
16 read as follows:

17       (1) The air pollution control account is established in the state  
18 treasury. All receipts collected by or on behalf of the department  
19 from RCW 70.94.151(2), and receipts from nonpermit program sources  
20 under RCW 70.94.152(1) ((and)) 70.94.154(7), and section 5 of this  
21 act and all receipts from RCW 70.94.6528 and 70.94.6534 shall be  
22 deposited into the account. Moneys in the account may be spent only  
23 after appropriation. Expenditures from the account may be used only  
24 to develop and implement the provisions of ((chapters 70.94 and))  
25 this chapter and chapter 70.120 RCW and RCW 70.235.080.

26       (2) The amounts collected and allocated in accordance with this  
27 section shall be expended upon appropriation except as otherwise  
28 provided in this section and in accordance with the following  
29 limitations:

30       Portions of moneys received by the department of ecology from the  
31 air pollution control account shall be distributed by the department  
32 to local authorities based on:

33       (a) The level and extent of air quality problems within such  
34 authority's jurisdiction;

35       (b) The costs associated with implementing air pollution  
36 regulatory programs by such authority; and

1       (c) The amount of funding available to such authority from other  
2       sources, whether state, federal, or local, that could be used to  
3       implement such programs.

4       (3) The air operating permit account is created in the custody of  
5       the state treasurer. All receipts collected by or on behalf of the  
6       department from permit program sources under RCW 70.94.152(1),  
7       70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the  
8       account. Expenditures from the account may be used only for the  
9       activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and  
10      70.94.154(7). Moneys in the account may be spent only after  
11      appropriation.

12      NEW SECTION. **Sec. 9.** A new section is added to chapter 80.28  
13      RCW to read as follows:

14      In reviewing the utility compliance obligations associated with  
15      any rule that is adopted under the authority of sections 2 and 3,  
16      chapter . . ., Laws of 2020 (sections 2 and 3 of this act), and  
17      section 5 of this act, the commission shall ensure that its processes  
18      and mechanisms allow timely cost recovery for prudent and reasonable  
19      costs associated with compliance with this act that are incurred by  
20      electrical companies and gas companies under its jurisdiction.

21      NEW SECTION. **Sec. 10.** A new section is added to chapter 70.94  
22      RCW to read as follows:

23      (1) Until January 1, 2023, no local air authority, city, county,  
24      or other subdivision of the state may directly regulate greenhouse  
25      gas emissions through an overall emissions cap or a charge on  
26      greenhouse gas emissions.

27      (2) No local air authority, city, county, or other subdivision of  
28      the state may adopt restrictions taking effect prior to June 1, 2022,  
29      applicable to natural gas infrastructure in newly constructed  
30      buildings.

31      NEW SECTION. **Sec. 11.** A new section is added to chapter 19.27A  
32      RCW to read as follows:

33      The Washington state energy code for residential structures, 2018  
34      edition, is not effective before July 1, 2022, provided that the  
35      legislature adopts policies and provides funding for energy  
36      efficiency retrofits in existing residential buildings to achieve  
37      emission reductions in an amount projected by the department of

1 commerce to exceed the emission reductions that would have been  
2 achieved by the 2018 edition for residential energy code.

3        **NEW SECTION.**    **Sec. 12.**    A new section is added to chapter 70.94  
4 RCW to read as follows:

5        (1) The provisions of this act, the powers granted herein, and  
6 any requirements or standards established pursuant to those powers,  
7 are null and void in their entirety upon enactment of a more  
8 comprehensive program addressing greenhouse gas emissions including,  
9 but not limited to, a cap and trade system or a tax on greenhouse gas  
10 emissions.

11        (2) For the purposes of this section, a more comprehensive  
12 greenhouse gas emission program is a program that puts a price on  
13 emissions associated with direct or indirect fossil fuel sources and  
14 that is designed and forecasted, using models developed by state  
15 agencies with subject matter expertise, to achieve the emission  
16 reduction limits established in RCW 70.235.020.

17        (3) Upon determining that a more comprehensive greenhouse gas  
18 emission program has been enacted, the department of ecology shall  
19 publish a finding to that effect in the Washington State Register and  
20 submit this finding to the appropriate committees of the house of  
21 representatives and the senate, the chief clerk of the house of  
22 representatives, the secretary of the senate, and the code reviser's  
23 office. Upon publication in the Washington State Register, this act  
24 is null and void immediately.

25        **NEW SECTION.**    **Sec. 13.**    If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

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