
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5735

State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rockefeller, Hargrove, Jacobsen, Ranker, Fraser, Keiser, Jarrett, Franklin, Shin, Kohl-Welles, Regala, McAuliffe, and Kline; by request of Governor Gregoire)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to reducing greenhouse gas emissions; adding a new
2 section to chapter 47.38 RCW; adding new sections to chapter 70.235
3 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** FINDINGS. (1) The legislature reaffirms the
6 state limits on greenhouse gas emissions adopted in RCW 70.235.020.
7 Despite the recent economic downturn, the output of greenhouse gas
8 emissions continues. It remains essential to fashion a long-term
9 strategy for reduction of greenhouse gas emissions, consistent with
10 previously enacted reduction goals of the state. The legislature
11 further finds that full implementation of current policies regarding
12 energy efficiency, new clean energy technologies, efficient building
13 practices, new energy efficient transportation technologies, and other
14 policies and programs may achieve nearly one-half of the estimated
15 statewide emissions reductions needed to meet the state's 2020
16 emissions limits, but that additional reduction strategies will be
17 needed.

18 (2) Therefore, it is the intent of the legislature by this act to
19 provide a thorough review and set of recommendations to the 2011

1 legislature regarding the merits of implementing a multisector
2 emissions reduction program in the state, as well as recommended
3 additional complementary policies to achieve the state's emission
4 reduction requirements.

5 NEW SECTION. **Sec. 2.** POLICY DECLARATION. When presenting the
6 state's position on any regional or national emissions reduction
7 program that relies on a multisector, market-based approach to
8 regulating greenhouse gas emissions, the state shall adhere to the
9 following policies:

10 (1) Assuring that biomass combustion for electricity or process
11 steam production is considered carbon neutral;

12 (2) Assuring equitable economic benefits and opportunities for
13 electric utilities operating in Washington that use hydroelectric
14 generation;

15 (3) Recognition must be provided to those emissions sources that
16 have taken early action to reduce their emissions;

17 (4) That the state's forest and agricultural lands that are managed
18 in ways that increase carbon sequestration be recognized for the use of
19 offsets to regulatory limits on emissions; and

20 (5) Assuring the protection of low and moderate income households.

21 NEW SECTION. **Sec. 3.** EMISSIONS CAPS. (1) In order to assist
22 Washington in meeting the requirements in RCW 70.235.020, the
23 department of ecology shall recommend a greenhouse gas emissions
24 reduction program that sets statewide and sector emission caps for
25 persons that annually emit at or above twenty-five thousand metric tons
26 of carbon dioxide equivalents. The emissions reduction program must
27 recognize early actions, complementary policies, and offsets as
28 specified in section 5 of this act. The emissions reduction program
29 must include protocols for directing technical and financial incentives
30 to those persons who monitor and demonstrate their emissions
31 reductions. No element of the program recommendations in this section
32 may be implemented unless specifically authorized by a future act of
33 the legislature.

34 (2) The department of ecology's recommendations must include the
35 following program design elements:

1 (a) Phase one of the emissions reduction program should be designed
2 to begin in 2012 and covers the following sectors: (i) Electricity
3 generated in the state or generated out-of-state and delivered to the
4 state by long-term financial commitments under chapter 80.80 RCW; (ii)
5 industrial and commercial fuel combustion; and (iii) industrial process
6 emissions;

7 (b) Phase two of the emissions reduction program should be designed
8 to begin in 2015 and covers the following sectors: (i) Transportation
9 fuel combustion; (ii) residential fuel combustion; and (iii) fuel
10 delivered or sold for industrial and commercial combustion where the
11 fuel is used by persons not otherwise covered by the program in 2012.
12 Phase two of the program may include complementary measures, except
13 that measures for transportation fuels must focus on emissions
14 reductions, not raising revenues, and consideration must be given to
15 differing rural and urban circumstances;

16 (c) For each compliance period, emissions caps must decline evenly
17 in each sector until the state greenhouse gas emissions are reduced as
18 required by RCW 70.235.020;

19 (d) Except for purposes of reporting, the following carbon dioxide
20 emissions are not covered by the program:

21 (i) Emissions from industrial combustion of biomass in the form of
22 fuel wood, wood waste, wood by-products, and wood residuals as long as
23 the region's silvicultural sequestration capacity is maintained or
24 increased; and

25 (ii) Emissions from the combustion of biofuels or the biofuel
26 component of blended fuels as the term "biofuel" is defined in RCW
27 43.325.010; and

28 (e) No more than forty-nine percent of a sector's total emissions
29 reductions from 2012 to 2020 may be satisfied with offsets.

30 (3) The recommendations in this section must be submitted to the
31 appropriate committees of the legislature by December 1, 2010.

32 NEW SECTION. **Sec. 4.** ALTERNATIVE STRATEGIES FOR ACHIEVING
33 EMISSIONS REDUCTIONS. (1) The department of ecology shall report to
34 the legislature on alternative strategies the state may implement to
35 meet the requirements in RCW 70.235.020. The report must include the
36 following: A comprehensive examination of all measures, not market-

1 based, that the state could employ to reduce the emissions of
2 greenhouse gases, such as:

3 (a) Regulatory emissions caps and other performance oriented
4 regulations;

5 (b) Economic and fiscal measures that would supplement a regulatory
6 approach;

7 (c) Measures for substantially reducing greenhouse gas emissions
8 from the electricity sector, including measures to facilitate the
9 transition from electricity generation derived from any coal-fired
10 facility to generation with significantly reduced emissions;

11 (d) Measures for reducing transportation emissions in urban areas
12 of the state, including programs providing incentives and assistance
13 for the deployment of electric vehicles and the necessary
14 infrastructure for such vehicles and policies directing the increased
15 use of these vehicles within state agency fleets; and

16 (e) Measures for reducing emissions by increasing energy efficiency
17 in buildings and commercial and industrial applications.

18 (2) The report must include an analysis of the alignment of
19 policies and standards among the participating jurisdictions in the
20 western climate initiative.

21 (3) The report must include recommendations for establishing a
22 performance auditing mechanism to monitor the effectiveness of
23 emissions reduction strategies.

24 (4) The report must include recommendations on complementary
25 measures the state may undertake to supplement a national emissions
26 reduction program.

27 (5) The report must incorporate an economic analysis by the
28 forecasting office of the office of financial management, in
29 consultation with members of the governor's council of economic
30 advisors, of the impact to Washington consumers, businesses, and
31 citizens if Washington entered into a regional or federal emissions
32 reduction program. The economic analysis must include:

33 (a) Various economic scenarios, such as when Washington has a
34 robust economy and when Washington is in an economic downturn;

35 (b) The economic impact sector by sector, including the impact to
36 the forest products manufacturing sector and Washington's port
37 districts;

1 (c) How to address trade competition from countries and states that
2 are not participating in an emissions reduction program;

3 (d) How to ensure that economic benefits are available to both
4 urban and rural communities; and

5 (e) The impact on the cost and affordability of food, housing,
6 energy, transportation, and other routine expenses on low and moderate-
7 income households.

8 (6) The report must be submitted to the appropriate committees of
9 the legislature by December 1, 2010.

10 NEW SECTION. **Sec. 5. OFFSETS.** (1) The department of ecology
11 shall recommend criteria for issuing and accepting offset credits for
12 offset projects that may be used to meet a person's compliance
13 obligation in a state, regional, or national emissions reduction
14 program. The department must give priority to investigating and
15 developing criteria for offset projects within the forestry,
16 agriculture, and waste management sectors, but must also develop
17 criteria for recognizing offsets from all sources of emissions
18 reductions that are additional to existing regulatory requirements and
19 that are reductions beyond business as usual emission levels. The
20 department shall present the state's policy on forestry offset projects
21 established under section 6 of this act as the state's position when
22 developing the criteria for forestry offset projects within any other
23 regional or national cap and trade emissions reduction program.

24 (2) With regard to forestry offsets, the department of ecology must
25 give first priority for issuing offset credits for forestry offset
26 projects located in Washington. Second priority must be given to
27 offset projects within Washington, Oregon, Idaho, and Montana. Third
28 priority must be given to offset projects that are located in any other
29 jurisdiction in the United States. One offset credit must be issued
30 for up to each metric ton of emissions as measured in carbon dioxide
31 equivalent associated with an offset project.

32 (3) Except as provided in this section, the department of ecology
33 may accept offset credits for compliance purposes from other
34 jurisdictions as well as annex 1 countries from the United Nations
35 framework convention on climate change, but only if an offset project
36 is not available in Washington.

1 (4) The department of ecology may also accept for compliance
2 purposes offset credits from developing countries, but only if an
3 offset project is not available in Washington. Offset credits from
4 developing countries must be in accordance with the clean development
5 mechanism of the Kyoto protocol or if the clean development mechanism
6 is replaced, a protocol developed by the department. The department
7 may develop criteria for these offset projects to ensure similar rigor
8 to offset projects within the state.

9 (5) Any offset credit that is used to meet a compliance obligation
10 must conform to the rules adopted by the department of ecology.

11 (6) Upon receipt by the department of ecology of an offset credit
12 to meet a compliance obligation, the department shall retire the offset
13 credit.

14 (7) The department of ecology shall ensure that all offset credits
15 that it issues are tracked to ensure that the department knows who
16 holds a given offset credit and when it is retired.

17 (8) The department of ecology shall consult with tribal governments
18 upon request on any offset criteria that may affect tribal governments,
19 such as the voluntary development of offset projects by tribes.

20 (9) The recommendations in this section must be submitted to the
21 appropriate committees of the legislature by December 1, 2010.

22 NEW SECTION. **Sec. 6.** FORESTRY OFFSET POLICY. The department of
23 ecology, in consultation with the forest practices board, the
24 department of natural resources, and the forest carbon working group,
25 shall develop the state's policy for forestry offset projects within
26 Washington. The agencies and the working group shall use the 2008
27 report of the forest carbon working group as the starting point in
28 developing the policy. The final policy must be completed by December
29 31, 2009, unless the department of ecology notifies the agencies and
30 working group that the policy is needed sooner. The public must be
31 provided with the opportunity to review and comment on the policy as it
32 is developed. The policy must include:

33 (1) Specific standards and guidelines that will support carbon
34 accounting in managed forests participating in an offset program;

35 (2) How to ensure that any carbon that is reduced or sequestered by
36 a forestry offset project will be eligible for an offset credit within
37 a regional or national cap and trade emissions reduction program;

1 (3) Recognition of management activities that increase carbon
2 stocks including, but not limited to, thinning, lengthening rotations,
3 increased retention of trees after harvest, fertilization, genetics,
4 timber stand improvement, fire management, and specific site class and
5 productivity of a managed forest;

6 (4) Specific standards and guidelines to support wood products
7 accounting, recognizing that carbon is stored in products after trees
8 are harvested including the use of the one hundred year method which
9 estimates the amount of carbon stored in the wood products that are
10 projected to remain in use after one hundred years;

11 (5) Guidelines on how forestry offset projects and forestry
12 financial incentive programs can work together so that Washington's
13 forest landowners will not be disadvantaged in comparison to other
14 jurisdictions participating in a regional or national cap and trade
15 emissions reduction program; and

16 (6) Recommendations for how to verify or certify carbon stocks that
17 will not be administratively burdensome.

18 NEW SECTION. **Sec. 7.** FINANCIAL INCENTIVES FOR FORESTRY. The
19 department of ecology, in consultation with the forest practices board,
20 the department of natural resources, and the forest carbon working
21 group, shall develop and deliver to the legislature by December 1,
22 2010, legislation to implement a financial incentives program for
23 forestry and forest products that will recognize activities such as:

24 (1) Forest landowners maintaining and actively managing their
25 forest land using management activities such as thinning, lengthening
26 of rotations, increased retention of trees at harvest, fertilization,
27 genetics, timber stand improvement, and fire management;

28 (2) Forest landowners continuing the production of wood products
29 while maintaining or increasing their carbon stocks on the ground;

30 (3) Retention by forest landowners of high carbon stocks where
31 there is no obligation to retain such stocks; and

32 (4) The use by developers and builders of wood building materials
33 instead of more intensive fossil fuel products such as concrete and
34 steel.

35 NEW SECTION. **Sec. 8.** WESTERN CLIMATE INITIATIVE. The director of

1 the department of ecology is authorized to continue discussions with
2 other jurisdictions in the western climate initiative.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.38 RCW
4 to read as follows:

5 (1) As a necessary and desirable step to expedite the transition to
6 transportation technologies and infrastructure with reduced emissions,
7 the department shall implement an electric vehicle and alternative fuel
8 vehicle infrastructure program that accelerates planning and allocation
9 of funding for pilot projects to demonstrate the feasibility of large
10 scale deployment of charging and alternative fuels distribution
11 infrastructure. The program must include the provisions in this
12 section and other electric vehicle programs being implemented by the
13 department.

14 (2) The governor shall direct the department, in collaboration with
15 the states of Oregon and California, to develop a multistate electric
16 vehicle infrastructure initiative. The objective of the initiative is
17 to implement large scale demonstration projects that support the
18 charging and other necessary infrastructure for electric vehicles along
19 shared interstate highways and in major urban areas in the three
20 states. The governor shall work in a multistate collaboration to seek
21 major federal funding for planning and projects in the initiative.

22 (3) As an element of the program authorized under this section, the
23 legislature authorizes an alternative fuels corridor pilot project
24 capable of supporting electric vehicle charging and battery exchange
25 technologies. To the extent permitted under federal programs,
26 regulations, or laws, the department may enter into partnership
27 agreements with other public and private entities for the use of land
28 and facilities along state routes and within interstate highway rights-
29 of-way for an alternative fuels corridor pilot project. The pilot
30 project may allow for commercial activities only as necessary to attain
31 basic economic sufficiency. The department is not responsible for
32 providing capital equipment nor operating refueling or recharging
33 services. At a minimum, the pilot project must:

34 (a) Limit renewable fuel and vehicle technology offerings to those
35 with a forecasted demand over the next fifteen years and approved by
36 the department;

1 (b) Ensure that a pilot project site does not compete with existing
2 retail businesses for the provision of the same refueling services or
3 recharging technologies in the same geographic area;

4 (c) Provide existing truck stop operators and retail truck
5 refueling businesses with an absolute right of first refusal over the
6 offering of refueling services to class six trucks with a maximum gross
7 vehicle weight of twenty-six thousand pounds within the same geographic
8 area identified for a possible pilot project site;

9 (d) Reach agreement with the department of services for the blind
10 ensuring that any commercial activities at host sites do not materially
11 affect the revenues forecasted from their vending operations at each
12 site;

13 (e) Regulate the internal rate of return from the partnership,
14 including provisions to reduce or eliminate the level of state support
15 once the partnership attains economic self-sufficiency;

16 (f) Be limited to not more than five locations on state-owned land
17 within federal interstate rights-of-way or state highway rights-of-way
18 in Washington; and

19 (g) Be limited in duration to a term of years reasonably necessary
20 for the partnership to recover the cost of capital investments, plus
21 the regulated internal rate of return.

22 (4) The department of transportation's obligations under this
23 section are subject to availability of amounts appropriated for the
24 specific purpose identified in this section.

25 NEW SECTION. **Sec. 10.** A regional transportation planning
26 organization containing any county with a population in excess of one
27 million in collaboration with representatives from the department of
28 ecology, the department of transportation, the department of community,
29 trade, and economic development, local governments, and the office of
30 regulatory affairs must seek federal or private funding for the
31 planning for, deployment of, or regulations concerning electric vehicle
32 infrastructure.

33 NEW SECTION. **Sec. 11.** ACCOUNT CREATED. The emissions reduction
34 assistance account is created in the state treasury. All
35 appropriations to the account and twenty-five percent of all federal
36 funds received pursuant to H.R. 1, P.L. 111-5 for the purpose of

1 assisting with energy efficiency and renewable energy, including
2 federal funds received for the state energy program, must be deposited
3 in the account. Other funds, gifts, grants, and endowments from public
4 or private sources, in trust or otherwise, may be directed into the
5 account. Any moneys received from sponsor match payments must be
6 deposited in the account. Moneys in the account may be spent only
7 after appropriation. Expenditures from the account may be used for the
8 following purposes, however at least ten percent of the revenues in the
9 account must be used for the purposes identified in subsection (5) of
10 this section:

11 (1) Assisting persons in achieving emissions reductions under
12 section 3 of this act;

13 (2) Assisting the transition of coal-fired facilities to cleaner-
14 burning technologies;

15 (3) Reducing price impacts for consumers with incomes within two
16 hundred fifty percent of the federal poverty level;

17 (4) Strategies to create jobs and provide for worker transition,
18 especially in and for those communities and workers that have been
19 disproportionately affected by economic downturns, through efforts to
20 reduce emissions, reduce energy use, and develop clean energy supplies;

21 (5) Supporting transit and transportation projects, including
22 telework projects, that will reduce greenhouse gas emissions;

23 (6) Energy efficiency and renewable energy incentives including
24 matching electric utility sponsored programs that support customer
25 energy efficiency investment, new renewable energy resource
26 development, including related transmission, energy storage, and
27 integration technologies;

28 (7) Promoting emissions reductions and carbon sequestration in
29 agriculture, forestry, waste management, and other uncapped sectors;

30 (8) Efforts funded by local governments to reduce community
31 greenhouse gas emissions;

32 (9) Adaptation to climate change impacts, including impacts on
33 affected species, habitats, and communities; and

34 (10) Research, development, demonstrations, and deployment of
35 technology to reduce greenhouse gas emissions.

36 NEW SECTION. **Sec. 12.** Captions used in this act are not any part
37 of the law.

1 NEW_SECTION. **Sec. 13.** Sections 2 and 11 of this act are each
2 added to chapter 70.235 RCW.

3 NEW_SECTION. **Sec. 14.** This act shall be in effect only to the
4 extent that funds are specifically appropriated for the purposes of
5 this act.

--- END ---