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**SUBSTITUTE SENATE BILL 6373**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Ranker, Rockefeller, Swecker, Pridemore, Marr, Kline, and Fraser; by request of Department of Ecology)

READ FIRST TIME 02/01/10.

1 AN ACT Relating to reporting of emissions of greenhouse gases;  
2 amending RCW 70.235.010 and 70.94.151; and declaring an emergency.

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

4 **Sec. 1.** RCW 70.235.010 and 2008 c 14 s 2 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Carbon dioxide equivalents" means a metric measure used to  
9 compare the emissions from various greenhouse gases based upon their  
10 global warming potential.

11 (2) "Climate advisory team" means the stakeholder group formed in  
12 response to executive order 07-02.

13 (3) "Climate impacts group" means the University of Washington's  
14 climate impacts group.

15 (4) "Department" means the department of ecology.

16 (5) (~~"Direct emissions" means emissions of greenhouse gases from~~  
17 ~~sources of emissions, including stationary combustion sources, mobile~~  
18 ~~combustion emissions, process emissions, and fugitive emissions.~~

19 ~~(6))~~ "Director" means the director of the department.

1 ((+7)) (6) "Greenhouse gas" and "greenhouse gases" includes carbon  
2 dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,  
3 ((and)) sulfur hexafluoride, and any other gas or gases designated by  
4 the department by rule.

5 ~~((+8)) "Indirect emissions" means emissions of greenhouse gases~~  
6 ~~associated with the purchase of electricity, heating, cooling, or~~  
7 ~~steam.~~

8 (+9)) (7) "Person" means an individual, partnership, franchise  
9 holder, association, corporation, a state, a city, a county, or any  
10 subdivision or instrumentality of the state.

11 ((+10)) (8) "Program" means the department's climate change  
12 program.

13 ~~((+11)) "Total emissions of greenhouse gases" means all direct~~  
14 ~~emissions and all indirect emissions.~~

15 (+12)) (9) "Western climate initiative" means the collaboration of  
16 states, Canadian provinces, Mexican states, and tribes to design a  
17 multisector market-based mechanism as directed under the western  
18 regional climate action initiative signed by the governor on February  
19 22, 2007.

20 **Sec. 2.** RCW 70.94.151 and 2008 c 14 s 5 are each amended to read  
21 as follows:

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

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

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

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

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

1 the date the registration or reporting was last made. If the capacity  
2 of the warehouse or elevator listed as part of the license is  
3 increased, any registration or reporting required for the warehouse or  
4 elevator under this section must be made by the date the warehouse or  
5 elevator receives grain from the first harvest season that occurs after  
6 the increase in its capacity is listed in 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 elevator  
18 under chapter 22.09 RCW or a license issued by the federal government  
19 licensing a facility as a grain warehouse or grain elevator for  
20 purposes similar to those of licensure for the facility under chapter  
21 22.09 RCW; and

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

23 (5)(a) The department shall adopt rules requiring ~~((the reporting~~  
24 ~~of)) persons to report emissions of greenhouse gases as defined in RCW~~  
25 ~~70.235.010(.~~ ~~The rules must include a de minimis amount of emissions~~  
26 ~~below which reporting will not be required for both indirect and direct~~  
27 ~~emissions. The rules must require that emissions of greenhouse gases~~  
28 ~~resulting from the burning of fossil fuels be reported separately from~~  
29 ~~emissions of greenhouse gases resulting from the burning of biomass.~~  
30 ~~Except as provided in (b) of this subsection, the department shall,~~  
31 ~~under the authority granted in subsection (1) of this section, adopt~~  
32 ~~rules requiring any owner or operator: (i) Of a fleet of on-road motor~~  
33 ~~vehicles that as a fleet emit at least twenty five hundred metric tons~~  
34 ~~of greenhouse gas annually in the state to report the emissions of~~  
35 ~~greenhouse gases generated from or emitted by that fleet; or (ii) of a~~  
36 ~~source or combination of sources that emit at least ten thousand metric~~  
37 ~~tons of greenhouse gas annually in the state to report their total~~  
38 ~~annual emissions of greenhouse gases. In calculating emissions of~~

1 greenhouse gases for purposes of determining whether or not reporting  
2 is required, only direct emissions shall be included. For purposes of  
3 reporting emissions of greenhouse gases in chapter 14, Laws of 2008,  
4 "source" means any stationary source as defined in RCW 70.94.030, or  
5 mobile source used for transportation of people or cargo. The  
6 emissions of greenhouse gases must be reported as carbon dioxide  
7 equivalents. The rules must require that persons report 2009 emissions  
8 starting in 2010. The rules must establish an annual reporting  
9 schedule that takes into account the time needed to allow the owner or  
10 operator reporting emissions of greenhouse gases to gather the  
11 information needed and to verify the emissions being reported.  
12 However, in no event may reports be submitted later than October 31st  
13 of the year in which the report is due. The department may phase in  
14 the reporting requirements for sources or combinations of sources under  
15 (a)(ii) of this subsection until the reporting threshold is met, which  
16 must be met by January 1, 2012. The department may from time to time  
17 amend the rules to include other persons that emit less than the annual  
18 greenhouse gas emissions levels set out in this subsection if necessary  
19 to comply with any federal reporting requirements for emissions of  
20 greenhouse gases.

21 (b) In its rules, the department may defer the reporting  
22 requirement under (a) of this subsection for emissions associated with  
23 interstate and international commercial aircraft, rail, truck, or  
24 marine vessels until (i) there is a federal requirement to report these  
25 emissions; or (ii) the department finds that there is a generally  
26 accepted reporting protocol for determining interstate emissions from  
27 these sources.) where those emissions from a single facility, source,  
28 or site, or from fossil fuels sold in Washington by a single supplier  
29 meet or exceed ten thousand metric tons of carbon dioxide equivalent  
30 annually. The department may phase in the requirement to report  
31 greenhouse gas emissions until the reporting threshold in this  
32 subsection is met, which must occur by January 1, 2012. In addition,  
33 the rules must require that:

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

37 (ii) Reporting will start in 2010 for 2009 emissions. Each annual  
38 report must include emissions data for the preceding calendar year and

1 must be submitted to the department by October 31st of the year in  
2 which the report is due. However, starting in 2011, a person who is  
3 required to report greenhouse gas emissions to the United States  
4 environmental protection agency under 40 C.F.R. Part 98, as adopted on  
5 September 22, 2009, must submit the report required under this section  
6 to the department concurrent with the submission to the United States  
7 environmental protection agency. Except as otherwise provided in this  
8 section, the data for emissions in Washington and any corrections  
9 thereto that are reported to the United States environmental protection  
10 agency must be the emissions data reported to the department; and

11 (iii) Emissions of carbon dioxide associated with the complete  
12 combustion or oxidation of liquid motor vehicle fuel, special fuel, or  
13 aircraft fuel that is sold in Washington where the annual emissions  
14 associated with that combustion or oxidation equal or exceed ten  
15 thousand metric tons be reported to the department. Each person who is  
16 required to file periodic tax reports of motor vehicle fuel sales under  
17 RCW 82.36.031 or special fuel sales under RCW 82.38.150, or each  
18 distributor of aircraft fuel required to file periodic tax reports  
19 under RCW 82.42.040 must report to the department the annual emissions  
20 of carbon dioxide from the complete combustion or oxidation of the  
21 fuels listed in those reports as sold in the state of Washington. The  
22 rules may allow this information to be aggregated when reported to the  
23 department. The department and the department of licensing may enter  
24 into an interagency agreement if necessary to share reported  
25 information and protect proprietary information. Any proprietary  
26 information exempt from disclosure when reported to the department of  
27 licensing is exempt from disclosure when shared by the department of  
28 licensing with the department under this provision.

29 (b) Except as otherwise provided in this subsection, the rules  
30 adopted by the department under (a) of this subsection must be  
31 consistent with the regulations adopted by the United States  
32 environmental protection agency in 40 C.F.R. Part 98 on September 22,  
33 2009. The department may by rule include additional gases to the  
34 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has  
35 been designated as a greenhouse gas by the United States congress or by  
36 the United States environmental protection agency. The department may  
37 by rule exempt persons who are required to report greenhouse gas

1 emissions to the United States environmental protection agency and who  
2 emit less than ten thousand metric tons carbon dioxide equivalent  
3 annually.

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

10 (d) The department shall share any reporting information reported  
11 to it with the local air authority in which the ((owner or operator))  
12 person reporting under the rules adopted by the department operates.

13 ((d)) (e) The fee provisions in subsection (2) of this section  
14 apply to reporting of emissions of greenhouse gases. ((Owners and  
15 operators)) Persons required to report under (a) of this subsection who  
16 fail to report or pay the fee required in subsection (2) of this  
17 section are subject to enforcement penalties under this chapter. The  
18 department shall enforce the reporting rule requirements unless it  
19 approves a local air authority's request to enforce the requirements  
20 for ((sources)) persons operating within the authority's jurisdiction.

21 ((e)) (f) The energy facility site evaluation council shall,  
22 simultaneously with the department, adopt rules that impose greenhouse  
23 gas reporting requirements in site certifications on owners or  
24 operators of a facility permitted by the energy facility site  
25 evaluation council. The greenhouse gas reporting requirements imposed  
26 by the energy facility site evaluation council must be the same as the  
27 greenhouse gas reporting requirements imposed by the department. The  
28 department shall share any information reported to it from facilities  
29 permitted by the energy facility site evaluation council with the  
30 council, including notice of a facility that has failed to report as  
31 required. The energy facility site evaluation council shall contract  
32 with the department to monitor the reporting requirements adopted under  
33 this section.

34 ((f) In developing its rules, the department shall, with the  
35 assistance of the department of transportation, identify a mechanism to  
36 report an aggregate estimate of the annual emissions of greenhouse  
37 gases generated from or emitted by otherwise unreported on road motor  
38 vehicles.))

1 (g) The inclusion or failure to include any person, source, classes  
2 of persons or sources, or types of emissions of greenhouse gases into  
3 the department's rules for reporting under this section does not  
4 indicate whether such a person, source, or category is appropriate for  
5 inclusion in the (~~(multisector market based system designed under RCW~~  
6 ~~70.235.020)) state, regional, or national greenhouse gas reduction  
7 program or strategy.~~

8 (~~(h) ((Should the federal government adopt rules sufficient to track~~  
9 ~~progress toward the emissions reductions required by chapter 14, Laws~~  
10 ~~of 2008 governing the reporting of greenhouse gases, the department~~  
11 ~~shall amend its rules, as necessary, to seek consistency with the~~  
12 ~~federal rules to ensure duplicate reporting is not required. Nothing~~  
13 ~~in this section requires the department to increase the reporting~~  
14 ~~threshold established in (a) of this subsection or otherwise require~~  
15 ~~the department's rules be identical to the federal rules in scope.))~~

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

18 (ii) For the purpose of this subsection (5), the term "supplier"  
19 includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel  
20 importer, as those terms are defined in RCW 82.36.010; (B) a special  
21 fuel supplier or a special fuel importer, as those terms are defined in  
22 RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms  
23 are defined in RCW 82.42.010.

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

29 NEW SECTION. Sec. 3. This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and takes effect  
32 immediately.

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