

SHB 3141 - S COMM AMD

By Committee on Natural Resources, Energy & Water

ADOPTED 03/03/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Applicant" has the meaning provided in RCW 80.50.020 and
6 includes an applicant for a permit for a fossil-fueled thermal electric
7 generation facility subject to RCW 70.94.152 and section 2(1) (b) or
8 (d) of this act.

9 (2) "Authority" means any air pollution control agency whose
10 jurisdictional boundaries are coextensive with the boundaries of one or
11 more counties.

12 (3) "Carbon credit" means a verified reduction in carbon dioxide or
13 carbon dioxide equivalents that is registered with a state, national,
14 or international trading authority or exchange that has been recognized
15 by the council.

16 (4) "Carbon dioxide equivalents" means a metric measure used to
17 compare the emissions from various greenhouse gases based upon their
18 global warming potential.

19 (5) "Cogeneration credit" means the carbon dioxide emissions that
20 the council, department, or authority, as appropriate, estimates would
21 be produced on an annual basis by a stand-alone industrial and
22 commercial facility equivalent in operating characteristics and output
23 to the industrial or commercial heating or cooling process component of
24 the cogeneration plant.

25 (6) "Cogeneration plant" means a fossil-fueled thermal power plant
26 in which the heat or steam is also used for industrial or commercial
27 heating or cooling purposes and that meets federal energy regulatory
28 commission standards for qualifying facilities under the public utility
29 regulatory policies act of 1978.

1 (7) "Commercial operation" means the date that the first
2 electricity produced by a facility is delivered for commercial sale to
3 the power grid.

4 (8) "Council" means the energy facility site evaluation council
5 created by RCW 80.50.030.

6 (9) "Department" means the department of ecology.

7 (10) "Fossil fuel" means natural gas, petroleum, coal, or any form
8 of solid, liquid, or gaseous fuel derived from such material to produce
9 heat for the generation of electricity.

10 (11) "Mitigation plan" means a proposal that includes the process
11 or means to achieve carbon dioxide mitigation through use of mitigation
12 projects or carbon credits.

13 (12) "Mitigation project" means one or more of the following:

14 (a) Projects or actions that are implemented by the certificate
15 holder or order of approval holder, directly or through its agent, or
16 by an independent qualified organization to mitigate the emission of
17 carbon dioxide produced by the fossil-fueled thermal electric
18 generation facility. This term includes but is not limited to the use
19 of, energy efficiency measures, clean and efficient transportation
20 measures, qualified alternative energy resources, demand side
21 management of electricity consumption, and carbon sequestration
22 programs;

23 (b) Direct application of combined heat and power (cogeneration);

24 (c) Verified carbon credits traded on a recognized trading
25 authority or exchange; or

26 (d) Enforceable and permanent reductions in carbon dioxide or
27 carbon dioxide equivalents through process change, equipment shutdown,
28 or other activities under the control of the applicant and approved as
29 part of a carbon dioxide mitigation plan.

30 (13) "Order of approval" means an order issued under RCW 70.94.152
31 with respect to a fossil-fueled thermal electric generation facility
32 subject to section 2(1) (b) or (d) of this act.

33 (14) "Permanent" means that emission reductions used to offset
34 emission increases are assured for the life of the corresponding
35 increase, whether unlimited or limited in duration.

36 (15) "Qualified alternative energy resource" has the same meaning
37 as in RCW 19.29A.090.

1 (16) "Station generating capability" means the maximum load a
2 generator can sustain over a given period of time without exceeding
3 design limits, and measured using maximum continuous electric
4 generation capacity, less net auxiliary load, at average ambient
5 temperature and barometric pressure.

6 (17) "Total carbon dioxide emissions" means:

7 (a) For a fossil-fueled thermal electric generation facility
8 described under section 2(1) (a) and (b) of this act, the amount of
9 carbon dioxide emitted over a thirty-year period based on the
10 manufacturer's or designer's guaranteed total net station generating
11 capability, new equipment heat rate, an assumed sixty percent capacity
12 factor for facilities under the council's jurisdiction or sixty percent
13 of the operational limitations on facilities subject to an order of
14 approval, and taking into account any enforceable limitations on
15 operational hours or fuel types and use; and

16 (b) For a fossil-fueled thermal electric generation facility
17 described under section 2(1) (c) and (d) of this act, the amount of
18 carbon dioxide emitted over a thirty-year period based on the proposed
19 increase in the amount of electrical output of the facility that
20 exceeds the station generation capability of the facility prior to the
21 applicant applying for certification or an order of approval pursuant
22 to section 2(1) (c) and (d) of this act, new equipment heat rate, an
23 assumed sixty percent capacity factor for facilities under the
24 council's jurisdiction or sixty percent of the operational limitations
25 on facilities subject to an order of approval, and taking into account
26 any enforceable limitations on operational hours or fuel types and use.

27 NEW SECTION. **Sec. 2.** (1) The provisions of this chapter apply to:

28 (a) New fossil-fueled thermal electric generation facilities with
29 station-generating capability of three hundred fifty thousand kilowatts
30 or more and fossil-fueled floating thermal electric generation
31 facilities of one hundred thousand kilowatts or more under RCW
32 80.50.020(14)(a), for which an application for site certification is
33 made to the council after July 1, 2004;

34 (b) New fossil-fueled thermal electric generation facilities with
35 station-generating capability of more than twenty-five thousand
36 kilowatts, but less than three hundred fifty thousand kilowatts, except

1 for fossil-fueled floating thermal electric generation facilities under
2 the council's jurisdiction, for which an application for an order of
3 approval has been submitted after July 1, 2004;

4 (c) Fossil-fueled thermal electric generation facilities with
5 station-generating capability of three hundred fifty thousand kilowatts
6 or more that have an existing site certification agreement and, after
7 July 1, 2004, apply to the council to increase the output of carbon
8 dioxide emissions by fifteen percent or more through permanent changes
9 in facility operations or modification or equipment; and

10 (d) Fossil-fueled thermal electric generation facilities with
11 station-generating capability of more than twenty-five thousand
12 kilowatts, but less than three hundred fifty thousand kilowatts, except
13 for fossil-fueled floating thermal electric generation facilities under
14 the council's jurisdiction, that have an existing order of approval
15 and, after July 1, 2004, apply to the department or authority, as
16 appropriate, to permanently modify the facility so as to increase its
17 station-generating capability by at least twenty-five thousand
18 kilowatts or to increase the output of carbon dioxide emissions by
19 fifteen percent or more, whichever measure is greater.

20 (2)(a) A proposed site certification agreement submitted to the
21 governor under RCW 80.50.100 and a final site certification agreement
22 issued under RCW 80.50.100 shall include an approved carbon dioxide
23 mitigation plan.

24 (b) For fossil-fueled thermal electric generation facilities not
25 under jurisdiction of the council, the order of approval shall require
26 an approved carbon dioxide mitigation plan.

27 (c) Site certification agreement holders or order of approval
28 holders may request, at any time, a change in conditions of an approved
29 carbon dioxide mitigation plan if the council, department, or
30 authority, as appropriate, finds that the change meets all requirements
31 and conditions for approval of such plans.

32 (3) An applicant for a fossil-fueled thermal electric generation
33 facility shall include one or a combination of the following carbon
34 dioxide mitigation options as part of its mitigation plan:

35 (a) Payment to a third party to provide mitigation;

36 (b) Direct purchase of permanent carbon credits; or

1 (c) Investment in applicant-controlled carbon dioxide mitigation
2 projects, including combined heat and power (cogeneration).

3 (4) Fossil-fueled thermal electric generation facilities that
4 receive site certification approval or an order of approval shall
5 provide mitigation for twenty percent of the total carbon dioxide
6 emissions produced by the facility.

7 (5) If the certificate holder or order of approval holder chooses
8 to pay a third party to provide the mitigation, the mitigation rate
9 shall be one dollar and sixty cents per metric ton of carbon dioxide to
10 be mitigated. For a cogeneration plant, the monetary amount is based
11 on the difference between twenty percent of the total carbon dioxide
12 emissions and the cogeneration credit.

13 (a) Through rule making, the council may adjust the rate per ton
14 biennially as long as any increase or decrease does not exceed fifty
15 percent of the current rate. The department or authority shall use the
16 adjusted rate established by the council pursuant to this subsection
17 for fossil-fueled thermal electric generation facilities subject to the
18 provisions of this chapter.

19 (b) In adjusting the mitigation rate the council shall consider,
20 but is not limited to, the current market price of a ton of carbon
21 dioxide. The council's adjusted mitigation rate shall be consistent
22 with RCW 80.50.010(3).

23 (6) The applicant may choose to make to the third party a lump sum
24 payment or partial payment over a period of five years.

25 (a) Under the lump sum payment option, the payment amount is
26 determined by multiplying the total carbon dioxide emissions by the
27 twenty percent mitigation requirement under subsection (4) of this
28 section and by the per ton mitigation rate established under subsection
29 (5) of this section.

30 (b) No later than one hundred twenty days after the start of
31 commercial operation, the certificate holder or order of approval
32 holder shall make a one-time payment to the independent qualified
33 organization for the amount determined under subsection (5) of this
34 section.

35 (c) As an alternative to a one-time payment, the certificate holder
36 or order of approval holder may make a partial payment of twenty
37 percent of the amount determined under subsection (5) of this section

1 no later than one hundred twenty days after commercial operation and a
2 payment in the same amount or as adjusted according to subsection
3 (5)(a) of this section, on the anniversary date of the initial payment
4 in each of the following four years. With the initial payment, the
5 certificate holder or order of approval holder shall provide a letter
6 of credit or other comparable security acceptable to the council or the
7 department for the remaining eighty percent mitigation payment amount
8 including possible changes to the rate per metric ton from rule making
9 under subsection (5)(a) of this section.

10 NEW SECTION. **Sec. 3.** (1) Carbon dioxide mitigation plans relying
11 on purchase of permanent carbon credits must meet the following
12 criteria:

13 (a) Credits must derive from real, verified, permanent, and
14 enforceable carbon dioxide or carbon dioxide equivalents emission
15 mitigation not otherwise required by statute, regulation, or other
16 legal requirements;

17 (b) The credits must be acquired after July 1, 2004; and

18 (c) The credits may not have been used for other carbon dioxide
19 mitigation projects.

20 (2) Permanent carbon credits purchased for project mitigation shall
21 not be resold unless approved by the council, department, or authority.

22 NEW SECTION. **Sec. 4.** (1) The carbon dioxide mitigation option
23 that provides for direct investment shall be implemented through
24 mitigation projects conducted directly by, or under the control of, the
25 certificate holder or order of approval holder.

26 (2) Mitigation projects must be approved by the council,
27 department, or authority, as appropriate, and made a condition of the
28 proposed and final site certification agreement or order of approval.
29 Direct investment mitigation projects shall be approved if the
30 mitigation projects provide a reasonable certainty that the performance
31 requirements of the mitigation projects will be achieved and the
32 mitigation projects were implemented after July 1, 2004. No
33 certificate holder or order of approval holder shall be required to
34 make direct investments that would exceed the cost of making a lump sum

1 payment to a third party, had the certificate holder or order of
2 approval holder chosen that option under section 2 of this act.

3 (3) Mitigation projects must be fully in place within a reasonable
4 time after the start of commercial operation. Failure to implement an
5 approved mitigation plan is subject to enforcement under chapter 80.50
6 or 70.94 RCW.

7 (4) The certificate holder or order of approval holder may not use
8 more than twenty percent of the total funds for the selection,
9 monitoring, and evaluation of mitigation projects and the management
10 and enforcement of contracts.

11 (5)(a) For facilities under the jurisdiction of the council, the
12 implementation of a carbon dioxide mitigation project, other than
13 purchase of a carbon credit shall be monitored by an independent entity
14 for conformance with the performance requirements of the carbon dioxide
15 mitigation plan. The independent entity shall make available the
16 mitigation project monitoring results to the council.

17 (b) For facilities under the jurisdiction of the department or
18 authority pursuant to section 2(1) (b) or (c) of this act, the
19 implementation of a carbon dioxide mitigation project, other than a
20 purchase of carbon dioxide equivalent emission reduction credits, shall
21 be monitored by the department or authority issuing the order of
22 approval.

23 (6) Upon promulgation of federal requirements for carbon dioxide
24 mitigation for fossil-fueled thermal electric generation facilities,
25 those requirements may be deemed by the council, department, or
26 authority to be equivalent and a replacement for the requirements of
27 this section.

28 NEW SECTION. **Sec. 5.** (1) The council shall maintain a list of
29 independent qualified organizations with proven experience in emissions
30 mitigation activities and a demonstrated ability to carry out their
31 activities in an efficient, reliable, and cost-effective manner.

32 (2) An independent qualified organization shall not use more than
33 twenty percent of the total funds for selection, monitoring, and
34 evaluation of mitigation projects and the management and enforcement of
35 contracts. None of these funds shall be used to lobby federal, state,
36 and local agencies, their elected officials, officers, or employees.

1 (3) Before signing contracts to purchase offsets with funds from
2 certificate holders or order of approval holders, an independent
3 qualified organization must demonstrate to the council that the
4 mitigation projects it proposes to use provides a reasonable certainty
5 that the performance requirements of the carbon dioxide mitigation
6 projects will be achieved.

7 (4) The independent qualified organization shall permit the council
8 to appoint up to three persons to inspect plans, operation, and
9 compliance activities of the organization and to audit financial
10 records and performance measures for carbon dioxide mitigation projects
11 using carbon dioxide mitigation money paid by certificate holders or
12 order of approval holders under this chapter.

13 (5) An independent qualified organization must file biennial
14 reports with the council, the department, or authority on the
15 performance of carbon dioxide mitigation projects, including the amount
16 of carbon dioxide reductions achieved and a statement of cost for the
17 mitigation period.

18 NEW SECTION. **Sec. 6.** Reasonable and necessary costs incurred by
19 the council in implementing and administering this chapter shall be
20 assessed against applicants and holders of site certification
21 agreements that are subject to the requirements of this chapter.

22 NEW SECTION. **Sec. 7.** The council, department, and authority shall
23 adopt rules to carry out this chapter.

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

26 (1) For fossil-fueled electric generation facilities having more
27 than twenty-five thousand kilowatts station generating capability but
28 less than three hundred fifty thousand kilowatts station generation
29 capability, except for fossil-fueled floating thermal electric
30 generation facilities under the jurisdiction of the energy facility
31 site evaluation council pursuant to RCW 80.50.010, the department or
32 authority shall implement a carbon dioxide mitigation program
33 consistent with the requirements of chapter 80.-- RCW (sections 1
34 through 7 of this act).

1 (2) For mitigation projects conducted directly by or under the
2 control of the applicant, the department or local air authority shall
3 approve or deny the mitigation plans, as part of its action to approve
4 or deny an application submitted under RCW 70.94.152 based upon whether
5 or not the mitigation plan is consistent with the requirements of
6 chapter 80.-- RCW (sections 1 through 7 of this act).

7 (3) The department or authority may determine, assess, and collect
8 fees sufficient to cover the costs to review and approve or deny the
9 carbon dioxide mitigation plan components of an order of approval
10 issued under RCW 70.94.152. The department or authority may also
11 collect fees sufficient to cover its additional costs to monitor
12 conformance with the carbon dioxide mitigation plan components of the
13 registration and air operating permit programs authorized in RCW
14 70.94.151 and 70.94.161. The department or authority shall track its
15 costs related to review, approval, and monitoring conformance with
16 carbon dioxide mitigation plans.

17 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute
18 a new chapter in Title 80 RCW."

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19 On page 1, line 2 of the title, after "generation;" strike the
20 remainder of the title and insert "adding a new section to chapter
21 70.94 RCW; and adding a new chapter to Title 80 RCW."

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