

# HOUSE BILL REPORT

## SHB 3141

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### As Passed Legislature

**Title:** An act relating to mitigating carbon dioxide emissions resulting from fossil-fueled electrical generation.

**Brief Description:** Establishing a policy to mitigate carbon dioxide emissions.

**Sponsors:** By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representative Morris).

### Brief History:

#### Committee Activity:

Technology, Telecommunications & Energy: 2/4/04, 2/6/04 [DPS].

#### Floor Activity:

Passed House: 2/17/04, 69-27.

Senate Amended.

Passed Senate: 3/3/04, 40-6.

House Concurred.

Passed House: 3/9/04, 69-26.

Passed Legislature.

### Brief Summary of Substitute Bill

- Establishes carbon dioxide mitigation requirements for fossil fueled thermal power plants with a generating capacity of 25 megawatts or more.

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## HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Anderson, Blake, Hudgins, Kirby, Romero, Tom, Wallace and Wood.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Nixon, Assistant Ranking Minority Member; Bush, Delvin, McMahan and McMorris.

**Staff:** Pam Madson (786-7166).

**Background:**

The Energy Facility Site Evaluation Council (EFSEC) was created in 1970 to provide one-stop licensing for large energy projects. Council membership includes mandatory representation from five state agencies and discretionary representation from four additional state agencies. The council's membership may include representatives from the particular city, county, or port district where potential projects may be located.

The EFSEC's jurisdiction includes the siting of electric thermal power plants above 350 megawatts. In 2003, EFSEC released a package of proposed rules designed to set standards for siting electric power plants. One of the proposed rules addresses the mitigation of carbon dioxide (CO<sub>2</sub>) emissions resulting from operation of these plants. Carbon dioxide mitigation requirements have been included in all recent siting approvals for electric power plants.

New or expanding industrial and commercial sources of air pollution emissions, including fossil-fueled thermal power plants, must obtain an order of approval from the Department of Ecology (DOE) or a local air pollution control authority. The order may set limits on emissions, require monitoring, record keeping, reporting, and other compliance measures.

The DOE is also developing rules for the mitigation of CO<sub>2</sub> emissions from fossil fueled thermal electric power plants not under the siting jurisdiction of EFSEC.

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**Summary of Substitute Bill:**

Fossil fueled thermal power plants with a generating capacity of 25 MW or more must provide mitigation for 20 percent of the CO<sub>2</sub> emissions produced by the plant over a period of 30 years. This requirement applies to new power plants seeking site certification or an order of approval after July 1, 2004, and existing plants that increase the production of CO<sub>2</sub> emissions by 15 percent or more.

This mitigation requirement applies to thermal power plants under the jurisdiction of the EFSEC, except for floating thermal power plants of 100 megawatt capacity or more. The requirement also applies to thermal power plants that must seek an order of approval for plants with a generating capacity less than 350 megawatts but with 25 megawatts or more from either DOE or a local air pollution control authority.

In determining total CO<sub>2</sub> emissions, the calculation uses a capacity factor of 60 percent or operational limitations contained in the order of approval (for plants not under the jurisdiction of EFSEC).

For plants that must seek site certification under the EFSEC, a CO<sub>2</sub> mitigation plan must

be included in a site certification agreement. For plants that apply for approval from the DOE or an air pollution control authority, an approved CO2 mitigation plan must be included as part of the order.

Carbon dioxide may be mitigated by making payment to an independent qualified organization, by direct purchase of permanent carbon credits, or by direct investment in CO2 mitigation projects.

**Payment to a Third Party Option.** The rate that must be paid per ton for those CO2 emissions that must be mitigated is \$1.60. This rate is subject to adjustment. For cogeneration plants, the monetary amount is based on the difference between 20 percent of total carbon dioxide emissions and the cogeneration credit. Payment may be made in a lump sum no later than 60 days prior to the start of construction or in partial payments over five years. Partial payments are paid in equal annual amounts and are also subject to adjustment.

The council may adjust the per ton rate every two years and any increase or decrease may not exceed 50 percent of the current rate. The DOE or local air authorities must use the adjusted rate established by the EFSEC.

**Carbon Credit Option.** Credits must come from real, permanent, verifiable CO2 mitigation not otherwise required or used for other CO2 mitigation projects. Credits eligible for mitigation must be acquired after July 1, 2004. Credits may be resold only with the approval of the EFSEC, DOE, or a local air authority.

**Direct Investment Option.** Mitigation projects must be approved by the EFSEC, the DOE, or a local authority and must be included in the site certification agreement or the order of approval. Direct investments are limited in amount to no more than the cost of a lump sum payment option. Projects must be in place in a reasonable time after the start of commercial operation. Implementation will be monitored by an independent entity for applicants under the jurisdiction of EFSEC, and by the DOE or a local air authority for applicants not under the jurisdiction of EFSEC, except for carbon credits. No more than 20 percent of the funds may be used for selection, monitoring, and evaluation of the mitigation project.

**Independent Qualified Organization.** The council must maintain a list of independent qualified organizations. No more than 20 percent of the funds may be used for selection, monitoring, and evaluation of the mitigation project. The organization must permit the council to appoint three persons to inspect plans, operations, and compliance activities of the organization and audit financial records and performance standards. The organization must file biennial reports with the EFSEC and the DOE.

Mitigation projects under both the payment to a third party option and direct investment option must: (1) provide a reasonable certainty that the performance requirements will be

achieved; (2) be implemented after July 1, 2004; (3) minimize the extent to which external events can reduce the amount of CO2 offset; (4) accomplish CO2 reductions that would not otherwise take place; and (5) provide for mitigation of an appropriate duration.

Reasonable and necessary costs for implementing this program must be assessed against the applicants and site certification holders subject to this requirement. The DOE or local air authority may assess and collect fees to administer this program. The EFSEC, DOE, and local authority may adopt rules to implement the program.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The Energy Facility Site Evaluation Council began rule-making last year to establish standards for CO2 mitigation for power plants. The EFSEC has been applying CO2 standards on an ad hoc basis. Applicants need standards so they know what is expected of them as they enter a project. The DOE has jurisdiction over plants below 350 megawatts and is starting rule-making to set standards. Parties are continuing to work on standards that can be placed in statute. This will provide more certainty for applicants than adoption of a rule. This is still a work in progress. A number of stakeholders have been involved in these discussion. The bill needs additional input. This is the product of a lot of public debate. A number of concerns have been expressed including the price per ton for mitigation, sufficient credit for cogeneration, credit for mitigation other greenhouse gases, the method for adjusting the rate, and the lack of an option for annual payments. These have been very productive discussions. Some support a higher rate per ton for mitigation and a higher percentage for mitigation in that this country is a source of very high emissions.

**Testimony Against:** None.

**Persons Testifying:** Dave Danner, Office of the Governor; Collins Sprague, Avista Corp.; Kristin Sauwin, Association of Washington Business; Linda Ver Nooy, Global Warming Action; Bill LaBorde, Northwest Energy Coalition; and Toni Potter, League of Women Voters

**Persons Signed In To Testify But Not Testifying:** None.