
HOUSE BILL 1210

State of Washington 60th Legislature 2007 Regular Session

By Representatives Chase, Morris, Kagi, Ormsby and Moeller

Read first time 01/15/2007. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to reducing statewide greenhouse gas emissions;
2 amending RCW 70.94.030; and adding new sections to chapter 70.94 RCW.

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

4 **Sec. 1.** RCW 70.94.030 and 2005 c 197 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) "Air contaminant" means dust, fumes, mist, smoke, other
9 particulate matter, vapor, gas, odorous substance, or any combination
10 thereof.

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

18 (3) "Air quality standard" means an established concentration,

1 exposure time, and frequency of occurrence of an air contaminant or
2 multiple contaminants in the ambient air which shall not be exceeded.

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

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

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

26 (7) "Best available retrofit technology" (BART) means an emission
27 limitation based on the degree of reduction achievable through the
28 application of the best system of continuous emission reduction for
29 each pollutant that is emitted by an existing stationary facility. The
30 emission limitation must be established, on a case-by-case basis,
31 taking into consideration the technology available, the costs of
32 compliance, the energy and nonair quality environmental impacts of
33 compliance, any pollution control equipment in use or in existence at
34 the source, the remaining useful life of the source, and the degree of
35 improvement in visibility that might reasonably be anticipated to
36 result from the use of the technology.

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

1 (9) "Carbon dioxide equivalent" has the same meaning assigned to
2 that term in RCW 80.70.010.

3 (10) "Control officer" means the air pollution control officer of
4 any authority.

5 (~~(10)~~) (11) "Department" or "ecology" means the department of
6 ecology.

7 (~~(11)~~) (12) "Emission" means a release of air contaminants into
8 the ambient air.

9 (~~(12)~~) (13) "Emission standard" and "emission limitation" mean a
10 requirement established under the federal clean air act or this chapter
11 that limits the quantity, rate, or concentration of emissions of air
12 contaminants on a continuous basis, including any requirement relating
13 to the operation or maintenance of a source to assure continuous
14 emission reduction, and any design, equipment, work practice, or
15 operational standard adopted under the federal clean air act or this
16 chapter.

17 (~~(13)~~) (14) "Fine particulate" means particulates with a diameter
18 of two and one-half microns and smaller.

19 (~~(14)~~) (15) "Greenhouse gas" or "greenhouse gases" includes the
20 following gases: Carbon dioxide, methane, nitrous oxide,
21 hydrofluorocarbons, perfluorocarbons, and sulfur hexaflouride.

22 (16) "Greenhouse gas emissions level" means the total annual
23 emissions of greenhouse gases in the state expressed in tons of carbon
24 dioxide equivalents. The term includes all emissions of greenhouse
25 gases from the generation of electricity delivered to and consumed in
26 Washington regardless of the state in which the electricity was
27 originally generated.

28 (17) "Greenhouse gas emission reduction measures" means programs,
29 measures, standards, and allowable alternative compliance mechanisms
30 applicable to sources or categories of sources that are designed to
31 reduce greenhouse gas emissions.

32 (18) "Lowest achievable emission rate" (LAER) means for any source
33 that rate of emissions that reflects:

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

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

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

7 ~~((+15+))~~ (19) "Modification" means any physical change in, or
8 change in the method of operation of, a stationary source that
9 increases the amount of any air contaminant emitted by such source or
10 that results in the emission of any air contaminant not previously
11 emitted. The term modification shall be construed consistent with the
12 definition of modification in Section 7411, Title 42, United States
13 Code, and with rules implementing that section.

14 ~~((+16+))~~ (20) "Multicounty authority" means an authority which
15 consists of two or more counties.

16 ~~((+17+))~~ (21) "New source" means (a) the construction or
17 modification of a stationary source that increases the amount of any
18 air contaminant emitted by such source or that results in the emission
19 of any air contaminant not previously emitted, and (b) any other
20 project that constitutes a new source under the federal clean air act.

21 ~~((+18+))~~ (22) "Official act of the legislature" means a bill or
22 section of a bill passed by a majority of the house of representatives
23 and senate and not vetoed by the governor.

24 (23) "Permit program source" means a source required to apply for
25 or to maintain an operating permit under RCW 70.94.161.

26 ~~((+19+))~~ (24) "Person" means an individual, firm, public or private
27 corporation, association, partnership, political subdivision of the
28 state, municipality, or governmental agency.

29 ~~((+20+))~~ (25) "Reasonably available control technology" (RACT)
30 means the lowest emission limit that a particular source or source
31 category is capable of meeting by the application of control technology
32 that is reasonably available considering technological and economic
33 feasibility. RACT is determined on a case-by-case basis for an
34 individual source or source category taking into account the impact of
35 the source upon air quality, the availability of additional controls,
36 the emission reduction to be achieved by additional controls, the
37 impact of additional controls on air quality, and the capital and

1 operating costs of the additional controls. RACT requirements for a
2 source or source category shall be adopted only after notice and
3 opportunity for comment are afforded.

4 ~~((+21+))~~ (26) "Silvicultural burning" means burning of wood fiber
5 on forest land consistent with the provisions of RCW 70.94.660.

6 ~~((+22+))~~ (27) "Source" means all of the emissions units including
7 quantifiable fugitive emissions, that are located on one or more
8 contiguous or adjacent properties, and are under the control of the
9 same person, or persons under common control, whose activities are
10 ancillary to the production of a single product or functionally related
11 group of products.

12 ~~((+23+))~~ (28) "Stationary source" means any building, structure,
13 facility, or installation that emits or may emit any air contaminant.

14 ~~((+24+))~~ (29) "Trigger level" means the ambient level of fine
15 particulates, measured in micrograms per cubic meter, that must be
16 detected prior to initiating a first or second stage of impaired air
17 quality under RCW 70.94.473.

18 NEW SECTION. Sec. 2. A new section is added to chapter 70.94 RCW
19 to read as follows:

20 (1) The department shall, by January 1, 2009, adopt a rule that
21 identifies an estimate as to what the statewide greenhouse gas
22 emissions level was in the year 1990.

23 (2) In identifying an estimated emissions level, the department
24 shall evaluate the best available scientific, technological, and
25 economic information relating to historic greenhouse gas emissions.

26 (3) Once adopted, the identified 1990 statewide greenhouse gas
27 emissions level may not be amended unless the department is directed to
28 do so by an official act of the legislature. If the department finds
29 after adopting the 1990 statewide level that advancements in
30 scientific, technological, or economic information warrants an
31 amendment to the adopted level, the director of the department shall
32 formally bring this information forward to the governor and the chairs
33 of the appropriate committees of the legislature.

34 NEW SECTION. Sec. 3. A new section is added to chapter 70.94 RCW
35 to read as follows:

1 (1) By January 1, 2020, the annual statewide greenhouse gas
2 emissions level shall be no more than the 1990 estimated level
3 identified by the department under section 2 of this act.

4 (2) The department shall adopt rules that are designed to allow the
5 state to satisfy the annual statewide greenhouse gas emissions level in
6 a way that uses the maximum technologically feasible and cost-effective
7 greenhouse gas emission reduction measures.

8 (3) Any rules adopted under this section may only apply to sources
9 of greenhouse gas emissions, or categories of sources, whose emissions
10 are at such a level of significance, as determined by the department,
11 that their inclusion will enable the department to effectively reduce
12 greenhouse gas emissions and monitor compliance with the statewide
13 greenhouse gas emissions limit.

14 (4) In administering this section, the department shall adopt
15 temporary rules under section 4 of this act and permanent rules under
16 section 5 of this act.

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

19 (1) Consistent with this section and section 3 of this act, the
20 department shall adopt a series of temporary rules, by June 30, 2008,
21 designed to allow the state to satisfy the annual statewide greenhouse
22 gas emissions level identified in section 3 of this act.

23 (2)(a) Before adopting temporary rules under this section, the
24 department shall identify and make available to the public a list of
25 proposed early action greenhouse gas emission reduction measures that
26 can be implemented before the permanent rules established in section 5
27 of this act.

28 (b) The list of proposed early actions must be made available for
29 public inspection and comment for no less than six months before the
30 department formally adopts the temporary rules required by this
31 section.

32 (c) Temporary rules adopted under this section must be
33 substantially consistent with the list of proposed early actions
34 developed by the department.

35 (3) Temporary rules adopted by the department under this section
36 shall only remain in effect until the permanent rules developed under
37 section 5 of this act take effect.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.94 RCW
2 to read as follows:

3 (1) Consistent with this section and section 3 of this act, the
4 department shall adopt a series of permanent rules, by June 30, 2011,
5 designed to allow the state to satisfy the annual statewide greenhouse
6 gas emissions level identified in section 3 of this act.

7 (2) Before adopting permanent rules under this section, the
8 department shall develop a scoping plan as provided in section 6 of
9 this act.

10 (3) In adopting permanent rules under this section, the department
11 shall, to the extent feasible:

12 (a) Ensure that the rules are substantially consistent with the
13 terms of the scoping plan adopted under section 6 of this act;

14 (b) Design the rules, including the distribution of emission
15 allowances, in a manner that is equitable, seeks to minimize costs and
16 maximize benefits, and encourages early action to reduce greenhouse gas
17 emissions;

18 (c) Ensure that activities undertaken under the rules do not
19 disproportionately impact low-income communities;

20 (d) Ensure that entities that have voluntarily reduced their
21 emissions before the adoption of the permanent rules receive
22 appropriate credit for their early action;

23 (e) Ensure that activities undertaken under the permanent rules
24 complement, and do not interfere with, federal and state efforts to
25 achieve and maintain ambient air quality standards;

26 (f) Consider overall societal benefits, including reductions in air
27 pollutants other than greenhouse gases, diversification of energy
28 sources, and other benefits to the economy, environment, and public
29 health;

30 (g) Minimize the administrative burden of implementing and
31 complying with the permanent rules; and

32 (h) Incorporate any appropriate temporary rules adopted under
33 section 4 of this act.

34 (4) If the department includes in the permanent rules a market-
35 based compliance mechanism, it must be designed consistent with section
36 7 of this act.

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

3 (1) The department shall develop a scoping plan for achieving the
4 maximum technologically feasible and cost-effective reductions in
5 greenhouse gas emissions from sources or categories of sources by the
6 year 2020.

7 (2) In developing the scoping plan, the department shall consult
8 with all public agencies with jurisdiction over the sources of
9 greenhouse gas emissions.

10 (3) The scoping plan shall identify and make recommendations on
11 direct emissions reduction measures, alternative compliance mechanisms,
12 market-based compliance mechanisms, and potential monetary and
13 nonmonetary incentives for sources and categories of sources.

14 (4) The department shall ensure that the scoping plan:

15 (a) Evaluates the total potential costs and total potential
16 economic and noneconomic benefits of the plan on the state's economy,
17 environment, and public health;

18 (b) Takes into account the relative contribution of each source or
19 source category to statewide greenhouse gas emissions;

20 (c) Takes into account the potential for adverse effects on small
21 businesses; and

22 (d) Recommends a de minimis threshold of greenhouse gas emissions
23 below which emission reductions requirements will not apply.

24 (5) Before final approval of the scoping plan, the department shall
25 conduct a series of public workshops to give all interested parties an
26 opportunity to comment on the scoping plan.

27 (6) The department shall update the scoping plan at least once
28 every five years.

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.94 RCW
30 to read as follows:

31 (1) The department may include in the permanent rules adopted under
32 section 5 of this act a mechanism to allow carbon sources, or
33 categories of carbon sources, to use market-based compliance mechanisms
34 in order to achieve the annual statewide greenhouse gas emissions level
35 established in section 3 of this act.

36 (2) Any market-based compliance mechanism allowed by the department
37 must be either:

1 (a) A system of market-based declining annual aggregate emissions
2 limitations for sources or categories of sources that emit greenhouse
3 gases; or

4 (b) Greenhouse gas emissions exchanges, banking, credits, and other
5 transactions governed by rule of the department that result in the same
6 greenhouse gas emission reduction over the same time period as direct
7 compliance with greenhouse gas emission reduction measures adopted by
8 the department in permanent rules under section 5 of this act.

9 (3) Before including market-based compliance mechanisms in the
10 permanent rules adopted under section 5 of this act, the department
11 shall:

12 (a) Consider the potential for direct, indirect, and cumulative
13 emission impacts from the market-based compliance mechanisms, including
14 localized impacts in communities that are already adversely impacted by
15 air pollution; and

16 (b) Design any market-based compliance mechanisms in a way that
17 prevent increases in the emission of toxic air contaminants or other
18 air pollutants.

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

21 (1) By January 1, 2009, the department shall adopt rules that
22 require the reporting and verification of statewide greenhouse gas
23 emissions.

24 (2) The rules adopted under this section must:

25 (a) Require the monitoring and annual reporting of greenhouse gas
26 emissions from greenhouse gas emission sources, beginning with the
27 sources or categories of sources that contribute the most to statewide
28 greenhouse gas emissions;

29 (b) Account for greenhouse gas emissions from all electricity
30 consumed in the state, as reported by the retail sellers of
31 electricity;

32 (c) Ensure consistent accounting of emissions, and provide
33 reporting tools and formats to ensure collection of necessary data; and

34 (d) Ensure that greenhouse gas emission sources maintain
35 comprehensive records of all reported greenhouse gas emissions.

36 (3) The department shall periodically review and update the
37 emission reporting rules required by this section.

1 (4) The department shall review existing and proposed
2 international, federal, and state greenhouse gas emission reporting
3 programs when developing or updating the rules required under this
4 section, and make reasonable efforts to promote consistency among the
5 programs.

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