SENATE BILL REPORT
E2SSB 5735

As Amended by House, April 14, 2009

Title: An act relating to reducing greenhouse gas emissions.

Brief Description: Reducing greenhouse gas emissions.

Sponsors: Senate Committee on 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).

Brief History:
Committee Activity: Environment, Water & Energy: 2/03/09, 2/10/09, 2/24/09 [DPS-WM, DNP].
Ways & Means: 2/27/09, 3/02/09 [DP2S, DNP].
Passed Senate: 3/11/09, 29-19.
Passed House: 4/14/09, 59-37.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5735 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Hatfield, Marr and Ranker.

Minority Report: Do not pass.
Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist, Morton and Sheldon.

Staff: William Bridges (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5735 be substituted therefor, and the second substitute bill do pass.
Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Keiser, Kline, Kohl-Welles, McDermott, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.
Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Hobbs, Honeyford, Parlette and Schoesler.

Staff: Maria Hovde (786-7710)

Background: Cap and Trade. In general terms, a cap-and-trade program is a market-based mechanism to reduce air pollution. First, a cap is set on an air pollutant. Entities are then given or sold "allowances" to emit the pollutant. Entities with unused allowances are allowed to sell their surpluses to entities that have overspent their allowances. Sometimes, a cap-and-trade program allows the use of "offsets," which are emission cuts outside the cap but are nonetheless treated like an allowance.

A U.S. cap-and-trade program was established for sulfur dioxide in 1990. In 2005, the European Union enacted a cap-and-trade program for CO2 emissions called the European Union Emission Trading System. In the U.S., the first mandatory cap-and-trade program for CO2 emissions is the Regional Greenhouse Gas Initiative (RGGI), an effort of ten northeastern states that auctioned its first allowances last fall.

Western Climate Initiative (WCI). In 2007 the governors of Arizona, California, New Mexico, Oregon, and Washington formed the WCI. They were later joined by Montana and Utah, and the Canadian provinces of British Columbia, Manitoba, Ontario, and Quebec. Other U.S. and Mexican states have joined as observers.

The WCI has recommended the implementation of a cap-and-trade program as part of a comprehensive regional effort to reduce greenhouse gas (GHG) emissions by 15 percent below 2005 levels by 2020.

Washington's GHG Emission Reduction Targets. In 2008 the Legislature set the following GHG reduction targets for the state:
- by 2020 reduce overall GHG emissions in the state to 1990 levels;
- by 2035 reduce overall GHG emissions in the state to 25 percent below 1990 levels; and
- by 2050 reduce overall GHG emissions in the state to 50 percent below 1990 levels, or 70 percent below the state's expected GHG emissions that year.

The Legislature also required the Department of Ecology (DOE), in coordination with the WCI, to develop a design for a regional multisector market-based system to limit and reduce GHG emissions. The design was presented to the Legislature in December 2008, and its concepts are addressed in this bill.

Summary of Engrossed Second Substitute Bill: Specifying Legislative Findings and Intent. The Legislature reaffirms the state's greenhouse gas (GHG) emission targets established in 2008. In addition, the Legislature finds, among other things, that despite the current economic downturn, it remains essential that the state fashion a long-term strategy for reducing GHG emissions.

The Legislature intends to provide recommendations to the 2011 Legislature regarding the merits of implementing a multisector emissions reduction program, as well as recommendations for complementary measures to achieve the state's emission reduction requirements.

Declaring an Emissions Reduction Policy. Polices are specified for the state's position on any regional or national multisector, market-based approach to regulating GHG emissions; for example, assuring equitable economic benefits and opportunities for electric utilities operating in Washington that use hydroelectric generation.

Requiring Recommendations for an Emission Reduction Program and Emission Caps. By December 1, 2010, the Department of Ecology (DOE) must recommend a GHG emissions reduction program that sets statewide and sector emission caps for persons that annually emit at or above 25,000 metric tons of $CO2$ equivalents. Except for reporting purposes, emissions from industrial biomass and biofuel combustion are not covered by the program.

Starting 2012, the following sectors should be covered by the program: (1) electricity generated in the state or generated out of the state and delivered to the state by long-term financial commitments under the state emissions performance law; (2) industrial and commercial fuel combustion; and (3) industrial process emissions.

Starting 2015, the following sectors should be covered by the program: (1) transportation fuel combustion; (2) residential fuel combustion; and (3) fuel delivered or sold for industrial and commercial combustion where the fuel is used by persons not otherwise covered in 2012. The 2015 phase of the program may include complementary measures, except that measures for transportation fuels must focus on emissions reductions, not raising revenues, and consideration must be given to differing rural and urban circumstances.

No more than 49 percent of a sector's total emissions reductions from 2012 to 2020 may be satisfied with offsets.

Requiring Alternative Strategies for Achieving Emissions Reductions. By December 1, 2010, DOE must report to the Legislature alternative strategies the state may implement to meet the GHG emissions targets established in 2008. The report must include a comprehensive examination of all measures, not market-based, that the state could employ to reduce the emissions of greenhouse gases, such as regulatory emissions caps and other performance oriented regulations. The report must also incorporate an analysis of the economic impact of an emissions reduction program on the state's consumers, businesses, and citizens. The economic analysis must be conducted by the Forecasting Office of the Office of Financial Management, in consultation with the Governor's Council of Economic Advisors.

Requiring Recommendations on Offset Credits. By December 1, 2010, DOE must recommend criteria for recognizing, tracking, and retiring offset credits. In developing the criteria for offset projects, priority must be given to offset projects within the forestry, agriculture, and waste management sectors. With regard to forestry offsets, DOE must give first priority for issuing offset credits for forestry offset projects located in Washington.

When developing the criteria for forestry offsets within any regional or national emissions reduction program, DOE must advance the policies developed from consultations with the Forest Practices Board, the Department of Natural Resources (DNR), and the Forest Carbon Working Group.

Requiring the Development of Forestry Offset Policy. DOE, in consultation with the Forest Practices Board, the DNR, and the Forest Carbon Working Group, must develop the state's policy for forestry offset projects in Washington. The final policy must be completed by December 31, 2009, unless DOE notifies the agencies and working group that the policy is needed sooner. The policy must include a number of elements, including guidelines for carbon accounting in managed forests.

Requiring Recommendations on Financial Incentives for Forestry. DOE must consult with the Forest Practices Board, DNR, and the Forest Carbon Working Group to develop and deliver to the Legislature by December 1, 2010, legislation to implement a financial incentives program for forestry and forest products.

Authorizing DOE to Continue Discussions with the Western Climate Initiative (WCI). The director of DOE is authorized to continue discussions with other jurisdictions in the WCI.

Requiring Implementation of an Infrastructure Program for Electric and Alternative Fueled Vehicles. Subject to appropriation, the Washington State Department of Transportation (DOT) must implement a program for planning and funding demonstration projects for the charging and fueling of alternative-fueled vehicles. The program includes, among other things, direction to pursue a West Coast initiative for major highways and urban areas.

Requiring Certain Regional Transportation Planning Organizations to Seek Funds. A regional transportation planning organization containing any county with a population over one million, in collaboration with representatives from DOE, DOT, the Department of Community, Trade and Economic Development, local governments, and the Office of Regulatory Affairs must seek federal or private funding for the planning for, deployment of, or regulations concerning electric vehicle infrastructure.

Creating the Emissions Reduction Assistance Account. An appropriated account is created for 25 percent of specified federal stimulus funds provided to the state for assisting with energy efficiency and renewable energy. Expenditures from the account may be used to assist persons in achieving emissions reductions under DOE's GHG emissions reduction program and to assist the transition of coal-fired facilities to cleaner-burning technologies. Additional purposes for expenditures are specified, such as reducing price impacts for low-income consumers.

Appropriations Provision. This act shall be in effect only to the extent that funds are specifically appropriated for the purposes of this act.

Appropriation: None.

Fiscal Note: Available on Original Bill.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Environment, Water & Energy): PRO: The Legislature established the GHG targets last session and the challenge now is to decide how to effectively and efficiently meet those targets. The state exported $16 billion for fossil fuels; that money could have stayed in the state for the development of renewable energy. Washington's involvement with the WCI is important to influence the Congressional debate on a national cap-and-trade program. The business-as-usual reliance on voluntary action is not good enough – emitters need to be held accountable for any claimed reductions. With green building legislation, clean car legislation, and a GHG emissions performance law, the Washington Legislature has been an environmental leader the last several years. This bill needs to continue that legacy and to meet the mandated reduction targets. Cap-and-trade is not new; it has worked for SO2 and it is being applied to CO2 in Europe and in the Northeastern U.S. Cap-and-trade is the only program that can assure Washington will meet the mandated targets. The costs of not acting on cap-and-trade are high: rising firefighting costs, reduced stream flows, rising health-care costs, and agricultural loses. The current economic recession will end and something must be in place in 2012 if the state is to reach its reduction targets. The Governor may delay the program for up to one year if the recession continues past 2012. King County is already participating in the Chicago Climate Exchange. The country needs a structural change; we can no longer rely on cheap oil. The old economy is not hiring and the new economy is. The bill recognizes hydro by reallocating allowances out of a 1 percent common pool. Allowances should be auctioned and not distributed according to historic emissions.

CON: Businesses are struggling in the current economic recession and a cap-and-trade program would be very expensive, costing billions and jeopardizing thousands of jobs. A single national program is best. Many of the Washington companies operate in a world economy, and these companies would be at a competitive disadvantage if they had to incorporate allowance costs into their products. Many of these companies would either move to a nonWCI state or go out of business. A regional cap-and-trade would discourage investments in Washington. The effects of a regional cap-and-trade program are hard to model, so companies will have a difficult time making investment decisions. The bill delegates too much authority to DOE, and it does not protect Washington's unique hydro system. Market oversight provisions need to be determined before launching into a cap-and-trade program. The bill does not address the effect of low-water years on the hydro system, which could require utilities to rely on coal power and expensive allowances. When it comes to protecting Washington's hydro system, it is time that Washington dictate to the WCI and not the other way around. Why would the Legislature consider destroying Washington's economy in an attempt to impress the federal government? When mills close, the state's carbon footprint rises because the foreign products that are imported are produced with dirtier power. New Zealand has been unsuccessful in setting up a cap-and-trade program and that uncertainty has led to deforestation. The bill does not recognize previous efficiency efforts by companies. The bill is a blank canvas for DOE, and DOE has no duty to follow the recommendations of any of the work groups. The California experience with climate change efforts shows they underestimated the costs to their economy.

Persons Testifying (Environment, Water & Energy): PRO: Senator Rockefeller, prime sponsor; Genesee Adkins, City of Seattle; Paul Birkeland, William Brent, Randi Gladwell, citizens from Seattle; Jessica Finn Coven, Climate Solutions; Bob Doppett, Climate Leadership Institute; Matt Kuharic, King County; Jay Manning, DOE; Ethan Schaffer, Bainbridge Graduate Institute; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council.

CON: Cali Daly, NW Food Processors Association; Kyle Davis, PacifiCorp; Mark Doumit, WFPA; Nancy Hiteshue, Washington Roundtable; Bart Kale, Nucor Steel; Kent Lopez, Washington Rural Electric Cooperatives; Llewelln Mathews, NWPPA; Dave McEntee, Simpson Investments; Mike Mosman, Port Blakely Tree Farms; Grant Nelson, AWB; Steve Smith, Cardinal Glass; Tamara Smilanich, citizen from Seattle; Collins Sprague, Avista; Bill Turlay, citizen from Vancouver; Dave Warren, Washington PUD Association.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: William Brent, Webber Shandwick, citizens; Dick Ewing, Farm Bureau, Winthrop.

CON: Wes McCart, Stevens County Farm Bureau.

OTHER: Amber Gunn, Evergreen Freedom Foundation.

Staff Summary of Public Testimony (Ways & Means): PRO: The Governor believes it is important for the state to continue its leadership on climate change for environmental and economical reasons. This bill is a work in progress and movement is encouraged in order to continue these negotiations and to make the reduction targets meaningful. The fiscal impacts for the DOE are estimated to be $761,000, with estimates for all agencies to be around $1.1 million. This is near what the Governor submitted in her budget. The Lands Commissioner believes the forest sector would benefit from the state being in a leading role in regional and national discussions of reducing greenhouse gas emissions. According to a recent study released by the University of Oregon the unmitigated costs of climate change in Washington will result in costs of $3.8 billion each year by 2020. This includes reduced crop yields in the Yakima River basin which will reduce the value of agricultural output by $23.0 million by 2020. An increased number of wildfires will reduce timber assets by $1.2 million by 2020. In contrast, this bill has an extremely modest cost to prepare a program to reduce emissions in Washington. In addition, in 2008 Washington spent $16.6 billion importing fossil fuels to this state. Growing the clean energy sector and ending our dependence on these fossil fuels will help to grow the state's economy.

Persons Testifying (Ways & Means): PRO: Ted Sturdevant, DOE; Craig Partridge, DNR; Clifford Traisman, Washington Environmental Voters, Washington Conservation Voters; Jessica Finn Coven, Climate Solutions.

House Amendment(s): <u>Adding and Removing Findings.</u> Various findings are added, including the following: (1) the state should continue participation in federal and regional GHG programs; (2) well-designed climate change policies should mitigate adverse impacts on the price of food, housing, energy, transportation, and other expenses; and (3) continued efforts in the transportation sector are critical to creating jobs, foster economic growth, and reducing reliance on foreign oil.

The following findings are removed: (1) the reaffirmation of the state's GHG targets; (2) the essential need to fashion a long-term GHG strategy despite the state's economic downturn; and (3) the statement that full implementation of current polices may achieve 50 percent of state's 2020 GHG target.

Modifying the Provisions Relating to National and Regional GHG Programs. The state policy declaration for regional or national GHG programs is removed; however, the Governor and DOE are required to represent the state's interests in the development of a national program to reduce GHG emissions. DOE must continue to participate in the WCI, which must be used to influence any national program to reduce GHG emissions.

Modifying Emission Caps. By December 31, 2010, DOE must develop and report its best estimate of emissions levels in 2012 for persons responsible for emitting at least 25,000 metric tons of $CO2$ a year and the trajectory of emissions reductions necessary to meet the 2020 reduction target. The report must include complementary policies and a description of any additional authority that is needed by DOE to implement strategies and actions to achieve reductions. The report must also include an assessment of the state's emission sources and sectors that are unable to reduce, and are necessary to state's economic viability.

The following intermediate deadlines apply: (1) by February 15, 2010, in consultation with business and other interested stakeholders, DOE must develop and notify each person its estimated 2012 emissions levels and its 2020 reduction trajectories, considering best practices and carbon-neutral fuels; and (2) by July 15, 2010, interested persons may recommend strategies or actions to DOE on achieving reductions.

The following provisions are removed: (1) DOE recommendations for annual statewide and sector emission caps, including design elements and timelines; and (2) recognition of early action, complementary policies, offsets; and (3) financial incentives.

Adding a Single Point of Accountability. The Governor must designate an existing full-time equivalent position (FTE) as the single point of accountability for all energy and climate change initiatives within state agencies. All agencies, councils, or work groups with energy or climate change initiatives must coordinate with this designee. The position must be funded from current FTE allocations without increasing budgets. If duties must be shifted in the agency, they must be shifted to current FTE allocations.

Modifying Forestry and Agricultural Offsets. By December 31, 2010, DOE must submit final recommendations for an offset policy that recognizes the role of forestry and agriculture in sequestering and storing $CO2$. The policy criteria can only be implemented in the context of a national or regional program with enforceable caps.

DOE must develop the forestry offset policies in consultation with DNR and the Forest Carbon Working Group. They should consider such things as carbon accounting guidelines; thinning and lengthening rotations; and a 100-year method for carbon stored in the wood products.

DOE must develop the agricultural offset policies in consultation with the WSU Department of Agriculture and the Agriculture Carbon Working Group. They should consider such things as survey of carbon soil sequestration levels in state and activities increasing such carbon sequestration.

Modifying the Financial Incentives for Forestry. The Forest Practices Board is removed and the recommendation concerning the use of wood to replace concrete or steel is also removed.

Requiring Coal-Fired Power Plants to Meet the Emissions Performance Standard (EPS). By December 31, 2025, coal-fired power plants in the state that burn over 1 million tons of coal per year must meet the state's EPS, which generally requires electric generation emissions be the lower of 1,100 pounds of GHG per megawatt-hour, or the average available GHG emissions output as updated by CTED.

The state may not require early or additional reductions of GHG except as might be required by federal programs or the EPS. The state must advocate for early action credits under future climate change programs if a covered plant reduces GHG before any future requirement.

Modifying the Infrastructure Program for Electric and Alternative Fueled Vehicles. The "subject to appropriation" clause is removed. In addition, the office of the Governor, in consultation with the CTED, DOE, GA, DOT, and WSU, are required to develop a project for the electrification of the west coast interstate and associated metropolitan centers. The project should be developed in collaboration with representatives of Oregon and California, the federal government, and the private sector. The state must seek federal funds for purchasing electric vehicles and installing infrastructure for electric and other high-efficiency, zero or low-carbon vehicles. DOE must also seek funds to expand the network of truck stop electrification facilities and port electrification facilities.

Modifying the Provision Relating to Regional Transportation Planning Organizations. Beginning December 1, 2011, regional transportation planning organizations (RTPO) encompassing at least one county with a population greater than 245,000 must adopt a regional transportation plan that implements goals in E2SHB 2815 (2008) to reduce annual per capita vehicle miles traveled in those counties. If a county over 245,000 is a member of more than one RTPO, the organization with the larger population must carry out the requirement.

Creating a Stakeholder Group on Transportation Alternatives. DOE, in cooperation with DOT, must convene a stakeholder group including legislators from the two largest caucuses to continue the work of the Transportation Implementation Working Group. DOT must submit a report to the Legislature by September 30, 2010, on recent trends in levels of vehicle miles traveled.

Encouraging the Aggregate Purchasing of Electric Vehicles. GA is directed to work with California, Oregon, and other states, federal agencies, local governments, and private fleet owners to encourage aggregate purchasing of electric vehicles to the maximum extent possible.

Removing Other Provisions. The following provisions are removed: (1) DOE report on alternative GHG strategies and OFM economic analysis; (2) recommendations on offset credits; (3) DOE report on alternative strategies for achieving GHG reductions; (4) the Emissions Reduction Assistance Account; and (5) the null and void clause.