

# SENATE BILL REPORT

## SSB 6373

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As Amended by House, March 3, 2010

**Title:** An act relating to reporting of emissions of greenhouse gases.

**Brief Description:** Directing the department of ecology to adopt rules requiring entities to report the emissions of greenhouse gases.

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

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 1/15/10, 1/29/10 [DPS-WM, DNP].

Ways & Means: 2/03/10, 2/04/10 [DPS(EWE), DNP, w/oRec].

Passed Senate: 2/12/10, 45-1.

Passed House: 3/03/10, 79-19.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 6373 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; Marr, Oemig, Ranker and Sheldon.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Morton.

**Staff:** Jan Odano (786-7486)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6373 as recommended by Committee on Environment, Water & Energy be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

**Minority Report:** Do not pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Zarelli, Ranking Minority Member; Honeyford, Parlette, Pflug and Schoesler.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Brandland, Carrell and Hewitt.

**Staff:** Maria Hovde (786-7710)

**Background:** In 2008 the Legislature passed E2SHB 2815, providing a framework for reducing greenhouse gas (GHG) emissions in the Washington economy. The legislation, in part, set forth requirements for the Department of Ecology (department) to adopt rules for reporting GHG emissions. In addition, the department is required to amend its GHG reporting rules when necessary to be consistent with federal rules to avoid duplicative reporting.

The department must adopt rules for owners or operators of a fleet of on-road motor vehicles that emit at 2500 metric tons or more per year of GHG emissions, or a source or combination of sources that emit 10,000 metric tons or more per year of direct GHG emissions. A source is defined as any building, structure, facility, or installation that emits any air contaminant or mobile source used for transportation or cargo.

Annual GHG emissions reporting is required beginning in 2010 for 2009 emissions. However, the department may phase in reporting requirements until the reporting threshold is met, which must be by January 1, 2012. In order to comply with federal reporting requirements, the department has discretion to amend the rules to include persons emitting less than the required annual GHG emission reporting levels. The department may also include GHG emissions that result from upstream and downstream sources. For interstate and international commercial aircraft, rail, truck, or marine vessels, the reporting requirement may be deferred until there is a federal reporting requirement or a generally accepted reporting protocol for determining interstate emissions.

In September 2009 the U.S. Environmental Protection Agency (EPA) adopted its Final Mandatory Greenhouse Gases Reporting Rule. The rule became effective January 1, 2010. Annual reporting begins March 2011, for emissions data collected in 2010. Fuel suppliers and facilities that emit 25,000 metric tons of GHG emissions per year must submit annual reports to the EPA. A facility is the physical property, plant building, structure, source, or stationary equipment located on a single piece or contiguous property. Mobile source emissions will be accounted for through reporting by suppliers of petroleum products and coal-based liquid fuel. Facilities with vehicle fleets are not required to report their emissions.

The EPA rule does not preempt or replace state reporting programs. EPA recognizes that its rule is much narrower and more targeted than many state programs and it also recognizes and supports states with their different programs that may be more advanced and have different policy objectives than its rules.

**Summary of Substitute Bill:** The department must modify its greenhouse gas emission reporting rules. A person who emits 10,000 metric tons or more per year of GHG from single facility, source, or fossil fuels sold in Washington by a single supplier must report

GHG emissions to the department. Beginning in 2011, a person who is required to report GHG emissions to EPA must concurrently submit the reported data to the department.

Persons who are required to file periodic tax reports of motor vehicle fuel sales, or special fuel sales, and distributors of aircraft fuel must report to the department the annual GHG emissions associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington. The department, by rule, may allow this information to be aggregated when reported to the department. The department and the Department of Licensing (DOL) may enter into an interagency agreement to share reported information and protect proprietary information. Any proprietary information exempt from disclosure when reported to the DOL remains exempt from disclosure when shared with the department.

The department may exempt a person required to report to the EPA from state reporting requirements and who emit less than 10,000 metric tons of GHG annually.

The following requirements are removed:

- determining a de minimis amount of emissions below which reporting will not be required for both indirect and direct emissions;
- reporting of indirect emissions;
- reporting GHG emissions by an owner or operator of a fleet of on-road motor vehicle fleets that emit at least 2,500 metric tons of GHG annually; and
- identifying a mechanism to report an aggregate estimate of the annual emissions of GHG generated from otherwise unreported on-road vehicles.

Definitions for direct emissions, indirect emissions, and total emissions of greenhouse gases are eliminated. The department may include, by rule, other gas or gases only when the gas has been designated as a GHG by Congress or the EPA.

The department must review and update the state GHG reporting rule whenever the EPA adopts final amendments to its GHG reporting rule to ensure consistency with federal reporting requirements.

A person includes: (1) an owner or operator, as those terms are defined by the EPA in its GHG reporting regulation; (2) a motor vehicle fuel supplier or a motor vehicle fuel importer; (3) a special fuel supplier or a special fuel importer; and (4) a distributor of aircraft fuel.

Whether or not an entity is required to report GHG emissions under the department's rules does not indicate if that entity should also be included in state, regional, or national GHG reduction program or strategy.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Original Bill (Environment, Water & Energy):**

PRO: The bill will provide consistency with the federal rules for reporting and make reporting of GHG easier. This will streamline reporting requirements and remove some from reporting. The changes proposed in this legislation are very important for the successful implementation of the reporting of GHGs. We are in favor of the mobile source reporting requirements. This simplifies reporting requirements for airlines greatly. We would like some acknowledgement of the potential for more fuel to be put on at SeaTac which might not be consumed in state. It is important that raw data from sales is not used for future regulatory programs. The use of sales data only creates the potential for the misinterpretation of data that could be problematic. It makes a lot more sense for fuel suppliers to report rather than the various fleets. The numbers are already generated through the Department of Licensing and therefore there should be no additional costs associated with the reporting requirements of fuel. This will make the reporting more workable, less cumbersome, and more cost effective. The emergency clause is needed in order to remove certain groups from reporting this year.

**Persons Testifying (Environment, Water & Energy):** PRO: Senator Ranker, prime sponsor; Janice Adair, Department of Ecology; Fran McNair, Olympic Region Clean Air Agency; Dan Coyne, Alaska Airlines; Miguel Perez-Gibson, Climate Solutions; Charlie Brown, WA Oil Marketers Association; Grant Nelson, Assoc of WA Business; John Stuhlmiller, WA Farm Bureau.

**Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):**

PRO: This bill will provide consistency with the federal reporting requirements. It eliminates the reporting requirements of owners and operators of smaller fleets of vehicles and replaces it with the reporting requirement on fuel sales.

**Persons Testifying (Ways & Means):** PRO: Janice Adair, Department of Ecology.

**House Amendment(s):** The Department of Ecology may not require additional information to calculate GHG emissions than persons who are required to file tax reports for motor vehicle fuel sales, special fuel sales, or aircraft fuel distribution provide to the Department of Licensing. The department must enter into an interagency agreement to ensure proprietary and confidential information is protected if the Departments of Ecology and Licensing share reported information. The Department of Ecology: (1) must notify the Legislature prior to adding gases to the definition of GHG; (2) must make decisions to amend the rule prior to December 1, and; (3) is prohibited from making the effective date of the rule before the end of the following regular legislative session.

The Department of Ecology must establish a methodology for persons to voluntarily report their GHGs. The department of Ecology and local air authorities are prohibited from prescribing penalties until six months after the DOE finalizes its reporting rule in 2010. Aircraft fuel purchased in state may not be considered equivalent to aircraft fuel combusted in state. The emergency clause is removed.