

SENATE BILL REPORT

2SSB 5343

As Amended by House, March 2, 2012

Title: An act relating to air emissions from anaerobic digesters.

Brief Description: Concerning air emissions from anaerobic digesters.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Delvin, Hatfield, Honeyford, Becker, Shin and Schoesler).

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 1/31/11, 2/17/11 [DPS].

Agriculture, Water & Rural Economic Development: 1/12/12, 1/23/12 [DP2S].

Passed Senate: 3/04/11, 42-7; 2/10/12, 41-6.

Passed House: 3/02/12, 97-0.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5343 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Shin, Vice Chair; Becker, Delvin, Haugen, Hobbs, Honeyford and Schoesler.

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Second Substitute Senate Bill No. 5343 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hatfield, Chair; Shin, Vice Chair; Honeyford, Ranking Minority Member; Becker, Haugen, Hobbs and Schoesler.

Staff: Diane Smith (786-7410)

Background: Washington has long promoted anaerobic digesters as renewable energy sources. State incentives include tax exemptions, cost recovery payments, and bioenergy loans. Currently, five commercial digesters in the state generate electricity from biogas derived from livestock manure, in some instances co-digested with certain organic waste.

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.

The first commenced generating operations in 2004. Similar digesters are planned. In 2009 the Legislature resolved a regulatory issue by exempting these digesters from a solid waste permitting requirement, provided that they complied with several environmental safeguards and operating guidelines.

Generator engines used in digesters are usually not major sources of pollutants that trigger strict federal standards, and states have some discretion in regulating them. In Washington, regional air quality authorities have, pursuant to authority under the state Clean Air Act, required digester operators to obtain air emission permits for digester engines and satisfy monitoring requirements. Requirements in other states vary widely, ranging from permitting exemptions to restrictive conditions in areas with poor air quality. Michigan exempts internal combustion engines from air permitting requirements, including generator engines used in digesters, if they have less than 10 million British thermal units (Btu) per hour maximum heat input.

Summary of Second Substitute Bill: Any one generator operating at an electric generating project is exempt from state Clean Air Act regulatory requirements if:

- it is fueled solely by biogas produced by an anaerobic digester qualifying for the current solid waste permitting exemption and the biogas contains less than 0.1 percent sulfur, after a startup period not exceeding 180 days;
- the aggregate heat input to the generator does not exceed 10 million Btu per hour;
- the exemption is permissible under federal law; and
- the generator is not located in a federally designated nonattainment area for hazardous air pollutants under the federal Clean air Act and amendments of 1990.

Modified generators can retain the exemption if they continue to meet the foregoing requirements.

The exemption is applied retroactively to January 1, 2004, with respect to generators subject to state Clean Air Act requirements imposed prior to the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Agriculture & Rural Economic Development):

Persons Testifying (Agriculture & Rural Economic Development):

Staff Summary of Public Testimony as Heard in Committee (Agriculture, Water & Rural Economic Development): PRO: We need to encourage anaerobic digesters because farmland on low ground can't handle manure. We need to boost the economies of dairying. This bill is a good start. A larger generating engine would be better as the economics are very tight, especially in Eastern Washington. One operating digester is already above this

limit. With 10 million BTUs being roughly equivalent to one megawatt of power, perhaps the limitation in the bill could be worked with if it applied to each engine. Digesters are not in cities so the risk to human health is not comparable to what it would be in a densely populated area. The Department of Ecology's (DOE) general order does not address the concerns of the industry. Few dairies will benefit from it. Of the 145 dairy digesters in the United States, only two experimental university-run digesters would qualify for exemption under the general order. The general order has become de facto rulemaking without the protections of the rulemaking under the Administrative Procedures Act. We meet all EPA standards. The question of how we don't has never been answered by DOE.

CON: The general order developed over the interim should satisfy the dairy farmers' concerns. It will be easier, faster and cheaper to get. It would exempt 30 percent of the farms that may want to use a digester from regulation and 65 percent of those farms would qualify for the general permit. The bill as written might allow digesters to violate national air quality standards for sulfur dioxide and release large amounts of nitrogen dioxide. The bill would eliminate the tools and authority for DOE to verify compliance with the thresholds in the bill. Because DOE worked with local air agencies, the conditions will be consistent across jurisdictions. DOE is enforcing federal health-based standards necessary to protect the public health. One digester in Enumclaw has been approved.

Persons Testifying as Heard in Committee (Agriculture, Water & Rural Economic Development): PRO: Senator Haugen, prime sponsor; Daryl Williams, Tulalip Tribes; Jay Gordon, Washington Dairy Federation; Kevin Maas, Farm Power.

CON: Marshall Taylor, DOE.

House Amendment(s): Grants certain electric generating projects powered by gas from anaerobic digesters an extended compliance period for permit provisions related to the emissions limit for sulfur established by DOE or a local air authority until December 31, 2016. To qualify for this extension, a generator must operate at an electric generating project with an installed generator capacity of at least 750 kilowatts, but not exceeding 1000 kilowatts; be in operation on the effective date of this act and that began operating after 2008; be located on agricultural lands of long-term commercial significance under the growth management act; and not be located in a federally designated nonattainment or maintenance area. Upon request, DOE or a local air authority must provide technical assistance to a generator meeting these requirements.

The DOE must submit a report by December 1, 2012, to the appropriate committees of the Legislature, containing information regarding the degree to which current state air quality regulations consider different feed sources for anaerobic digesters, and strategies to address the different feed sources used in anaerobic digesters.

Contains a null and void clause.