

FINAL BILL REPORT

E2SSB 5769

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Synopsis as Enacted

Brief Description: Regarding coal-fired electric generation facilities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rockefeller, Pridemore, Kohl-Welles, White, Chase, Murray, Ranker, Regala, Fraser, Shin and Kline).

Senate Committee on Environment, Water & Energy

Senate Committee on Ways & Means

House Committee on Environment

House Committee on Capital Budget

Background: Greenhouse Gas (GHG) Emission Reductions. The state is required to achieve the following statewide GHG emission reductions:

- 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.

GHG Emissions Performance Standard (EPS) for Electric Generation Plants. Electric utilities may not enter into a long-term financial commitment for baseload electric generation on or after July 1, 2008, unless the generating plant's emissions are the lower of:

- 1100 pounds of GHG per megawatt (MW)-hour; or
- the average available GHG emissions output as updated by the Department of Commerce (Commerce).

Baseload electric generation means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent. Long-term financial commitment means (1) either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or (2) a new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

Executive Order. In 2009 the Governor issued an executive order directing the Department of Ecology (Ecology) to work with the existing coal-fired plant within Washington that burns over 1 million tons of coal per year, TransAlta Centralia Generation LLC, to establish an

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agreed order to apply the EPS to the facility by no later than December 31, 2025. The agreed order must include a schedule of major decision making and resource investment milestones.

Senate Work Sessions. On January 19, 2011, the Senate Environment, Water & Energy Committee held a work session on the role of coal in meeting Washington's electric needs. On January 21, 2011, the same committee held a work session on the environmental and health impacts of coal power.

Energy Facility Site Evaluation Council (EFSEC). EFSEC is the permitting and certificating authority for the siting of major energy facilities in Washington, such as thermal electric power plants 350 megawatts or greater. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC process. EFSEC must generally process an application within 12 months of receipt; however, it can be as short as 180 days under an expedited siting process.

Community Economic Revitalization Board (CERB). Comprised of 20 members appointed by the Governor, CERB funds public infrastructure improvements, such as the acquisition, construction, or repair of water and sewer systems, bridges, railroad spurs, telecommunication systems, roads, structures, and port facilities.

Public Works Board. Comprised of 13 members appointed by the Governor, the Public Works Board administers the public works assistance account to provide loans to local governments and special purpose districts with infrastructure projects.

Sales and Use Tax Exemptions for Coal. Purchases of coal used at a thermal electric generating facility placed in operation after 1969 and before July 1, 1997, are exempt from retail sales and use taxes. The exemptions are contingent upon owners of the plant demonstrating to Ecology that progress is being made to install the necessary air pollution control devices and that the facility has emitted no more than 10,000 tons of sulfur dioxide during the previous 12 months.

Technology to Control Emissions of Nitrogen Oxides (NOx). Selective Catalytic Reduction (SCR) is a technology for capturing NOx emissions from industrial boilers such as coal fired power plants. It uses a combination of ammonia injection and a catalyst to capture NOx emissions. Selective Noncatalytic Reduction (SNCR) is also a NOx control technology for industrial boilers. It is similar to SCR but only uses injected ammonia without a catalyst. According to Ecology, SCR may capture up to 90 percent of NOx emissions from a large coal-fired plant while SNCR may capture up to 25 percent, but SCR is substantially more expensive than SNCR.

Washington Utilities and Transportation Commission (WUTC). The WUTC is a three-member commission that has broad authority to regulate the rates, services, and practices of investor-owned electric utilities, among other industries. Under general rate-making principles, an electric utility may recover the full cost of a power purchase contract in rates, with no additional premium, if the contract is approved by the WUTC. An electric utility may recover the full cost of an investment in a new generating facility in rates, with an

additional return to reflect the risk of the investment, if the investment is approved by the WUTC.

Integrated Resource Plan (IRP). All investor-owned and consumer-owned electric utilities in the state, with more than 25,000 customers, must develop IRPs. All other utilities in the state, including those that essentially receive all their power from the Bonneville Power Administration, must file either an IRP or a less detailed resource plan.

An IRP must describe the mix of generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers. When determining the lowest reasonable cost for resources identified in its IRP, a utility must consider state and federal policies regarding resource preference, among other factors.

Carbon Dioxide Mitigation for Fossil-Fueled Energy Facilities. Under state law, certain fossil-fueled thermal power facilities with a generating capacity of 25 MW or more must mitigate their carbon dioxide (CO₂) emissions. The requirement applies to new electric generating facilities seeking site certification from EFSEC or an order of approval under the Washington Clean Air Act. The requirement also applies to existing facilities between 25 and 350 MW that increase their generating capacity by at least 25 MW or their emissions production of CO₂ by 15 percent or more.

Mitigation is required for 20 percent of the CO₂ emissions produced by a facility over a 30-year period, and must include one or a combination of the following options: (1) payments to an independent qualified organization; (2) direct purchase of permanent carbon credits; or (3) direct investment in CO₂ mitigation projects, including qualified alternative energy resources and cogeneration.

Summary: Applying the EPS to Specified Facilities. A coal-fired baseload electric generation facility in Washington that emitted more than 1 million tons of GHG in any calendar year prior to 2008 (qualifying facility) must meet the lower of the following emissions standards such that one generating boiler is in compliance by December 31, 2020, and any other generating boilers are in compliance by December 31, 2025:

- 1100 pounds of GHG per MW-hour; or
- the average available GHG emissions output as updated by Commerce, whichever is lower.

The emission standard does not apply to a coal-fired baseload electric generating facility if Ecology determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

Requiring a Memorandum of Agreement (MOA). By January 1, 2012, the Governor on behalf of the state must enter into an MOA that takes effect on April 1, 2012, with the owners of a qualifying facility for achieving the specified emissions reductions. The MOA must include a number of terms, such as binding commitments to install SNCR pollution control technology by January 1, 2013. The MOA terminates if Ecology determines state or federal law or regulation requires the installation of SCR technology. If the MOA is not signed by

January 1, 2012, the Governor must impose requirements consistent with the installation of SNCR technology.

The MOA must also require the facility to provide the following financial assistance to the affected community: (1) \$30 million for economic development and energy efficiency and weatherization; and (2) \$25 million for energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits. The MOA must specify the accounts where the funds are to be deposited, individuals who may approve expenditures from the accounts, and the schedule for disbursing the funds. Financial assistance is no longer required if the sales and use tax exemptions on coal are repealed.

If an MOA is reached, no state agency or political subdivision of the state may adopt or impose additional or inconsistent GHG emission standards as specified in the act.

Recognizing Coal Transition Power in the EPS and in WUTC Rate Proceedings. The EPS is amended to allow long-term contracts for the output of a qualifying facility, called coal transition power (transition power). In addition, a process is created to allow an electric utility to petition the WUTC for approval of a power purchase agreement for transition power. If approved, the utility may treat the purchase as an investment entitled to a portion of the premium it would receive if it constructed a facility with an equivalent generation capacity.

Recognizing Carbon Reductions. An MOA may include provisions recognizing such reductions in state policies and programs relating to GHG emissions, and advocating for such reductions in all established and emerging regional, national, or international GHG frameworks. The Governor may recommend actions to the Legislature concerning the recognition of investments in early emissions reductions.

Requiring Expedited EFSEC Processing. EFSEC must use its expedited process for siting generating facilities meeting the EPS if the facility is to be sited in the county where a qualifying facility is located, and if the siting application is filed before December 31, 2025.

Requiring a Decommissioning Plan. A qualifying facility subject to closure must provide Ecology with a plan for the closure and postclosure of the facility at least 24 months prior to closure or 24 months prior to start of decommissioning work, whichever is earlier. Among other things, the plan must include financial assurances to fund required activities and the preparation of a decommissioning and site restoration plan. The decommissioning plan as well as any significant changes to it are subject to Ecology's approval.

Requiring Financial Assistance Guarantees in the Decommissioning Plan. A qualifying facility subject to closure must guarantee funds are available to perform all activities in the decommissioning plan. The guarantee may be accomplished with an Ecology approved letter of credit, surety bond, or other means acceptable to Ecology.

Providing for Community Economic Development. CERB and the Public Works Board must each solicit and give priority consideration to projects that attract new industrial and commercial projects to areas affected by the closure or potential closure of a qualifying

facility. Project awards must be consistent with applicable plans for future major industrial activities on lands formerly used or designated for surface coal mining and other supporting uses.

Requiring Additional Analysis in IRPs. When developing its IRP, a utility must compare the benefits and risks of purchasing power or building new resources.

Exempting Certain Fossil-Fueled Facilities from Carbon Mitigation. The owner of a qualifying facility applying to EFSEC for the siting a natural gas-fired generation plant to be constructed in a county with the qualifying facility is exempt from state carbon mitigation requirements, if the application is filed before December 31, 2025. The exemption expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this provision equals the station-generating capability from a coal-fired electric generation facility subject to the EPS provision for qualifying facilities.

Adopting Findings, Expressing Legislative Intent, and Adding a Severability Clause. Various findings are adopted, including the harmful effects of emissions from the combustion of coal to generate electricity; the contribution of coal-fired electricity generation as a large source of the state's GHG emissions; the role of coal-fired electricity generation in providing baseload power necessary for near-term grid stability and reliability; and that coal-fired baseload electric generation facilities are a significant contributor of family-wage jobs.

Among other things, the Legislature intends to provide for the reduction of GHG emissions from large coal-fired baseload electric power generation facilities; to ensure appropriate cleanup and site restoration upon decommissioning of any facilities in the state; and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities.

A severability clause is added, stating that if any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Votes on Final Passage:

Senate	36	13	
House	87	9	(House amended)
Senate	33	14	(Senate concurred)

Effective: July 22, 2011.