
SECOND SUBSTITUTE SENATE BILL 5769

State of Washington

62nd Legislature

2011 Regular Session

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

READ FIRST TIME 02/25/11.

1 AN ACT Relating to coal-fired electric generation facilities;
2 amending RCW 80.80.040, 80.80.070, 80.50.100, and 43.160.076;
3 reenacting and amending RCW 80.80.010 and 80.80.060; adding new
4 sections to chapter 80.80 RCW; adding a new section to chapter 43.155
5 RCW; adding a new section to chapter 43.06 RCW; adding a new section to
6 chapter 80.04 RCW; adding a new chapter to Title 80 RCW; creating new
7 sections; and providing an expiration date.

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

9 NEW SECTION. **Sec. 101.** (1) Under RCW 70.235.020, the legislature
10 required that statewide overall greenhouse gas emissions be reduced to
11 1990 levels by 2020.

12 (2) The legislature finds that generating electricity from the
13 combustion of coal produces large amounts of harmful pollutants,
14 including ammonia, arsenic, lead, mercury, hydrochloric acid, nitrogen
15 oxides, sulfuric acid, sulfur dioxide, particulate matter, and several
16 toxic heavy metals, all of which have been determined by medical
17 science to be harmful to human health and safety. In addition, the
18 emissions from the combustion of coal in the state impact visibility in
19 eight class I areas in the state. While the emission of many of these

1 pollutants continues to be addressed through application of federal and
2 state air quality laws, the emission of greenhouse gases resulting from
3 the combustion of coal has not been addressed. Furthermore, these
4 harmful by-products may be damaging the cultural history of Washington
5 and its people by eroding ancient native American petroglyphs and
6 pictographs and by accumulating in the soil and waters of the usual and
7 accustomed areas for tribal hunting, fishing, gathering, and grazing.

8 (3) The legislature has previously found that greenhouse gas
9 emissions contribute to climate change and has found that Washington is
10 especially vulnerable to climate change. The legislature now finds
11 that coal-fired electricity generation is one of the largest sources of
12 greenhouse gas emissions in the state, accounting for the largest
13 source of such emissions from the generation of electricity in the
14 state.

15 (4) The legislature finds coal-fired electric generation may
16 provide baseload power that is necessary for the stability and
17 reliability of the electrical transmission grid and that contributes to
18 the availability of affordable power in the state. The legislature
19 further finds that efforts to transition power to other fuels requires
20 the deliberate development of replacement generation, and any necessary
21 transmission facilities, over a reasonable period of time to ensure
22 grid stability and to maintain affordable electricity resources.

23 (5) The legislature finds that coal-fired baseload electric
24 generation facilities are a significant contributor to family-wage jobs
25 and economic health in parts of the state and that transition of these
26 facilities must address the economic future and the preservation of
27 jobs in affected communities.

28 (6) The legislature finds that coal-fired baseload electric
29 generation facilities are large industrial facilities that require
30 substantial planning and funding for closure and postclosure to ensure
31 that the site is fully restored and free of contamination.

32 (7) Therefore, it is the purpose of this act to provide for the
33 reduction of greenhouse gas emissions from large coal-fired baseload
34 electric power generation facilities, to effect an orderly transition
35 of these facilities to cleaner fuels in a manner that ensures
36 reliability of the state's electrical grid, to ensure appropriate
37 cleanup and site restoration upon decommissioning of any of these

1 facilities in the state, and to provide assistance to host communities
2 planning for new economic development and mitigating the economic
3 impacts of the closure of these facilities.

4 **Sec. 102.** RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are
5 each reenacted and amended to read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Attorney general" means the Washington state office of the
9 attorney general.

10 (2) "Auditor" means: (a) The Washington state auditor's office or
11 its designee for consumer-owned utilities under its jurisdiction; or
12 (b) an independent auditor selected by a consumer-owned utility that is
13 not under the jurisdiction of the state auditor.

14 (3) "Average available greenhouse gas emissions output" means the
15 level of greenhouse gas emissions as surveyed and determined by the
16 energy policy division of the department of commerce under RCW
17 80.80.050.

18 (4) "Baseload electric generation" means electric generation from
19 a power plant that is designed and intended to provide electricity at
20 an annualized plant capacity factor of at least sixty percent.

21 (5) "Cogeneration facility" means a power plant in which the heat
22 or steam is also used for industrial or commercial heating or cooling
23 purposes and that meets federal energy regulatory commission standards
24 for qualifying facilities under the public utility regulatory policies
25 act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

26 (6) "Combined-cycle natural gas thermal electric generation
27 facility" means a power plant that employs a combination of one or more
28 gas turbines and steam turbines in which electricity is produced in the
29 steam turbine from otherwise lost waste heat exiting from one or more
30 of the gas turbines.

31 (7) "Commission" means the Washington utilities and transportation
32 commission.

33 (8) "Consumer-owned utility" means a municipal utility formed under
34 Title 35 RCW, a public utility district formed under Title 54 RCW, an
35 irrigation district formed under chapter 87.03 RCW, a cooperative
36 formed under chapter 23.86 RCW, a mutual corporation or association
37 formed under chapter 24.06 RCW, or port district within which an

1 industrial district has been established as authorized by Title 53 RCW,
2 that is engaged in the business of distributing electricity to more
3 than one retail electric customer in the state.

4 (9) "Department" means the department of ecology.

5 (10) "Distributed generation" means electric generation connected
6 to the distribution level of the transmission and distribution grid,
7 which is usually located at or near the intended place of use.

8 (11) "Electric utility" means an electrical company or a consumer-
9 owned utility.

10 (12) "Electrical company" means a company owned by investors that
11 meets the definition of RCW 80.04.010.

12 (13) "Governing board" means the board of directors or legislative
13 authority of a consumer-owned utility.

14 (14) "Greenhouse (~~gases~~) gas" includes carbon dioxide, methane,
15 nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur
16 hexafluoride.

17 (15) "Long-term financial commitment" means:

18 (a) Either a new ownership interest in baseload electric generation
19 or an upgrade to a baseload electric generation facility; or

20 (b) A new or renewed contract for baseload electric generation with
21 a term of five or more years for the provision of retail power or
22 wholesale power to end-use customers in this state.

23 (16) "Plant capacity factor" means the ratio of the electricity
24 produced during a given time period, measured in kilowatt-hours, to the
25 electricity the unit could have produced if it had been operated at its
26 rated capacity during that period, expressed in kilowatt-hours.

27 (17) "Power plant" means a facility for the generation of
28 electricity that is permitted as a single plant by a jurisdiction
29 inside or outside the state.

30 (18) "Upgrade" means any modification made for the primary purpose
31 of increasing the electric generation capacity of a baseload electric
32 generation facility. "Upgrade" does not include routine or necessary
33 maintenance, installation of emission control equipment, installation,
34 replacement, or modification of equipment that improves the heat rate
35 of the facility, or installation, replacement, or modification of
36 equipment for the primary purpose of maintaining reliable generation
37 output capability that does not increase the heat input or fuel usage

1 as specified in existing generation air quality permits as of July 22,
2 2007, but may result in incidental increases in generation capacity.

3 (19) "Clean fuel transition power" means the power purchased by an
4 electric utility or other entity as part of implementing a memorandum
5 of agreement entered under sections 106 and 107 of this act to achieve
6 early emissions reductions of greenhouse gases.

7 (20) "Memorandum of agreement" or "memorandum" means a binding and
8 enforceable contract between the governor and an owner of a baseload
9 electric generation facility in the state that provides for early
10 greenhouse gas emissions reductions from the facility through the use
11 of clean fuel transition power.

12 **Sec. 103.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to
13 read as follows:

14 (1) Beginning July 1, 2008, the greenhouse gas emissions
15 performance standard for all baseload electric generation for which
16 electric utilities enter into long-term financial commitments on or
17 after such date is the lower of:

18 (a) One thousand one hundred pounds of greenhouse gases per
19 megawatt-hour; or

20 (b) The average available greenhouse gas emissions output as
21 determined under RCW 80.80.050.

22 (2) This chapter does not apply to long-term financial commitments
23 with the Bonneville power administration.

24 (3)(a) Except as provided in (c) of this subsection, all baseload
25 electric generation facilities in operation as of June 30, 2008, are
26 deemed to be in compliance with the greenhouse gas emissions
27 performance standard established under this section until the
28 facilities are the subject of long-term financial commitments.

29 (b) All baseload electric generation that commences operation after
30 June 30, 2008, and is located in Washington, must comply with the
31 greenhouse gas emissions performance standard established in subsection
32 (1) of this section.

33 (c) A coal-fired baseload electric generation facility in
34 Washington that has emitted more than one million tons of greenhouse
35 gases annually in calendar year 2005 must comply with the following
36 greenhouse gas emissions performance standard by the date established
37 in a memorandum of agreement formed under section 106 of this act:

1 (i) One thousand one hundred pounds of greenhouse gases per
2 megawatt-hour; or

3 (ii) The average available greenhouse gas emissions output as
4 determined under RCW 80.80.050.

5 (4) All electric generation facilities or power plants powered
6 exclusively by renewable resources, as defined in RCW 19.280.020, are
7 deemed to be in compliance with the greenhouse gas emissions
8 performance standard established under this section.

9 (5) All cogeneration facilities in the state that are fueled by
10 natural gas or waste gas or a combination of the two fuels, and that
11 are in operation as of June 30, 2008, are deemed to be in compliance
12 with the greenhouse gas emissions performance standard established
13 under this section until the facilities are the subject of a new
14 ownership interest or are upgraded.

15 (6) In determining the rate of emissions of greenhouse gases for
16 baseload electric generation, the total emissions associated with
17 producing electricity shall be included.

18 (7) In no case shall a long-term financial commitment be determined
19 to be in compliance with the greenhouse gas emissions performance
20 standard if the commitment includes more than twelve percent of
21 electricity from unspecified sources.

22 (8) For a long-term financial commitment with multiple power
23 plants, each specified power plant must be treated individually for the
24 purpose of determining the annualized plant capacity factor and net
25 emissions, and each power plant must comply with subsection (1) of this
26 section, except as provided in subsections (3) through (5) of this
27 section.

28 (9) The department shall establish an output-based methodology to
29 ensure that the calculation of emissions of greenhouse gases for a
30 cogeneration facility recognizes the total usable energy output of the
31 process, and includes all greenhouse gases emitted by the facility in
32 the production of both electrical and thermal energy. In developing
33 and implementing the greenhouse gas emissions performance standard, the
34 department shall consider and act in a manner consistent with any rules
35 adopted pursuant to the public utilities regulatory policy act of 1978
36 (16 U.S.C. Sec. 824a-3), as amended.

37 (10) The following greenhouse gas emissions produced by baseload
38 electric generation owned or contracted through a long-term financial

1 commitment shall not be counted as emissions of the power plant in
2 determining compliance with the greenhouse gas emissions performance
3 standard:

4 (a) Those emissions that are injected permanently in geological
5 formations;

6 (b) Those emissions that are permanently sequestered by other means
7 approved by the department; and

8 (c) Those emissions sequestered or mitigated as approved under
9 subsection (16) of this section.

10 (11) In adopting and implementing the greenhouse gas emissions
11 performance standard, the department of (~~community, trade, and~~
12 ~~economic development~~) commerce energy policy division, in consultation
13 with the commission, the department, the Bonneville power
14 administration, the western electricity (~~coordination~~ {~~coordinating~~})
15 coordinating council, the energy facility site evaluation council,
16 electric utilities, public interest representatives, and consumer
17 representatives, shall consider the effects of the greenhouse gas
18 emissions performance standard on system reliability and overall costs
19 to electricity customers.

20 (12) In developing and implementing the greenhouse gas emissions
21 performance standard, the department shall, with assistance of the
22 commission, the department of (~~community, trade, and economic~~
23 ~~development~~) commerce energy policy division, and electric utilities,
24 and to the extent practicable, address long-term purchases of
25 electricity from unspecified sources in a manner consistent with this
26 chapter.

27 (13) The directors of the energy facility site evaluation council
28 and the department shall each adopt rules under chapter 34.05 RCW in
29 coordination with each other to implement and enforce the greenhouse
30 gas emissions performance standard. The rules necessary to implement
31 this section shall be adopted by June 30, 2008.

32 (14) In adopting the rules for implementing this section, the
33 energy facility site evaluation council and the department shall
34 include criteria to be applied in evaluating the carbon sequestration
35 plan, for baseload electric generation that will rely on subsection
36 (10) of this section to demonstrate compliance, but that will commence
37 sequestration after the date that electricity is first produced. The
38 rules shall include but not be limited to:

1 (a) Provisions for financial assurances, as a condition of plant
2 operation, sufficient to ensure successful implementation of the carbon
3 sequestration plan, including construction and operation of necessary
4 equipment, and any other significant costs;

5 (b) Provisions for geological or other approved sequestration
6 commencing within five years of plant operation, including full and
7 sufficient technical documentation to support the planned
8 sequestration;

9 (c) Provisions for monitoring the effectiveness of the
10 implementation of the sequestration plan;

11 (d) Penalties for failure to achieve implementation of the plan on
12 schedule;

13 (e) Provisions for an owner to purchase emissions reductions in the
14 event of the failure of a sequestration plan under subsection (16) of
15 this section; and

16 (f) Provisions for public notice and comment on the carbon
17 sequestration plan.

18 (15)(a) Except as provided in (b) of this subsection, as part of
19 its role enforcing the greenhouse gas emissions performance standard,
20 the department shall determine whether sequestration or a plan for
21 sequestration will provide safe, reliable, and permanent protection
22 against the greenhouse gases entering the atmosphere from the power
23 plant and all ancillary facilities.

24 (b) For facilities under its jurisdiction, the energy facility site
25 evaluation council shall contract for review of sequestration or the
26 carbon sequestration plan with the department consistent with the
27 conditions under (a) of this subsection, consider the adequacy of
28 sequestration or the plan in its adjudicative proceedings conducted
29 under RCW 80.50.090(3), and incorporate specific findings regarding
30 adequacy in its recommendation to the governor under RCW 80.50.100.

31 (16) A project under consideration by the energy facility site
32 evaluation council by July 22, 2007, is required to include all of the
33 requirements of subsection (14) of this section in its carbon
34 sequestration plan submitted as part of the energy facility site
35 evaluation council process. A project under consideration by the
36 energy facility site evaluation council by July 22, 2007, that receives
37 final site certification agreement approval under chapter 80.50 RCW
38 shall make a good faith effort to implement the sequestration plan. If

1 the project owner determines that implementation is not feasible, the
2 project owner shall submit documentation of that determination to the
3 energy facility site evaluation council. The documentation shall
4 demonstrate the steps taken to implement the sequestration plan and
5 evidence of the technological and economic barriers to successful
6 implementation. The project owner shall then provide to the energy
7 facility site evaluation council notification that they shall implement
8 the plan that requires the project owner to meet the greenhouse gas
9 emissions performance standard by purchasing verifiable greenhouse gas
10 emissions reductions from an electric (~~generating~~) generation
11 facility located within the western interconnection, where the
12 reduction would not have occurred otherwise or absent this contractual
13 agreement, such that the sum of the emissions reductions purchased and
14 the facility's emissions meets the standard for the life of the
15 facility.

16 **Sec. 104.** RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are
17 each reenacted and amended to read as follows:

18 (1) No electrical company may enter into a long-term financial
19 commitment unless the baseload electric generation supplied under such
20 a long-term financial commitment complies with the greenhouse (~~gases~~
21 ~~gas~~) gas emissions performance standard established under RCW
22 80.80.040.

23 (2) In order to enforce the requirements of this chapter, the
24 commission shall review in a general rate case or as provided in
25 subsection (5) of this section any long-term financial commitment
26 entered into by an electrical company after June 30, 2008, to determine
27 whether the baseload electric generation to be supplied under that
28 long-term financial commitment complies with the greenhouse (~~gases~~
29 ~~gas~~) gas emissions performance standard established under RCW
30 80.80.040.

31 (3) In determining whether a long-term financial commitment is for
32 baseload electric generation, the commission shall consider the design
33 of the power plant and its intended use, based upon the electricity
34 purchase contract, if any, permits necessary for the operation of the
35 power plant, and any other matter the commission determines is relevant
36 under the circumstances.

1 (4) Upon application by an electric utility, the commission may
2 provide a case-by-case exemption from the greenhouse (~~(gases-[gas])~~)
3 gas emissions performance standard to address: (a) Unanticipated
4 electric system reliability needs; (b) extraordinary cost impacts on
5 utility ratepayers; or (c) catastrophic events or threat of significant
6 financial harm that may arise from unforeseen circumstances.

7 (5) Upon application by an electrical company, the commission shall
8 determine whether the company's proposed decision to acquire electric
9 generation or enter into a power purchase agreement for electricity
10 complies with the greenhouse (~~(gases-[gas])~~) gas emissions performance
11 standard established under RCW 80.80.040. The commission shall not
12 decide in a proceeding under this subsection (5) issues involving the
13 actual costs to construct and operate the selected resource, cost
14 recovery, or other issues reserved by the commission for decision in a
15 general rate case or other proceeding for recovery of the resource or
16 contract costs.

17 (6) An electrical company may account for and defer for later
18 consideration by the commission costs incurred in connection with a
19 long-term financial commitment, including operating and maintenance
20 costs, depreciation, taxes, and cost of invested capital. The deferral
21 begins with the date on which the power plant begins commercial
22 operation or the effective date of the power purchase agreement and
23 continues for a period not to exceed twenty-four months; provided that
24 if during such period the company files a general rate case or other
25 proceeding for the recovery of such costs, deferral ends on the
26 effective date of the final decision by the commission in such
27 proceeding. Creation of such a deferral account does not by itself
28 determine the actual costs of the long-term financial commitment,
29 whether recovery of any or all of these costs is appropriate, or other
30 issues to be decided by the commission in a general rate case or other
31 proceeding for recovery of these costs. For the purpose of this
32 subsection (6) only, the term "long-term financial commitment" also
33 includes an electric company's ownership or power purchase agreement
34 with a term of five or more years associated with an eligible renewable
35 resource as defined in RCW 19.285.030.

36 (7) The commission shall consult with the department to apply the
37 procedures adopted by the department to verify the emissions of
38 greenhouse gases from baseload electric generation under RCW 80.80.040.

1 The department shall report to the commission whether baseload electric
2 generation will comply with the greenhouse ((~~gases~~—[gas])) gas
3 emissions performance standard for the duration of the period the
4 baseload electric generation is supplied to the electrical company.

5 (8) The commission shall adopt rules for the enforcement of this
6 section with respect to electrical companies and adopt procedural rules
7 for approving costs incurred by an electrical company under subsection
8 (4) of this section.

9 (9) This section does not apply to a long-term financial commitment
10 for the purchase of clean fuel transition power.

11 (10) The commission shall adopt rules necessary to implement this
12 section by December 31, 2008.

13 **Sec. 105.** RCW 80.80.070 and 2007 c 307 s 9 are each amended to
14 read as follows:

15 (1) No consumer-owned utility may enter into a long-term financial
16 commitment unless the baseload electric generation supplied under such
17 a long-term financial commitment complies with the greenhouse ((~~gases~~))
18 gas emissions performance standard established under RCW 80.80.040.

19 (2) The governing board shall review and make a determination on
20 any long-term financial commitment by the utility, pursuant to this
21 chapter and after consultation with the department, to determine
22 whether the baseload electric generation to be supplied under that
23 long-term financial commitment complies with the greenhouse ((~~gases~~))
24 gas emissions performance standard established under RCW 80.80.040. No
25 consumer-owned utility may enter into a long-term financial commitment
26 unless the baseload electric generation to be supplied under that long-
27 term financial commitment complies with the greenhouse ((~~gases~~)) gas
28 emissions performance standard established under RCW 80.80.040.

29 (3) In confirming that a long-term financial commitment is for
30 baseload electric generation, the governing board shall consider the
31 design of the power plant and the intended use of the power plant based
32 upon the electricity purchase contract, if any, permits necessary for
33 the operation of the power plant, and any other matter the governing
34 board determines is relevant under the circumstances.

35 (4) The governing board may provide a case-by-case exemption from
36 the greenhouse ((~~gases~~)) gas emissions performance standard to address:

1 (a) Unanticipated electric system reliability needs; or (b)
2 catastrophic events or threat of significant financial harm that may
3 arise from unforeseen circumstances.

4 (5) The governing board shall apply the procedures adopted by the
5 department to verify the emissions of greenhouse gases from baseload
6 electric generation under RCW 80.80.040, and may request assistance
7 from the department in doing so.

8 (6) For consumer-owned utilities, the auditor is responsible for
9 auditing compliance with this chapter and rules adopted under this
10 chapter that apply to those utilities and the attorney general is
11 responsible for enforcing that compliance.

12 (7) This section does not apply to long-term financial commitments
13 for the purchase of clean fuel transition power.

14 NEW SECTION. Sec. 106. A new section is added to chapter 80.80
15 RCW to read as follows:

16 (1) The governor shall seek to enter into a memorandum of agreement
17 with the owners of a coal-fired baseload facility that has emitted more
18 than one million tons of greenhouse gases annually in calendar year
19 2005.

20 (2) The memorandum of agreement must incorporate binding
21 commitments to achieve the early reductions required by this section
22 and include a schedule of major steps and investments necessary to
23 achieve the reductions. The agreement must provide for the following
24 minimum levels of emission reductions when measured on a calendar year
25 basis as a percentage of the average annual emissions in calendar year
26 2005:

27 (a) Between January 1, 2012, and December 31, 2016, the facility
28 must achieve at least a ten percent average reduction; and

29 (b) Beginning January 1, 2017, the facility must achieve further
30 significant reductions as specified in the memorandum of agreement.

31 (3) The memorandum of agreement must specify the date by which the
32 facility must meet the emissions performance standard in RCW
33 80.80.040(3)(c). The date may be no sooner than December 31, 2020, and
34 no later than December 31, 2025, and must be the earliest date by which
35 the following factors can reasonably be addressed:

36 (a) Impacts upon employment and other economic impacts in the
37 community hosting the baseload electric generation facility;

1 (b) The financial impact upon the baseload electric generation
2 facility owner; and

3 (c) The environmental effects of continued operation of the
4 coal-fired baseload electric generation facility.

5 (4) The memorandum of agreement must include provisions by which
6 the facility owners will provide financial assistance to the community
7 for planning for future site uses and preserving jobs. The financial
8 assistance must be equivalent to the financial benefits to the facility
9 from the tax exemptions provided under RCW 82.08.811 and 82.12.811.

10 NEW SECTION. **Sec. 107.** A new section is added to chapter 80.80
11 RCW to read as follows:

12 (1) A memorandum of agreement formed under section 106 of this act
13 may describe the potential sources and types of fuel for electricity
14 generation that may qualify as clean fuel transition power. When
15 negotiating the issue of clean fuel transition power in any memorandum
16 of agreement, the governor may consult with any entity necessary to
17 ensure a regional dialogue concerning replacement power, transmission
18 reliability, natural gas pipeline capacity, or any other relevant
19 issue. An interested entity may become a party to the memorandum of
20 agreement.

21 (2) No state agency or political subdivision of the state may adopt
22 a greenhouse gas emission performance standard, or other operating
23 requirement or limitation, that is inconsistent with the provisions of
24 a memorandum of agreement entered pursuant to this section. The
25 memorandum of agreement may provide for its termination or suspension,
26 or require modification to the satisfaction of the parties to the
27 memorandum of agreement, in the event that a conflicting emission or
28 performance standard, or other operational requirement or limitation
29 directly addressing greenhouse gas emissions, is imposed by federal
30 law, rules, or regulatory requirements.

31 NEW SECTION. **Sec. 108.** A new section is added to chapter 80.80
32 RCW to read as follows:

33 (1) A memorandum of agreement entered into pursuant to section 106
34 of this act may include provisions to assist in the financing of
35 emissions reductions that exceed those required by RCW 80.80.040(3)(c)
36 by providing for the recognition of such reductions in applicable state

1 policies and programs relating to greenhouse gas emissions, and by
2 encouraging and advocating for the recognition of the reductions in all
3 established and emerging emission reduction frameworks at the regional,
4 national, or international level.

5 (2) Where the agreement includes the provisions referred to in
6 subsection (1) of this section, electric utilities serving customers in
7 this state must be afforded an opportunity to manage their future
8 carbon regulatory risk through investments in early emission reductions
9 under the agreement. Such an investment must be treated as if it were
10 an equal reduction in the emissions generated by the utility and of any
11 emissions resulting from the consumption of electricity by the
12 utility's customers.

13 (3) The governor may recommend actions by the legislature to
14 strengthen implementation of an agreement or a proposed agreement
15 relating to recognition of investments in early emissions reductions.

16 **Sec. 109.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
17 read as follows:

18 (1) The council shall report to the governor its recommendations as
19 to the approval or rejection of an application for certification within
20 twelve months of receipt by the council of such an application, or such
21 later time as is mutually agreed by the council and the applicant. In
22 the case of an application for certification of an energy facility
23 proposed for construction, modification, or expansion for the purpose
24 of providing clean fuel transition power assisting in implementing
25 provisions of a memorandum of agreement entered pursuant to section 106
26 of this act, the council shall expedite the processing of the
27 application pursuant to RCW 80.50.075 and shall report its
28 recommendations to the governor within one hundred eighty days of
29 receipt by the council of such an application, or a later time as is
30 mutually agreed by the council and the applicant. If the council
31 recommends approval of an application for certification, it shall also
32 submit a draft certification agreement with the report. The council
33 shall include conditions in the draft certification agreement to
34 implement the provisions of this chapter, including, but not limited
35 to, conditions to protect state or local governmental or community
36 interests affected by the construction or operation of the energy
37 facility, and conditions designed to recognize the purpose of laws or

1 ordinances, or rules or regulations promulgated thereunder, that are
2 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
3 amended.

4 (2)(a) Within sixty days of receipt of the council's report the
5 governor shall take one of the following actions:

6 (~~(a)~~) (i) Approve the application and execute the draft
7 certification agreement; or

8 (~~(b)~~) (ii) Reject the application; or

9 (~~(c)~~) (iii) Direct the council to reconsider certain aspects of
10 the draft certification agreement.

11 (b) The council shall reconsider such aspects of the draft
12 certification agreement by reviewing the existing record of the
13 application or, as necessary, by reopening the adjudicative proceeding
14 for the purposes of receiving additional evidence. Such
15 reconsideration shall be conducted expeditiously. The council shall
16 resubmit the draft certification to the governor incorporating any
17 amendments deemed necessary upon reconsideration. Within sixty days of
18 receipt of such draft certification agreement, the governor shall
19 either approve the application and execute the certification agreement
20 or reject the application. The certification agreement shall be
21 binding upon execution by the governor and the applicant.

22 (3) The rejection of an application for certification by the
23 governor shall be final as to that application but shall not preclude
24 submission of a subsequent application for the same site on the basis
25 of changed conditions or new information.

26 NEW SECTION. **Sec. 201.** The legislature finds that very large
27 coal-fired baseload electric generation facilities are major industrial
28 facilities whose closure, removal of structures, and site reclamation
29 requires significant planning and funding. In order to ensure that the
30 site of these facilities after closure is fully cleaned up, it is
31 necessary to require that the facility owner demonstrate during the
32 facility's operation that sufficient funding will be available for
33 closure and postclosure activities. Since the degree of cleanup
34 depends, in part, on the proposed future uses of a site, the closure
35 and postclosure requirements must consider the land use designations
36 and economic development plans of the host community. It is the intent
37 of the legislature to facilitate the transition of these facilities by

1 requiring facility decommissioning and site restoration plans that are
2 coordinated and consistent with economic development plans of affected
3 communities.

4 NEW SECTION. **Sec. 202.** (1) A facility subject to closure under
5 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of
6 this act, must provide the department of ecology with a plan for the
7 closure and postclosure of the facility at least twenty-four months
8 prior to its closure. This plan must include but not be limited to:

9 (a) A detailed estimate of the cost to implement the plan based on
10 the cost of hiring a third party to conduct all activities;

11 (b) Demonstrating financial assurance to fund the closure and
12 postclosure of the facility and providing methods by which this
13 assurance may be demonstrated;

14 (c) Methods for estimating closure costs, including full site
15 reclamation under all applicable federal and state clean-up standards;
16 and

17 (d) A decommissioning and site restoration plan that addresses
18 restoring physical topography, cleanup of all hazardous substances on
19 the site, potential future uses of the site following restoration, and
20 coordination with local and community plans for economic development in
21 the vicinity of the site.

22 (2) All cost estimates in the plan must be in current dollars and
23 may not include a net present value adjustment or offsets for salvage
24 value of wastes or other property.

25 (3) Adoption of the plan and significant revisions to the plan must
26 be approved by the department of ecology following consultation with
27 the advisory board created in section 302 of this act.

28 NEW SECTION. **Sec. 203.** (1) A facility subject to closure under
29 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of
30 this act, must guarantee funds are available to perform all activities
31 specified in the decommissioning plan developed under section 202 of
32 this act. The amount must equal the cost estimates specified in the
33 decommissioning plan and must be updated annually for inflation. All
34 guarantees under this section must be assumed by any successor owner,
35 parent company, or holding company.

1 (2) The guarantee required under subsection (1) of this section may
2 be accomplished by letter of credit that is acceptable to the
3 department of ecology.

4 (3) The issuing institution of the letter of credit must be an
5 entity that has the authority to issue letters of credit and whose
6 letter of credit operations are regulated by a federal or state agency.

7 (4) A qualifying facility that uses a letter of credit to satisfy
8 the requirements of this act must also establish a standby trust fund.
9 Under the terms of the letter of credit, all amounts paid pursuant to
10 a draft from the department of ecology must be deposited by the issuing
11 institution directly into the standby trust fund in accordance with
12 instructions from the department of ecology. This standby trust fund
13 must be approved by the department of ecology.

14 (5) The letter of credit must be irrevocable and issued for a
15 period of at least one year. The letter of credit must provide that
16 the expiration date will be automatically extended for a period of at
17 least one year unless, at least one hundred twenty days before the
18 current expiration date, the issuing institution notifies both the
19 qualifying facility and the department of ecology of a decision not to
20 extend the expiration date. Under the terms of the letter of credit,
21 the one hundred twenty days will begin on the date when both the
22 qualifying plant and the department of ecology have received the
23 notice, as evidenced by certified mail return receipts or by overnight
24 courier delivery receipts.

25 (6) If the qualifying facility does not establish an alternative
26 method of guaranteeing decommissioning funds are available within
27 ninety days after receipt by both the qualifying facility plant and the
28 department of ecology of a notice from the issuing institution that it
29 has decided not to extend the letter of credit beyond the current
30 expiration date, the department of ecology must draw on the letter of
31 credit. The department of ecology must approve any replacement or
32 substitute guarantee method before the expiration of the ninety-day
33 period.

34 (7) If a qualifying facility elects to use a letter of credit as
35 the sole method for guaranteeing decommissioning funds are available,
36 the face value of the letter of credit must meet or exceed the current
37 inflation-adjusted cost estimate.

1 (8) A qualifying facility may use an amendment to increase the face
2 value of a letter of credit each year to account for inflation. A
3 qualifying facility is not required to obtain a new letter of credit to
4 cover annual inflation adjustments.

5 NEW SECTION. **Sec. 204.** The department of ecology shall consult
6 with the energy facility site evaluation council to harmonize the
7 standards required under the rules adopted under section 202 of this
8 act with rules adopted by the council for site restoration and
9 preservation applicable to facilities subject to a site certification
10 agreement under chapter 80.50 RCW.

11 NEW SECTION. **Sec. 205.** Sections 201 through 204 and 302 of this
12 act constitute a new chapter in Title 80 RCW.

13 NEW SECTION. **Sec. 301.** The legislature finds that to achieve the
14 state's greenhouse gas emissions limits established under RCW
15 70.235.020, very large emissions sources from fossil fuel electric
16 generation facilities in the state are likely to be transitioned to
17 lower-emitting fuels. It is in the public interest to assist local
18 communities in which very large facilities may be closed, in order to
19 plan for future economic uses of the site and in the community
20 surrounding the site.

21 NEW SECTION. **Sec. 302.** A new section is added to chapter 43.06
22 RCW to read as follows:

23 (1) By January 1, 2016, the governor shall create a coal-fired
24 electric generating facility transition advisory board for each
25 facility that is operating on July 1, 2015, and that is subject to the
26 standards applicable under RCW 80.80.040(3)(c). The advisory board
27 shall serve the purpose of providing community involvement in facility
28 and site decommissioning and planning for future economic development
29 to mitigate the community impacts of facility decommissioning.

30 (2)(a) Five members of the advisory board are voting members and
31 must be appointed by the governor. One voting member must be a
32 representative of the owner of the facility. One voting member must be
33 a representative of the county economic development council where the
34 facility is located. One voting member must be a representative of the

1 majority of employees at the facility, chosen by those employees or a
2 bargaining entity established to represent those employees. Two voting
3 members must represent the general public. All voting advisory board
4 members must comply with applicable provisions in chapter 42.52 RCW
5 concerning any potential conflicts of interest. The governor shall
6 appoint one of the general public members of the board as the chair.

7 (b) In making the appointments to the advisory board, the governor
8 shall seek a board membership that collectively provides strong fiscal
9 and environmental oversight of the facility transition to cleaner
10 fuels, that provides extensive knowledge of local government processes,
11 and that has an understanding of issues relevant to the environment and
12 economic development in Washington state. Vacant positions on the
13 advisory board must be filled in the same manner as the original
14 appointments. Advisory board members appointed by the governor shall
15 serve for terms coextensive with the term of the governor. All
16 advisory board members may be removed for cause.

17 (3) In addition to the five voting members of the advisory board,
18 the following shall serve as ex officio nonvoting members of the
19 advisory board: The director of the department of ecology; the mayor
20 of the city in which the qualifying facility is located; a
21 representative from the city council in which the facility is located;
22 and the chair of the county council in which the facility is located.
23 The members serving in an ex officio capacity may designate a
24 representative from their respective agencies or offices to serve on
25 the board on their behalf. Such a designation must be made in writing.

26 (4) The advisory board has the following powers and duties related
27 to decommissioning of the facility and planning for future site uses:

28 (a) To review and provide comments regarding the decommissioning
29 and site restoration plan required by this chapter;

30 (b) To advise the department of ecology on whether the
31 decommissioning and site restoration plan is coordinated and consistent
32 with economic development plans of affected communities; and

33 (c) To set its meeting schedules and convene at scheduled times or
34 meet at the request of a majority of its members or the chair.

35 (5) Decisions of the advisory board must be made by a majority of
36 its total voting membership.

37 (6) Members of the board must be reimbursed as provided by RCW
38 43.03.050 and 43.03.060.

1 (7) This section expires three years after the applicable date in
2 RCW 80.80.040(3)(c). The governor's office must notify the code
3 reviser's office in writing of the final expiration date.

4 **Sec. 303.** RCW 43.160.076 and 2008 c 327 s 8 are each amended to
5 read as follows:

6 (1) Except as authorized to the contrary under subsection (2) of
7 this section, from all funds available to the board for financial
8 assistance in a biennium under this chapter, the board shall approve at
9 least seventy-five percent of the first twenty million dollars of funds
10 available and at least fifty percent of any additional funds for
11 financial assistance for projects in rural counties.

12 (2) If at any time during the last six months of a biennium the
13 board finds that the actual and anticipated applications for qualified
14 projects in rural counties are clearly insufficient to use up the
15 allocations under subsection (1) of this section, then the board shall
16 estimate the amount of the insufficiency and during the remainder of
17 the biennium may use that amount of the allocation for financial
18 assistance to projects not located in rural counties.

19 (3) The board shall solicit qualifying projects to plan, design,
20 and construct public facilities needed to attract new industrial and
21 commercial activities in areas impacted by the closure or potential
22 closure of large fossil fuel electric generation facilities, which for
23 the purposes of this section means a facility that has emitted more
24 than one million tons per year of greenhouse gases in calendar year
25 2005. The projects should be consistent with any applicable plans for
26 major industrial activity on lands formerly used or designated for
27 surface coal mining and supporting uses under RCW 36.70A.368. When the
28 board receives timely and eligible project applications from a
29 political subdivision of the state for financial assistance for such
30 projects, the board from available funds shall provide a priority for
31 funding projects at the following levels:

32 (a) For the 2011-2013 biennium, at least two hundred fifty thousand
33 dollars;

34 (b) For the 2013-2015 biennium, at least two hundred fifty thousand
35 dollars;

36 (c) For the 2015-2017 biennium, at least one million dollars;

37 (d) For the 2017-2019 biennium, at least one million dollars;

- 1 (e) For the 2019-2021 biennium, at least two million dollars; and
2 (f) For the 2021-2023 biennium, at least two million dollars.

3 NEW SECTION. Sec. 304. A new section is added to chapter 43.155
4 RCW to read as follows:

5 The board shall solicit qualifying projects to plan, design, and
6 construct public works projects needed to attract new industrial and
7 commercial activities in areas impacted by the closure or potential
8 closure of large fossil fuel electric generation facilities, which for
9 the purposes of this section means a facility that has emitted more
10 than one million tons per year of greenhouse gases in calendar year
11 2005. The projects should be consistent with any applicable plans for
12 major industrial activity on lands formerly used or designated for
13 surface coal mining and supporting uses under RCW 36.70A.368. When the
14 board receives timely and eligible project applications from a
15 political subdivision of the state for financial assistance for such
16 projects, the board from available funds shall provide a priority for
17 funding projects at the following levels:

18 (1) For the 2011-2013 biennium, at least two hundred fifty thousand
19 dollars;

20 (2) For the 2013-2015 biennium, at least two hundred fifty thousand
21 dollars;

22 (3) For the 2015-2017 biennium, at least one million dollars;

23 (4) For the 2017-2019 biennium, at least one million dollars;

24 (5) For the 2019-2021 biennium, at least two million dollars; and

25 (6) For the 2021-2023 biennium, at least two million dollars.

26 NEW SECTION. Sec. 305. A new section is added to chapter 80.04
27 RCW to read as follows:

28 (1) In any rate proceeding of an electrical company, the commission
29 must allow the company to recover the cost to acquire clean fuel
30 transition power, as defined in RCW 80.80.010, provided the power is
31 needed by the company to serve its ratepayers and the acquisition is
32 economical for the company and its ratepayers.

33 (2) In determining whether the acquisition of clean fuel transition
34 power is economical, the commission may consider:

35 (a) The long-term economic benefit to the electrical company and
36 its ratepayers of such a long-term purchase; and

1 (b) The environmental benefits attributable to the production of
2 clean fuel transition power.

3 NEW SECTION. **Sec. 306.** No civil liability may be imposed by any
4 court on the state, its officers, employees, instrumentalities, or
5 subdivisions under sections 101, 201, or 301 of this act.

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