
SENATE BILL 5769

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By Senators Rockefeller, Pridemore, Kohl-Welles, White, Chase, Murray, Ranker, Regala, Fraser, Shin, and Kline

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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 chapter to Title 80 RCW; creating new sections;
6 repealing RCW 82.08.811 and 82.12.811; providing an effective date; and
7 providing an expiration date.

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

9 NEW SECTION. **Sec. 101.** (1) In chapter 14, Laws of 2008, the
10 legislature required that statewide overall greenhouse gas emissions
11 must be reduced to 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. The emissions from
18 the combustion of coal in the state significantly impact visibility in
19 eight class I areas in the state. Furthermore, these harmful by-

1 products are damaging the cultural history of Washington and its people
2 by eroding ancient native American petroglyphs and pictographs and by
3 accumulating in the soil and waters of the usual and accustomed areas
4 for tribal hunting, fishing, gathering, and grazing.

5 (3) The legislature has previously recognized that greenhouse gas
6 emissions contribute to climate change and has found that Washington is
7 especially vulnerable to climate change. The legislature now finds
8 that coal-powered electricity generation is one of the largest sources
9 of greenhouse gas emissions in the state, accounting for ten percent of
10 the state's total greenhouse gas emissions and nearly eighty percent of
11 such emissions from the generation of electricity in the state.

12 (4) The legislature finds coal-fired electric generation may
13 provide baseload power that is necessary for the stability and
14 reliability of the electrical transmission grid and that efforts to
15 transition that power to other fuels requires the deliberate
16 development of replacement generation.

17 (5) The legislature finds that coal-fired electric generation
18 facilities are large industrial facilities that require substantial
19 planning and funding for closure and postclosure to ensure that the
20 site is fully restored and free of contamination.

21 (6) Therefore, it is the purpose of this act to provide for the
22 reduction of greenhouse gas emissions from large coal-fired electric
23 power generation facilities, to ensure appropriate cleanup and site
24 restoration upon decommissioning of any facilities in the state, and to
25 provide assistance to host communities planning for new economic
26 development and mitigating the economic impacts of the closure of these
27 facilities.

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

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Attorney general" means the Washington state office of the
33 attorney general.

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

1 (3) "Average available greenhouse gas emissions output" means the
2 level of greenhouse gas emissions as surveyed and determined by the
3 energy policy division of the department of commerce under RCW
4 80.80.050.

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

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

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

18 (7) "Commission" means the Washington utilities and transportation
19 commission.

20 (8) "Consumer-owned utility" means a municipal utility formed under
21 Title 35 RCW, a public utility district formed under Title 54 RCW, an
22 irrigation district formed under chapter 87.03 RCW, a cooperative
23 formed under chapter 23.86 RCW, a mutual corporation or association
24 formed under chapter 24.06 RCW, or port district within which an
25 industrial district has been established as authorized by Title 53 RCW,
26 that is engaged in the business of distributing electricity to more
27 than one retail electric customer in the state.

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

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

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

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

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

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

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

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

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

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

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

17 (18) "Upgrade" means any modification made for the primary purpose
18 of increasing the electric generation capacity of a baseload electric
19 generation facility. "Upgrade" does not include routine or necessary
20 maintenance, installation of emission control equipment, installation,
21 replacement, or modification of equipment that improves the heat rate
22 of the facility, or installation, replacement, or modification of
23 equipment for the primary purpose of maintaining reliable generation
24 output capability that does not increase the heat input or fuel usage
25 as specified in existing generation air quality permits as of July 22,
26 2007, but may result in incidental increases in generation capacity.

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

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

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

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

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

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

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

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

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

20 (c) A baseload electric generation facility in Washington that has
21 emitted more than one million tons of greenhouse gases annually in each
22 of calendar years 2005, 2006, and 2007 must comply with the greenhouse
23 gas emissions performance standard established in subsection (1) of
24 this section by December 31, 2020, unless extended by order of the
25 governor pursuant to section 109 of this act.

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

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

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

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

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

11 (9) The department shall establish an output-based methodology to
12 ensure that the calculation of emissions of greenhouse gases for a
13 cogeneration facility recognizes the total usable energy output of the
14 process, and includes all greenhouse gases emitted by the facility in
15 the production of both electrical and thermal energy. In developing
16 and implementing the greenhouse gas emissions performance standard, the
17 department shall consider and act in a manner consistent with any rules
18 adopted pursuant to the public utilities regulatory policy act of 1978
19 (16 U.S.C. Sec. 824a-3), as amended.

20 (10) The following greenhouse gas emissions produced by baseload
21 electric generation owned or contracted through a long-term financial
22 commitment shall not be counted as emissions of the power plant in
23 determining compliance with the greenhouse gas emissions performance
24 standard:

25 (a) Those emissions that are injected permanently in geological
26 formations;

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

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

31 (11) In adopting and implementing the greenhouse gas emissions
32 performance standard, the department of (~~community, trade, and~~
33 ~~economic development~~) commerce energy policy division, in consultation
34 with the commission, the department, the Bonneville power
35 administration, the western electricity (~~coordination~~ coordinating)
36 coordinating council, the energy facility site evaluation council,
37 electric utilities, public interest representatives, and consumer

1 representatives, shall consider the effects of the greenhouse gas
2 emissions performance standard on system reliability and overall costs
3 to electricity customers.

4 (12) In developing and implementing the greenhouse gas emissions
5 performance standard, the department shall, with assistance of the
6 commission, the department of (~~community, trade, and economic~~
7 ~~development~~) commerce energy policy division, and electric utilities,
8 and to the extent practicable, address long-term purchases of
9 electricity from unspecified sources in a manner consistent with this
10 chapter.

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

16 (14) In adopting the rules for implementing this section, the
17 energy facility site evaluation council and the department shall
18 include criteria to be applied in evaluating the carbon sequestration
19 plan, for baseload electric generation that will rely on subsection
20 (10) of this section to demonstrate compliance, but that will commence
21 sequestration after the date that electricity is first produced. The
22 rules shall include but not be limited to:

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

27 (b) Provisions for geological or other approved sequestration
28 commencing within five years of plant operation, including full and
29 sufficient technical documentation to support the planned
30 sequestration;

31 (c) Provisions for monitoring the effectiveness of the
32 implementation of the sequestration plan;

33 (d) Penalties for failure to achieve implementation of the plan on
34 schedule;

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

1 (f) Provisions for public notice and comment on the carbon
2 sequestration plan.

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

9 (b) For facilities under its jurisdiction, the energy facility site
10 evaluation council shall contract for review of sequestration or the
11 carbon sequestration plan with the department consistent with the
12 conditions under (a) of this subsection, consider the adequacy of
13 sequestration or the plan in its adjudicative proceedings conducted
14 under RCW 80.50.090(3), and incorporate specific findings regarding
15 adequacy in its recommendation to the governor under RCW 80.50.100.

16 (16) A project under consideration by the energy facility site
17 evaluation council by July 22, 2007, is required to include all of the
18 requirements of subsection (14) of this section in its carbon
19 sequestration plan submitted as part of the energy facility site
20 evaluation council process. A project under consideration by the
21 energy facility site evaluation council by July 22, 2007, that receives
22 final site certification agreement approval under chapter 80.50 RCW
23 shall make a good faith effort to implement the sequestration plan. If
24 the project owner determines that implementation is not feasible, the
25 project owner shall submit documentation of that determination to the
26 energy facility site evaluation council. The documentation shall
27 demonstrate the steps taken to implement the sequestration plan and
28 evidence of the technological and economic barriers to successful
29 implementation. The project owner shall then provide to the energy
30 facility site evaluation council notification that they shall implement
31 the plan that requires the project owner to meet the greenhouse gas
32 emissions performance standard by purchasing verifiable greenhouse gas
33 emissions reductions from an electric (~~generating~~) generation
34 facility located within the western interconnection, where the
35 reduction would not have occurred otherwise or absent this contractual
36 agreement, such that the sum of the emissions reductions purchased and
37 the facility's emissions meets the standard for the life of the
38 facility.

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

3 (1) No electrical company may enter into a long-term financial
4 commitment unless the baseload electric generation supplied under such
5 a long-term financial commitment complies with the greenhouse (~~gases~~
6 ~~gas~~) gas emissions performance standard established under RCW
7 80.80.040.

8 (2) In order to enforce the requirements of this chapter, the
9 commission shall review in a general rate case or as provided in
10 subsection (5) of this section any long-term financial commitment
11 entered into by an electrical company after June 30, 2008, to determine
12 whether the baseload electric generation to be supplied under that
13 long-term financial commitment complies with the greenhouse (~~gases~~
14 ~~gas~~) gas emissions performance standard established under RCW
15 80.80.040.

16 (3) In determining whether a long-term financial commitment is for
17 baseload electric generation, the commission shall consider the design
18 of the power plant and its intended use, based upon the electricity
19 purchase contract, if any, permits necessary for the operation of the
20 power plant, and any other matter the commission determines is relevant
21 under the circumstances.

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

28 (5) Upon application by an electrical company, the commission shall
29 determine whether the company's proposed decision to acquire electric
30 generation or enter into a power purchase agreement for electricity
31 complies with the greenhouse (~~gases~~~~gas~~) gas emissions performance
32 standard established under RCW 80.80.040. The commission shall not
33 decide in a proceeding under this subsection (5) issues involving the
34 actual costs to construct and operate the selected resource, cost
35 recovery, or other issues reserved by the commission for decision in a
36 general rate case or other proceeding for recovery of the resource or
37 contract costs.

1 (6) An electrical company may account for and defer for later
2 consideration by the commission costs incurred in connection with a
3 long-term financial commitment, including operating and maintenance
4 costs, depreciation, taxes, and cost of invested capital. The deferral
5 begins with the date on which the power plant begins commercial
6 operation or the effective date of the power purchase agreement and
7 continues for a period not to exceed twenty-four months; provided that
8 if during such period the company files a general rate case or other
9 proceeding for the recovery of such costs, deferral ends on the
10 effective date of the final decision by the commission in such
11 proceeding. Creation of such a deferral account does not by itself
12 determine the actual costs of the long-term financial commitment,
13 whether recovery of any or all of these costs is appropriate, or other
14 issues to be decided by the commission in a general rate case or other
15 proceeding for recovery of these costs. For the purpose of this
16 subsection (6) only, the term "long-term financial commitment" also
17 includes an electric company's ownership or power purchase agreement
18 with a term of five or more years associated with an eligible renewable
19 resource as defined in RCW 19.285.030.

20 (7) The commission shall consult with the department to apply the
21 procedures adopted by the department to verify the emissions of
22 greenhouse gases from baseload electric generation under RCW 80.80.040.
23 The department shall report to the commission whether baseload electric
24 generation will comply with the greenhouse (~~gases~~ [gas]) gas
25 emissions performance standard for the duration of the period the
26 baseload electric generation is supplied to the electrical company.

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

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

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

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

37 (1) No consumer-owned utility may enter into a long-term financial

1 commitment unless the baseload electric generation supplied under such
2 a long-term financial commitment complies with the greenhouse (~~gases~~)
3 gas emissions performance standard established under RCW 80.80.040.

4 (2) The governing board shall review and make a determination on
5 any long-term financial commitment by the utility, pursuant to this
6 chapter and after consultation with the department, to determine
7 whether the baseload electric generation to be supplied under that
8 long-term financial commitment complies with the greenhouse (~~gases~~)
9 gas emissions performance standard established under RCW 80.80.040. No
10 consumer-owned utility may enter into a long-term financial commitment
11 unless the baseload electric generation to be supplied under that long-
12 term financial commitment complies with the greenhouse (~~gases~~) gas
13 emissions performance standard established under RCW 80.80.040.

14 (3) In confirming that a long-term financial commitment is for
15 baseload electric generation, the governing board shall consider the
16 design of the power plant and the intended use of the power plant based
17 upon the electricity purchase contract, if any, permits necessary for
18 the operation of the power plant, and any other matter the governing
19 board determines is relevant under the circumstances.

20 (4) The governing board may provide a case-by-case exemption from
21 the greenhouse (~~gases~~) gas emissions performance standard to address:
22 (a) Unanticipated electric system reliability needs; or (b)
23 catastrophic events or threat of significant financial harm that may
24 arise from unforeseen circumstances.

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

29 (6) For consumer-owned utilities, the auditor is responsible for
30 auditing compliance with this chapter and rules adopted under this
31 chapter that apply to those utilities and the attorney general is
32 responsible for enforcing that compliance.

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

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

1 (1) The governor shall seek to enter into a memorandum of agreement
2 with the owners of a facility that has emitted more than one million
3 tons of greenhouse gases annually in calendar years 2005 through 2007.

4 (2) The memorandum of agreement must incorporate binding
5 commitments to achieve the reductions required by this section and
6 include a schedule of major steps and resource investments necessary to
7 achieve the reductions. The agreement must provide for the following
8 minimum levels of emission reductions when measured on a calendar year
9 basis as a percentage of the average annual emissions in calendar years
10 2005 through 2007:

11 (a) Beginning January 1, 2014, the facility must achieve at least
12 a twenty-five percent reduction; and

13 (b) Beginning January 1, 2017, the facility must achieve at least
14 a forty percent reduction.

15 (3) The memorandum of agreement must be consistent with the
16 requirement that the facility meet the emissions performance standard
17 by the applicable date in RCW 80.80.040(3)(c).

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

20 (1) A memorandum of agreement formed under section 106 of this act
21 may describe the potential sources and types of fuel for electricity
22 generation that may qualify as clean fuel transition power. If the
23 memorandum of agreement provides such a provision, the memorandum of
24 agreement must also provide timely procedures for the governor to
25 review the proposed purchases and determine that the purchases will
26 assist in implementing the memorandum of agreement. When negotiating
27 the issue of clean fuel transition power in any memorandum of
28 agreement, the governor may consult with any entity necessary to ensure
29 a regional dialogue concerning replacement power, transmission
30 reliability, natural gas pipeline capacity, or any other relevant
31 issue.

32 (2) No state agency or political subdivision of the state may adopt
33 a greenhouse gas emission performance standard, or other operating
34 requirement or limitation, that is inconsistent with the provisions of
35 a memorandum of agreement entered pursuant to this section. The
36 memorandum of agreement may provide for its termination or suspension,
37 or require modification to the satisfaction of the parties to the

1 memorandum of agreement, in the event that a conflicting emission or
2 performance standard, or other operational requirement or limitation
3 directly addressing greenhouse gas emissions, is imposed by federal
4 law, rules, or regulatory requirements.

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

7 (1) A memorandum of agreement entered into pursuant to section 106
8 of this act may include provisions to assist in the financing of
9 emissions reductions that exceed those required by RCW 80.80.040(3)(c)
10 by providing for the recognition of such reductions in applicable state
11 policies and programs relating to greenhouse gas emissions, and by
12 encouraging and advocating for the recognition of the reductions in all
13 established and emerging emission reduction frameworks at the regional,
14 national, or international level.

15 (2) Where the agreement includes the provisions referred to in
16 subsection (1) of this section, electric utilities serving customers in
17 this state must be afforded an opportunity to manage their future
18 carbon regulatory risk through investments in early emission reductions
19 under the agreement. Such an investment must be treated as if it were
20 an equal reduction in the emissions generated by the utility and of any
21 emissions resulting from the consumption of electricity by the
22 utility's customers. Such an investment must be treated as prudent in
23 meeting the utility's responsibilities to contribute toward greenhouse
24 gas emissions reductions to meet the state's limits established under
25 RCW 70.235.020.

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

29 NEW SECTION. **Sec. 109.** A new section is added to chapter 80.80
30 RCW to read as follows:

31 (1) Upon petition by the baseload electric generation facility
32 owner, the governor may grant an extension of the compliance date
33 applicable under RCW 80.80.040(3)(c) when the governor determines under
34 the provisions of this section that such an extension would be in the
35 public interest. An extension of the compliance date may not be
36 granted beyond December 31, 2025.

1 (2) The governor shall broadly seek information and positions upon
2 the petition, including the views of agencies and entities engaged in
3 the management of the generation, transmission, and distribution of
4 electricity. A reasonable opportunity to provide comments must be
5 afforded to all interested persons.

6 (3) The governor shall consider all relevant information submitted
7 in support of or opposing the petition, including but not limited to
8 such considerations as:

9 (a) Impacts upon baseload and peak load electricity supplies in the
10 state and throughout the region;

11 (b) Impacts upon the reliability and the operational costs of the
12 region's electrical transmission system;

13 (c) Impacts of the compliance date upon retail electric rates;

14 (d) Impacts upon employment and other economic impacts in the
15 community hosting the baseload electric generation facility; and

16 (e) Financial impact upon the baseload electric generation facility
17 owner.

18 (4) The governor shall issue a draft order that must identify the
19 information relied upon to support the order. The draft order must be
20 made available to the public and a reasonable time afforded for review
21 and comments to be submitted to the governor.

22 (5) The governor may grant or deny the petition by order.

23 (6) The governor may designate an official of state government to
24 perform the duties under this section, except that the governor must
25 review the information submitted and issue the final decision whether
26 to grant or deny the petition.

27 **Sec. 110.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
28 read as follows:

29 (1) The council shall report to the governor its recommendations as
30 to the approval or rejection of an application for certification within
31 twelve months of receipt by the council of such an application, or such
32 later time as is mutually agreed by the council and the applicant. In
33 the case of an application for certification of an energy facility
34 proposed for construction, modification, or expansion for the purpose
35 of providing clean fuel transition power assisting in implementing
36 provisions of a memorandum of agreement entered pursuant to section 106
37 of this act, the council shall report its recommendations to the

1 governor within one hundred eighty days of receipt by the council of
2 such an application, or a later time as is mutually agreed by the
3 council and the applicant. If the council recommends approval of an
4 application for certification, it shall also submit a draft
5 certification agreement with the report. The council shall include
6 conditions in the draft certification agreement to implement the
7 provisions of this chapter, including, but not limited to, conditions
8 to protect state or local governmental or community interests affected
9 by the construction or operation of the energy facility, and conditions
10 designed to recognize the purpose of laws or ordinances, or rules or
11 regulations promulgated thereunder, that are preempted or superseded
12 pursuant to RCW 80.50.110 as now or hereafter amended.

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

15 (~~(a)~~) (i) Approve the application and execute the draft
16 certification agreement; or

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

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

20 (b) The council shall reconsider such aspects of the draft
21 certification agreement by reviewing the existing record of the
22 application or, as necessary, by reopening the adjudicative proceeding
23 for the purposes of receiving additional evidence. Such
24 reconsideration shall be conducted expeditiously. The council shall
25 resubmit the draft certification to the governor incorporating any
26 amendments deemed necessary upon reconsideration. Within sixty days of
27 receipt of such draft certification agreement, the governor shall
28 either approve the application and execute the certification agreement
29 or reject the application. The certification agreement shall be
30 binding upon execution by the governor and the applicant.

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

35 NEW SECTION. **Sec. 201.** The legislature finds that very large
36 coal-fired electric generation facilities, together with nearby coal
37 mines that have historically supplied coal to the facilities, are major

1 industrial facilities whose closure, removal of structures, and site
2 reclamation requires significant planning and funding. In order to
3 ensure that the site of these facilities after closure is fully cleaned
4 up and surrounding communities are fully assured that applicable and
5 appropriate clean-up standards are met, it is necessary to require that
6 the facility owner demonstrate during the facility's operation that
7 sufficient funding will be available for closure and postclosure
8 activities.

9 NEW SECTION. **Sec. 202.** (1) By June 30, 2013, the department of
10 ecology shall adopt rules establishing requirements for the closure and
11 postclosure of coal-fired electric generating facilities in operation
12 prior to the effective date of this section and which have emitted more
13 than five million tons of greenhouse gases in each of the calendar
14 years 2006 through 2010.

15 (2) The rules must include but not be limited to:

16 (a) Demonstrating financial assurance to fund the closure and
17 postclosure of the facility and providing methods by which this
18 assurance may be demonstrated. The rules must be consistent with the
19 requirement to establish a closure trust account provided under section
20 204 of this act;

21 (b) Methods for estimating closure costs, including full site
22 reclamation under all applicable federal and state clean-up standards;

23 (c) Methods to ensure that the full funding necessary for closure
24 and postclosure costs will be available at the time of closure of the
25 facility; and

26 (d) Requiring a decommissioning and site restoration plan. The
27 plan must address restoring physical topography, cleanup of all
28 hazardous substances on the site, potential future uses of the site
29 following restoration, and coordination with local and community plans
30 for economic development in the vicinity of the site. Adoption of the
31 plan and significant revisions to the plan must be approved by the
32 department following consultation with the advisory board created in
33 section 302 of this act.

34 NEW SECTION. **Sec. 203.** (1) Each coal-fired electric generating
35 facility in operation on the effective date of this section and which
36 has emitted more than five million tons of greenhouse gases in each of

1 the calendar years 2006 through 2010 must, on or before December 31,
2 2012, and on or before December 31st of each year thereafter until coal
3 combustion at the facility ceases, pay into the trust account required
4 by section 204 of this act funds for the purpose of decommissioning
5 such a facility.

6 (2) The funding must be calculated based upon the total annual
7 electricity generated from the combustion of coal in the amount of one
8 dollar per megawatt hour in the preceding twelve months.

9 (3) The parent corporation, holding company, or successor owner of
10 the coal-fired electric generating facility is responsible for any
11 costs associated with eliminating toxic contamination at the facility,
12 dismantling infrastructure at the facility, and disposing of waste
13 created by the dismantling of infrastructure at the facility if those
14 costs exceed the amount reserved in the trust account required by
15 section 204 of this act.

16 NEW SECTION. **Sec. 204.** (1) All funds required under section 203
17 of this act for the purpose of decommissioning must be deposited into
18 a trust account, maintained for the purpose of holding such
19 decommissioning funds, with a financial institution as defined by RCW
20 30.22.041 or licensed escrow agent located in Washington. Except as
21 provided in subsection (2) of this section, all interest paid on trust
22 account deposits must be reinvested in the account. The qualifying
23 coal-fired electric generating facility shall provide to the department
24 and to the advisory board created in section 302 of this act a written
25 accounting of all relevant deposits, and provide written notice of the
26 name, address, and location of the depository and any subsequent change
27 thereof. If ownership of the facility is transferred to another
28 person, entity, or corporation, any sums in the trust account affected
29 by such a transfer must simultaneously be transferred to an equivalent
30 trust account of the successor owner, and the successor owner shall
31 promptly notify the department and the advisory board created in
32 section 302 of this act of the transfer and of the name, address, and
33 location of the new depository. No creditor of the qualifying facility
34 has a superior claim to any moneys deposited under this section,
35 including a trustee in bankruptcy or receiver.

36 (2) All moneys paid in excess of the yearly deposits required by
37 section 203 of this act as security for performance of the facility's

1 decommissioning obligations must be deposited into the account required
2 by subsection (1) of this section. The interest accruing on deposits
3 in the account, minus fees charged to administer the account, must be
4 reinvested in the account. All other provisions of subsection (1) of
5 this section apply to deposits under this subsection.

6 (3) Expenditures from the trust account may only be made in
7 accordance with an authorized decommissioning and site restoration
8 plan.

9 NEW SECTION. **Sec. 205.** The department of ecology shall consult
10 with the energy facility site evaluation council to harmonize the
11 standards required under the rules adopted under section 202 of this
12 act with rules adopted by the council for site restoration and
13 preservation applicable to facilities subject to a site certification
14 agreement under chapter 80.50 RCW.

15 NEW SECTION. **Sec. 206.** The department of ecology shall consult
16 with the department of natural resources to harmonize the standards
17 required under the rules adopted under section 202 of this act with the
18 site reclamation requirements of the department of natural resources
19 under the surface mining regulations of chapter 78.44 RCW. Where the
20 department of ecology determines that a site reclamation permit from
21 the department of natural resources establishes sufficient financial
22 assurance mechanisms for the restoration of surface mining sites
23 associated with a generation facility to the levels required by this
24 chapter, the department of ecology may recognize such a permit in lieu
25 of compliance with the rules adopted under section 202 of this act
26 solely with regard to the site areas addressed in the site reclamation
27 permit.

28 NEW SECTION. **Sec. 207.** Sections 201 through 206 and 302 of this
29 act constitute a new chapter in Title 80 RCW.

30 NEW SECTION. **Sec. 301.** The legislature finds that to achieve the
31 state's greenhouse gas emissions limits established under chapter 14,
32 Laws of 2008, very large emissions sources from fossil fuel electric
33 generation facilities in the state are likely to be transitioned to
34 lower-emitting fuels. It is in the public interest to assist local

1 communities in which very large facilities may be closed, in order to
2 plan for future economic uses of the site and in the community
3 surrounding the site.

4 NEW SECTION. **Sec. 302.** (1) By January 1, 2016, the governor shall
5 create a coal-fired electric generating facility transition and
6 decommissioning advisory board for each facility that is operating on
7 July 1, 2015, and that is subject to the standards applicable under RCW
8 80.80.040(3)(c). The advisory board shall serve the purpose of
9 providing community involvement in facility and site decommissioning
10 and planning for future economic development to mitigate the community
11 impacts of facility decommissioning.

12 (2)(a) Five members of the advisory board are voting members and
13 must be appointed by the governor. One voting member must be a
14 representative of the owner of the facility. One voting member must be
15 a representative of the county economic development council where the
16 facility is located. One voting member must be a representative of the
17 majority of employees at the facility, chosen by those employees or a
18 bargaining entity established to represent those employees. Two voting
19 members must represent the general public. All voting advisory board
20 members must comply with applicable provisions in chapter 42.52 RCW
21 concerning any potential conflicts of interest. The governor shall
22 appoint one of the general public members of the board as the chair.

23 (b) In making the appointments to the advisory board, the governor
24 shall seek a board membership that collectively provides strong fiscal
25 and environmental oversight of the decommissioning plan, that provides
26 extensive knowledge of local government processes, and that has an
27 understanding of issues relevant to the environment and economic
28 development in Washington state. Vacant positions on the advisory
29 board must be filled in the same manner as the original appointments.
30 Advisory board members appointed by the governor shall serve for terms
31 coextensive with the term of the governor. All advisory board members
32 may be removed for cause.

33 (3) In addition to the five voting members of the advisory board,
34 the following shall serve as ex officio nonvoting members of the
35 advisory board: The director of the department of ecology; the mayor
36 of the city in which the qualifying facility is located; a
37 representative of the city council in which the facility is located;

1 and the chair of the county council in which the facility is located.
2 The members serving in an ex officio capacity may designate a
3 representative of their respective agencies to serve on the board on
4 their behalf. Such a designation must be made in writing and in such
5 a manner as is specified by the advisory board.

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

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

10 (b) To review and concur in expenditures from the decommission
11 trust account required under section 204 of this act; and

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

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

16 (6) Members of the board must be reimbursed as provided by RCW
17 43.03.050 and 43.03.060.

18 (7) This section expires December 31, 2020.

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

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

27 (2) If at any time during the last six months of a biennium the
28 board finds that the actual and anticipated applications for qualified
29 projects in rural counties are clearly insufficient to use up the
30 allocations under subsection (1) of this section, then the board shall
31 estimate the amount of the insufficiency and during the remainder of
32 the biennium may use that amount of the allocation for financial
33 assistance to projects not located in rural counties.

34 (3) The board shall solicit qualifying projects to plan, design,
35 and construct public facilities needed to attract new industrial and
36 commercial activities in areas impacted by the closure or potential
37 closure of large fossil fuel electric generation facilities, which for

1 the purposes of this section means a facility that has emitted more
2 than one million tons per year of greenhouse gases in each of the
3 calendar years 2005 through 2007. The projects should be consistent
4 with any applicable plans for major industrial activity on lands
5 formerly used or designated for surface coal mining and supporting uses
6 under RCW 36.70A.368. When the board receives timely and eligible
7 project applications from a political subdivision of the state for
8 financial assistance for such projects, the board from available funds
9 shall provide a priority for funding projects at the following levels:

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

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

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

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

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

17 (f) For the 2021-2023 biennium, at least two million dollars.

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

20 The board shall solicit qualifying projects to plan, design, and
21 construct public works projects needed to attract new industrial and
22 commercial activities in areas impacted by the closure or potential
23 closure of large fossil fuel electric generation facilities, which for
24 the purposes of this section means a facility that has emitted more
25 than one million tons per year of greenhouse gases in each of the
26 calendar years 2005 through 2007. The projects should be consistent
27 with any applicable plans for major industrial activity on lands
28 formerly used or designated for surface coal mining and supporting uses
29 under RCW 36.70A.368. When the board receives timely and eligible
30 project applications from a political subdivision of the state for
31 financial assistance for such projects, the board from available funds
32 shall provide a priority for funding projects at the following levels:

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

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

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

- 1 (4) For the 2017-2019 biennium, at least one million dollars;
2 (5) For the 2019-2021 biennium, at least two million dollars; and
3 (6) For the 2021-2023 biennium, at least two million dollars.

4 NEW SECTION. **Sec. 305.** A new section is added to chapter 80.80
5 RCW to read as follows:

6 (1) The clean fuel transition community assistance account is
7 created in the treasury. All receipts from subsection (2) of this
8 section must be deposited into the account. Moneys in the account may
9 be spent only after appropriation. Expenditures from the account may
10 be used only for the purpose of assisting communities hosting a coal-
11 fired electric generating facility for which decommissioning of the
12 facility and planning for future uses of the site and economic
13 development in the community is being planned.

14 (2) The state treasurer shall transfer from the general fund to the
15 account the following amounts in each of the following fiscal years,
16 the transfers to be made on July 1st of each fiscal year:

17 (a) For the fiscal years ending June 30, 2016, 2017, 2018, 2019,
18 and 2020, the amount of two million four hundred thousand dollars; and

19 (b) For the fiscal years ending June 30, 2021, 2022, 2023, 2024,
20 2025, and 2026, two million dollars.

21 NEW SECTION. **Sec. 306.** The following acts or parts of acts are
22 each repealed:

23 (1) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal
24 electric generation facility--Application--Demonstration of progress in
25 air pollution control--Notice of emissions violations--Reapplication--
26 Payments on cessation of operation) and 1997 c 368 s 4; and

27 (2) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal
28 electric generation facility--Application--Demonstration of progress in
29 air pollution control--Notice of emissions violations--Reapplication--
30 Payments on cessation of operation) and 1997 c 368 s 6.

31 NEW SECTION. **Sec. 307.** Sections 305 and 306 of this act take
32 effect July 1, 2015.

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