

# HOUSE BILL REPORT

## HB 2506

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**As Reported by House Committee On:**  
Technology & Economic Development  
General Government & Information Technology

**Title:** An act relating to the development of a state plan to implement federal regulations on electric generation facilities.

**Brief Description:** Concerning the development of a state plan to implement federal regulations on electric generation facilities.

**Sponsors:** Representatives Young, Tarleton, Smith, Morris and Harmsworth.

**Brief History:**

**Committee Activity:**

Technology & Economic Development: 1/20/16, 2/3/16 [DPS];  
General Government & Information Technology: 2/8/16 [DPS(TED)].

**Brief Summary of Substitute Bill**

- Establishes legislative intent language directing the Department of Ecology (ECY) to submit an initial state plan with an extension request to comply with the federal Clean Power Plan by September 6, 2016.
- Requires the initial submittal of a state plan to outline a cumulative statewide mass-based implementation plan.
- Authorizes the ECY to select an average statewide rate-based implementation plan under certain conditions after reporting to the Legislature by December 1, 2016.
- Establishes certain requirements that must be met by the state plan to comply with the Clean Power Plan.
- Specifies that nothing in the bill changes the terms of or otherwise amends the memorandum of agreement with owners of a coal-fired baseload facility established under RCW 80.80.100.

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**HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT**

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

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Morris, Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Harmsworth, Magendanz, Nealey, Rossetti and Young.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Tarleton, Vice Chair; Fey and Hudgins.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Santos and Wylie.

**Staff:** Nikkole Hughes (786-7156).

### **Background:**

#### Federal Clean Power Plan.

On August 3, 2015, the United States Environmental Protection Agency (US EPA) released its Clean Power Plan final rule. In the rule, the US EPA established:

- carbon dioxide emission performance rates representing the best system of emission reduction (BSER) for fossil fuel-fired electric utility steam generating units and stationary national gas combustion turbines;
- state-specific carbon dioxide goals reflecting the carbon dioxide emissions performance rates; and
- guidelines for developing and submitting state plans to implement the carbon dioxide emission performance rates, either directly by means of source-specific emission standards or other requirements, or indirectly through measures that achieve equivalent carbon dioxide reductions from the same groups of electric generating units (EGUs).

#### State Goals Under the Clean Power Plan.

States may decide to meet a specific state goal as an equivalent quantitative expression of the BSER. The US EPA established interim and final state-specific carbon dioxide goals in three different forms from which a state may choose:

- a rate-based goal measured in pounds of carbon dioxide per megawatt-hour;
- a mass-based goal measured in short tons of carbon dioxide; or
- a mass-based goal with a new source complement measured in short tons of carbon dioxide.

Under the Clean Power Plan, Washington must meet either the rate-based goal of 983 pounds of carbon dioxide per megawatt-hour by 2030 or the mass-based goal of 10,739,172 short tons of carbon dioxide by 2030.

#### State Plans to Implement the Clean Power Plan.

Each state with EGUs covered by the Clean Power Plan must develop, adopt, and submit a state plan that implements the BSER. The US EPA's final guidelines for state plans outlines two plan types from which a state may choose:

- an Emission Standards Plan, under which a state places federally enforceable emission standards on affected EGUs that fully meet either the carbon dioxide emission performance rates or the state goal; or
- a State Measures Plan, under which a state that chooses to pursue a mass-based goal implements measures that are not federally enforceable emission standards but that result in the affected EGUs meeting emission requirements, and under which the state includes a backstop provision that imposes federally enforceable emission standards on the affected EGUs.

States are required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016. Final complete state plans must be submitted no later than September 6, 2018. If a state does not submit a plan or extension request, or if the plan is not approved by the US EPA, then the US EPA has authority under the Clean Air Act Section 111(d) to establish a federal compliance plan for the state.

#### Trading and Other Multi-State Arrangements Under the Clean Power Plan.

The Clean Power Plan enables states to collaborate with each other by submitting multi-state plans or by linking plans through common administrative provisions (i.e. "trading ready"). Trading ready mechanisms allow states or affected EGUs to use creditable, out-of-state reductions to meet their goal without the need for up-front interstate agreements.

#### Department of Ecology.

As the state agency with delegated authority to implement programs under the federal Clean Air Act, the Department of Ecology (ECY) is the lead agency in preparing the state's implementation plan under the Clean Power Plan. The ECY is also responsible for enforcing the state greenhouse gas emissions performance standard. The state greenhouse gas emissions performance standard prohibits Washington utilities from investing in or making long-term financial commitment to sources of electricity whose generation exceeds 1,100 pounds of greenhouse gases per megawatt hour, or a separate standard for natural gas generation as determined by the Department of Commerce.

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#### **Summary of Substitute Bill:**

The ECY is directed to submit to the US EPA an initial submittal of a state plan by September 6, 2016, with an extension request in order to comply with the federal Clean Power Plan.

The initial submittal of the state plan must outline a cumulative statewide mass-based implementation plan. By December 1, 2016, the ECY must submit and present a report to the appropriate committees of the Legislature on the cumulative statewide mass-based implementation plan. The report must include an analysis of the projected economic impact

or value of the cumulative statewide mass-based implementation plan compared with the projected economic impact or value of an average statewide rate-based implementation plan.

The ECY is authorized to select the average statewide rate-based implementation plan for a final state plan only if the ECY concludes in its report to the Legislature that a rate-based plan would provide greater quantifiable benefit to electric generation facilities, the flexibility of operation of the regional electric grid, and ratepayers.

Regardless of whether or not a mass-based or rate-based implementation plan is selected, the state plan to comply with the federal Clean Power Plan must:

- maintain state flexibility to achieve compliance using market-based regulations that include the use of market-based tools;
- distribute all compliance instruments equal to the baseline emissions for the compliance period; and
- facilitate Washington's participation in a regional or multistate program to trade compliance instruments.

State participation in a regional or multistate program to trade compliance instruments must be such that:

- the state's opportunity to reduce greenhouse gas emissions and realize benefit is maximized at the least risk and least cost to electric generation facilities and ratepayers;
- the current system reliability, diversification, and diversity of the state's electric generation sources is not diminished; and
- the administration and distribution of compliance instruments minimizes rate impacts on low-income families and other customer classes served by the state's electric utilities.

Nothing in the bill changes the terms or otherwise amends the memorandum of agreement with owners of a coal-fired baseload facility established under RCW 80.80.100.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- adds legislative intent language directing the ECY to submit an initial state plan with an extension request to comply with the federal Clean Power Plan by September 6, 2016;
- establishes a statewide cumulative mass-based implementation plan as the default plan for an initial submittal to the US EPA;
- authorizes the ECY to select an average statewide rate-based implementation plan under certain conditions after reporting to the Legislature by December 1, 2016;
- modifies the requirements that must be met by the state plan to comply with the federal Clean Power Plan; and
- specifies that nothing in the bill changes the terms of or otherwise amends the memorandum of agreement with owners of a coal-fired baseload facility established under RCW 80.80.100.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 3, 2016.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill provides an opportunity to create some transparency around the state's compliance with the federal Clean Power Plan. This bill doesn't micromanage the ECY's process, but rather provides clarity and direction.

(Opposed) This bill limits the state's ability to analyze all of its options in complying with the Clean Power Plan. It would be premature to take other options off the table right now. Protecting low-income communities should be a priority of the state, but it would be premature to decide how those communities should be protected. There are a lot of questions surrounding the intent of this bill to preserve the diversification of the state's electric generation resources.

(Other) Because of its hydropower base and existing policies, Washington is strongly positioned to comply with either the mass-based or rate-based goal under the Clean Power Plan. This bill forces the state to select a mass-based goal when it is too early to tell whether or not the rate-based option provides equal or greater benefits. The state plan should put the best approach into place by exploring all available options.

**Persons Testifying:** (In support) Representative Young, prime sponsor.

(Opposed) Kelly Hall, Renewable Northwest.

(Other) Tim Boyd, Industrial Customers of Northwest Utilities; Nancy Atwood, Puget Sound Energy; Dave Warren, Washington Public Utilities Districts Association; Stu Clark, Department of Ecology; and Kathleen Collins, PacifiCorp.

**Persons Signed In To Testify But Not Testifying:** None.

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**HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION  
TECHNOLOGY**

**Majority Report:** The substitute bill by Committee on Technology & Economic Development be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kuderer, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Johnson and Morris.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Hudgins, Chair; Senn.

**Staff:** James Mackison (786-7104).

**Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Technology & Economic Development:**

No new changes were recommended by the committee.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The purpose of the bill is to provide direction and give the state a say in implementing the United States (US) Environmental Protection Agency (EPA) Clean Power Plan. The original bill required a mass-based option, with the intent of providing certainty to market participants. A mass-based approach is the US EPA preference and the Department of Ecology's stated direction. The original bill was modified from requiring a mass-based approach, to using a mass-based approach as a default, with an option to switch to rate-based if research determines it to be a better approach.

(Opposed) Despite changes made in the policy committee, there remain issues with the bill. The bill presumes a mass-based approach. Washington may already meet rate-based standards, which could make that the better option. Prior to analysis, the bill specifies how allowances are allocated, with most going to large emitters based on the current baseline. The bill does not allow the state flexibility in using allowances to achieve other goals. The allocation approach should come out of a public planning process and there is time for that. The diversity language is also unclear. The bill is premature.

**Persons Testifying:** (In support) Representative Young, Prime sponsor.

(Opposed) Joni Bosh, NW Energy Coalition.

**Persons Signed In To Testify But Not Testifying:** None.