

SENATE BILL REPORT

SB 6173

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, January 20, 2016

Title: An act relating to prohibiting rules and policies that limit greenhouse gas emissions.

Brief Description: Prohibiting rules and policies that limit greenhouse gas emissions.

Sponsors: Senators Ericksen and Sheldon.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/19/16, 1/20/16 [DP, DNP].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown and Honeyford.

Minority Report: Do not pass.

Signed by Senators McCoy, Ranking Minority Member; Cleveland and Habib.

Staff: Kimberly Cushing (786-7421)

Background: The Washington Supreme Court has held that administrative agencies have those powers expressly granted to them and those necessarily implied from their statutory delegation of authority. Additionally, agency rules or regulations cannot amend legislative enactments.

The Administrative Procedure Act (APA) provides the process that state agencies must follow when adopting, amending, or repealing rules. Under the APA, a rule includes an agency order, directive, or regulation of general applicability that:

- could result in a penalty or sanction;
- establishes a process for agency hearings;
- addresses qualifications or requirements relating to benefits or privileges conferred by law; and
- addresses qualifications or standards for commercial activity or professional licensed professions.

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.

In order to adopt a rule, the APA generally requires that an agency:

- have the statutory authority to adopt the rule;
- provide public notice of the proposed rulemaking; and
- provide an opportunity for the public to comment on the proposed rules, both in writing and at a hearing.

Summary of Bill: The Department of Ecology (Ecology) may not adopt any rule or policy establishing a statewide limit, cap, or standard, to control the amount of greenhouse gas (GHG) emissions occurring during a period of time, unless it is authorized to adopt such a rule or policy in legislation enacted after the effective date of this act.

GHG includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by Ecology.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill deals with ability of executive branch to put in place a carbon cap by rule without legislative approval. Washington already has some of the highest energy carbon taxes in the United States. Washington taxpayers pay on average \$2.32 a gallon of gas and the national average for a gallon of gas is \$1.88. Washington also has a significantly higher tax load on refinery energy than in California, due to our hazardous substance tax and business and occupations tax. Companies are going to leave the state due to the carbon rule, carbon tax, and cap and trade being put in place at same time because they cannot compete and pass on costs. Companies are not going to want to come to Washington to make capital investments and increase jobs in high energy-utilizing manufacturing arena. Rulemaking for the Clean Air Rule was rushed through in fast manner, when normally it would take a couple of years to work through the process. A major concern with the rule is inclusion of fuel consumption. The Legislature should want oversight over GHG emissions goals and to credit for businesses who adopt early action. The Legislature can ensure alignment with other regulations, linkage to other programs, trading, and credits. Let's hold off on carbon cap rule and let the legislative process work.

CON: The Clean Air Rule is a real opportunity for Washington to continue leading the country. There is broad support for the rule to move forward. Others rules that Ecology may adopt to comply with federal rule may be restricted by the bill as well. Adopting carbon pollution standards is consistent with others moving toward cleaner and more efficient technology. Ecology is empowering business to decide how the Legislature's goals should be implemented. Washington is a progressive state in terms of climate change. A ban on restricting fossil fuel emissions does not reflect well on us as a state and is not in our best interest as member of global community. We need to incorporate all aspects of climate actions, not just low-hanging fruit.

Persons Testifying: PRO: Brandon Houskeeper, Assoc. of WA Business; Frank Holmes, WSPA.

CON: Vladimir Gutman, Climate Solutions/Washington Director; Madeline Goodwin, The Evergreen State College, graduate student.

Persons Signed In To Testify But Not Testifying: No one.