Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Environment & Energy Committee

HB 2472

Brief Description: Incorporating comprehensive measurements of greenhouse gas emissions from certain fossil fuels into state environmental laws.

Sponsors: Representatives Pollet, Fitzgibbon, Thai and Ryu.

Brief Summary of Bill

- Directs the Department of Ecology (Ecology), in consultation with other state agencies, to adopt a rule establishing a cumulative greenhouse gas (GHG) emissions rate associated with fossil fuel production, gathering, processing, storage, distribution, and combustion.
- Requires Ecology to adopt a related rule to specify the global warming potential associated with fossil fuel emissions over a 20-year and 100-year time frame.
- Requires Ecology to adopt rules under the State Environmental Policy Act (SEPA) to establish standards for the mitigation of greenhouse gases that achieve no net increase in cumulative GHG emissions associated with a project or other government action.
- Integrates the fossil fuel cumulative emissions rate and global warming potential rules into other environmental and energy laws, including SEPA, the state Clean Air Act and GHG emission reporting laws, carbon dioxide mitigation laws for thermal power plants, and utility resource planning laws.

Hearing Date: 1/21/20

Staff: Jacob Lipson (786-7196).

Background:

Federal and State Regulation of Greenhouse Gases.
The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,

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perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures.

Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent). Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of carbon dioxide equivalent report their emissions to the EPA. At the state level, GHGs are regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of carbon dioxide equivalent each year to report their annual emissions to Ecology or to local air pollution control authorities that implement the state Clean Air Act. Ecology has adopted rules governing the reporting of GHG emissions that specify the GHG emissions calculation methodology for covered facilities.

In September 2016, Ecology adopted a rule under state Clean Air Act authority (the Clean Air Rule) to limit emissions of GHGs from certain stationary emission sources, petroleum product producers and importers, and natural gas distributors. In a decision published January 16, 2020, the Washington State Supreme Court invalidated the portion of the Clean Air Rule that applied to indirect emissions from products supplied for combustion in Washington.

Greenhouse Gas Limits.
In 2008, state limits were established for the emissions of GHGs as follows:

- By 2020, overall GHG emissions in the state must be reduced to 1990 levels.
- By 2035, overall GHG emissions in the state must be reduced to 25 percent below 1990 levels.
- By 2050, overall GHG emissions in the state must be reduced to 50 percent below 1990 levels, or 70 percent below the state's expected emissions for that year.

These statutory emission limits do not specify how the state must achieve the established limits, nor are emission reductions required to be achieved by particular entities or types of entities. Ecology and the Department of Commerce must report to the Governor and the Legislature by December 31 of even-numbered years regarding the total GHG emissions and GHG emissions by source sector.

Carbon Dioxide Mitigation Requirements for Fossil Fuel Thermal Power Plants.
Fossil-fueled thermal power plants with a generating capacity of 25 megawatts (MW) or greater must provide mitigation for 20 percent of the carbon dioxide emissions produced by the plant over a period of 30 years. This requirement applies to new power plants seeking site certification with the Energy Facility Site Evaluation Council or an order of approval after July 1, 2004, and to existing plants that increase the production of carbon dioxide emissions by 15 percent or more.

State Environmental Policy Act.
The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions,

such as the issuance of permits or the adoption of land-use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. Government decisions that the SEPA checklist process identifies as having significant adverse environmental impacts must then undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS).

Projects which undergo a SEPA review may be required to mitigate significant adverse environmental impacts in order to receive approval from the government entity performing the SEPA analysis. Project proponents may also choose to mitigate environmental impacts identified in the environmental checklist in order to receive a determination that the project does not have significant environmental impacts and can thereby avoid the process of completing an EIS for the project.

Under SEPA rules adopted by Ecology, air quality and climate are among the elements of the environment that must be considered by lead agencies. In December, 2019, Governor Inslee issued an executive order directing Ecology to adopt rules by September 1, 2021, to strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts. The rules should:

- be uniform and apply to all branches of state and local government;
- cover major industrial projects and major fossil fuel projects;
- establish methods, processes, procedures, protocols, or criteria that ensure a comprehensive assessment and quantification of direct and indirect GHG emissions from projects;
- result in the inclusion in environmental assessments and reporting of 20-year and 100-year global warming potentials for all GHGs attributable to the project;
- include an assessment of induced load or growth in fuel or energy consumption or energy generation from a project; and
- include methods, procedures, protocols, criteria, or standards for the mitigation of GHGs, as necessary to achieve a goal of no net increase in GHGs attributable to the project.

Investor-owned Utility Ratemaking.
The Utilities and Transportation Commission (UTC) has the power upon complaint, or upon its own motion, to determine the fair value, for ratemaking purposes, of the property of an investor-owned gas or electric utility that is used and useful for service in the state by or during the rate effective period. The valuation may include consideration of any property of the investor-owned utility acquired or constructed by or during the rate effective period, including the reasonable costs of construction work in progress, to the extent the UTC finds that such an inclusion is in the public interest and will yield fair, just, reasonable, and sufficient rates.

Energy Facility Site Evaluation Council.
The Energy Facility Site Evaluation Council EFSEC is responsible for making certification recommendations to the Governor for certain new energy facility construction or existing facility expansion proposals.

Utility Resource Planning.
Each electric utility must develop a resource plan. Utilities with 25,000 or more customers that are not fully served by the BPA must develop Integrated Resource Plans (IRPs). An IRP must include forecasts of projected customer demand and assessments of commercially available conservation and efficiency resources and renewable and nonrenewable technologies. Utilities with fewer than 25,000 customers or that are fully served BPA customers must complete a Resource Plan with fewer required components than IRPs. IRPs and other Resource Plans must be updated at least every two years.

Summary of Bill:

Fossil Fuel Emissions Rule.
The Department of Ecology (Ecology), in consultation with other specified state agencies, must adopt a rule (Emissions Rule) to establish an emissions rate that establishes cumulative upstream and downstream emissions for each fossil fuel. Fossil fuels are defined to include coal, natural gas, petroleum, or any fuels or products derived from such materials.

The Emissions Rule must incorporate emissions from the production, gathering, processing, transmission, storage, distribution, and combustion of fossil fuels:
- prior to end use of the fossil fuel; or
- either prior to or after the final point of commerce in Washington.

The Emissions Rule must be adopted by December 1, 2021.

In adopting the Emissions Rule, Ecology:
- must survey studies of North American fossil fuel cumulative upstream emissions;
- may require gas pipeline companies, gas or electrical companies, oil refineries, terminals, and pipelines to submit emissions information related to emissions of fossil fuels from production, gathering, processing, transmission, storage, and distribution; and
- must achieve a high level of confidence that the adopted rate does not underestimate the actual average leakage, energy use, and other life-cycle emissions.

Ecology must evaluate the accuracy of the fossil fuel cumulative emissions rate every three years beginning in 2024, and must update the Emissions Rule if appropriate. Ecology must provide an opportunity for interested parties to comment on the information considered in the development of the rule.

In conjunction with the Emissions Rule, Ecology's rules must specify the global warming potential associated with fossil fuel emissions over a 20-year and 100-year timeframe. For purposes of the State Environmental Policy Act (SEPA) review, adopted rules must also require consideration of induced load or growth in fuel or energy consumption associated with a project or government action.

Integration of Fossil Fuel Cumulative Emissions Rule into Other Environmental Laws.
The Emissions Rule must be uniformly applicable to fossil fuel proposals and projects and may not specify a utility-specific or project-specific upstream emissions rate. The Emissions Rule must apply broadly to government decision-making involving the environmental review or permitting of projects that use fossil fuels as a fuel source or primary project component.

The following activities under environmental laws must be consistent with the Emissions Rule:

- the implementation and enforcement of the state Clean Air Act and state greenhouse gas (GHG) limits;
- the study of environmental impact information for proposed potential sites under review by the Energy Facility Site Evaluation Council;
- assessments in electric utility resource plans; and
- implementation and enforcement of gas and electric rate-making authority by the Utilities and Transportation Commission (UTC), as well as other generally-applicable regulatory provisions to gas companies, and electric companies involving the UTC.

Under the state Clean Air Act, Ecology must require reported GHG emissions from fossil fuels to include the emissions consistent with the Emissions Rule. Production, gathering, processing, transmission, storage, and distribution emissions from fossil fuels must be reported as separate measurements from end-use emissions.

The Rule must be applied in the review of proposed actions under the State Environmental Policy Act (SEPA) involving the use of fossil fuels by either:

- a person required to report GHG emissions under the state Clean Air Act; or
- a facility or project whose associated direct or indirect annual GHG emissions may reasonably be anticipated to exceed 10,000 tons per year.

Ecology must evaluate the appropriateness of this emissions threshold every three years and recommend amendments to it in a report to the Legislature.

The mitigation of emissions by new fossil fuel thermal power plants must be based upon the carbon dioxide equivalents associated with both the end use of fossil fuel and the cumulative emissions, calculated consistent with the Emissions Rule.

Appropriation: None.

Fiscal Note: Requested on January 14, 2020.

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