

HOUSE BILL REPORT

HB 2957

As Reported by House Committee On: Appropriations

Title: An act relating to reducing greenhouse gas emissions by providing authority for the regulation of indirect sources under the clean air act and implementing standards and programs that reduce emissions associated with buildings.

Brief Description: Reducing greenhouse gas emissions by providing authority for the regulation of indirect sources under the clean air act and implementing standards and programs that reduce emissions associated with buildings.

Sponsors: Representatives Fitzgibbon and Pollet.

Brief History:

Committee Activity:

Appropriations: 3/2/20 [DPS].

Brief Summary of Substitute Bill

- Directs the Department of Ecology (Ecology) to adopt a rule, under state Clean Air Act (state CAA) authority, to regulate greenhouse gases (GHGs) that takes effect after October 1, 2021, and specifies emission thresholds for regulated sources, how biofuels must be allowed to earn credits, and that emission reduction credits be authorized for forest carbon sequestration.
- Authorizes Ecology to collect fees, rely on market-based mechanisms to achieve emission reductions, and provide special consideration for energy-intensive and trade-exposed industries to address leakage.
- Revises the state CAA's definition of "emission" and "emission standard" to include both direct and indirect emissions.
- Authorizes Ecology and local air authorities to require persons who produce or distribute fossil fuels or other products that emit GHGs in Washington to comply with air quality standards, emission standards, or emission limits on GHGs under the state CAA.
- Directs the Utilities and Transportation Commission to allow timely GHG rule compliance-cost recovery for prudent and reasonable compliance costs by gas companies and electric companies.

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.

- Suspends the implementation of the 2018 Washington State Energy Code for residential structures until at least July 1, 2022, if the Legislature provides policies and funding for existing residential building retrofit programs that achieve comparatively larger GHG emission reductions.
- Prohibits certain types of local government GHG emission programs and regulations temporarily.
- Makes the state CAA authority newly provided to Ecology and local air authorities null and void upon the enactment of a more comprehensive GHG emission reduction program that puts a price on GHG emissions and is designed and forecasted to achieve statutory statewide GHG emission-reduction limits.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 15 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Corry, Dye, Hoff, Kraft, Mosbrucker, Schmick, Springer, Steele, Sutherland and Ybarra.

Staff: Dan Jones (786-7118).

Background:

State and Federal Clean Air Acts.

Under the federal Clean Air Act (federal CAA), the United States Environmental Protection Agency (EPA) is responsible for establishing and enforcing standards and limits on air pollutants. Individual states and tribes may receive delegated authority to implement the federal program and may adopt their own rules and regulations at least as stringent as those set by the EPA. In Washington, the Department of Ecology (Ecology) and seven local air pollution control authorities (local air authorities) have each received approval from the EPA to administer aspects of the federal CAA. Local air authorities have primary responsibility for administering the state Clean Air Act (state CAA) and the federal CAA in counties which have elected to activate a local air authority or to form a multicounty air authority. In other areas of the state, Ecology is responsible for administering state and federal CAA programs.

The state CAA directs Ecology to adopt air quality standards and emission standards for the control of air contaminants. Air quality standards and emission standards must be based upon a system of classification by types of emissions or types of sources of emissions.

- "Air quality standards" are defined as an established concentration, exposure time, and frequency of occurrence of an air contaminant or contaminants in the ambient air

which must not be exceeded. Ecology has adopted air quality standards for lead, sulfur oxides, and ozone, among other contaminants.

- "Emission" is defined as a release of air contaminants into the ambient air, and emission standards and emission limits refer to requirements that limit the quantity, rate, or concentration of emissions of air contaminants on a continuous basis. Ecology has adopted a variety of emission standards, including gasoline vapor control requirements applicable to gasoline storage tanks, emission standards for sources of volatile organic compounds, and emission standards for combustion and incineration units.

The state CAA establishes an Air Pollution Control Account (Account) for use by Ecology in carrying out certain responsibilities under the state CAA. The Account is funded by certain fees and other receipts authorized under the state CAA.

Violations of state CAA requirements are punishable by a variety of criminal and civil penalties. Civil penalties of up to \$10,000 per violation are authorized by the state CAA. Penalties recovered by Ecology (rather than by a local air authority) are paid into the Account in the State Treasury and may be used by Ecology to implement the state CAA.

Federal and State Regulation of Greenhouse Gases.

The EPA and Ecology identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, 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 or CO₂e). Under the federal CAA, GHGs are regulated as air pollutants and are subject to several air regulations administered by the EPA. These federal CAA 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 CAA. 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. Ecology has adopted rules governing the reporting of GHG emissions that specify the GHG emissions calculation methodology for covered facilities. Fuel suppliers must submit GHG emissions data to Ecology that relates to emissions from the fuel reported to the Department of Licensing for fuel tax purposes.

State Emission Limits.

In 2008 state limits were established for the emission 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.

Clean Air Rule.

In September 2016 Ecology adopted a rule (the Clean Air Rule) under state CAA authority to limit emissions of GHGs from certain stationary emission sources and from fuel supplied by petroleum product producers and importers and natural gas distributors. For purposes of meeting compliance obligations under the Clean Air Rule, parties that are required to reduce GHG emissions may directly reduce their own emissions or earn or acquire emission reduction units, which represent the emission of one metric ton of CO₂e. With the exception of certain designated "Energy-Intensive and Trade-Exposed Covered parties," which are assigned alternative emission reduction requirements based on an efficiency improvement rate, parties subject to the Clean Air Rule must reduce their GHG emissions relative to baseline emission levels by 1.7 percent per year. Entities that emit more than 100,000 metric tons per year were subject to emission reduction requirements at the program's outset, with progressively smaller emitters being brought into the program over time until 2035.

After adoption, the Clean Air Rule was challenged in both state (Thurston County Superior Court) and federal court (United States District Court for the Eastern District of Washington). The federal court challenge was paused, pending resolution of the state court case. Implementation of the Clean Air Rule was also suspended while the court challenges proceeded.

In December 2017 the Thurston County Superior Court invalidated the Clean Air Rule on the basis that it exceeded Ecology's statutory authority by regulating petroleum product producers and importers and natural gas distributors. Ecology appealed that decision directly to the Washington Supreme Court, which issued a decision on January 16, 2020, that affirmed in part, and reversed in part, the Thurston County Court's decision. The Washington Supreme Court invalidated the rule to the extent that it regulated indirect emitters or nonemitters via an emission standard. However, in determining that the Clean Air Rule was severable, the Washington Supreme Court invalidated only the part of the rule that the court determined had exceeded Ecology's statutory authority and remanded the case to Thurston County Superior Court.

State Building Code.

The State Energy Code (Code) is part of the State Building Code, which sets the minimum construction requirements for buildings in the state. The Code provides a maximum and minimum level of energy efficiency for residential buildings and the minimum level of energy efficiency for nonresidential buildings. The State Building Code Council (Council) maintains the Code. Unless otherwise amended by rule, the Code must reflect the 2006 edition.

The Code for residential structures preempts the residential energy code of each city, town, and county in Washington, unless the local jurisdiction's residential energy code exceeds the requirements of the Code and was adopted before March 1, 1990.

The Council reviews, updates, and adopts model state building codes every three years. The Code must be designed to:

- construct increasingly energy-efficient homes and buildings that help achieve the broader goal of building zero-fossil fuel GHG emission homes and buildings by the year 2031;
- require new buildings to meet a certain level of energy efficiency but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and
- allow space-heating equipment efficiency to offset or substitute for building envelope thermal performance.

The Council must adopt state energy codes that require buildings constructed from 2013 through 2031 to move incrementally toward a 70 percent reduction in energy use by 2031. The Code must consider regional climatic conditions. The Council may amend the Code by rule if the amendments increase energy efficiency in the affected buildings.

Summary of Substitute Bill:

Authority to Regulate Indirect Emissions.

For purposes of the state Clean Air Act (state CAA), "emission" and "emission standards" include both direct or indirect releases of air contaminants. The Department of Ecology (Ecology) or local air authorities may require persons who produce or distribute fossil fuels or other products that emit greenhouse gases (GHGs) in Washington to comply with air quality standards, emission standards, or emission limits on GHGs.

Greenhouse Gas Reporting Rules.

The GHG reporting protocols under the state CAA are amended, including by:

- making annual emission reports due to Ecology on March 31 of each year, rather than October 31;
- authorizing Ecology to adopt rules that modify federal GHG emission reporting methodologies;
- authorizing Ecology to require persons to use federal GHG emission reporting methods applicable to specific emission source types;
- removing the prohibition on GHG reporting rules considering aircraft fuel purchased in Washington to be equivalent to aircraft fuel combusted in Washington;
- authorizing Ecology to require persons to have a third party verify their GHG reports to Ecology; and
- authorizing Ecology to adopt rules that amend the Environmental Protection Agency (EPA) GHG reporting definitions to address differences in state and federal boundaries.

Greenhouse Gas Emission Reduction Rules.

Ecology must adopt a rule under state CAA authority to regulate GHGs. The rule may not be adopted before May 1, 2021, and must take effect no earlier than October 1, 2021. The House of Representatives and the Senate must hold a joint meeting by January 20, 2021, at which Ecology will present on the progress of rulemaking.

Under GHG emission reduction rules, Ecology may:

- collect annual fees from regulated parties to cover Ecology's cost of administering and enforcing rule requirements;
- rely on market-based mechanisms to achieve GHG emission reductions but may not auction or sell credits or other market-based mechanisms; and
- identify and give special consideration to energy-intensive and trade-exposed facilities to the extent necessary to address leakage where reductions in in-state GHG emissions are offset by an increase in GHG emissions outside of Washington.

Under GHG emission reduction rules, Ecology must:

- provide for substantial emission reduction credits or offsets to be recognized in the sequestration of natural lands, forests, and the forest products sector, for rules applicable to sources of GHGs other than transportation fuels alone. Standards for sequestration projects and activities must be consistent with protocols and verification standards adopted by other jurisdictions and nongovernmental carbon offset organizations;
- not regulate entities that emit less than 25,000 metric tons per year of GHGs, for rules applicable to sources of GHGs other than transportation fuels alone; and
- provide that biofuels receive credit against compliance obligations, emission reduction units, or other regulatory mechanisms based on the difference in lifecycle emissions of the biofuel and the fossil fuel that the biofuel may reasonably be assumed to displace.

The Utilities and Transportation Commission must ensure that its processes and mechanisms allow timely cost recovery by gas and electric utilities for prudent and reasonable costs associated with compliance with GHG emission reduction rules.

The Air Pollution Control Account used for Ecology's general state CAA activities also receives any fees implemented by Ecology to reduce GHG emissions and may be used to implement GHG emission reduction rules.

Other State and Local Greenhouse Gas Emission Programs.

Local air authorities and local governments may not:

- directly regulate GHG emissions through an overall emissions cap or charge before January 1, 2023;
- adopt a clean fuels standard or low carbon fuel standard before January 1, 2023, if Ecology adopts a clean fuels standard or low carbon fuel standard by January 1, 2021; or
- adopt restrictions applicable to natural gas infrastructure in newly constructed buildings that take effect before June 1, 2022.

The 2018 State Energy Code for residential structures is not effective before July 1, 2022, if the Legislature adopts policies and provides funding for energy-efficiency retrofits in existing residential buildings that achieve comparatively greater GHG emission reductions than the 2018 residential energy code, as projected by the Department of Commerce.

In exercising GHG emission reduction authority under the CAA, Ecology must seek to integrate new GHG requirements with existing requirements and rules and must seek to

design requirements so as to help regulated entities achieve emission reduction requirements simultaneously with other regulatory obligations at the lowest cost possible.

The authority granted to Ecology under the state CAA in the bill is null and void upon the enactment of a more comprehensive greenhouse gas emission reduction program that:

- puts a price on direct and indirect GHG emissions, including but not limited to a cap and trade system or a tax; and
- is designed and forecasted by state agencies with subject-matter expertise to achieve the statutory statewide GHG emission reduction limits.

Notice that the state CAA authority under the bill is null and void must be published by Ecology in the Washington State Register.

Other Provisions.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The substitute bill:

- defines indirect emissions for purposes of greenhouse gas (GHG) emissions;
- defines 25 categories of energy-intensive trade exposed industries which the Department of Ecology (Ecology) GHG emission rules may give special consideration to in order to address leakage of emissions that increase GHG emissions outside of Washington;
- clarifies that provisions related to credit generation for biofuels applies only to those biofuels that lead to reduced lifecycle emissions when substituted for gasoline, diesel, natural gas, or heating oil;
- specifies that Ecology may require the submission of data or information that differs from currently reported information if necessary to accurately measure newly regulated sources of indirect emissions;
- specifies that the 25,000 ton per year minimum emission threshold that makes an entity eligible for GHG regulation under Ecology rules is a threshold of 25,000 tons of indirect emissions;
- clarifies that Ecology and local air authorities may require compliance with air quality or emissions standards by persons who produce or distribute products that emit GHGs only when combusted;
- clarifies that the preemption of local natural gas restrictions until 2022 applies to restrictions that prohibit natural gas in newly constructed buildings; and
- preempts local air authorities and cities and counties from adopting a clean fuels standard or low carbon fuel standard until January 1, 2023, if Ecology adopts a clean fuels standard or low carbon fuel standard by January 1, 2021.

Appropriation: None.

Fiscal Note: Requested on February 28, 2020.

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 bill does not create carbon policy, but rather provides the Department of Ecology (Ecology) the authority they would need to address the recent Washington State Supreme Court decision. The bill requires Ecology to report to the Legislature on the status of their rulemaking, giving the Legislature the opportunity to weigh in. The bill allows Ecology to fully carry out the purposes of the Clean Air Act by addressing indirect sources of green house gases (GHGs). The bill provides a missing tool needed to regulate GHG emissions from transportation; however, the language affecting implementation of the Washington State Energy Code is problematic because it preempts local government. The updated Washington State Energy Code is ready to implement this July. An economy-wide price on carbon is essential, and a "cap and invest" type of policy would be preferable.

(Opposed) The authority granted to Ecology is overly broad and should have more sideboards. The bill should include options for compliance mechanisms for natural gas distributors. Natural gas utilities cannot limit the use of natural gas by their customers, and higher costs do not necessarily lead to a lower use of the service. The costs of compliance would increase costs to utility customers. The authority granted to Ecology is even broader than what was affected by the court decision. The Legislature should retain more authority over GHG emissions. The preemption of local authority to regulate GHGs would be better as a permanent preemption rather than just a delay. The bill is likely to lead to further litigation. The bill should be amended to exempt the electricity sector. The bill lacks cost containment measures.

(Other) This policy would be disappointing as the state's primary carbon policy. The bill does not address potential impacts to low-income individuals or affected workers. The bill is being heard and potentially passed very soon after being introduced, leaving little time for interested citizens to understand it. The bill preempts local governments, and local issues should be left in the hands of local citizens.

Persons Testifying: (In support) Chris Davis, Office of the Governor; Vlad Gutman-Britten, Climate Solutions; Kate White Tudor, Natural Resources Defense Council; Bruce Wishart, Sierra Club; Amy Wheelless, Northwest Energy Coalition; and Nick Federici, BP America.

(Opposed) Brandon Houskeeper, Puget Sound Energy; Greg Hanon, Western States Petroleum Association; Charlie Brown, Cascade Natural Gas and Northwest Natural Gas; John Rothlin, Avista; Nicolas Garcia, Washington Public Utilities Districts Association; and Peter Godlewski, Association of Washington Business.

(Other) Isaac Kastama, Low Carbon Prosperity Institute; and Thad Curtz.

Persons Signed In To Testify But Not Testifying: None.