

SENATE BILL REPORT

SB 6628

As Reported by Senate Committee On:
Environment, Energy & Technology, February 6, 2020

Title: An act relating to emissions of greenhouse gases.

Brief Description: Concerning emissions of greenhouse gases. [**Revised for 1st Substitute:** Reducing greenhouse gas emissions from fossil fuels.]

Sponsors: Senators Carlyle, Liias, Kuderer, Hunt, Stanford, Salomon and Wellman; by request of Office of the Governor.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/29/20, 2/06/20 [DPS, DNP].

Brief Summary of First Substitute Bill

- Authorizes the Department of Ecology to require persons who produce or distribute fossil fuels that emit greenhouse gases to comply with air quality and emission standards or emission limits on greenhouse gases.
- Provides a definition of emission, emission standard, and emission limitation as applied to greenhouse gas emissions that includes indirect emissions from the production or distribution of petroleum products or natural gas.
- Establishes that a renewable fuels production facility producing more than 100 million gallons of renewable energy products per year is a project of state-wide significance.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 6628 be substituted therefor, and the substitute bill do pass.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, McCoy, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

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.

Signed by Senators Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment; Brown, Rivers and Short.

Staff: Jan Odano (786-7486)

Background: The federal Clean Air Act is a comprehensive set of laws designed to control air pollution. The United States Environmental Protection Agency (EPA) is responsible for establishing and enforcing standards and limits on air pollutants. Individual states and tribes have 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.

Under the Washington state Clean Air Act (CAA), the authority of the Department of Ecology (Ecology) includes adopting rules to establish minimum air quality and emission standards for the state. Ecology enforces the state and federal rules, except where a local air authority has been established.

In 2015, at the direction of the Governor, Ecology began developing emission standards to cap and reduce greenhouse gas emissions from in-state stationary sources, producers, and importers of petroleum products, and distributors of natural gas. The Clean Air Rule (CAR) was adopted on September 15, 2016, which required entities emitting more than 100,000 metric tons a year to reduce their greenhouse gas emissions. Every year, the threshold will be lowered by 1.7 percent, and more emitters brought into the program until 2035. Organizations can meet their obligations in several ways:

- by lowering their actual emissions according to a prescribed plan;
- through projects that reduce emissions; or
- by obtaining emission allowances from out of state emissions market programs.

Following the adoption of CAR, several trade and industry organizations petitioned for review of the rule. Ecology suspended CAR as the court reviewed the case. In 2017, the Thurston County Superior Court held that Ecology has statutory authority to impose CAR on entities emitting contaminants into the air, but not on those who sell commodities. The ruling invalidated CAR in its entirety, and the case was appealed to the Washington State Supreme Court (Court).

On January 16, 2020, the Court issued a 5-4 opinion partially invalidating CAR. The Court held that the part of the rule which applies emission standards to actual emitters or direct sources of greenhouse gases is valid because Ecology has this authority under the CAA. The Court ruled Ecology does not have the authority to apply emissions standards to entities that do not directly emit, or indirect sources, such as natural gas distributors and petroleum product producers and importers.

The four dissenting justices argued that the CAA is ambiguous as to whether it applies only to direct emitters or to both direct and indirect emitters. The dissenters focused on the Legislature's intent that the laws protecting the state's environmental interest be broadly construed to achieve the statutory goals and include both direct and indirect sources.

The Court remanded the case back to the superior court for further proceedings consistent with its opinion.

Summary of Bill (First Substitute): Ecology is authorized to require persons who produce or distribute fossil fuels or other products that emit greenhouse gases in Washington to comply with air quality standards, emission standards, or emission limits of greenhouse gases.

A definition of emission, emission standard, and emission limitation as applied to greenhouse gas emissions includes indirect emissions from the production or distribution of petroleum products or natural gas is provided.

The Utilities, Transportation Commission must ensure that its processes allow electricity and natural gas suppliers timely cost recovery for reasonable and prudent costs associated with compliance of this act. Within the framework of the Administrative Procedures Act, cost-benefit and least burdensome analyses, Ecology must seek to integrate new greenhouse gas requirements with existing regulations.

A renewable fuels production facility producing more than 100 million gallons of renewable energy products per year is a project of state-wide significance.

The Legislature intends to provide authority under the Clean Air Act for Ecology to regulate greenhouse gas emissions from producers and distributors of natural gas and petroleum products.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Adds findings regarding the Supreme Court decision and that the legislature intends to provide authority to regulate emissions from producers and distributors of natural gas and petroleum products.
- Removes "direct or indirect" from definitions of emission and emission standards.
- Provides that emission, emission standard and emission limitation as applied to greenhouse gases include indirect emissions from producers and distributors of natural gas and petroleum products where contaminants are released into the air during consumption, use, combustion or oxidation of the products.
- Requires UTC to ensure that its processes allow for timely cost recovery by electricity suppliers and natural gas suppliers under its jurisdiction for prudent and reasonable costs associated with compliance.
- Requires Ecology to seek to integrate new state greenhouse gas requirements with existing requirements and regulations consistent with the APA and to design new requirements that help to achieve emission reduction targets at the lowest compliance cost.
- Adds renewable fuels production facility producing more than 100 million gallons of renewable energy products per year as a project of state-wide significance.
- Requires penalties for violations of air quality and emission standards for greenhouse gases by natural gas and petroleum suppliers to be deposited in the multimodal transportation account.
- Makes technical corrections.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The courts indicated that we do have a climate crisis. This gives the state another tool to address greenhouse gases and climate change. We need to update the tools to better equip our state to ensure a clean and safe environment. Indirect emissions are the largest source of emissions and we can not achieve the goal without being able to address these sources. The Legislature fundamentally intended the Clean Air Act to reach these sources. It is necessary to actually deliver on the goal of protecting public health and the environment. Climate change is having a dramatic impact on our lands through wildfires and floods. It is the number one threat to birds and people. Two-thirds of North American birds are under threat of extinction due to climate change. This provides Ecology with an important tool to address climate change. We support any policy that reduce greenhouse gases in an equitable manner and it is essential to address mobile sources. Contaminants in the air causes health issues and for people like me it can cause anaphylactic reactions. Anything you can do will help people like me. Indirect emissions can be regulated. We manage ozone, low vapor gasoline when dealing with nonattainment. This will lead to significant reductions in greenhouse gases and assist with the impacts of climate change and provide near term health benefits.

CON: This provides a sweeping grant of authority to Ecology without clear legislative direction. The Clean Air rule was not workable, it included a complicated method that is inaccurate and bureaucratic nightmare. We have no confidence to support the program through ERU. Covered products are treated like point sources when the fuel sources have no control over what and how it is burned. Definitions for indirect/direct emissions are not included with other definitions in the CAA. This would open the CAA to any possible emission, including any sort of source depending on how ecology interpreted it. We support a carbon tax and carbon reduction programs. The Legislature is the proper place for these conversations. The CAR is fundamentally flawed. CAA is not for a region wide issue. Natural gas utilities a duty/obligation to serve all who request the service. We can not limit rate/quantity of emissions or control them, by law. It is vital to work with Ecology on direct emissions. The best approach is for the Legislature to continue the conversation. The preferred approach is a uniform federal policy, although we recognize the desire to move forward in the absence of federal guidance.

Persons Testifying: PRO: Senator Reuven Carlyle, Prime Sponsor; Clifford Traisman, Washington Environmental Council, Washington Conservation Voters; Vlad Gutman, Climate Solutions; Kate White Tudor, Natural Resources Defense Council; Phyllis Farrell, League of Women Voters; Ben Silesky, Audubon Washington; Scott Richards, The Nature Conservancy; Lacy Nadeau, citizen; Craig Kenworthy, Puget Sound Clean Air Agency; Laura Johnson, Department of Health; Annabel Drayton, NW Energy Coalition.

CON: Greg Hanon, Western States Petroleum Association; Vicki Christophersen, Washington Refuse and Recycling Association; Charlie Brown, Cascade Natural Gas;

Brandon Houskeeper, Puget Sound Energy; John Rothlin, Avista; Peter Godlewski, Association of Washington Business.

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