

HOUSE BILL REPORT

HB 2073

As Reported by House Committee On:

Environment & Energy
Appropriations

Title: An act relating to emissions of greenhouse gases from sources other than methane and carbon dioxide.

Brief Description: Concerning emissions of greenhouse gases from sources other than methane and carbon dioxide.

Sponsors: Representatives Slatter, Fitzgibbon, Berry, Reed, Ramel, Doglio, Hackney and Pollet.

Brief History:

Committee Activity:

Environment & Energy: 1/11/24, 1/23/24 [DPS];

Appropriations: 2/1/24, 2/3/24 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Requires the Department of Ecology (Ecology) to complete a study by July 1, 2025, addressing sulfuryl fluoride and greenhouse gases with a high global warming potential used for anesthetic purposes (anesthetic GHGs), and to submit recommendations to the Legislature by October 1, 2025.
- Requires Ecology to develop a guidance document for the reduction of greenhouse gas emissions from the use of anesthetic GHGs, and requires facilities at which medical, dental, and veterinary practitioners use anesthetic GHGs to only use anesthesia in a manner consistent with the guidance document, beginning January 1, 2027.
- Requires Ecology to identify the availability and feasibility of safer alternatives to sulfuryl fluoride as a fumigant.

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

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Abbarno, Barnard, Berry, Duerr, Fey, Goehner, Lekanoff, Ramel, Sandlin, Slatter and Street.

Minority Report: Without recommendation. Signed by 1 member: Representative Ybarra, Assistant Ranking Minority Member.

Staff: Jacob Lipson (786-7196).

Background:

Greenhouse Gas Identification, Reporting, and the Climate Commitment Act.

Under state law for purposes of greenhouse gas emission reporting requirements, tracking progress towards state emission limits, and the Climate Commitment Act (CCA), carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are identified in statute as greenhouse gases (GHGs). In addition, the Department of Ecology (Ecology) has the authority to designate other GHGs by rule, and has used that authority to designate numerous additional chemicals as GHGs. Among the chemicals that Ecology has identified by rule are desflurane, isoflurane, halothane, and sevoflurane, which are used in various types of medical settings as an anesthetic. Another chemical used primarily as a structural fumigant pesticide, sulfuryl fluoride, is not currently identified by Ecology rules as a GHG.

According to the Environmental Protection Agency, 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). Ecology designates the GWP of desflurane as 989, sevoflurane as 216, isoflurane as 350, halothane as 41, and nitrous oxide as 298.

At the state level, GHG reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions of GHGs exceed 10,000 metric tons of CO₂e each year to report their annual emissions to Ecology. Ecology is responsible for monitoring and tracking the state's progress in achieving emissions limits set for the years 2030, 2040, and 2050. The 2021 CCA establishes a program to cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, which include allowances or eligible offset credits. Under the CCA, annual allowance budgets are set at a level to

achieve the share of reductions by covered entities necessary to achieve the state's 2030, 2040, and 2050 emissions limits. Covered entities must obtain, by no-cost allocation from Ecology, purchase at auction, or purchases from other parties, compliance instruments in a timely manner and in an amount necessary to meet the compliance obligations associated with their emissions.

Alternative Assessments and Chemical Information Reporting.

The Safer Products for Washington program implemented by Ecology, in consultation with the Department of Health, provides an administrative process for the regulation of priority chemicals in priority consumer products. Under this process, certain chemicals were defined as priority chemicals, and Ecology may designate additional chemicals as priority chemicals. Ecology must identify priority consumer products that include priority chemicals and may then determine regulatory actions related to those chemicals in a priority consumer product.

Various state laws require state agencies to study of the availability and feasibility in certain consumer products, including per- and polyfluoroalkyl chemicals in food packaging, certain chemicals in brake friction materials, and polybrominated diphenyl ether flame retardants in mattresses. Sometimes, regulatory authority to restrict the use of a chemical in a consumer product is made contingent upon a determination by a state agency that a safer alternative exists; for example, under Safer Products for Washington, Ecology's ability to restrict or prohibit a priority chemical in a priority consumer product is contingent upon a determination that safer alternatives are feasible and available.

Under both the Safer Products for Washington program and the Children's Safe Product Act, Ecology may require a manufacturer to submit certain information related to the use of a chemical in a product, including a description of the function of the chemical in the product, and the amount of the chemical used in the product.

Summary of Substitute Bill:

The Department of Ecology (Ecology) must commission a study that analyzes certain aspects of the greenhouse gas (GHG) emissions in Washington from sulfur fluoride and anesthetic gases with a high global warming potential (anesthetic GHGs), including the evidence supporting the inclusion of sulfur fluoride as a GHG, potential sources of the gases in Washington, and estimates on the quantity of emissions, and recommends potential points of regulation for each gas. Based on the study, Ecology must consider whether to add, by rule, sulfur fluoride as a GHG subject to GHG reporting and CCA compliance requirements. The study must be completed by July 1, 2025, and Ecology, in consultation with the Department of Health, must submit recommendations that consider the results of the study to the Legislature by October 1, 2025.

By January 1, 2026, Ecology must develop and publish a guidance document with a goal to reduce emissions from anesthetic GHGs used in medical, dental, veterinary, and similar facilities, but without limiting the ability of medical, dental, and veterinary professionals to provide safe and effective care, and while allowing flexibility in extenuating clinical circumstances. The guidance document must address sevoflurane, desflurane, isoflurane, halothane, and nitrous oxide. Ecology must consult with the Department of Health in developing the guidance document and solicit input from a number of medical system regulators, medical associations, and other specified stakeholders. Ecology must consider the efforts of other jurisdictions on anesthetic GHGs, best practices prepared by medical professional associations, financial considerations, and existing practices in place at facilities. Ecology must also consider the results of a Department of Health evaluation of the medical procedure and professional liability risks of lower-GHG anesthetic options, which must be completed by July 1, 2025. By January 1, 2027, facilities and practitioners that use anesthetic GHGs may only do so in compliance with Ecology's guidance document. No penalties are prescribed for violations of this requirement.

Ecology, in consultation with the Department of Agriculture, must identify the availability and feasibility of safer alternatives to the use of sulfuryl fluoride as a fumigant. Ecology may order a manufacturer, distributor, or importer of sulfuryl fluorides or potential safer alternatives to submit information about the chemical in a manner consistent with GHG emission reporting requirements or the Safer Products for Washington and the Children's Safe Products Act, or other information relevant to determining the volume, GHG emissions, or human health hazards associated with a chemical. Ecology must receive the information ordered in this manner within four months of a person receiving the order.

Ecology must submit a report to the Legislature by October 1, 2025, regarding the availability of safer alternatives to sulfuryl fluoride and recommendations for actions to reduce sulfuryl fluoride emissions.

A severability clause is included.

Substitute Bill Compared to Original Bill:

Substitute House Bill 2073 makes the following changes to House Bill 2073:

- It eliminates the statutory designation of sulfuryl fluoride as a greenhouse gas (GHG) subject to reporting and Climate Commitment Act compliance requirements.
- It directs the Department of Ecology (Ecology) to consider adding sulfuryl fluoride as a GHG based upon the information in the Ecology-commissioned study due in October of 2025.
- It adds the University of Washington and Washington State University as entities that Ecology must solicit input from in the development of its anesthetic gas guidance document.
- It requires Ecology to consider financial considerations related to changes intended to reduce anesthetic GHG emissions, in the development of Ecology's guidance

document.

- It requires the Department of Health to evaluate medical procedure and professional liability risks of alternative anesthetic options intended to reduce greenhouse gas emissions, and to report to Ecology and the Legislature by July 1, 2025.
- It requires Ecology to consider the results of the Department of Health's evaluation in the development of its anesthetic gas guidance document.
- It describes the goal of Ecology's anesthetic gas guidance document as reducing GHG emissions without limiting the judgment or needs of medical, dental, or veterinary professionals in providing care, rather than unduly limiting their judgment or needs.
- It provides that the guidance document must allow flexibility for extenuating clinical circumstances when a medical professional is of the opinion that unrestricted use of anesthetic gases is needed for patient safety and comfort.
- It delays the date by which facilities and practitioners must use anesthesia in a manner consistent with the guidance document from July 1, 2026, until January 1, 2027.

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) State greenhouse gas emission policies have rightly focused on big sources of emissions, but there is increased learning and awareness of other sources of greenhouse gas (GHG) emissions. Medical practitioners and associations around the world are taking steps to reduce their emissions of anesthetic gases. Anesthetic gases are potent GHGs. It is contradictory to spend so much effort helping save the lives of those inside a hospital while harming those outside in the process. There are better and safer alternatives that reduce GHG emissions from anesthesia practices. Most anesthesia emissions come from wasteful and avoidable uses of the gases. Reductions in wasted gases will result in cost savings to medical practices, in addition to environmental benefits. Guidelines from the Department of Ecology (Ecology) are necessary to overcome the inertia of established practices. Sulfuryl fluoride is a super polluting GHG, and emissions of it are increasing globally. Trade-offs around using gases are complex, and study of alternatives is merited.

(Opposed) Sulfuryl fluoride is an important pesticide product for the management of stored product pests. It is used as an alternative fumigant when primary fumigants do not work. It is premature to classify sulfuryl fluoride as a GHG before the study of it is complete. Sulfuryl fluoride has beneficial properties as a pesticide, including no residual pesticide on the product once the treatment is complete. Environmental issues related to the use of sulfuryl fluoride have not been raised to the pesticide advisory board.

(Other) It is unclear how Ecology's guidance document could affect medical practices. Limitations or a ban on potential anesthetics could result in negative healthcare outcomes. Physicians must retain their ability to use their own clinical judgment. Hospitals could use more than six months after the publication of Ecology's guidance to ensure that they can change their practices to meet the requirements of the guidelines. Animal medical research could pose unique challenges. The guidance document should be reviewed by the Legislature before it takes effect.

Persons Testifying: (In support) Representative Vandana Slatter, prime sponsor; Ryan Jense; Annemarie Dooley, Washington Physicians for Social Responsibility; Elizabeth Hansen; and Kate Tudor, Natural Resources Defense Council.

(Opposed) Larry Treleven, Sprague Pest Solutions and Washington Pest Management Association; Ashley Roden; and Billy Olesen, PestStop and Washington State Pest Management Association.

(Other) Remy Kerr, Washington State Hospital Association; Greg Hanon, Washington State Veterinary Medical Association; Kelli Camp, Washington Association of Nurse Anesthetists; and Amy Brackenbury, Washington State Society of Anesthesiologists.

Persons Signed In To Testify But Not Testifying: Adam Lough; Eric Pratt; Kelly McLain, Washington State Department of Agriculture; and John Worthington.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 23 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stonier, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 4 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Rude and Schmick.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:

The second substitute bill:

- requires the Department of Ecology (Ecology), in its 2025 report to the Legislature making recommendations on greenhouse gas emission reductions from sulfur hexafluoride and anesthetic gases, to note any recommendations that the Department of Agriculture or Health disagrees with, and to provide an opportunity for those agencies to share their opinions as an appendix to the recommendations;
- eliminates the Department of Health study on the professional liability and medical procedure risk associated with low-emission anesthesia alternatives;
- requires Ecology, in developing the guidance document, to consider input from specified stakeholders on the professional liability and medical procedure risk associated with low-emission anesthesia alternatives;
- specifies that the guidance document does not require a practitioner or facility to provide medical care in a manner that increases medical procedure or professional liability risks in the judgment of the facility owner or operator or medical professional; and
- clarifies that Ecology may not issue penalties to a practitioner or facility for a failure to follow the guidance document.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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 is trying to address climate change, which is leading to health impacts as well as wildfires, drought, and other disasters. Many jurisdictions have banned these chemicals or acknowledged them as potent greenhouse gases. Some health care professionals are looking at their practices, and whether the use of anesthetic gases is contributing to climate change. The bill will help identify safer alternatives. Nitrous oxide damages the ozone. Some health professionals have voluntarily taken steps to reduce the use of anesthetic gases. The bill preserves clinical judgement on whether to use anesthetic gases or not. Most anesthetic gas is wasted due to the inefficiencies of providing it through pipes. Emissions from anesthetic gas makes up a high proportion of overall hospital greenhouse gas emissions. There are existing anesthetic practices that have lower greenhouse gas emissions and are cheaper.

(Opposed) None.

(Other) Although the environmental impacts are a concern, patient care is also important, especially in underserved communities. If barriers are created for dentists' use of nitrous oxide, children would need general anesthesia, which would require going to the hospital

and an increase in risks and costs.

Persons Testifying: (In support) Representative Vandana Slatter, prime sponsor; Elizabeth Hansen; Adam Lough; Annemarie Dooley, Washington Physicians for Social Responsibility; Kate White Tudor, Natural Resources Defense Council; and Amy Brackenbury, Washington State Society of Anesthesiologists.

(Other) John Gibbons.

Persons Signed In To Testify But Not Testifying: None.