H-3106.1

SECOND SUBSTITUTE HOUSE BILL 2073

State of Washington 68th Legislature 2024 Regular Session

By House Appropriations (originally sponsored by Representatives Slatter, Fitzgibbon, Berry, Reed, Ramel, Doglio, Hackney, and Pollet)

READ FIRST TIME 02/05/24.

AN ACT Relating to emissions of greenhouse gases from sources other than methane and carbon dioxide; adding a new section to chapter 43.21A RCW; creating new sections; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The legislature finds that a great deal of emphasis in greenhouse gas emissions policymaking in the state has appropriately focused on reducing sources of carbon dioxide, methane, and refrigerant gases, which remain the most significant types of greenhouse gases emitted in the state. However, the legislature also finds it prudent not to overlook meaningful opportunities to reduce emissions of other types of greenhouse gases from more niche sources, whether they be used as pesticides or as anesthetic gases.

(a) The legislature finds that certain gases used as an anesthetic in medical, dental, and veterinary contexts, including desflurane, isoflurane, sevoflurane, halothane, and nitrous oxide, are potent greenhouse gases. Efforts in the medical community are already underway to minimize the emissions from these gases, including by national and international anesthesiologist associations. In other jurisdictions, including Scotland and England,

efforts are also underway to phase out the use of the anesthetic gases with the greatest potential greenhouse gas emissions.

(b) The legislature finds that sulfuryl fluoride, a chemical typically used as a fumigant pesticide, was relatively recently discovered to be a potent greenhouse gas. Due to the recency of these scientific findings, emissions of this gas have not previously been required to be reported to the department of ecology in a manner similar to other greenhouse gases like carbon dioxide and methane. In addition, it is uncertain whether any safer alternatives to sulfuryl fluoride exist that do not result in greenhouse gas emissions or that would result in lower greenhouse gas emissions.

(2) Therefore, it is the intent of the legislature to reduce emissions from these sources of greenhouse gases, in spite of their obscurity, by:

(a) Studying these gases;

(b) Developing guidance to reduce emissions of greenhouse gases used for anesthetic purposes; and

(c) Initiating data gathering and alternatives evaluations for the use of sulfuryl fluoride.

NEW SECTION. **Sec. 2.** (1) The department of ecology must commission a study to be completed by July 1, 2025, that:

(a) Analyzes the evidence supporting the inclusion of sulfuryl fluoride as a greenhouse gas;

(b) Determines the potential sources of sulfuryl fluoride and gases with a high global warming potential that are used for anesthetic purposes within Washington;

(c) Determines how these gases are used in Washington;

(d) Estimates the quantity of emissions;

(e) Recommends potential points of regulation for each of these gases; and

(f) Recommends measures for reducing or eliminating emissions of these gases.

(2) By October 1, 2025, the department of ecology, in consultation with the departments of health and agriculture and considering the results of the study commissioned under subsection (1) of this section and the alternatives assessment carried out consistent with section 4 of this act, must submit recommendations to the appropriate committees of the legislature regarding any further statutory changes needed in order to appropriately and effectively

reduce greenhouse gas emissions associated with the use of sulfuryl fluoride or anesthetic gases, including any recommendations to prohibit the manufacture, distribution, sale, or use of specific anesthetic gases. The department of ecology must note, in the report to the legislature under this section, any recommendations that the department of agriculture or the department of health does not endorse and must provide an opportunity for the department of agriculture or health to share their opinions on such matters as an appendix to the recommendations.

(3) Based on the evidence identified in subsection (1)(a) of this section, the department of ecology must consider the addition of sulfuryl fluoride as a greenhouse gas, consistent with the authority granted in RCW 70A.45.010(7), for purposes of RCW 70A.15.2200(5) and chapters 70A.45 and 70A.65 RCW. The department of ecology may require producers or suppliers of sulfuryl fluoride to begin reporting under RCW 70A.15.2200 for purposes of calendar year 2025 emissions.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.21A RCW to read as follows:

(1) By January 1, 2026, the department must develop and publish a guidance document intended to reduce greenhouse gas emissions associated with the use of gases with a high global warming potential that are used for anesthetic purposes in medical, dental, veterinary, or other similar facilities and settings. Gases subject to the guidance document must include, at minimum: Sevoflurane; desflurane; isoflurane; halothane; and nitrous oxide. In developing the guidance document, the department of ecology must consult with the department of health, and solicit the input from the following:

(a) The state board of health;

(b) The Washington medical commission;

(c) The Washington state board of nursing;

(d) The dental quality assurance commission;

(e) The board of osteopathic medicine and surgery;

(f) The veterinary board of governors;

(g) The University of Washington and Washington State University;

(h) Associations representing medical, dental, or veterinary practitioners that use anesthetic gases;

(i) Associations representing facilities at which anesthetic gases are used;

(j) Environmental organizations with a focus on efforts to reduce greenhouse gas emissions; and

(k) Subject matter experts with knowledge of the most efficient and effective methods to reduce greenhouse gas emissions from anesthetic gas use.

(2) In developing the guidance document, the department must consider:

(a) The efforts of other jurisdictions, including those in Europe, to restrict the use of high global warming potential greenhouse gases or to otherwise reduce greenhouse gas emissions associated with the use of anesthesia;

(b) The guidance documents or best practices prepared by national and international anesthesiology professionals, including the American society of anesthesiologists, the world federation of societies of anaesthesiologists, and the association of anesthetists; and guidance documents published in peer-reviewed medical journals;

(c) Existing practices in place at facilities and by practitioners in Washington to limit greenhouse gas emissions associated with anesthesia use;

(d) Input related to professional liability and medical procedure risks associated with the implementation of alternative anesthetic options intended to lower greenhouse gas emissions associated with the use of anesthetic gases; and

(e) Any additional financial considerations in the use of changes intended to reduce emissions of anesthetic gases.

(3) The goal of the guidance document must be to reduce greenhouse gas emissions associated with the use of anesthetic gases, but without limiting the judgment or needs of medical, dental, or veterinary professionals in providing safe and effective care, while allowing flexibility for extenuating clinical circumstances when, in the opinion of the medical professional, unrestricted use of anesthetic gases is needed for patient safety and comfort. Nothing in the guidance document may be construed to require a facility or practitioner 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 the medical professional.

(4) By January 1, 2027, facilities at which anesthetic gases are used, and the medical, dental, or veterinary practitioners that use such gases, may only use anesthesia in a manner consistent with the guidance document published under this section. The department may

not issue penalties under this section to a facility owner or operator of a practitioner for a failure to follow the guidance document.

NEW SECTION. **Sec. 4.** (1) The department of 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. The department of ecology must solicit the input of potentially affected stakeholders, including manufacturers, importers, distributors, and users of sulfuryl fluoride, in carrying out the requirements of this section.

(2) The department of ecology may order a manufacturer, distributor, or importer of sulfuryl fluoride or potential safer alternatives to submit a notice to the department that contains the information specified in RCW 70A.430.060 (1) through (6), information of the type reported under RCW 70.15.2200(5), or other information relevant to the determination of the volume of a chemical used, its expected greenhouse gas emissions associated with use, or to the department's determination of the hazard to human health or the environment associated with a chemical. The information ordered under this section must be submitted to the department of ecology no later than four months after receipt of such a demand from the department.

(3) The department of ecology, in consultation with the department of agriculture, must submit a report to the appropriate committees of the legislature containing the findings regarding the availability of safer alternatives to sulfuryl fluoride, including recommendations for any actions to reduce sulfuryl fluoride emissions, by October 1, 2025.

(4) For the purposes of this section, "safer alternative" means an alternative that is less hazardous to humans or the environment than sulfuryl fluoride. A safer alternative to sulfuryl fluoride may include: (a) A change in pest management practices that eliminates the need for a chemical alternative; (b) a chemical alternative whose use does not result in greenhouse gas emissions; or (c) a chemical alternative whose use results in lower greenhouse gas emissions, including through the use of a chemical alternative with a lower global warming potential than sulfuryl fluoride or a lower volume of application in order to achieve intended purposes.

(5) This section expires July 1, 2026.

NEW SECTION. **Sec. 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

--- END ---