

Proposed Substitute House Bill 2892

By Representative Fitzgibbon

Original Bill: Authorizing the department of ecology to regulate greenhouse gas emissions associated with persons who produce or distribute fossil fuel products that emit greenhouse gases in Washington.

Proposed Substitute Bill (H-4482.1) compared to the House Bill 2892 (Z-0871.2):

- Defines indirect emissions for purposes for greenhouse gas emissions under the state Clean Air Act.
- Amends greenhouse gas emission reporting under the state Clean Air Act, including by eliminating limitations restricting the type of data that fuel suppliers may be required to submit to Ecology to that which is provided to the Department of Licensing, moving the reporting deadline from October 31 to March 31 of each year, and by authorizing Ecology to adopt rules to modify greenhouse gas emission reporting methodologies established by the United States Environmental Protection Agency.
- Requires the Department of Ecology (Ecology) to adopt a rule to reduce greenhouse gas emissions under state Clean Air Act authority that take effect no earlier than July 1, 2021;
- Authorizes Ecology to collect annual fees from persons subject to greenhouse gas emission reduction rules.
- Authorizes Ecology to rely upon market-based mechanisms for greenhouse gas emission reduction rules, including credits or emission reduction units, so long as the state does not sell or auction the credits.
- Authorizes Ecology to identify and give special consideration to energy-intensive and trade-exposed industries under greenhouse gas emission reduction rules in order to address leakage.
- Adds an intent section referencing an intent to provide authority to establish emission standards for producers and distributors of fossil fuels in response to the Washington Supreme Court decision in *Association of Washington Business v. Department of Ecology* (no. 95885-8, January 16, 2020).
- Adds a severability clause.

Committee: House Environment & Energy Committee
Staff: Jacob Lipson (786-7196), Office of Program Research
Date: February 3, 2020
Draft: H-4482.1

1 AN ACT Relating to authorizing the department of ecology to
2 regulate greenhouse gas emissions associated with persons who produce
3 or distribute fossil fuel products that emit greenhouse gases in
4 Washington; amending RCW 70.94.030, 70.94.331, 70.94.151, and
5 70.94.015; adding a new section to chapter 70.94 RCW; and creating a
6 new section.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that in *Association*
9 *of Washington Business v. Washington Department of Ecology* (No.
10 95885-8, January 16, 2020), the Washington supreme court held that
11 certain regulations establishing emission standards for producers and
12 distributors of fossil fuels were invalid because the department of
13 ecology lacked sufficient statutory authority. The legislature
14 intends by this act to expressly provide such authority under chapter
15 70.94 RCW, the clean air act.

16 **Sec. 2.** RCW 70.94.030 and 2005 c 197 s 2 are each amended to
17 read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

1 (1) "Air contaminant" means dust, fumes, mist, smoke, other
2 particulate matter, vapor, gas, odorous substance, or any combination
3 thereof.

4 (2) "Air pollution" is presence in the outdoor atmosphere of one
5 or more air contaminants in sufficient quantities and of such
6 characteristics and duration as is, or is likely to be, injurious to
7 human health, plant or animal life, or property, or which
8 unreasonably interfere with enjoyment of life and property. For the
9 purpose of this chapter, air pollution shall not include air
10 contaminants emitted in compliance with chapter 17.21 RCW.

11 (3) "Air quality standard" means an established concentration,
12 exposure time, and frequency of occurrence of an air contaminant or
13 multiple contaminants in the ambient air which shall not be exceeded.

14 (4) "Ambient air" means the surrounding outside air.

15 (5) "Authority" means any air pollution control agency whose
16 jurisdictional boundaries are coextensive with the boundaries of one
17 or more counties.

18 (6) "Best available control technology" (BACT) means an emission
19 limitation based on the maximum degree of reduction for each air
20 pollutant subject to regulation under this chapter emitted from or
21 that results from any new or modified stationary source, that the
22 permitting authority, on a case-by-case basis, taking into account
23 energy, environmental, and economic impacts and other costs,
24 determines is achievable for such a source or modification through
25 application of production processes and available methods, systems,
26 and techniques, including fuel cleaning, clean fuels, or treatment or
27 innovative fuel combustion techniques for control of each such a
28 pollutant. In no event shall application of "best available control
29 technology" result in emissions of any pollutants that will exceed
30 the emissions allowed by any applicable standard under 40 C.F.R. Part
31 60 and Part 61, as they exist on July 25, 1993, or their later
32 enactments as adopted by reference by the director by rule. Emissions
33 from any source utilizing clean fuels, or any other means, to comply
34 with this subsection shall not be allowed to increase above levels
35 that would have been required under the definition of BACT as it
36 existed prior to enactment of the federal clean air act amendments of
37 1990.

38 (7) "Best available retrofit technology" (BART) means an emission
39 limitation based on the degree of reduction achievable through the
40 application of the best system of continuous emission reduction for

1 each pollutant that is emitted by an existing stationary facility.
2 The emission limitation must be established, on a case-by-case basis,
3 taking into consideration the technology available, the costs of
4 compliance, the energy and nonair quality environmental impacts of
5 compliance, any pollution control equipment in use or in existence at
6 the source, the remaining useful life of the source, and the degree
7 of improvement in visibility that might reasonably be anticipated to
8 result from the use of the technology.

9 (8) "Board" means the board of directors of an authority.

10 (9) "Control officer" means the air pollution control officer of
11 any authority.

12 (10) "Department" or "ecology" means the department of ecology.

13 (11) "Emission" means a direct or indirect release of air
14 contaminants into the ambient air.

15 (12) "Emission standard" and "emission limitation" mean a
16 requirement established under the federal clean air act or this
17 chapter that limits the quantity, rate, or concentration of direct or
18 indirect emissions of air contaminants on a continuous basis,
19 including any requirement relating to the operation or maintenance of
20 a source to assure continuous emission reduction, and any design,
21 equipment, work practice, or operational standard adopted under the
22 federal clean air act or this chapter.

23 (13) "Fine particulate" means particulates with a diameter of two
24 and one-half microns and smaller.

25 (14) "Lowest achievable emission rate" (LAER) means for any
26 source that rate of emissions that reflects:

27 (a) The most stringent emission limitation that is contained in
28 the implementation plan of any state for such class or category of
29 source, unless the owner or operator of the proposed source
30 demonstrates that such limitations are not achievable; or

31 (b) The most stringent emission limitation that is achieved in
32 practice by such class or category of source, whichever is more
33 stringent.

34 In no event shall the application of this term permit a proposed
35 new or modified source to emit any pollutant in excess of the amount
36 allowable under applicable new source performance standards.

37 (15) "Modification" means any physical change in, or change in
38 the method of operation of, a stationary source that increases the
39 amount of any air contaminant emitted by such source or that results
40 in the emission of any air contaminant not previously emitted. The

1 term modification shall be construed consistent with the definition
2 of modification in Section 7411, Title 42, United States Code, and
3 with rules implementing that section.

4 (16) "Multicounty authority" means an authority which consists of
5 two or more counties.

6 (17) "New source" means (a) the construction or modification of a
7 stationary source that increases the amount of any air contaminant
8 emitted by such source or that results in the emission of any air
9 contaminant not previously emitted, and (b) any other project that
10 constitutes a new source under the federal clean air act.

11 (18) "Permit program source" means a source required to apply for
12 or to maintain an operating permit under RCW 70.94.161.

13 (19) "Person" means an individual, firm, public or private
14 corporation, association, partnership, political subdivision of the
15 state, municipality, or governmental agency.

16 (20) "Reasonably available control technology" (RACT) means the
17 lowest emission limit that a particular source or source category is
18 capable of meeting by the application of control technology that is
19 reasonably available considering technological and economic
20 feasibility. RACT is determined on a case-by-case basis for an
21 individual source or source category taking into account the impact
22 of the source upon air quality, the availability of additional
23 controls, the emission reduction to be achieved by additional
24 controls, the impact of additional controls on air quality, and the
25 capital and operating costs of the additional controls. RACT
26 requirements for a source or source category shall be adopted only
27 after notice and opportunity for comment are afforded.

28 (21) "Silvicultural burning" means burning of wood fiber on
29 forestland consistent with the provisions of RCW (~~70.94.660~~)
30 70.94.6534.

31 (22) "Source" means all of the emissions units including
32 quantifiable fugitive emissions, that are located on one or more
33 contiguous or adjacent properties, and are under the control of the
34 same person, or persons under common control, whose activities are
35 ancillary to the production of a single product or functionally
36 related group of products.

37 (23) "Stationary source" means any building, structure, facility,
38 or installation that emits or may emit any air contaminant.

39 (24) "Trigger level" means the ambient level of fine
40 particulates, measured in micrograms per cubic meter, that must be

1 detected prior to initiating a first or second stage of impaired air
2 quality under RCW 70.94.473.

3 (25) "Indirect emissions" means, for purposes only of emissions
4 of greenhouse gases as defined in RCW 70.235.010, the emissions from
5 the production or distribution of fuels, including electricity, where
6 the release of air contaminants into the ambient air occurs during
7 the consumption, use, combustion, or oxidation of the fuels.

8 **Sec. 3.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
9 read as follows:

10 (1) The department shall have all the powers as provided in RCW
11 70.94.141.

12 (2) The department, in addition to any other powers vested in it
13 by law after consideration at a public hearing held in accordance
14 with chapters 42.30 and 34.05 RCW shall:

15 (a) Adopt rules establishing air quality objectives and air
16 quality standards;

17 (b) Adopt emission standards which shall constitute minimum
18 emission standards throughout the state. An authority may enact more
19 stringent emission standards, except for emission performance
20 standards for new woodstoves and opacity levels for residential solid
21 fuel burning devices which shall be statewide, but in no event may
22 less stringent standards be enacted by an authority without the prior
23 approval of the department after public hearing and due notice to
24 interested parties;

25 (c) Adopt by rule air quality standards and emission standards
26 for the control or prohibition of emissions to the outdoor atmosphere
27 of radionuclides, dust, fumes, mist, smoke, other particulate matter,
28 vapor, gas, odorous substances, or any combination thereof. Such
29 requirements may be based upon a system of classification by types of
30 emissions or types of sources of emissions, or combinations thereof,
31 which it determines most feasible for the purposes of this chapter.
32 The department may require persons who produce or distribute fossil
33 fuels or other products that emit greenhouse gases in Washington to
34 comply with air quality standards, emission standards, or emission
35 limits on emissions of greenhouse gases. However, an industry, or the
36 air pollution control authority having jurisdiction, can choose,
37 subject to the submittal of appropriate data that the industry has
38 quantified, to have any limit on the opacity of emissions from a
39 source whose emission standard is stated in terms of a weight of

1 particulate per unit volume of air (e.g., grains per dry standard
2 cubic foot) be based on the applicable particulate emission standard
3 for that source, such that any violation of the opacity limit
4 accurately indicates a violation of the applicable particulate
5 emission standard. Any alternative opacity limit provided by this
6 section that would result in increasing air contaminants emissions in
7 any nonattainment area shall only be granted if equal or greater
8 emission reductions are provided for by the same source obtaining the
9 revised opacity limit. A reasonable fee may be assessed to the
10 industry to which the alternate opacity standard would apply. The fee
11 shall cover only those costs to the air pollution control authority
12 which are directly related to the determination on the acceptability
13 of the alternate opacity standard, including testing, oversight and
14 review of data.

15 (3) The air quality standards and emission standards may be for
16 the state as a whole or may vary from area to area or source to
17 source, except that emission performance standards for new woodstoves
18 and opacity levels for residential solid fuel burning devices shall
19 be statewide, as may be appropriate to facilitate the accomplishment
20 of the objectives of this chapter and to take necessary or desirable
21 account of varying local conditions of population concentration, the
22 existence of actual or reasonably foreseeable air pollution,
23 topographic and meteorologic conditions and other pertinent
24 variables.

25 (4) The department is directed to cooperate with the appropriate
26 agencies of the United States or other states or any interstate
27 agencies or international agencies with respect to the control of air
28 pollution and air contamination, or for the formulation for the
29 submission to the legislature of interstate air pollution control
30 compacts or agreements.

31 (5) The department is directed to conduct or cause to be
32 conducted a continuous surveillance program to monitor the quality of
33 the ambient atmosphere as to concentrations and movements of air
34 contaminants and conduct or cause to be conducted a program to
35 determine the quantity of emissions to the atmosphere.

36 (6) The department shall enforce the air quality standards and
37 emission standards throughout the state except where a local
38 authority is enforcing the state regulations or its own regulations
39 which are more stringent than those of the state.

1 (7) The department shall encourage local units of government to
2 handle air pollution problems within their respective jurisdictions;
3 and, on a cooperative basis provide technical and consultative
4 assistance therefor.

5 (8) The department shall have the power to require the addition
6 to or deletion of a county or counties from an existing authority in
7 order to carry out the purposes of this chapter. No such addition or
8 deletion shall be made without the concurrence of any existing
9 authority involved. Such action shall only be taken after a public
10 hearing held pursuant to the provisions of chapter 34.05 RCW.

11 (9) The department shall establish rules requiring sources or
12 source categories to apply reasonable and available control methods.
13 Such rules shall apply to those sources or source categories that
14 individually or collectively contribute the majority of statewide air
15 emissions of each regulated pollutant. The department shall review,
16 and if necessary, update its rules every five years to ensure
17 consistency with current reasonable and available control methods.
18 The department shall have adopted rules required under this
19 subsection for all sources by July 1, 1996.

20 For the purposes of this section, "reasonable and available
21 control methods" shall include but not be limited to, changes in
22 technology, processes, or other control strategies.

23 **Sec. 4.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to
24 read as follows:

25 (1) The board of any activated authority or the department, may
26 classify air contaminant sources, by ordinance, resolution, rule or
27 regulation, which in its judgment may cause or contribute to air
28 pollution, according to levels and types of emissions and other
29 characteristics which cause or contribute to air pollution, and may
30 require registration or reporting or both for any such class or
31 classes. Classifications made pursuant to this section may be for
32 application to the area of jurisdiction of such authority, or the
33 state as a whole or to any designated area within the jurisdiction,
34 and shall be made with special reference to effects on health,
35 economic and social factors, and physical effects on property.

36 (2) Except as provided in subsection (3) of this section, any
37 person operating or responsible for the operation of air contaminant
38 sources of any class for which the ordinances, resolutions, rules or
39 regulations of the department or board of the authority, require

1 registration or reporting shall register therewith and make reports
2 containing information as may be required by such department or board
3 concerning location, size and height of contaminant outlets,
4 processes employed, nature of the contaminant emission and such other
5 information as is relevant to air pollution and available or
6 reasonably capable of being assembled. In the case of emissions of
7 greenhouse gases as defined in RCW 70.235.010 the department shall
8 adopt rules requiring reporting of those emissions. The department or
9 board may require that such registration or reporting be accompanied
10 by a fee, and may determine the amount of such fee for such class or
11 classes: PROVIDED, That the amount of the fee shall only be to
12 compensate for the costs of administering such registration or
13 reporting program which shall be defined as initial registration and
14 annual or other periodic reports from the source owner providing
15 information directly related to air pollution registration, on-site
16 inspections necessary to verify compliance with registration
17 requirements, data storage and retrieval systems necessary for
18 support of the registration program, emission inventory reports and
19 emission reduction credits computed from information provided by
20 sources pursuant to registration program requirements, staff review,
21 including engineering or other reliable analysis for accuracy and
22 currentness, of information provided by sources pursuant to
23 registration program requirements, clerical and other office support
24 provided in direct furtherance of the registration program, and
25 administrative support provided in directly carrying out the
26 registration program: PROVIDED FURTHER, That any such registration
27 made with either the board or the department shall preclude a further
28 registration and reporting with any other board or the department,
29 except that emissions of greenhouse gases as defined in RCW
30 70.235.010 must be reported as required under subsection (5) of this
31 section.

32 All registration program and reporting fees collected by the
33 department shall be deposited in the air pollution control account.
34 All registration program fees collected by the local air authorities
35 shall be deposited in their respective treasuries.

36 (3) If a registration or report has been filed for a grain
37 warehouse or grain elevator as required under this section,
38 registration, reporting, or a registration program fee shall not,
39 after January 1, 1997, again be required under this section for the
40 warehouse or elevator unless the capacity of the warehouse or

1 elevator as listed as part of the license issued for the facility has
2 been increased since the date the registration or reporting was last
3 made. If the capacity of the warehouse or elevator listed as part of
4 the license is increased, any registration or reporting required for
5 the warehouse or elevator under this section must be made by the date
6 the warehouse or elevator receives grain from the first harvest
7 season that occurs after the increase in its capacity is listed in
8 the license.

9 This subsection does not apply to a grain warehouse or grain
10 elevator if the warehouse or elevator handles more than ten million
11 bushels of grain annually.

12 (4) For the purposes of subsection (3) of this section:

13 (a) A "grain warehouse" or "grain elevator" is an establishment
14 classified in standard industrial classification (SIC) code 5153 for
15 wholesale trade for which a license is required and includes, but is
16 not limited to, such a licensed facility that also conducts cleaning
17 operations for grain;

18 (b) A "license" is a license issued by the department of
19 agriculture licensing a facility as a grain warehouse or grain
20 elevator under chapter 22.09 RCW or a license issued by the federal
21 government licensing a facility as a grain warehouse or grain
22 elevator for purposes similar to those of licensure for the facility
23 under chapter 22.09 RCW; and

24 (c) "Grain" means a grain or a pulse.

25 (5)(a) The department shall adopt rules requiring persons to
26 report emissions of greenhouse gases as defined in RCW 70.235.010
27 where those emissions from a single facility, source, ~~((or))~~ site, or
28 ~~((from fossil fuels sold in Washington by a single))~~ supplier meet or
29 exceed ten thousand metric tons of carbon dioxide equivalent
30 annually. ~~((The department may phase in the requirement to report
31 greenhouse gas emissions until the reporting threshold in this
32 subsection is met, which must occur by January 1, 2012.))~~ In
33 addition, the rules must require that:

34 (i) Emissions of greenhouse gases resulting from the combustion
35 of fossil fuels be reported separately from emissions of greenhouse
36 gases resulting from the combustion of biomass; and

37 ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each
38 annual report must include emissions data for the preceding calendar
39 year and must be submitted to the department by ~~((October))~~ March
40 31st of the year in which the report is due. ~~((However, starting in~~

1 ~~2011, a person who is required to report greenhouse gas emissions to~~
2 ~~the United States environmental protection agency under 40 C.F.R.~~
3 ~~Part 98, as adopted on September 22, 2009, must submit the report~~
4 ~~required under this section to the department concurrent with the~~
5 ~~submission to the United States environmental protection agency.)~~
6 Except as otherwise provided in this section, the data for emissions
7 in Washington and any corrections thereto that are reported to the
8 United States environmental protection agency must be the emissions
9 data reported to the department (~~;~~ and

10 ~~(iii) Emissions of carbon dioxide associated with the complete~~
11 ~~combustion or oxidation of liquid motor vehicle fuel, special fuel,~~
12 ~~or aircraft fuel that is sold in Washington where the annual~~
13 ~~emissions associated with that combustion or oxidation equal or~~
14 ~~exceed ten thousand metric tons be reported to the department. Each~~
15 ~~person who is required to file periodic tax reports of motor vehicle~~
16 ~~fuel sales under RCW 82.36.031 or special fuel sales under RCW~~
17 ~~82.38.150, or each distributor of aircraft fuel required to file~~
18 ~~periodic tax reports under RCW 82.42.040 must report to the~~
19 ~~department the annual emissions of carbon dioxide from the complete~~
20 ~~combustion or oxidation of the fuels listed in those reports as sold~~
21 ~~in the state of Washington. The department shall not require~~
22 ~~suppliers to use additional data to calculate greenhouse gas~~
23 ~~emissions other than the data the suppliers report to the department~~
24 ~~of licensing. The rules may allow this information to be aggregated~~
25 ~~when reported to the department. The department and the department of~~
26 ~~licensing shall enter into an interagency agreement to ensure~~
27 ~~proprietary and confidential information is protected if the~~
28 ~~departments share reported information. Any proprietary or~~
29 ~~confidential information exempt from disclosure when reported to the~~
30 ~~department of licensing is exempt from disclosure when shared by the~~
31 ~~department of licensing with the department under this provision)).~~

32 (b) (i) Except as otherwise provided in this subsection, the rules
33 adopted by the department under (a) of this subsection must be
34 consistent with the regulations adopted by the United States
35 environmental protection agency in 40 C.F.R. Part 98 as it existed on
36 ~~((September 22, 2009))~~ January 1, 2020.

37 (ii) The department may by rule include additional gases to the
38 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
39 been designated as a greenhouse gas by the United States congress or
40 by the United States environmental protection agency. Prior to

1 including additional gases to the definition of "greenhouse gas" in
2 RCW 70.235.010, the department shall notify the appropriate
3 committees of the legislature. Decisions to amend the rule to include
4 additional gases must be made prior to December 1st of any year and
5 the amended rule may not take effect before the end of the regular
6 legislative session in the next year.

7 (iii) The department may by rule exempt persons who are required
8 to report greenhouse gas emissions to the United States environmental
9 protection agency and who emit less than ten thousand metric tons
10 carbon dioxide equivalent annually.

11 (iv) The department must establish a methodology for persons who
12 are not required to report under this section to voluntarily report
13 their greenhouse gas emissions.

14 (v) The department may by rule modify methodologies established
15 in 40 C.F.R. Part 98.

16 (vi) The department may by rule require a person to use a
17 specific method established in 40 C.F.R. Part 98 to complete their
18 report to the department.

19 (c) The department shall review and if necessary update its rules
20 whenever the United States environmental protection agency adopts
21 final amendments to 40 C.F.R. Part 98 to ensure consistency with
22 federal reporting requirements for emissions of greenhouse gases.
23 However, the department shall not amend its rules in a manner that
24 conflicts with (a) or (b) of this subsection.

25 (d) The department shall share any reporting information reported
26 to it with the local air authority in which the person reporting
27 under the rules adopted by the department operates.

28 (e) The fee provisions in subsection (2) of this section apply to
29 reporting of emissions of greenhouse gases. Persons required to
30 report under (a) of this subsection who fail to report or pay the fee
31 required in subsection (2) of this section are subject to enforcement
32 penalties under this chapter. The department shall enforce the
33 reporting rule requirements unless it approves a local air
34 authority's request to enforce the requirements for persons operating
35 within the authority's jurisdiction. ~~((However, neither the~~
36 ~~department nor a local air authority approved under this section are~~
37 ~~authorized to assess enforcement penalties on persons required to~~
38 ~~report under (a) of this subsection until six months after the~~
39 ~~department adopts its reporting rule in 2010.))~~

1 (f) The energy facility site evaluation council shall,
2 simultaneously with the department, adopt rules that impose
3 greenhouse gas reporting requirements in site certifications on
4 owners or operators of a facility permitted by the energy facility
5 site evaluation council. The greenhouse gas reporting requirements
6 imposed by the energy facility site evaluation council must be the
7 same as the greenhouse gas reporting requirements imposed by the
8 department. The department shall share any information reported to it
9 from facilities permitted by the energy facility site evaluation
10 council with the council, including notice of a facility that has
11 failed to report as required. The energy facility site evaluation
12 council shall contract with the department to monitor the reporting
13 requirements adopted under this section.

14 (g) The inclusion or failure to include any person, source,
15 classes of persons or sources, or types of emissions of greenhouse
16 gases into the department's rules for reporting under this section
17 does not indicate whether such a person, source, or category is
18 appropriate for inclusion in state, regional, or national greenhouse
19 gas reduction programs or strategies. (~~Furthermore, aircraft fuel~~
20 ~~purchased in the state may not be considered equivalent to aircraft~~
21 ~~fuel combusted in the state.))~~

22 (h) The department may by rule require persons to have a third
23 party verify their report to the department. The department retains
24 final authority when determining the accuracy of reports submitted to
25 the department.

26 (i)(i) The definitions in RCW 70.235.010 apply throughout this
27 subsection (5) unless the context clearly requires otherwise.

28 (ii) (~~For the purpose of this subsection (5), the term~~
29 ~~"supplier" includes: (A) A motor vehicle fuel supplier or a motor~~
30 ~~vehicle fuel importer, as those terms are defined in RCW 82.36.010;~~
31 ~~(B) a special fuel supplier or a special fuel importer, as those~~
32 ~~terms are defined in RCW 82.38.020; and (C) a distributor of aircraft~~
33 ~~fuel, as those terms are defined in RCW 82.42.010.~~

34 ~~(iii))~~ For the purpose of this subsection (5), the term "person"
35 (~~includes: (A) An~~) means an owner or operator, as those terms are
36 defined by the United States environmental protection agency in its
37 mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98,
38 as (~~adopted on September 22, 2009; and (B) a supplier~~) it existed
39 on January 1, 2020. However, the department may adopt rules that

1 amend these United States environmental protection agency definitions
2 to address differences in state and federal boundaries.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.94
4 RCW to read as follows:

5 (1) The department must adopt rules under this chapter to
6 regulate greenhouse gases as defined in RCW 70.235.010 that take
7 effect no earlier than July 1, 2021.

8 (2) For the purposes of any rules adopted by the department to
9 regulate greenhouse gases under this chapter, the department may:

10 (a) Determine, assess, and collect annual fees from persons
11 subject to the rules in an amount sufficient to cover the direct and
12 indirect costs of administering and enforcing the requirements of the
13 rules;

14 (b) Rely upon market-based mechanisms, including bankable,
15 tradeable credits or emission reduction units to achieve greenhouse
16 gas emission reductions, as long as such mechanisms are not auctioned
17 or sold by the state to persons subject to the rules; and

18 (c) Identify and give special consideration to energy-intensive
19 and trade-exposed facilities only to the extent necessary in order to
20 address leakage.

21 (3) For the purposes of this section, "leakage" means a reduction
22 in emissions of greenhouse gases within the state that is offset by
23 an increase in emissions of greenhouse gas emissions outside the
24 state.

25 **Sec. 6.** RCW 70.94.015 and 2019 c 284 s 6 are each amended to
26 read as follows:

27 (1) The air pollution control account is established in the state
28 treasury. All receipts collected by or on behalf of the department
29 from RCW 70.94.151(2), and receipts from nonpermit program sources
30 under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW
31 70.94.6528 ~~((and))~~, 70.94.6534, and section 5 of this act shall be
32 deposited into the account. Moneys in the account may be spent only
33 after appropriation. Expenditures from the account may be used only
34 to develop and implement the provisions of ~~((chapters 70.94 and))~~
35 this chapter and chapter 70.120 RCW and RCW 70.235.080.

36 (2) The amounts collected and allocated in accordance with this
37 section shall be expended upon appropriation except as otherwise

1 provided in this section and in accordance with the following
2 limitations:

3 Portions of moneys received by the department of ecology from the
4 air pollution control account shall be distributed by the department
5 to local authorities based on:

6 (a) The level and extent of air quality problems within such
7 authority's jurisdiction;

8 (b) The costs associated with implementing air pollution
9 regulatory programs by such authority; and

10 (c) The amount of funding available to such authority from other
11 sources, whether state, federal, or local, that could be used to
12 implement such programs.

13 (3) The air operating permit account is created in the custody of
14 the state treasurer. All receipts collected by or on behalf of the
15 department from permit program sources under RCW 70.94.152(1),
16 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the
17 account. Expenditures from the account may be used only for the
18 activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and
19 70.94.154(7). Moneys in the account may be spent only after
20 appropriation.

21 NEW SECTION. **Sec. 7.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

--- END ---