

Proposed Substitute House Bill 2957

By Representative Fitzgibbon

Original Bill: 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.

Proposed Substitute Bill (H-5297.1) compared to the House Bill (H-5194.1):

- Defines indirect emissions for purposes of greenhouse gas emissions.
- Defines 25 categories of energy-intensive trade exposed industries which Department of Ecology (Ecology) greenhouse gas emission rules may give special consideration to in order to address leakage of emissions that increase greenhouse gas 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 greenhouse gas 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 greenhouse gases 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.

Committee: House Appropriations Committee
Staff: Jacob Lipson (786-7196), Office of Program Research
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1 AN ACT Relating to reducing greenhouse gas emissions by providing
2 authority for the regulation of indirect sources under the clean air
3 act and implementing standards and programs that reduce emissions
4 associated with buildings; amending RCW 70.94.030, 70.94.331,
5 70.94.151, and 70.94.015; adding new sections to chapter 70.94 RCW;
6 adding a new section to chapter 70.235 RCW; adding a new section to
7 chapter 80.28 RCW; adding a new section to chapter 19.27A RCW; and
8 creating a new section.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that in *Association*
11 *of Washington Business v. Washington Department of Ecology* (No.
12 95885-8, January 16, 2020), the Washington supreme court held that
13 certain regulations establishing emission standards for producers and
14 distributors of fossil fuels were invalid because the department of
15 ecology lacked sufficient statutory authority. The legislature
16 intends by this act to expressly provide such authority under chapter
17 70.94 RCW, the clean air act.

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

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

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

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

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

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

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

20 (6) "Best available control technology" (BACT) means an emission
21 limitation based on the maximum degree of reduction for each air
22 pollutant subject to regulation under this chapter emitted from or
23 that results from any new or modified stationary source, that the
24 permitting authority, on a case-by-case basis, taking into account
25 energy, environmental, and economic impacts and other costs,
26 determines is achievable for such a source or modification through
27 application of production processes and available methods, systems,
28 and techniques, including fuel cleaning, clean fuels, or treatment or
29 innovative fuel combustion techniques for control of each such a
30 pollutant. In no event shall application of "best available control
31 technology" result in emissions of any pollutants that will exceed
32 the emissions allowed by any applicable standard under 40 C.F.R. Part
33 60 and Part 61, as they exist on July 25, 1993, or their later
34 enactments as adopted by reference by the director by rule. Emissions
35 from any source utilizing clean fuels, or any other means, to comply
36 with this subsection shall not be allowed to increase above levels
37 that would have been required under the definition of BACT as it
38 existed prior to enactment of the federal clean air act amendments of
39 1990.

1 (7) "Best available retrofit technology" (BART) means an emission
2 limitation based on the degree of reduction achievable through the
3 application of the best system of continuous emission reduction for
4 each pollutant that is emitted by an existing stationary facility.
5 The emission limitation must be established, on a case-by-case basis,
6 taking into consideration the technology available, the costs of
7 compliance, the energy and nonair quality environmental impacts of
8 compliance, any pollution control equipment in use or in existence at
9 the source, the remaining useful life of the source, and the degree
10 of improvement in visibility that might reasonably be anticipated to
11 result from the use of the technology.

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

13 (9) "Control officer" means the air pollution control officer of
14 any authority.

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

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

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

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

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

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

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

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

1 (15) "Modification" means any physical change in, or change in
2 the method of operation of, a stationary source that increases the
3 amount of any air contaminant emitted by such source or that results
4 in the emission of any air contaminant not previously emitted. The
5 term modification shall be construed consistent with the definition
6 of modification in Section 7411, Title 42, United States Code, and
7 with rules implementing that section.

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

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

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

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

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

32 (21) "Silvicultural burning" means burning of wood fiber on
33 forestland consistent with the provisions of RCW (~~70.94.660~~)
34 70.94.6534.

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

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

3 (24) "Trigger level" means the ambient level of fine
4 particulates, measured in micrograms per cubic meter, that must be
5 detected prior to initiating a first or second stage of impaired air
6 quality under RCW 70.94.473.

7 (25) "Indirect emissions" means, for purposes only of emissions
8 of greenhouse gases as defined in RCW 70.235.010, the emissions from
9 the production or distribution of fuels where the release of air
10 contaminants into the ambient air occurs during the consumption, use,
11 combustion, or oxidation of the fuels.

12 (26) "Leakage" means a reduction in emissions of greenhouse gases
13 within the state that is offset by an increase in emissions of
14 greenhouse gas emissions outside the state.

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

17 (1) The department shall have all the powers as provided in RCW
18 70.94.141.

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

22 (a) Adopt rules establishing air quality objectives and air
23 quality standards;

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

32 (c) Adopt by rule air quality standards and emission standards
33 for the control or prohibition of emissions to the outdoor atmosphere
34 of radionuclides, dust, fumes, mist, smoke, other particulate matter,
35 vapor, gas, odorous substances, or any combination thereof. Such
36 requirements may be based upon a system of classification by types of
37 emissions or types of sources of emissions, or combinations thereof,
38 which it determines most feasible for the purposes of this chapter.
39 The department or authority may require persons who produce or

1 distribute fossil fuels or other products that emit or the combustion
2 of which emits greenhouse gases in Washington to comply with air
3 quality standards, emission standards, or emission limits on
4 emissions of greenhouse gases. However, an industry, or the air
5 pollution control authority having jurisdiction, can choose, subject
6 to the submittal of appropriate data that the industry has
7 quantified, to have any limit on the opacity of emissions from a
8 source whose emission standard is stated in terms of a weight of
9 particulate per unit volume of air (e.g., grains per dry standard
10 cubic foot) be based on the applicable particulate emission standard
11 for that source, such that any violation of the opacity limit
12 accurately indicates a violation of the applicable particulate
13 emission standard. Any alternative opacity limit provided by this
14 section that would result in increasing air contaminants emissions in
15 any nonattainment area shall only be granted if equal or greater
16 emission reductions are provided for by the same source obtaining the
17 revised opacity limit. A reasonable fee may be assessed to the
18 industry to which the alternate opacity standard would apply. The fee
19 shall cover only those costs to the air pollution control authority
20 which are directly related to the determination on the acceptability
21 of the alternate opacity standard, including testing, oversight and
22 review of data.

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

33 (4) The department is directed to cooperate with the appropriate
34 agencies of the United States or other states or any interstate
35 agencies or international agencies with respect to the control of air
36 pollution and air contamination, or for the formulation for the
37 submission to the legislature of interstate air pollution control
38 compacts or agreements.

39 (5) The department is directed to conduct or cause to be
40 conducted a continuous surveillance program to monitor the quality of

1 the ambient atmosphere as to concentrations and movements of air
2 contaminants and conduct or cause to be conducted a program to
3 determine the quantity of emissions to the atmosphere.

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

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

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

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

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

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

32 (1) The board of any activated authority or the department, may
33 classify air contaminant sources, by ordinance, resolution, rule or
34 regulation, which in its judgment may cause or contribute to air
35 pollution, according to levels and types of emissions and other
36 characteristics which cause or contribute to air pollution, and may
37 require registration or reporting or both for any such class or
38 classes. Classifications made pursuant to this section may be for
39 application to the area of jurisdiction of such authority, or the

1 state as a whole or to any designated area within the jurisdiction,
2 and shall be made with special reference to effects on health,
3 economic and social factors, and physical effects on property.

4 (2) Except as provided in subsection (3) of this section, any
5 person operating or responsible for the operation of air contaminant
6 sources of any class for which the ordinances, resolutions, rules or
7 regulations of the department or board of the authority, require
8 registration or reporting shall register therewith and make reports
9 containing information as may be required by such department or board
10 concerning location, size and height of contaminant outlets,
11 processes employed, nature of the contaminant emission and such other
12 information as is relevant to air pollution and available or
13 reasonably capable of being assembled. In the case of emissions of
14 greenhouse gases as defined in RCW 70.235.010 the department shall
15 adopt rules requiring reporting of those emissions. The department or
16 board may require that such registration or reporting be accompanied
17 by a fee, and may determine the amount of such fee for such class or
18 classes: PROVIDED, That the amount of the fee shall only be to
19 compensate for the costs of administering such registration or
20 reporting program which shall be defined as initial registration and
21 annual or other periodic reports from the source owner providing
22 information directly related to air pollution registration, on-site
23 inspections necessary to verify compliance with registration
24 requirements, data storage and retrieval systems necessary for
25 support of the registration program, emission inventory reports and
26 emission reduction credits computed from information provided by
27 sources pursuant to registration program requirements, staff review,
28 including engineering or other reliable analysis for accuracy and
29 currentness, of information provided by sources pursuant to
30 registration program requirements, clerical and other office support
31 provided in direct furtherance of the registration program, and
32 administrative support provided in directly carrying out the
33 registration program: PROVIDED FURTHER, That any such registration
34 made with either the board or the department shall preclude a further
35 registration and reporting with any other board or the department,
36 except that emissions of greenhouse gases as defined in RCW
37 70.235.010 must be reported as required under subsection (5) of this
38 section.

39 All registration program and reporting fees collected by the
40 department shall be deposited in the air pollution control account.

1 All registration program fees collected by the local air authorities
2 shall be deposited in their respective treasuries.

3 (3) If a registration or report has been filed for a grain
4 warehouse or grain elevator as required under this section,
5 registration, reporting, or a registration program fee shall not,
6 after January 1, 1997, again be required under this section for the
7 warehouse or elevator unless the capacity of the warehouse or
8 elevator as listed as part of the license issued for the facility has
9 been increased since the date the registration or reporting was last
10 made. If the capacity of the warehouse or elevator listed as part of
11 the license is increased, any registration or reporting required for
12 the warehouse or elevator under this section must be made by the date
13 the warehouse or elevator receives grain from the first harvest
14 season that occurs after the increase in its capacity is listed in
15 the license.

16 This subsection does not apply to a grain warehouse or grain
17 elevator if the warehouse or elevator handles more than ten million
18 bushels of grain annually.

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

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

25 (b) A "license" is a license issued by the department of
26 agriculture licensing a facility as a grain warehouse or grain
27 elevator under chapter 22.09 RCW or a license issued by the federal
28 government licensing a facility as a grain warehouse or grain
29 elevator for purposes similar to those of licensure for the facility
30 under chapter 22.09 RCW; and

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

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

1 (i) Emissions of greenhouse gases resulting from the combustion
2 of fossil fuels be reported separately from emissions of greenhouse
3 gases resulting from the combustion of biomass;

4 (ii) ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each
5 annual report must include emissions data for the preceding calendar
6 year and must be submitted to the department by ~~((October))~~ March
7 31st of the year in which the report is due. ~~((However, starting in
8 2011, a person who is required to report greenhouse gas emissions to
9 the United States environmental protection agency under 40 C.F.R.
10 Part 98, as adopted on September 22, 2009, must submit the report
11 required under this section to the department concurrent with the
12 submission to the United States environmental protection agency.))~~
13 Except as otherwise provided in this section, the data for emissions
14 in Washington and any corrections thereto that are reported to the
15 United States environmental protection agency must be the emissions
16 data reported to the department; ~~((and))~~

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

1 (iv) If the department determines that it is necessary for
2 purposes of accurately measuring greenhouse gas emissions associated
3 with sources of indirect emissions regulated consistent with RCW
4 70.94.331(2)(c), the department may require the submission of data or
5 information to be used for purposes of calculating greenhouse gas
6 emissions that is different from or additional to the data reported
7 under (a)(iii) of this subsection.

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

13 (ii) The department may by rule include additional gases to the
14 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
15 been designated as a greenhouse gas by the United States congress or
16 by the United States environmental protection agency. Prior to
17 including additional gases to the definition of "greenhouse gas" in
18 RCW 70.235.010, the department shall notify the appropriate
19 committees of the legislature. Decisions to amend the rule to include
20 additional gases must be made prior to December 1st of any year and
21 the amended rule may not take effect before the end of the regular
22 legislative session in the next year.

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

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

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

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

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

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

4 (e) The fee provisions in subsection (2) of this section apply to
5 reporting of emissions of greenhouse gases. Persons required to
6 report under (a) of this subsection who fail to report or pay the fee
7 required in subsection (2) of this section are subject to enforcement
8 penalties under this chapter. The department shall enforce the
9 reporting rule requirements unless it approves a local air
10 authority's request to enforce the requirements for persons operating
11 within the authority's jurisdiction. (~~However, neither the~~
12 ~~department nor a local air authority approved under this section are~~
13 ~~authorized to assess enforcement penalties on persons required to~~
14 ~~report under (a) of this subsection until six months after the~~
15 ~~department adopts its reporting rule in 2010.))~~

16 (f) The energy facility site evaluation council shall,
17 simultaneously with the department, adopt rules that impose
18 greenhouse gas reporting requirements in site certifications on
19 owners or operators of a facility permitted by the energy facility
20 site evaluation council. The greenhouse gas reporting requirements
21 imposed by the energy facility site evaluation council must be the
22 same as the greenhouse gas reporting requirements imposed by the
23 department. The department shall share any information reported to it
24 from facilities permitted by the energy facility site evaluation
25 council with the council, including notice of a facility that has
26 failed to report as required. The energy facility site evaluation
27 council shall contract with the department to monitor the reporting
28 requirements adopted under this section.

29 (g) The inclusion or failure to include any person, source,
30 classes of persons or sources, or types of emissions of greenhouse
31 gases into the department's rules for reporting under this section
32 does not indicate whether such a person, source, or category is
33 appropriate for inclusion in state, regional, or national greenhouse
34 gas reduction programs or strategies. (~~Furthermore, aircraft fuel~~
35 ~~purchased in the state may not be considered equivalent to aircraft~~
36 ~~fuel combusted in the state.))~~

37 (h) The department may by rule require persons to have a third
38 party verify their report to the department. The department retains
39 final authority when determining the accuracy of reports submitted to
40 the department.

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

3 (ii) For the purpose of this subsection (5), the term "supplier"
4 includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel
5 importer, as those terms are defined in RCW 82.36.010; (B) a special
6 fuel supplier or a special fuel importer, as those terms are defined
7 in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those
8 terms are defined in RCW 82.42.010.

9 (iii) For the purpose of this subsection (5), the term "person"
10 (~~(includes)~~) means: (A) An owner or operator, as those terms are
11 defined by the United States environmental protection agency in its
12 mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98,
13 as adopted on September 22, 2009; and (B) a supplier. However, the
14 department may adopt rules that amend these United States
15 environmental protection agency definitions to address differences in
16 state and federal boundaries.

17 NEW SECTION. Sec. 5. A new section is added to chapter 70.94
18 RCW to read as follows:

19 (1) (a) The department must adopt rules under this chapter to
20 regulate greenhouse gases as defined in RCW 70.235.010.

21 (b) The rules may not be adopted before May 1, 2021, and may not
22 take effect before October 1, 2021.

23 (c) In the exercise of authority granted under this section and
24 sections 2 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of
25 this act), if the rule applies to sources of direct or indirect
26 emissions other than transportation fuels alone, the department may
27 not regulate entities that have indirect emissions of less than
28 twenty-five thousand metric tons per year. For the purposes of
29 assessing whether an entity exceeds this threshold, the department
30 may average emissions reported for recent years for which such data
31 is available, or may use other reasonable methods of determining
32 whether an entity may be assumed to emit at least twenty-five
33 thousand metric tons per year, and therefore may be covered by
34 regulatory requirements consistent with this section and sections 2
35 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of this act).

36 (2) (a) For the purposes of any rules adopted by the department to
37 regulate greenhouse gases under this chapter, for biofuels that lead
38 to reduced life-cycle emissions relative to fossil fuels that the
39 biofuel may reasonably be presumed to be a substitute for including,

1 but not limited to, gasoline, diesel, natural gas, or heating oil,
2 the department must assign to the biofuel credits against compliance
3 obligations or assign to the biofuel the generation of emission
4 reduction units or other regulatory or market-based mechanisms in an
5 amount proportional to the difference in life-cycle emissions between
6 the fossil fuel and the biofuel.

7 (b) For the purposes of this subsection, "biofuel" means a liquid
8 or gaseous fuel derived from organic matter including, but not
9 limited to, biodiesel, renewable diesel, ethanol, renewable natural
10 gas, and renewable propane.

11 (3) For the purposes of any rules adopted by the department to
12 regulate greenhouse gases under this chapter, the department may:

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

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

21 (4) By January 20, 2021, the house of representatives environment
22 and energy committee and the senate environment, energy, and
23 technology committee must hold at least one joint meeting at which
24 the department must present an update on the progress of rule making
25 authorized by this act.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.94
27 RCW to read as follows:

28 (1) The department may give special consideration to energy-
29 intensive and trade-exposed facilities only to the extent necessary
30 to address leakage.

31 (2) For the purposes of this section, "energy-intensive and
32 trade-exposed facilities" mean facilities with the following North
33 American industry classification system (NAICS) codes, using the
34 system in effect as of January 1, 2020:

35 (a) 311411: Frozen fruit, juice, and vegetable manufacturing;

36 (b) 311423: Dried and dehydrated food manufacturing;

37 (c) 311611: Animal (except poultry) slaughtering;

38 (d) 322110: Pulp mills;

39 (e) 322121: Paper (except newsprint) mills;

- 1 (f) 322122: Newsprint mills;
2 (g) 322130: Paperboard mills;
3 (h) 325120: Industrial gas manufacturing;
4 (i) 324110: Petroleum refineries;
5 (j) 325188: All other basic inorganic chemical manufacturing;
6 (k) 325199: All other basic organic chemical manufacturing;
7 (l) 325311: Nitrogenous fertilizer manufacturing;
8 (m) 327211: Flat glass manufacturing;
9 (n) 327213: Glass container manufacturing;
10 (o) 327310: Cement manufacturing;
11 (p) 327410: Lime manufacturing;
12 (q) 327420: Gypsum product manufacturing;
13 (r) 327992: Ultra high purity silicon manufacturing;
14 (s) 331111: Iron and steel mills;
15 (t) 331312: Primary aluminum production;
16 (u) 331315: Aluminum sheet, plate, and foil manufacturing;
17 (v) 331419: Primary smelting and refining of nonferrous metal
18 (except copper and aluminum);
19 (w) 334413: Semiconductor and related device manufacturing;
20 (x) 336411: Aircraft manufacturing; and
21 (y) 336413: Other aircraft parts and auxiliary equipment
22 manufacturing.
23 (3) The energy-intensive and trade-exposed facilities to which
24 the department may give special consideration do not include the
25 products produced by the facilities.

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.94
27 RCW to read as follows:

28 (1) The legislature intends to support and enhance the state's
29 ability to continue to sequester carbon through natural and working
30 forestlands and forest products, and to promote and invest in
31 industry sectors that act as sequesters of carbon. Among the measures
32 that maintain and enhance carbon sequestration are maintaining and
33 expanding the forestland base, reducing emissions from land
34 conversion to nonforest uses, increasing forest resiliency to reduce
35 the risk of carbon releases from disturbances such as wildfire, pest
36 infestation, and disease, and applying sustainable forest management
37 techniques to maintain or enhance forest carbon stocks and forest
38 carbon sinks, including through the transference of carbon to wood
39 products.

1 (2) In adopting rules to exercise the authority granted under
2 sections 2 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of
3 this act), and section 5 of this act, if the rule applies to sources
4 of direct or indirect emissions other than transportation fuels
5 alone, the department must provide for substantial emission reduction
6 credits or offsets to be recognized in the sequestration of carbon in
7 working and natural lands forests and the forest products sector. The
8 standards for qualifying projects and activities must be consistent
9 with protocols and verification standards adopted by other
10 jurisdictions and nongovernmental carbon offset organizations.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.235
12 RCW to read as follows:

13 In exercising the authority provided under sections 2 and 3,
14 chapter . . ., Laws of 2020 (sections 2 and 3 of this act), and
15 section 5 of this act, the department, consistent with the
16 requirements of chapter 34.05 RCW and in the context of cost-benefit
17 and least burdensome analyses, must seek to integrate new state
18 greenhouse gas requirements with existing requirements and rules. The
19 department must seek to design new requirements in a way that helps
20 regulated entities achieve emission reduction requirements
21 simultaneously with other regulatory obligations at the lowest
22 compliance cost possible.

23 **Sec. 9.** RCW 70.94.015 and 2019 c 284 s 6 are each amended to
24 read as follows:

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

34 (2) The amounts collected and allocated in accordance with this
35 section shall be expended upon appropriation except as otherwise
36 provided in this section and in accordance with the following
37 limitations:

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

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

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

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

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

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 80.28
20 RCW to read as follows:

21 In reviewing the utility compliance obligations associated with
22 any rule that is adopted under the authority of sections 2 and 3,
23 chapter . . ., Laws of 2020 (sections 2 and 3 of this act), and
24 section 5 of this act, the commission shall ensure that its processes
25 and mechanisms allow timely cost recovery for prudent and reasonable
26 costs associated with compliance with this act that are incurred by
27 electrical companies and gas companies under its jurisdiction.

28 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.94
29 RCW to read as follows:

30 (1) Until January 1, 2023, no local air authority, city, county,
31 or other subdivision of the state may directly regulate greenhouse
32 gas emissions through an overall emissions cap or a charge on
33 greenhouse gas emissions.

34 (2) No local air authority, city, county, or other subdivision of
35 the state may adopt restrictions taking effect prior to June 1, 2022,
36 that prohibit natural gas infrastructure in newly constructed
37 buildings.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.27A
2 RCW to read as follows:

3 The Washington state energy code for residential structures, 2018
4 edition, is not effective before July 1, 2022, provided that the
5 legislature adopts policies and provides funding for energy
6 efficiency retrofits in existing residential buildings to achieve
7 emission reductions in an amount projected by the department of
8 commerce to exceed the emission reductions that would have been
9 achieved by the 2018 edition for residential energy code.

10 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.94
11 RCW to read as follows:

12 (1) The provisions of this act, the powers granted herein, and
13 any requirements or standards established pursuant to those powers,
14 are null and void in their entirety upon enactment of a more
15 comprehensive program addressing greenhouse gas emissions including,
16 but not limited to, a cap and trade system or a tax on greenhouse gas
17 emissions.

18 (2) For the purposes of this section, a more comprehensive
19 greenhouse gas emission program is a program that puts a price on
20 emissions associated with direct or indirect fossil fuel sources and
21 that is designed and forecasted, using models developed by state
22 agencies with subject matter expertise, to achieve the emission
23 reduction limits established in RCW 70.235.020.

24 (3) Upon determining that a more comprehensive greenhouse gas
25 emission program has been enacted, the department of ecology shall
26 publish a finding to that effect in the Washington State Register and
27 submit this finding to the appropriate committees of the house of
28 representatives and the senate, the chief clerk of the house of
29 representatives, the secretary of the senate, and the code reviser's
30 office. Upon publication in the Washington State Register, this act
31 is null and void immediately.

32 NEW SECTION. **Sec. 14.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

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