S-2399.1

SUBSTITUTE SENATE BILL 6001

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Pridemore, Poulsen, Rockefeller, Brown, Eide, Oemig, Hargrove, Marr, Fraser, Kohl-Welles, Keiser, Regala, Franklin, Fairley, Jacobsen, Shin, Haugen, Berkey, Spanel, Kline and Weinstein)

READ FIRST TIME 02/28/07.

AN ACT Relating to mitigating the impacts of climate change; adding a new section to chapter 43.19 RCW; adding a new section to chapter 35.92 RCW; adding a new section to chapter 54.04 RCW; adding a new chapter to Title 43 RCW; adding a new chapter to Title 80 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that:

(a) Washington is especially vulnerable to climate change because of the state's dependence on snow pack for summer stream flows and because the expected rise in sea levels threatens our coastal communities. Extreme weather, a warming Pacific Northwest, reduced snow pack, and sea level rise are four major ways that climate change is disrupting Washington's economy, environment, and communities;

(b) Washington's greenhouse gas emissions are continuing to increase, despite international scientific consensus that worldwide emissions must be reduced significantly below current levels to avert catastrophic climate change;

(c) Washington has been a leader in actions to reduce the increase of emissions, including the adoption of clean car standards, stronger

appliance energy efficiency standards, increased production and use of renewable liquid fuels, and increased renewable energy sources by electrical utilities;

(d) Washington has participated with other Western states in designing regional approaches to reduce greenhouse gas emissions, and a regional cap and trade mechanism will be more effective than if implemented separately in each state;

(e) While these actions are significant, there is a need to assess the trend of emissions statewide over the next several decades, and to take sufficient actions so that Washington meets its responsibility to contribute to the global actions needed to reduce the impacts and the pace of global warming;

(f) Actions to reduce greenhouse gas emissions will spur technology development and increase efficiency, thus resulting in benefits to Washington's economy and businesses; and

(g) Numerous states and nations have adopted emission reduction goals to assist emission sources with planning for changes in practices and technologies.

(2) The legislature further finds that companies that generate greenhouse gas emissions or manufacture products that generate such emissions are purchasing carbon credits from landowners and from other companies in order to provide carbon credits. Companies that are purchasing carbon credits would benefit from a program to trade and to bank carbon credits. Washington forests are one of the most effective resources that can absorb carbon dioxide from the atmosphere. Forests, and other planted lands and waters, provide carbon storage and mitigate greenhouse gas emissions. Washington contains the most productive forests in the world and both public and private landowners could benefit from a carbon storage trading and banking program. The legislature further finds that catastrophic forest fires are a major source of greenhouse gas emissions, and that federal and state forest land management should seek to manage forests to reduce the risk of such fires.

(3) The legislature intends by this act to establish goals for the statewide reduction in greenhouse gas emissions and reduction in petroleum use, and to adopt the governor's mechanism in Executive Order No. 07-02 to design and recommend a comprehensive set of measures to accomplish the goals. The legislature further intends by this act to

authorize immediate actions in the electric power generation sector for the reduction of greenhouse gas emissions and to accelerate efficiency in the transportation sector.

NEW SECTION. **Sec. 2.** The following greenhouse gas emissions reduction and clean energy economy goals are established for Washington state:

(1) By 2020, reduce greenhouse gas emissions in the state to 1990 levels;

(2) By 2035, reduce greenhouse gas emissions in the state to twenty-five percent below 1990 levels;

(3) By 2050, the state will do its part to reach global climate stabilization levels by reducing emissions to fifty percent below 1990 levels or seventy percent below the state's expected emissions that year;

(4) By 2020, increase the number of clean energy sector jobs to twenty-five thousand from the eight thousand four hundred jobs the state had in 2004; and

(5) By 2020, reduce expenditures by twenty percent on fuel imported into the state by developing Washington resources and supporting efficient energy use.

NEW SECTION. **Sec. 3.** Executive Order No. 07-02 shall provide the mechanisms for identifying the policies and strategies necessary to achieve the economic and emission reduction goals of section 2 of this act.

NEW SECTION. **Sec. 4.** By December 31st of each even-numbered year beginning in 2010, the departments of ecology and community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total greenhouse gas emissions for the preceding two years, and totals in each major source sector.

NEW SECTION. **Sec. 5.** (1) The legislature finds that:

(a) The United Nation's intergovernmental panel on climate change report, released February 2, 2007, states that evidence of the

climate's warming "is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global mean sea level";

(b) Global warming will have serious adverse consequences on the economy, health, and environment of Washington;

(c) During the last several years, the state has taken significant strides towards implementing an environmentally and economically sound energy policy through reliance on energy efficiency, conservation, and renewable energy resources in order to promote a sustainable energy future that ensures an adequate and reliable energy supply at reasonable and stable prices;

(d) The governor, in Executive Order No. 07-02, has called for the reduction of Washington's emission of greenhouse gases to 1990 levels by 2020;

(e) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the state will rely on clean and efficient fossil fuel fired generation and will encourage the development of cost-effective, highly efficient, and environmentally sound supply resources to provide reliability and consistency with the state's energy priorities;

(f) It is vital to ensure all electric utilities internalize the significant and underrecognized cost of emissions and to reduce Washington's exposure to costs associated with future regulation of these emissions;

(g) A greenhouse gases emissions performance standard for new long-term financial commitments to electric generating resources will reduce potential exposure of Washington's consumers to future reliability problems in electricity supplies;

(h) The state of California recently enacted a law establishing a greenhouse gases emissions performance standard for electric utility procurement of baseload electric generation that is based on the emissions of a combined-cycle thermal electric generation facility fueled by natural gas; and

(i) The state of Washington has an obligation to provide clear guidance for the procurement of baseload electric generation to alleviate regulatory uncertainty while addressing risks that can affect the ability of electric utilities to make necessary and timely

investments to ensure an adequate, reliable, and cost-effective supply of electricity.

(2) The legislature declares that:

(a) A greenhouse gases emissions performance standard for new long-term financial commitments for baseload electric generation should reduce financial risk to electric utilities and their customers from future pollution-control costs, without jeopardizing the state's commitment to lowest reasonable cost resources and the need to maintain a reliable regional electric system.

(b) A greenhouse gases emissions performance standard will complement the state's carbon dioxide mitigation policy for fossil-fueled thermal electric generation facilities under chapter 80.70 RCW.

(c) The need for long-term financial commitments for new baseload electric generation can be reduced over time through the deployment by electric utilities of technologies that improve the efficiency of electricity production, transmission, distribution, and consumption.

NEW SECTION. **Sec. 6.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(4) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(5) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more

gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(6) "Commission" means the Washington utilities and transportation commission.

(7) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(8) "Department" means the department of ecology.

(9) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(10) "Electric utility" means an electrical company or a consumer-owned utility.

(11) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(12) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(13) "Long-term financial commitment" means either a new ownership investment in baseload electric generation, or a new or renewed contract for baseload electric generation with a term of five or more years for the provision of power in this state.

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

(15) "Output-based methodology" means a greenhouse gases emissions performance standard that is expressed in pounds of greenhouse gases emitted per net megawatt-hour produced, factoring in the electrical equivalent of useful thermal energy employed for purposes other than the generation of electricity.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that includes one or more generating units at the same location.

NEW SECTION. **Sec. 7.** (1) Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of one thousand one hundred pounds of greenhouse gases per megawatt-hour or the rate of emissions of greenhouse gases for a commercially available combined-cycle natural gas thermal electric generation facility that provides baseload electric generation. All combined-cycle natural gas thermal electric generation facilities that are in operation, or that are permitted to operate as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are modified or upgraded, even if the actual emissions are higher than the greenhouse gas emissions performance standard. For the purposes of this subsection, "commercially available" means that at least one hundred plants of substantially the same design, specifications, and performance characteristics have been in commercial operation for at least three years. In determining the rate of emissions of greenhouse gases for baseload electric generation, the net emissions resulting from the production of electricity by the baseload electric generation shall be included.

(2) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gases emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(3) Carbon dioxide that is injected permanently in geological formations, so as to prevent releases into the atmosphere, in compliance with applicable laws and regulations may not be counted as emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard.

(4) In adopting and implementing the greenhouse gases emissions performance standard, the department, in consultation with the commission, the Bonneville power administration, the western electricity coordination council, electric utilities, public interest representatives, and consumer representatives shall consider the effects of the greenhouse gases emissions performance standard on system reliability and overall costs to electricity customers.

(5) In developing and implementing the greenhouse gases emissions performance standard, the department shall, with assistance of the commission and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(6) The department shall adopt the greenhouse gases emissions performance standard by rule pursuant to chapter 34.05 RCW, the administrative procedure act. The department shall adopt rules to enforce the requirements of this section, and adopt procedures to verify the emissions of greenhouse gases from any baseload electric generation supplied directly or under a contract subject to the greenhouse gases emissions performance standard to ensure compliance with the standard. Enforcement of the greenhouse gases emissions performance standard must begin immediately upon the establishment of the standard.

(7) The department shall adopt the rules necessary to implement this section by June 30, 2008.

NEW SECTION. **Sec. 8.** (1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 7 of this act.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment

entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 7 of this act.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall make a determination regarding the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity that complies with the greenhouse gases emissions performance standard established under section 7 of this act, as to the need for the resource, and the appropriateness of the specific resource selected. The commission shall take into consideration factors such as the company's forecasted loads, need for energy, power plant technology, expected costs, and other associated investment decisions. In addition, the commission shall provide for recovery of the prudently incurred capital and operating cost of these resources and may impose such conditions as it finds necessary to ensure that rates are fair, just, reasonable, and sufficient, coincident with the in-service date of the project or the effective date of the power purchase agreement.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with the long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and ends on the effective date of the final decision by the commission regarding recovery in rates of these deferred costs. Creation of such

a deferral account does not by itself determine whether recovery of any or all of these costs is appropriate.

(7) In establishing rates for each electrical company regulated under chapter 80.28 RCW, the commission shall adopt policies allowing an additional return on investments to encourage meeting energy requirements through distributed generation as defined in RCW 19.285.030, and to accelerate efficiencies in electric transmission and distribution systems that increase reliability and reduce energy losses or otherwise increase the efficiency of energy delivery to end-use consumers. These policies shall include but are not limited to adding an increment of two percent to the rate of return on common equity permitted on an electrical company's other investments for prudently incurred investments in distributed generation, and in measures that improve, as measured in kilowatt-hour savings, the overall efficiency of transmission, distribution, and end-use consumption of electricity through energy efficiency technologies, including any device, instrument, machine, appliance, or process related to the transmission, distribution, and consumption of electricity to increase energy efficiency, including but not limited to smart grid technology, smart meters, and demand response technologies. The rate of return increment must be allowed for a period, at the commission's discretion, of at least seven but not more than thirty years after the investment is first placed in the rate base. Measures or projects encouraged under this section are those for which construction or installation is begun after July 1, 2007, and before January 1, 2017, and which, at the time they are placed in the rate base, are reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use that is less than or equal to the incremental system cost per unit of energy delivered to end use from new baseload or peaking electric generation and that the electrical company could acquire to meet energy demand in the same time period.

(8) The commission shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under section 7 of this act.

(9) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(10) The commission shall adopt the rules necessary to implement this section by June 30, 2008.

NEW SECTION. **Sec. 9.** (1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 7 of this act.

(2) The governing board of a consumer-owned utility shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 7 of this act. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 7 of this act.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation pursuant to section 7 of this act, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

NEW SECTION. **Sec. 10.** A new section is added to chapter 43.19 RCW to read as follows:

(1) During the biennium ending June 30, 2009, the department of general administration is authorized to purchase at least one hundred plug-in electric hybrid vehicles for state agency light duty vehicle uses, when commercially available at comparable life costs to other vehicles. The department of general administration shall assign these vehicles to departments and job functions that on average log the most miles driving light duty vehicles. The vehicles must bear a prominent designation as a plug-in electric hybrid vehicle. The department of general administration shall develop a purchasing contract under which state agencies and local governments may purchase plug-in electric hybrid vehicles.

(2) By December 31, 2009, the department of general administration shall provide a report to the transportation and energy committees of the senate and house of representatives on the acquisition of these vehicles and their operational and maintenance performance.

NEW SECTION. **Sec. 11.** The legislature finds and declares that offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers. The legislature declares that sections 12 and 13 of this act are intended to reverse the result of *Okeson v. City of Seattle,* (January 18, 2007), by expressly granting municipal utilities and public utility districts the statutory authority to engage in mitigation activities to offset their utility's impact on the environment.

NEW SECTION. **Sec. 12.** A new section is added to chapter 35.92 RCW to read as follows:

(1) A city or town authorized to acquire and operate utilities for the purpose of furnishing the city or town and its inhabitants and other persons with electricity for lighting and other purposes may develop and make publicly available a plan for the utility to reduce greenhouse gases emissions or achieve no-net emissions from all sources of greenhouse gases it owns, leases, uses, contracts for, or otherwise controls.

(2) A city or town authorized to acquire and operate utilities for the purpose of furnishing the city or town and its inhabitants and other persons with electricity for lighting and other purposes may, as part of its utility operation, mitigate the environmental impacts, such as greenhouse gases emissions, of its operation and any power purchases. The mitigation may include, but is not limited to, those greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of greenhouse gas offsets or credits. If a state greenhouse gases registry is established, a utility that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry.

NEW SECTION. **Sec. 13.** A new section is added to chapter 54.04 RCW to read as follows:

(1) A public utility district may develop and make publicly available a plan for the district to reduce its greenhouse gases or to achieve no-net emissions from all sources of greenhouse gases it owns, leases, uses, contracts for, or otherwise controls.

(2) A public utility district may, as part of its utility operation, mitigate the environmental impacts of its operation, such as greenhouse gases emissions, and any power purchases. The mitigation may include, but is not limited to, all greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of carbon offsets or credits. If a state greenhouse gases registry is established, a utility that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry.

NEW SECTION. **Sec. 14.** Sections 1 through 4 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 15.** Sections 5 through 9 of this act constitute

a new chapter in Title 80 RCW.

--- END ---