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**HOUSE BILL 1597**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Pollet, Doglio, Tarleton, Goodman, Slatter, Senn, Fitzgibbon, Appleton, Thai, Valdez, Ryu, Stanford, Reeves, Frame, and Macri

AN ACT Relating to incorporating comprehensive measurements of greenhouse gas emissions from certain fossil fuels into state environmental laws; amending RCW 70.94.151, 80.50.175, and 19.280.030; adding a new section to chapter 43.21A RCW; adding a new section to chapter 70.94 RCW; adding a new section to chapter 70.235 RCW; adding a new section to chapter 43.21C RCW; adding a new section to chapter 80.70 RCW; adding a new section to chapter 80.28 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that leaked methane associated with natural gas production is a potent greenhouse gas with a global warming potential that far exceeds that of carbon dioxide, and which is particularly harmful to the climate in the first decades after its release. Because of the urgency in addressing climate change, it is particularly important to take reasonable measures to consider and curb emissions of methane. Natural gas production processes are also responsible for significant carbon dioxide emissions.

(2) The life-cycle greenhouse gas emissions associated with natural gas use are a known environmental problem that deserves particular attention under state environmental laws due to a number of factors, including:

(a) The recent growth of the natural gas production industry;

(b) The current lack of standardized measurement or management of greenhouse gas emissions across the natural gas production and supply industries;

(c) The recent rollback of federal regulations that would have applied modest management requirements for natural gas production emissions; and

(d) The prospect of natural gas being relied upon as a regrettable substitute for fossil fuels that have higher point-of-use greenhouse gas emissions, but which may be functionally equivalent when their environmental impacts are viewed from a life-cycle perspective. Such regrettable substitutions will lead to the overbuilding of natural gas infrastructure, and, without appropriate government oversight of the industry, the costs of such stranded natural gas assets run this risk of falling unfairly upon utility ratepayers.

(3) Therefore, in directing state agencies to adopt a rule requiring state agencies and local governments to consider upstream natural gas emissions in permitting, planning, and other regulatory processes, it is appropriate to apply a precautionary principle and to err on the side of applying comprehensive and inclusive assumptions about emission rates. In doing so, it is the intent of the legislature to broadly apply a fair and comprehensive consideration of the climate impacts of natural gas use to government regulations and decision making.

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

(1) In consultation with the utilities and transportation commission, the chair of the energy facility site evaluation council, the department of natural resources, and the department of commerce, the department must adopt a rule to establish an upstream emissions rate that incorporates production, gathering, processing, transmission, storage, and distribution emissions that occur prior to the end use of natural gas or final point of commerce for the natural gas in Washington. In adopting an upstream emissions rate that is uniformly applicable to covered natural gas proposals and projects, the department:

(a) Shall survey studies of North American natural gas upstream emissions, including but not limited to studies of leakage and fugitive emissions rates conducted by government agencies, academic institutions, or private or nonprofit organizations. Studies surveyed may include top-down or bottom-up analyses, or both;

(b) May require a gas or electrical company regulated under chapter 80.28 RCW or a gas pipeline company regulated under chapter 81.88 RCW to submit emissions information related to the production, gathering, processing, transmission, storage, or distribution of the company's existing or proposed gas facilities. Information obtained under this subsection (1)(b) may be used for the purposes of determining a uniformly applicable upstream emissions rate, but may not be used to apply a utility-specific rate or a project-specific rate that differs from the rule adopted under this section; and

(c) Shall presume a reasonable worst case upstream emissions rate, based on the information considered under (a) and (b) of this subsection.

(2) By July 1, 2024, and every three years thereafter, the department shall:

(a) Evaluate the accuracy of the upstream emissions rate determined under subsection (1) of this section and report the results of the evaluation to the appropriate committees of the house of representatives and the senate. Upon the completion of such an evaluation, the department must update the rule adopted under subsection (1) of this section, if appropriate;

(b) Evaluate the appropriateness of the threshold established in section 6 of this act for applying the rule adopted in this section to persons, facilities, and projects undertaking review under the state environmental policy act. In the report to the legislature required in (a) of this subsection, the department may recommend amendments to the threshold established in section 6 of this act.

(3) In conjunction with the rule adopted under subsection (1) of this section, the department must adopt a rule to specify the global warming potential over a twenty-year time frame associated with natural gas emissions.

(4) The department shall provide an opportunity for interested parties to comment on the information that it considers in the development of the rules adopted under this section.

(5) The rules adopted under this section specifying a natural gas upstream emissions rate and global warming potential must apply broadly to state agency, local government, and municipal corporation decision making involving the environmental review or permitting of projects that use natural gas as a fuel source or as the primary component of the project.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Natural gas" does not include methane or other hydrocarbon biogases derived from the decomposition of organic material in landfills, wastewater treatment facilities, anaerobic digesters, or other sources of organic decomposition.

(b) "Reasonable worst case scenario" means that the department must presume an upstream emissions rate that attempts to provide a ninety-five percent confidence level that the actual emissions associated with the natural gas are below the rate, such that there would be a five percent chance that the actual upstream emissions associated with the natural gas exceeds the rate.

(c) "Upstream emissions" means emissions from the production, gathering, processing, transmission, storage, and distribution of natural gas that occurs prior to the end use of natural gas or final point of commerce for the natural gas in Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)(i) Except as otherwise provided in this subsection, the rules adopted by the department under (a) of this subsection must be consistent with the regulations adopted by the United States environmental protection agency in 40 C.F.R. Part 98 on September 22, 2009.

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

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

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

(v) The department must require reported emissions from natural gas to include the emissions consistent with the upstream emissions rate and global warming potential rule adopted under section 2 of this act. Production, gathering, processing, transmission, storage, and distribution emissions from natural gas must be reported as a separate measurement from the emissions associated with the end use of the natural gas.

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

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

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

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

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

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

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

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator, as those terms are defined by the United States environmental protection agency in its mandatory greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on September 22, 2009; and (B) a supplier.

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

For purposes of the implementation and enforcement of this chapter, the department shall apply a natural gas upstream emissions rate and global warming potential consistent with the rule adopted under section 2 of this act.

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

For purposes of the implementation and enforcement of this chapter, the department shall use a natural gas upstream emissions rate and global warming potential consistent with the rule adopted under section 2 of this act.

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

The review under this chapter of a proposed action that will involve the use of natural gas by a person required to report greenhouse gas emissions under RCW 70.94.151(5)(a), or related to a facility or project whose associated direct or indirect annual greenhouse gas emissions may reasonably be anticipated to exceed ten thousand tons per year, must apply the upstream emissions rate and global warming potential of the rule adopted under section 2 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 80.70 RCW to read as follows:

For purposes of the implementation and enforcement of this chapter, the council, department, or authority shall apply a natural gas upstream emissions rate and global warming potential consistent with the rule adopted under section 2 of this act. The council, department, or authority shall require a carbon dioxide mitigation plan developed under RCW 80.70.020 to provide mitigation based upon the carbon dioxide equivalents associated with both the end use of the natural gas and the production, gathering, processing, transmission, storage, and distribution of natural gas consistent with the rule adopted under section 2 of this act.

**Sec.**  RCW 80.50.175 and 1983 c 3 s 205 are each amended to read as follows:

(1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. The study of environmental impact information for a proposed potential site must evaluate greenhouse gas emissions consistent with the rule adopted under section 2 of this act. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.

(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location.

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

For purposes of the implementation and enforcement of this chapter, the commission, gas companies, and electrical companies shall use a natural gas upstream emissions rate and global warming potential consistent with the rule adopted under section 2 of this act.

**Sec.**  RCW 19.280.030 and 2015 3rd sp.s. c 19 s 9 are each amended to read as follows:

Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years or longer, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, opportunities for development of combined heat and power as an energy and capacity resource, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) An assessment of methods, commercially available technologies, or facilities for integrating renewable resources, and addressing overgeneration events, if applicable to the utility's resource portfolio;

(f) The integration of the demand forecasts and resource evaluations into a long‑range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs, including mitigating overgeneration events, at the lowest reasonable cost and risk to the utility and its ratepayers; and

(g) A short‑term plan identifying the specific actions to be taken by the utility consistent with the long‑range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not: (i) Renewable resources; (ii) methods, commercially available technologies, or facilities for integrating renewable resources, including addressing any overgeneration event; or (iii) conservation and efficiency resources, why such a decision was made.

(3)(a) Assessments for demand side resources included in an integrated resource plan may include combined heat and power systems as one of the measures in a conservation supply curve. The value of recoverable waste heat resulting from combined heat and power must be reflected in analyses of cost-effectiveness under this subsection.

(b) Assessments involving natural gas resources must be consistent with the rule adopted under section 2 of this act.

(4) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(5) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(6) Plans shall not be a basis to bring legal action against electric utilities.

(7) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

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