S-6053.3

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**SUBSTITUTE SENATE BILL 6628**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle, Liias, Kuderer, Hunt, Stanford, Salomon, and Wellman; by request of Office of the Governor)

AN ACT Relating to reducing greenhouse gas emissions from fossil fuels; amending RCW 70.94.030, 70.94.331, and 43.157.010; adding a new section to chapter 80.28 RCW; adding a new section to chapter 70.235 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that in *Association of Washington Business v. Washington Department of Ecology* (No. 95885-8, January 16, 2020), the Washington supreme court held that certain regulations establishing greenhouse gas emission standards for producers and distributors of natural gas and petroleum products were invalid because the department lacked sufficient statutory authority under the state's clean air act to regulate such emissions while upholding regulations of sources directly emitting greenhouse gases. The legislature intends by this act to expressly provide such authority under the clean air act.

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Emission" means a release of air contaminants into the ambient air.

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

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

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

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

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

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

(15) "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 emission 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.

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

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

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

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

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

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

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

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

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

(25) "Emission," "emission standard," and "emission limitation," as applied to greenhouse gases as defined in RCW 70.235.010, include indirect emissions of greenhouse gases resulting from production or distribution of petroleum products or natural gas, where the release of air contaminants into the ambient air occurs during the consumption, use, combustion, or oxidation of the petroleum products or natural gas.

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

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

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

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

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

(c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. The department may require persons who produce or distribute fossil fuels or other products that emit greenhouse gases in Washington to comply with air quality standards, emission standards, or emission limitations on emissions of greenhouse gases. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

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

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

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

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

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

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

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

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

(10) Any penalty imposed on a person who produces or distributes fossil fuels or other products that is in violation of the requirements on air quality standards, emission standards, or emission limitations on greenhouse gases, as provided in subsection (2)(c) of this section, must be deposited into the multimodal transportation account.

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

In reviewing the utility compliance obligations associated with any rule that arises under the authority of section 1 of this act and RCW 70.94.030 and 70.94.331, the commission shall ensure that its processes and mechanisms allow timely cost recovery for prudent and reasonable costs associated with compliance with this act that are incurred by electrical companies and gas companies under its jurisdiction.

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

In exercising the authority provided under sections 2 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of this act), the department, consistent with the requirements of chapter 34.05 RCW and in the context of cost-benefit and least burdensome analyses, must seek to integrate new state greenhouse gas requirements with existing requirements and rules. The department must seek to design new requirements in a way that helps compliance entities achieve emission reduction targets and comply with existing sources and rules at the lowest compliance cost possible.

**Sec.**  RCW 43.157.010 and 2017 c 288 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter and RCW 28A.525.166, 43.21A.350, and 90.58.100, unless the context requires otherwise:

(1) "Applicant" means a person applying to the department for designation of a development project as a project of statewide significance.

(2) "Aviation biofuels production facility" means a facility primarily for the processing of nonfossil biogenic feedstocks to produce aviation fuels that meet the fuel quality technical standards of the American society for testing materials for aviation fuels and coproducts.

(3) "Department" means the department of commerce.

(4) "Manufacturing" shall have the meaning assigned it in RCW 82.62.010.

(5)(a) "Project of statewide significance" means:

(i) A border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces;

(ii) A development project that will provide a net environmental benefit;

(iii) A development project in furtherance of the commercialization of innovations;

(iv) A private industrial development with private capital investment in manufacturing or research and development;

(v) An aviation biofuels production facility; ((~~or~~))

(vi) A project to construct a renewable fuels production facility that will be capable of producing more than one hundred million gallons of renewable energy products annually; or

(vii) A project designated by the legislature and codified under this chapter.

(b) To qualify for designation under RCW 43.157.030 as a project of statewide significance:

(i) The project must be completed after January 1, 2009;

(ii) The applicant must submit an application to the department for designation as a project of statewide significance to the department of commerce; and

(iii) Except for an aviation biofuels production facility, the project must have:

(A) In counties with a population less than or equal to twenty thousand, a capital investment of five million dollars;

(B) In counties with a population greater than twenty thousand but no more than fifty thousand, a capital investment of ten million dollars;

(C) In counties with a population greater than fifty thousand but no more than one hundred thousand, a capital investment of fifteen million dollars;

(D) In counties with a population greater than one hundred thousand but no more than two hundred thousand, a capital investment of twenty million dollars;

(E) In counties with a population greater than two hundred thousand but no more than four hundred thousand, a capital investment of thirty million dollars;

(F) In counties with a population greater than four hundred thousand but no more than one million, a capital investment of forty million dollars;

(G) In counties with a population greater than one million, a capital investment of fifty million dollars;

(H) In rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of fifty or greater;

(I) In counties other than rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of one hundred or greater; or

(J) Been qualified by the director of the department as a project of statewide significance either because:

(I) The economic circumstances of the county merit the additional assistance such designation will bring;

(II) The impact on a region due to the size and complexity of the project merits such designation;

(III) The project resulted from or is in furtherance of innovation activities at a public research institution in the state or is in or resulted from innovation activities within an innovation partnership zone; or

(IV) The project will provide a net environmental benefit as evidenced by plans for design and construction under green building standards or for the creation of renewable energy technology or components or under other environmental criteria established by the director in consultation with the director of the department of ecology.

A project may be qualified under this subsection (5)(b)(iii)(J) only after consultation on the availability of staff resources of the office of regulatory assistance.

(6) "Research and development" shall have the meaning assigned it in RCW 82.62.010.

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