

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2129

Chapter 448, Laws of 2009

(partial veto)

61st Legislature
2009 Regular Session

GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARD

EFFECTIVE DATE: 07/26/09

Passed by the House April 20, 2009
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 9, 2009
Yeas 45 Nays 0

BRAD OWEN

President of the Senate

Approved May 11, 2009, 3:04 p.m., with
the exception of Section 4 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is **HOUSE
BILL 2129** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2009

**Secretary of State
State of Washington**

HOUSE BILL 2129

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By Representative Eddy

1 AN ACT Relating to the greenhouse gas emissions performance
2 standard under chapter 80.80 RCW; and amending RCW 80.80.010,
3 80.80.040, 80.80.060, and 80.80.070.

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

5 **Sec. 1.** RCW 80.80.010 and 2007 c 307 s 2 are each amended to read
6 as follows:

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

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

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

15 (3) "Average available greenhouse ((~~gases~~{gas})) gas emissions
16 output" means the level of greenhouse ((~~gases~~{gas})) gas emissions as
17 surveyed and determined by the energy policy division of the department
18 of community, trade, and economic development under RCW 80.80.050.

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

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

9 (6) "Combined-cycle natural gas thermal electric generation
10 facility" means a power plant that employs a combination of one or more
11 gas turbines and steam turbines in which electricity is produced in the
12 steam turbine from otherwise lost waste heat exiting from one or more
13 of the gas turbines.

14 (7) "Commission" means the Washington utilities and transportation
15 commission.

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

24 (9) "Department" means the department of ecology.

25 (10) "Distributed generation" means electric generation connected
26 to the distribution level of the transmission and distribution grid,
27 which is usually located at or near the intended place of use.

28 (11) "Electric utility" means an electrical company or a consumer-
29 owned utility.

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

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

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

36 (15) "Long-term financial commitment" means:

37 (a) Either a new ownership interest in baseload electric generation
38 or an upgrade to a baseload electric generation facility; or

1 (b) A new or renewed contract for baseload electric generation with
2 a term of five or more years for the provision of retail power or
3 wholesale power to end-use customers in this state.

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

8 (17) "Power plant" means a facility for the generation of
9 electricity that is permitted as a single plant by ~~((the energy
10 facility site evaluation council or a local jurisdiction))~~ a
11 jurisdiction inside or outside the state.

12 (18) "Upgrade" means any modification made for the primary purpose
13 of increasing the electric generation capacity of a baseload electric
14 generation facility. "Upgrade" does not include routine or necessary
15 maintenance, installation of emission control equipment, installation,
16 replacement, or modification of equipment that improves the heat rate
17 of the facility, or installation, replacement, or modification of
18 equipment for the primary purpose of maintaining reliable generation
19 output capability that does not increase the heat input or fuel usage
20 as specified in existing generation air quality permits as of July 22,
21 2007, but may result in incidental increases in generation capacity.

22 **Sec. 2.** RCW 80.80.040 and 2007 c 307 s 5 are each amended to read
23 as follows:

24 (1) Beginning July 1, 2008, the greenhouse ~~((gases))~~ gas emissions
25 performance standard for all baseload electric generation for which
26 electric utilities enter into long-term financial commitments on or
27 after such date is the lower of:

28 (a) One thousand one hundred pounds of greenhouse gases per
29 megawatt-hour; or

30 (b) The average available greenhouse ~~((gases))~~ gas emissions output
31 as determined under RCW 80.80.050.

32 (2) This chapter does not apply to long-term financial commitments
33 with the Bonneville power administration.

34 (3) All baseload electric generation facilities in operation as of
35 June 30, 2008, are deemed to be in compliance with the greenhouse
36 ~~((gases))~~ gas emissions performance standard established under this
37 section until the facilities are the subject of long-term financial

1 commitments. All baseload electric generation that commences operation
2 after June 30, 2008, and is located in Washington, must comply with the
3 greenhouse (~~gases~~) gas emissions performance standard established in
4 subsection (1) of this section.

5 ~~((3))~~ (4) All electric generation facilities or power plants
6 powered exclusively by renewable resources, as defined in RCW
7 19.280.020, are deemed to be in compliance with the greenhouse
8 (~~gases~~) gas emissions performance standard established under this
9 section.

10 ~~((4))~~ (5) All cogeneration facilities in the state that are
11 fueled by natural gas or waste gas or a combination of the two fuels,
12 and that are in operation as of June 30, 2008, are deemed to be in
13 compliance with the greenhouse (~~gases~~) gas emissions performance
14 standard established under this section until the facilities are the
15 subject of a new ownership interest or are upgraded.

16 ~~((5))~~ (6) In determining the rate of emissions of greenhouse
17 gases for baseload electric generation, the total emissions associated
18 with producing electricity shall be included.

19 (7) In no case shall a long-term financial commitment be determined
20 to be in compliance with the greenhouse gas emissions performance
21 standard if the commitment includes more than twelve percent of
22 electricity from unspecified sources.

23 (8) For a long-term financial commitment with multiple power
24 plants, each specified power plant must be treated individually for the
25 purpose of determining the annualized plant capacity factor and net
26 emissions, and each power plant must comply with subsection (1) of this
27 section, except as provided in subsections (3) through (5) of this
28 section.

29 ~~((6))~~ (9) The department shall establish an output-based
30 methodology to ensure that the calculation of emissions of greenhouse
31 gases for a cogeneration facility recognizes the total usable energy
32 output of the process, and includes all greenhouse gases emitted by the
33 facility in the production of both electrical and thermal energy. In
34 developing and implementing the greenhouse (~~gases~~) gas emissions
35 performance standard, the department shall consider and act in a manner
36 consistent with any rules adopted pursuant to the public utilities
37 regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

1 (~~(7)~~) (10) The following greenhouse (~~(gases)~~) gas emissions
2 produced by baseload electric generation owned or contracted through a
3 long-term financial commitment shall not be counted as emissions of the
4 power plant in determining compliance with the greenhouse (~~(gases)~~) gas
5 emissions performance standard:

6 (a) Those emissions that are injected permanently in geological
7 formations;

8 (b) Those emissions that are permanently sequestered by other means
9 approved by the department; and

10 (c) Those emissions sequestered or mitigated as approved under
11 subsection (~~(13)~~) (16) of this section.

12 (~~(8)~~) (11) In adopting and implementing the greenhouse (~~(gases)~~)
13 gas emissions performance standard, the department of community, trade,
14 and economic development energy policy division, in consultation with
15 the commission, the department, the Bonneville power administration,
16 the western electricity coordination council, the energy facility site
17 evaluation council, electric utilities, public interest
18 representatives, and consumer representatives, shall consider the
19 effects of the greenhouse (~~(gases)~~) gas emissions performance standard
20 on system reliability and overall costs to electricity customers.

21 (~~(9)~~) (12) In developing and implementing the greenhouse
22 (~~(gases)~~) gas emissions performance standard, the department shall,
23 with assistance of the commission, the department of community, trade,
24 and economic development energy policy division, and electric
25 utilities, and to the extent practicable, address long-term purchases
26 of electricity from unspecified sources in a manner consistent with
27 this chapter.

28 (~~(10)~~) (13) The directors of the energy facility site evaluation
29 council and the department shall each adopt rules under chapter 34.05
30 RCW in coordination with each other to implement and enforce the
31 greenhouse (~~(gases)~~) gas emissions performance standard. The rules
32 necessary to implement this section shall be adopted by June 30, 2008.

33 (~~(11)~~) (14) In adopting the rules for implementing this section,
34 the energy facility site evaluation council and the department shall
35 include criteria to be applied in evaluating the carbon sequestration
36 plan, for baseload electric generation that will rely on subsection
37 (~~(7)~~) (10) of this section to demonstrate compliance, but that will

1 commence sequestration after the date that electricity is first
2 produced. The rules shall include but not be limited to:

3 (a) Provisions for financial assurances, as a condition of plant
4 operation, sufficient to ensure successful implementation of the carbon
5 sequestration plan, including construction and operation of necessary
6 equipment, and any other significant costs;

7 (b) Provisions for geological or other approved sequestration
8 commencing within five years of plant operation, including full and
9 sufficient technical documentation to support the planned
10 sequestration;

11 (c) Provisions for monitoring the effectiveness of the
12 implementation of the sequestration plan;

13 (d) Penalties for failure to achieve implementation of the plan on
14 schedule;

15 (e) Provisions for an owner to purchase emissions reductions in the
16 event of the failure of a sequestration plan under subsection ~~((+13))~~
17 (16) of this section; and

18 (f) Provisions for public notice and comment on the carbon
19 sequestration plan.

20 ~~((+12))~~ (15)(a) Except as provided in (b) of this subsection, as
21 part of its role enforcing the greenhouse ~~((gases))~~ gas emissions
22 performance standard, the department shall determine whether
23 sequestration or a plan for sequestration will provide safe, reliable,
24 and permanent protection against the greenhouse gases entering the
25 atmosphere from the power plant and all ancillary facilities.

26 (b) For facilities under its jurisdiction, the energy facility site
27 evaluation council shall contract for review of sequestration or the
28 carbon sequestration plan with the department consistent with the
29 conditions under (a) of this subsection, consider the adequacy of
30 sequestration or the plan in its adjudicative proceedings conducted
31 under RCW 80.50.090(3), and incorporate specific findings regarding
32 adequacy in its recommendation to the governor under RCW 80.50.100.

33 ~~((+13))~~ (16) A project under consideration by the energy facility
34 site evaluation council by July 22, 2007, is required to include all of
35 the requirements of subsection ~~((+11))~~ (14) of this section in its
36 carbon sequestration plan submitted as part of the energy facility site
37 evaluation council process. A project under consideration by the
38 energy facility site evaluation council by July 22, 2007, that receives

1 final site certification agreement approval under chapter 80.50 RCW
2 shall make a good faith effort to implement the sequestration plan. If
3 the project owner determines that implementation is not feasible, the
4 project owner shall submit documentation of that determination to the
5 energy facility site evaluation council. The documentation shall
6 demonstrate the steps taken to implement the sequestration plan and
7 evidence of the technological and economic barriers to successful
8 implementation. The project owner shall then provide to the energy
9 facility site evaluation council notification that they shall implement
10 the plan that requires the project owner to meet the greenhouse
11 (~~gases~~) gas emissions performance standard by purchasing verifiable
12 greenhouse (~~gases~~) gas emissions reductions from an electric
13 generating facility located within the western interconnection, where
14 the reduction would not have occurred otherwise or absent this
15 contractual agreement, such that the sum of the emissions reductions
16 purchased and the facility's emissions meets the standard for the life
17 of the facility.

18 **Sec. 3.** RCW 80.80.060 and 2007 c 307 s 8 are each amended to read
19 as follows:

20 (1) No electrical company may enter into a long-term financial
21 commitment unless the baseload electric generation supplied under such
22 a long-term financial commitment complies with the greenhouse gases
23 emissions performance standard established under RCW 80.80.040.

24 (2) In order to enforce the requirements of this chapter, the
25 commission shall review in a general rate case or as provided in
26 subsection (5) of this section any long-term financial commitment
27 entered into by an electrical company after June 30, 2008, to determine
28 whether the baseload electric generation to be supplied under that
29 long-term financial commitment complies with the greenhouse gases
30 emissions performance standard established under RCW 80.80.040.

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

1 (4) Upon application by an electric utility, the commission may
2 provide a case-by-case exemption from the greenhouse gases emissions
3 performance standard to address: (a) Unanticipated electric system
4 reliability needs; ~~((or))~~ (b) extraordinary cost impacts on utility
5 ratepayers; or (c) catastrophic events or threat of significant
6 financial harm that may arise from unforeseen circumstances.

7 (5) Upon application by an electrical company, the commission shall
8 determine whether the company's proposed decision to acquire electric
9 generation or enter into a power purchase agreement for electricity
10 complies with the greenhouse gases emissions performance standard
11 established under RCW 80.80.040(~~(, whether the company has a need for~~
12 ~~the resource, and whether the specific resource selected is~~
13 ~~appropriate. The commission shall take into consideration factors such~~
14 ~~as the company's forecasted loads, need for energy, power plant~~
15 ~~technology, expected costs, and other associated investment~~
16 ~~decisions)). The commission shall not decide in a proceeding under~~
17 ~~this subsection (5) issues involving the actual costs to construct and~~
18 ~~operate the selected resource, cost recovery, or other issues reserved~~
19 ~~by the commission for decision in a general rate case or other~~
20 ~~proceeding for recovery of the resource or contract costs. ((A~~
21 ~~proceeding under this subsection (5) shall be conducted pursuant to~~
22 ~~chapter 34.05 RCW (part IV). The commission shall adopt rules to~~
23 ~~provide that the schedule for a proceeding under this subsection takes~~
24 ~~into account both (a) the needs of the parties to the proposed resource~~
25 ~~acquisition or power purchase agreement for timely decisions that allow~~
26 ~~transactions to be completed; and (b) the procedural rights to be~~
27 ~~provided to parties in chapter 34.05 RCW (part IV), including~~
28 ~~intervention, discovery, briefing, and hearing.))~~

29 (6) An electrical company may account for and defer for later
30 consideration by the commission costs incurred in connection with
31 ~~((the))~~ a long-term financial commitment, including operating and
32 maintenance costs, depreciation, taxes, and cost of invested capital.
33 The deferral begins with the date on which the power plant begins
34 commercial operation or the effective date of the power purchase
35 agreement and continues for a period not to exceed twenty-four months;
36 provided that if during such period the company files a general rate
37 case or other proceeding for the recovery of such costs, deferral ends
38 on the effective date of the final decision by the commission in such

1 proceeding. Creation of such a deferral account does not by itself
2 determine the actual costs of the long-term financial commitment,
3 whether recovery of any or all of these costs is appropriate, or other
4 issues to be decided by the commission in a general rate case or other
5 proceeding for recovery of these costs. For the purpose of this
6 subsection (6) only, the term "long-term financial commitment" also
7 includes an electric company's ownership or power purchase agreement
8 with a term of five or more years associated with an eligible renewable
9 resource as defined in RCW 19.285.030.

10 (7) The commission shall consult with the department to apply the
11 procedures adopted by the department to verify the emissions of
12 greenhouse gases from baseload electric generation under RCW 80.80.040.
13 The department shall report to the commission whether baseload electric
14 generation will comply with the greenhouse gases emissions performance
15 standard for the duration of the period the baseload electric
16 generation is supplied to the electrical company.

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

21 (9) The commission shall adopt rules necessary to implement this
22 section by December 31, 2008.

23 ***Sec. 4. RCW 80.80.070 and 2007 c 307 s 9 are each amended to read**
24 **as follows:**

25 (1) **No consumer-owned utility may enter into a long-term financial**
26 **commitment unless the baseload electric generation supplied under such**
27 **a long-term financial commitment complies with the greenhouse ((gases))**
28 **gas emissions performance standard established under RCW 80.80.040.**

29 (2) **The governing board shall review and make a determination on**
30 **any long-term financial commitment by the utility, pursuant to this**
31 **chapter and after consultation with the department, to determine**
32 **whether the baseload electric generation to be supplied under that**
33 **long-term financial commitment complies with the greenhouse ((gases))**
34 **gas emissions performance standard established under RCW 80.80.040. No**
35 **consumer-owned utility may enter into a long-term financial commitment**
36 **unless the baseload electric generation to be supplied under that long-**

1 term financial commitment complies with the greenhouse ((gases)) gas
2 emissions performance standard established under RCW 80.80.040.

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

9 (4) The governing board may provide a case-by-case exemption from
10 the greenhouse ((gases)) gas emissions performance standard to address:

11 (a) Unanticipated electric system reliability needs; ((or)) (b)
12 extraordinary cost impacts on utility ratepayers; or (c) catastrophic
13 events or threat of significant financial harm that may arise from
14 unforeseen circumstances.

15 (5) The governing board shall apply the procedures adopted by the
16 department to verify the emissions of greenhouse gases from baseload
17 electric generation under RCW 80.80.040, and may request assistance
18 from the department in doing so.

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

*Sec. 4 was vetoed. See message at end of chapter.

Passed by the House April 20, 2009.

Passed by the Senate April 9, 2009.

Approved by the Governor May 11, 2009, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 11, 2009.

Note: Governor's explanation of partial veto is as follows:

"I have approved, except for Section 4, House Bill 2129 entitled:

"AN ACT Relating to the greenhouse gas emissions performance
standard under chapter 80.80 RCW."

Section 4 allows the governing boards of public utilities to exempt
themselves from performance standards if they find "extraordinary
cost impacts on utility ratepayers." I am vetoing this section because
there is no clear definition of what these impacts may be on
ratepayers, no process by which other parties would have the
opportunity to present evidence and argument opposing a proposed
exemption, and no clear legal framework that assures transparency and
accountability.

For these reasons, I have vetoed Section 4 of House Bill 2129. With
the exception of Section 4, House Bill No. 2129 is approved."