

SENATE BILL REPORT

SB 5769

As Reported by Senate Committee On:
Environment, Water & Energy, February 18, 2011
Ways & Means, February 25, 2011

Title: An act relating to coal-fired electric generation facilities.

Brief Description: Regarding coal-fired electric generation facilities.

Sponsors: Senators Rockefeller, Pridemore, Kohl-Welles, White, Chase, Murray, Ranker, Regala, Fraser, Shin and Kline.

Brief History:

Committee Activity: Environment, Water & Energy: 2/11/11, 2/18/11 [DPS-WM, DNP].
Ways & Means: 2/24/11, 2/25/11 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- By 2020 applies an emissions standard to electric generation facilities in Washington that emitted more than one million tons of green house gases in calendar year 2005.
- Provides opportunities for extending the deadline and rewarding early emission reductions.
- Establishes standards to decommission large coal-fired electric generating facilities and provides the means to mitigate the economic impacts following decommissioning.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5769 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Chase, Fraser and Ranker.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist Newbry and Morton.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: William Bridges (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5769 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Brown, Conway, Fraser, Kastama, Keiser, Kohl-Welles, Pridemore, Regala, Rockefeller and Tom.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Baxter, Hewitt, Holmquist Newbry, Honeyford and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Parlette, Ranking Minority Member Capital; Baumgartner and Pflug.

Staff: Chris Godwin (786-7441)

Background: Greenhouse Gas (GHG) Emission Reductions. The state is required to achieve the following statewide GHG emission reductions:

- by 2020 reduce overall GHG emissions in the state to 1990 levels;
- by 2035 reduce overall GHG emissions in the state to 25 percent below 1990 levels; and
- by 2050 reduce overall GHG emissions in the state to 50 percent below 1990 levels, or 70 percent below the state's expected GHG emissions that year.

GHG Emissions Performance Standard (EPS) for Electric Generation Plants. Electric utilities may not enter into a long-term financial commitment for baseload electric generation on or after July 1, 2008, unless the generating plant's emissions are the lower of:

- 1100 pounds of GHG per megawatt (MW)-hour; or
- the average available GHG emissions output as updated by Commerce.

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 60 percent. Long-term financial commitment means (1) either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or (2) a new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

Executive Order. In 2009 the Governor issued an executive order directing the Department of Ecology (Ecology) to work with the existing coal-fired plant within Washington that burns over one million tons of coal per year, TransAlta Centralia Generation LLC, to establish an agreed order to apply the EPS to the facility by no later than December 31, 2025. The agreed order must include a schedule of major decision making and resource investment milestones. Discussions between Ecology and TransAlta are continuing.

Senate Work Sessions. On January 19, 2011, the Senate Environment, Water & Energy Committee held a work session on the role of coal in meeting Washington's electric needs.

On January 21, 2011, the same committee held a work session on the environmental and health impacts of coal power.

Energy Facility Site Evaluation Council (EFSEC). EFSEC is the permitting and certificating authority for the siting of major energy facilities in Washington, such as thermal electric power plants 350 megawatts or greater. In addition, energy facilities of any size that exclusively use alternative energy resources (wind, solar, geothermal, landfill gas, wave or tidal action, or biomass energy) can opt-in to the EFSEC process. EFSEC must generally process an application within 12 months of receipt; however, it can be as short as 180 days under an expedited siting process.

Community Economic Revitalization Board (CERB). Comprised of 20 members appointed by the Governor, CERB funds public infrastructure improvements, such as the acquisition, construction, or repair of water and sewer systems, bridges, railroad spurs, telecommunication systems, roads, structures, and port facilities.

Public Works Board. Comprised of 13 members appointed by the Governor, the Public Works Board administers the public works assistance account to provide loans to local governments and special purpose districts with infrastructure projects.

Sales and Use Tax Exemptions for Coal. Purchases of coal used at a thermal electric generating facility placed in operation after 1969 and before July 1, 1997, are exempt from retail sales and use taxes. The exemptions are contingent upon owners of the plant demonstrating to Ecology that progress is being made to install the necessary air pollution control devices and that the facility has emitted no more than 10,000 tons of sulfur dioxide during the previous 12 months.

Summary of Bill (Recommended Second Substitute): Applying the EPS to Specified Facilities. By December 31, 2020, a baseload electric generation facility in Washington that emitted more than one million tons of GHG in calendar year 2005 (qualifying facility) must meet the following emissions standard:

- 1100 pounds of GHG per MW-hour; or
- the average available GHG emissions output as updated by Commerce, whichever is lower.

Providing an Opportunity to Extend the EPS Deadline. A qualifying facility may petition the Governor for an extension of the December 31, 2020, deadline, but not beyond December 31, 2025. When considering the petition, the Governor must seek public comments and all relevant information submitted by interested persons, such as impacts on grid reliability, electric rates, and local employment. The Governor must issue a draft order for public review, followed by the issuance of a final order granting or denying the petition. The final order must be issued with 120 days of receipt of the petition.

Providing for Early Reductions by Memorandum of Agreement (Agreement). The Governor must seek to enter into a binding agreement with the owners of a qualifying facility for achieving emissions reductions before December 31, 2020. The agreement must be consistent with the new EPS requirements and must provide for the following minimum

decreases in emissions, measured as a percentage of the average annual emissions in calendar year 2005:

- at least a 10 percent average reduction between January 1, 2012, and December 31, 2016; and
- beginning January 1, 2017, further significant reductions as specified in the agreement.

If an agreement is reached, no state agency or local government may impose additional or inconsistent GHG emission standards. The agreement may contain provisions for terminating, suspending, or modifying the agreement if a conflicting GHG emission standard is imposed by the federal government.

Providing for Clean Fuel Transition Power (Transition Power). An agreement for early reductions may specify the sources and types of fuel that may qualify as transition power, which can be used to assist the qualifying facility in achieving its emission obligations. When negotiating the issue of transition power, the Governor may consult with any entity necessary to ensure a regional dialogue concerning replacement power, transmission reliability, natural gas pipeline capacity, or any other relevant issue. An interested entity may become a party to the agreement. Because transition power is exempt from the EPS, other electric utilities in the state may enter into long-term purchases with the qualifying facility generating such power.

The Washington Utilities and Transportation Commission must allow a utility to recover the costs of acquiring transition power if it is needed to serve the utility's ratepayers and the acquisition is economical.

Recognizing Carbon Reductions. An agreement for early reductions may include provisions recognizing such reductions in state policies and programs relating to GHG emissions, and advocating for such reductions in all regional, national, or international GHG frameworks. The Governor may recommend actions to the Legislature concerning the recognition of investments in early emissions reductions.

Requiring Expedited EFSEC Processing for Transition Power. EFSEC must use its expedited process for siting facilities providing transition power.

Requiring Decommissioning Plans. A facility subject to closure must provide Ecology with a plan for the closure and postclosure of the facility at least 24 months prior to closure. Among other things, the plan must include financial assurances to fund required activities and the preparation of a decommissioning and site restoration plan. The decommissioning plan as well as any significant changes to it are subject to Ecology's approval. Ecology must consult with EFSEC to harmonize any site restoration standards.

Requiring a Financial Guarantee in the Decommissioning Plan. A facility subject to closure must guarantee funds are available to perform all activities in the decommissioning plan. The guarantee may be accomplished with an Ecology-approved letter of credit with a standby trust fund.

Creating a Transition Advisory Board. By January 1, 2016, the Governor must create an advisory board to review the decommissioning of a qualifying facility and future economic development of the site. The board consists of five voting members appointed by the Governor representing the owner of the facility, the relevant county economic development council, employees of the facility, and the general public. Representatives of Ecology and the relevant mayor, city council, and county council serve as ex-officio nonvoting members. The board ends three years after the closure of the facility.

Providing for Community Economic Development. CERB and the Public Works Board must each solicit projects to attract new industrial and commercial projects to areas affected by the closure or potential closure of a qualifying facility. Project awards must be consistent with applicable community redevelopment plans for the area, including planning for future industrial activities associated with reuse of reclaimed coal mine lands. Funding allocations from CERB and the Public Works Board are progressively increased from a total of \$500,000 in 2011-2013 to \$4 million in the 2021-2023 biennium. In addition, a qualifying facility that has entered into a memorandum of agreement must provide financial assistance to the affected community equivalent to the amount of tax benefits received from the sales and use tax exemptions on coal.

Adopting Findings and Expressing Intent. Various findings are adopted, including the harmful effects of emissions from the combustion of coal; the contribution of coal-powered electricity generation as a large source of the state's GHG emissions; the need for the deliberate development of replacement generation to maintain grid stability and reliability; and the necessity to ensure substantial planning and funding for the closure and postclosure activities of coal-fired electric generation facilities. No civil liability based on any finding may be imposed upon the state.

Among other things, the Legislature intends to provide for the reduction of GHG emissions from large coal-fired electric power generation facilities; to ensure appropriate cleanup and site restoration upon decommissioning of any facilities in the state; and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Removes the 2020 deadline for applying the emissions performance standard to baseload electric generation facilities in Washington that emitted more than 1 million tons of GHG in calendar year 2005. Allows the Governor to set the deadline for applying the emissions performance standard within a memorandum of agreement so long as the deadline is between December 31, 2020, and December 31, 2025. Removes the section allowing the Governor to extend the 2020 deadline for applying the emissions performance standard.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended First Substitute): The base years for measuring emissions is changed to 2005. The Governor is required to act on a petition for extension in 120 days. The steps for early reductions are changed. An interested entity may become a party to a memorandum of agreement. Rate recovery for the purchase of transition power is clarified. Decommissioning rules are replaced with a plan submitted by a qualifying facility. A

decommissioning trust account is replaced with a guarantee accomplished by a letter of credit. The expiration of the decommissioning advisory board is changed. The repeal of the sales and use taxes on coal is removed. Findings are modified. No civil liability imposed on the state for legislative findings is provided.

Appropriation: None.

Fiscal Note: New fiscal note requested on February 18, 2011.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Environment, Water & Energy):

PRO: Coal power poses risks to the dignity and sacredness of human life, so it should be phased out by 2015. The combustion of coal poses health risks, and CO2 contributes to climate change, which will cause heat waves, infectious diseases, food shortages, and asthma for children and the elderly. Mercury from the burning of coal is a toxin that causes serious long-term chronic health problems. The life of coal-fired plants keeps on getting extended but the pollution continues. Colorado is shutting down its plants in 2017, Oregon in 2020, and Canada will shut down all plants older than 45 years. To allow TransAlta to continue operating will amount to pollution equal to millions of cars on the road or ten Lake Washingtons poisoned with mercury. The environmental community shares the same concerns for the economic well-being of TransAlta workers, understands the importance of grid stability, and wants a feasible and successful transition to cleaner fuels. Transition fuels need to be defined. The provisions in the bill need to be aligned with the federal Clean Air Act, and the 2020 deadline should not be extendable. The degradation of the environment needs to stop in favor of more sustainable alternatives.

CON: TransAlta is a company with a social conscience that has contributed millions of dollars to the local community, including assistance after the flood of 2007 and the development of an industrial park. Closing TransAlta would be worse than the closure of Boeing for King or Snohomish counties. If TransAlta is going to close, it should be done in a systematic fashion; the community is not prepared for a premature shutdown. There are multiple taxing districts that rely on TransAlta and its closure would result in a loss of millions of dollars. The loss of tax revenues would be devastating for a county with 13 percent unemployment, an average wage of \$33,000 a year, and that is still recovering from the flood of 2007. The employees at TransAlta are hard working people trying to make a living, and many are environmentalists but they recognize that carbon-free is not cost-free. Unlike the Boardman Plant in Oregon, TransAlta has invested in modern pollution control equipment, so it should at least be allowed to run to 2025 as outlined in the Governor's executive order. Shutting down TransAlta will jeopardize the electrical grid and produce higher electricity prices. TransAlta employs 278 workers and about 400 contractors and the average TransAlta wage is \$88,000 a year. If TransAlta shuts down, there would be no comparable jobs in Lewis County. Shutting down TransAlta would have no appreciable effect on global GHG levels. The plant should be used as a template for how older plants can be equipped with modern pollution-controlling technology. China will reap the benefits if

coal is not burned here. TransAlta is not a good citizen, as demonstrated by laying-off 600 miners. The tax exemptions for coal should be repealed immediately, the advisory board should be started in 2011, and the plant should be closed in 2015. TransAlta gets its coal from Wyoming, sends its electricity to California, its profits to Canada, and leaves the pollution here. The provision allowing a five-year extension creates too much uncertainty for utilities who may want to enter long-term contracts. Interested parties need to be part of the memorandum of agreement. There needs to be a concrete transition plan. The bill sends the signal that if the government does not like a business, it will target it for closure.

OTHER: Centralia coal-fired facility faces several near- and medium-term regulatory obligations: EPA requirements for nitrogen oxide, mercury, coal ash, and cooling water beginning in 2011; and EPA ambient air quality standards for ozone and fine particles by 2014. Low natural gas prices have displaced coal in other parts of the U.S. Other countries, such as Canada, have shut down old coal plants. Energy efficiency and renewable resource policies are also contributing to the transition from coal to cleaner fuels.

Persons Testifying (Environment, Water & Energy): PRO: Steven Gilbert, Institute of Neurotoxicology and Neurological Disorders; Terri Glaberson, Cool Mom; Nancy Hirsh, NW Energy Coalition; Doug Howell, Sierra Club; Sister Mimi Maloney, Sisters of the Holy Names, Earth Ministry; Carol McKinley, WA State Unitarian Universalist Voices for Justice; Joelle Puccio, RN, BSN; Cliff Traisman, WA Environmental Council; Dawn Vyvyan, Yakama Nation.

CON: Ron Averill, Lewis County Board of County Commissioners; Matt Briggs, Daniel Fugate, TransAlta, IBEW Local 125; Debbie Campbell, United Way of Lewis County; Dianne Dorey, Lewis County Assessor; David Gibson, Express Employment Professionals; Bob Guenther, IBEW 77; Ken Johnson, Puget Sound Energy; Robert Johnson, Lewis County Community Development; Bill Lotto, Industrial Park at TransAlta; Chris McCabe, Association of Washington Business; Bill Moyer, Backbone Campaign; Marcy Putman, IBEW Local 125; Anil Puri, Steve Ward; Lou Florence, Larry Webster, TransAlta; Randy Robbins, Boiler Makers Local 502; Jennifer Williams, Climb Against Coal.

OTHER: Christopher James, Regulatory Assistance Project.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: Stakeholders have been negotiating in good faith to balance the needs of the people employed by the TransAlta plant in Centralia with the need to reduce greenhouse gas emissions and safeguard the environment in the state. We encourage the passage of the bill and endorse Senator Rockefeller's proposed amendment. Since TransAlta purchased the plant in Centralia they have always monitored the air quality and will continue to do so. The TransAlta plant is an economic driver in the regional economy. Operating the plant until 2025 would allow the plant and the community to stably transition away from coal-fired generation. The Governor is still committed to transition off of coal to cleaner sources of electricity in a way that is practicable and stable and equitable. The Governor also endorses Senator Rockefeller's proposed substitute. Please continue the conversation, as there are equity concerns about language in the bill that requires facilities to finance decommissioning but only requires CERB and the Public Works Board to expend funds as available.

Persons Testifying (Ways & Means): PRO: Clifford Traisman, Washington Environmental Coalition, Washington Conservation Voters; Bob Guenther, International Brotherhood of Electrical Workers Local 77, TransAlta; Keith Phillips, Governor Gregoire's Office; Dick Larman, Matt Stevenwalt.