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HOUSE BILL 2421

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State of Washington

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By Representatives Pike, Vick, Blake, Manweller, Harris, Wilson, Shea, Taylor, Dent, and Condotta

Read first time 01/13/16. Referred to Committee on Environment.

1 AN ACT Relating to directing that the state may not regulate  
2 greenhouse gas emissions beyond the requirements established by  
3 federal law; amending RCW 70.94.151; adding a new section to chapter  
4 70.94 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The stable, reliable, and low-cost  
7 supply of power has historically attracted many job-creating  
8 industries to Washington, such as the semiconductor industry that has  
9 chosen to locate in Clark county. Retaining low-cost and reliable  
10 access to this power supply is critical to the survival and expansion  
11 of many sectors of Washington's economy.

12 (2) Washington's sources of electricity feature low levels of  
13 greenhouse gas emissions. In addition to the zero-emission  
14 hydroelectric power that supplies the majority of the state's power  
15 supply needs, many of the state's natural gas power plants, such as  
16 the river road gas fired plant operated by Clark public utility  
17 district, operate far more efficiently than is required by either  
18 federal or state emissions regulations. By ensuring that Washington  
19 manufacturing remains economically viable and that industries will  
20 continue to rely on Washington's comparatively clean electricity,  
21 overall global greenhouse gas emissions remain lower than if jobs and

1 production were to move to less-intensively regulated jurisdictions  
2 where production of the same amount of manufactured product would be  
3 accompanied by far greater emissions of greenhouse gases.

4 (3) Therefore, it is the intent of the legislature to ensure that  
5 state restrictions on greenhouse gas emissions are no more stringent  
6 than restrictions established by federal law.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94  
8 RCW to read as follows:

9 (1) The department is designated as the state agency responsible  
10 for submitting the state plan to the United States environmental  
11 protection agency consistent with the federal rule relating to  
12 greenhouse gas emissions from electric utility generating units,  
13 published in the federal register on October 23, 2015; 80 C.F.R. Sec.  
14 64966 (2015).

15 (2) The plan submitted by the department under subsection (1) of  
16 this section may not limit or otherwise provide for the regulation of  
17 the greenhouse gas emissions of electric generation units that  
18 operate at a lower emissions rate than the final rate-based objective  
19 for average emissions associated with fossil fuel-fired electric  
20 generation in Washington that is established by the federal rule  
21 published in the federal register on October 23, 2015; 80 C.F.R. Sec.  
22 64662 (2015).

23 (3) Under the authority of this chapter, the department may not  
24 adopt rules to limit or otherwise regulate greenhouse gas emissions  
25 that are more stringent than any requirements necessary for the state  
26 plan submitted pursuant to subsection (1) of this section to meet the  
27 minimum requirements necessary to comply with the federal rule  
28 published in the federal register on October 23, 2015; 80 C.F.R. Sec.  
29 64966 (2015).

30 **Sec. 3.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to  
31 read as follows:

32 (1)(a) The board of any activated authority or the department,  
33 may classify air contaminant sources, by ordinance, resolution, rule  
34 or regulation, which in its judgment may cause or contribute to air  
35 pollution, according to levels and types of emissions and other  
36 characteristics which cause or contribute to air pollution(~~(, and)~~).

37 (b) Except as provided in (c) of this subsection, the board of  
38 any authority or the department may require registration or reporting

1 or both for any ((such)) class or classes of air contaminant sources  
2 or levels and types or other characteristics of emissions.

3 (c) The department shall adopt rules requiring the reporting of  
4 the emissions of greenhouse gases, as defined in RCW 70.235.010.  
5 However, except as provided in section 2 of this act, the department  
6 or board of any authority may not limit or otherwise regulate  
7 emissions of greenhouse gases under the authority of this chapter.

8 (d) Classifications made pursuant to this section may be for  
9 application to the area of jurisdiction of such authority, or the  
10 state as a whole or to any designated area within the jurisdiction,  
11 and shall be made with special reference to effects on health,  
12 economic and social factors, and physical effects on property.

13 (2) Except as provided in subsection (3) of this section, any  
14 person operating or responsible for the operation of air contaminant  
15 sources of any class for which the ordinances, resolutions, rules or  
16 regulations of the department or board of the authority, require  
17 registration or reporting shall register therewith and make reports  
18 containing information as may be required by such department or board  
19 concerning location, size and height of contaminant outlets,  
20 processes employed, nature of the contaminant emission and such other  
21 information as is relevant to air pollution and available or  
22 reasonably capable of being assembled. (~~In the case of emissions of~~  
23 ~~greenhouse gases as defined in RCW 70.235.010 the department shall~~  
24 ~~adopt rules requiring reporting of those emissions.)) The department  
25 or board may require that such registration or reporting be  
26 accompanied by a fee, and may determine the amount of such fee for  
27 such class or classes: PROVIDED, That the amount of the fee shall  
28 only be to compensate for the costs of administering such  
29 registration or reporting program which shall be defined as initial  
30 registration and annual or other periodic reports from the source  
31 owner providing information directly related to air pollution  
32 registration, on-site inspections necessary to verify compliance with  
33 registration requirements, data storage and retrieval systems  
34 necessary for support of the registration program, emission inventory  
35 reports and emission reduction credits computed from information  
36 provided by sources pursuant to registration program requirements,  
37 staff review, including engineering or other reliable analysis for  
38 accuracy and currentness, of information provided by sources pursuant  
39 to registration program requirements, clerical and other office  
40 support provided in direct furtherance of the registration program,~~

1 and administrative support provided in directly carrying out the  
2 registration program: PROVIDED FURTHER, That any such registration  
3 made with either the board or the department shall preclude a further  
4 registration and reporting with any other board or the department,  
5 except that emissions of greenhouse gases as defined in RCW  
6 70.235.010 must be reported as required under subsection (5) of this  
7 section.

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

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

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

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

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

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

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

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

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

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

26 (iii) Emissions of carbon dioxide associated with the complete  
27 combustion or oxidation of liquid motor vehicle fuel, special fuel,  
28 or aircraft fuel that is sold in Washington where the annual  
29 emissions associated with that combustion or oxidation equal or  
30 exceed ten thousand metric tons be reported to the department. Each  
31 person who is required to file periodic tax reports of motor vehicle  
32 fuel sales under RCW 82.36.031 or special fuel sales under RCW  
33 82.38.150, or each distributor of aircraft fuel required to file  
34 periodic tax reports under RCW 82.42.040 must report to the  
35 department the annual emissions of carbon dioxide from the complete  
36 combustion or oxidation of the fuels listed in those reports as sold  
37 in the state of Washington. The department shall not require  
38 suppliers to use additional data to calculate greenhouse gas  
39 emissions other than the data the suppliers report to the department  
40 of licensing. The rules may allow this information to be aggregated

1 when reported to the department. The department and the department of  
2 licensing shall enter into an interagency agreement to ensure  
3 proprietary and confidential information is protected if the  
4 departments share reported information. Any proprietary or  
5 confidential information exempt from disclosure when reported to the  
6 department of licensing is exempt from disclosure when shared by the  
7 department of licensing with the department under this provision.

8 (b)(i) Except as otherwise provided in this subsection, the rules  
9 adopted by the department under (a) of this subsection must be  
10 consistent with the regulations adopted by the United States  
11 environmental protection agency in 40 C.F.R. Part 98 on September 22,  
12 2009.

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

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

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

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

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

39 (e) The fee provisions in subsection (2) of this section apply to  
40 reporting of emissions of greenhouse gases. Persons required to

1 report under (a) of this subsection who fail to report or pay the fee  
2 required in subsection (2) of this section are subject to enforcement  
3 penalties under this chapter. The department shall enforce the  
4 reporting rule requirements unless it approves a local air  
5 authority's request to enforce the requirements for persons operating  
6 within the authority's jurisdiction. However, neither the department  
7 nor a local air authority approved under this section are authorized  
8 to assess enforcement penalties on persons required to report under  
9 (a) of this subsection until six months after the department adopts  
10 its reporting rule in 2010.

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

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

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

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

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

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