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HOUSE BILL 2879

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Fitzgibbon, Macri, and Pollet; by request of Department of Ecology

Read first time 01/19/18. Referred to Committee on Environment.

1 AN ACT Relating to the Washington clean air act; amending RCW  
2 70.94.331, 70.94.850, and 70.94.151; and creating new sections.

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

4 **Sec. 1.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to  
5 read as follows:

6 (1) The department shall have all the powers as provided in RCW  
7 70.94.141.

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

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

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

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

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

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

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

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

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

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

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

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

38 **Sec. 2.** RCW 70.94.850 and 1984 c 164 s 1 are each amended to  
39 read as follows:

1 The department of ecology and the local boards may implement an  
2 emission credits banking program. For the purposes of this section,  
3 an emission credits banking program means a program whereby an air  
4 contaminant source which reduces emissions of a given air contaminant  
5 by an amount greater than that required by applicable law,  
6 regulation, or order is granted credit for a given amount, which  
7 credit shall be administered by a credit bank operated by the  
8 appropriate agency. The amount of the credit shall be determined by  
9 the department or local board with jurisdiction(~~(, but it shall be~~  
10 ~~less than the amount of the emissions reduction)~~). The credit may be  
11 used, traded, sold, or otherwise expended for purposes established by  
12 regulation of state or local agencies consistent with the provisions  
13 of any emission reduction program established by the state or local  
14 agencies, including but not limited to the prevention of significant  
15 deterioration program under RCW 70.94.860, the bubble program under  
16 RCW 70.94.155, and the new source review program under RCW 70.94.152,  
17 if there will be no net ((~~adverse impact on air quality~~)) increase in  
18 emissions of the contaminants regulated by the applicable program.

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

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

32 (2) Except as provided in subsection (3) of this section, any  
33 person operating or responsible for the operation of air contaminant  
34 sources of any class for which the ordinances, resolutions, rules or  
35 regulations of the department or board of the authority, require  
36 registration or reporting shall register therewith and make reports  
37 containing information as may be required by such department or board  
38 concerning location, size and height of contaminant outlets,  
39 processes employed, nature of the contaminant emission and such other

1 information as is relevant to air pollution and available or  
2 reasonably capable of being assembled. In the case of emissions of  
3 greenhouse gases as defined in RCW 70.235.010 the department shall  
4 adopt rules requiring reporting of those emissions. The department or  
5 board may require that such registration or reporting be accompanied  
6 by a fee, and may determine the amount of such fee for such class or  
7 classes: PROVIDED, That the amount of the fee shall only be to  
8 compensate for the costs of administering such registration or  
9 reporting program which shall be defined as initial registration and  
10 annual or other periodic reports from the source owner providing  
11 information directly related to air pollution registration, on-site  
12 inspections necessary to verify compliance with registration  
13 requirements, data storage and retrieval systems necessary for  
14 support of the registration program, emission inventory reports and  
15 emission reduction credits computed from information provided by  
16 sources pursuant to registration program requirements, staff review,  
17 including engineering or other reliable analysis for accuracy and  
18 currentness, of information provided by sources pursuant to  
19 registration program requirements, clerical and other office support  
20 provided in direct furtherance of the registration program, and  
21 administrative support provided in directly carrying out the  
22 registration program: PROVIDED FURTHER, That any such registration  
23 made with either the board or the department shall preclude a further  
24 registration and reporting with any other board or the department,  
25 except that emissions of greenhouse gases as defined in RCW  
26 70.235.010 must be reported as required under subsection (5) of this  
27 section.

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

32 (3) If a registration or report has been filed for a grain  
33 warehouse or grain elevator as required under this section,  
34 registration, reporting, or a registration program fee shall not,  
35 after January 1, 1997, again be required under this section for the  
36 warehouse or elevator unless the capacity of the warehouse or  
37 elevator as listed as part of the license issued for the facility has  
38 been increased since the date the registration or reporting was last  
39 made. If the capacity of the warehouse or elevator listed as part of  
40 the license is increased, any registration or reporting required for

1 the warehouse or elevator under this section must be made by the date  
2 the warehouse or elevator receives grain from the first harvest  
3 season that occurs after the increase in its capacity is listed in  
4 the license.

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

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

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

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

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

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

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

33 (ii) ~~((Reporting will start in 2010 for 2009 emissions.))~~ Each  
34 annual report must include emissions data for the preceding calendar  
35 year and must be submitted to the department by ~~((October))~~ March  
36 31st of the year in which the report is due. ~~((However, starting in  
37 2011, a person who is required to report greenhouse gas emissions to  
38 the United States environmental protection agency under 40 C.F.R.  
39 Part 98, as adopted on September 22, 2009, must submit the report  
40 required under this section to the department concurrent with the~~

1 ~~submission to the United States environmental protection agency.)~~  
2 Except as otherwise provided in this section, the data for emissions  
3 in Washington and any corrections thereto that are reported to the  
4 United States environmental protection agency must be the emissions  
5 data reported to the department (~~;~~ and  
6 ~~(iii) Emissions of carbon dioxide associated with the complete~~  
7 ~~combustion or oxidation of liquid motor vehicle fuel, special fuel,~~  
8 ~~or aircraft fuel that is sold in Washington where the annual~~  
9 ~~emissions associated with that combustion or oxidation equal or~~  
10 ~~exceed ten thousand metric tons be reported to the department. Each~~  
11 ~~person who is required to file periodic tax reports of motor vehicle~~  
12 ~~fuel sales under RCW 82.36.031 or special fuel sales under RCW~~  
13 ~~82.38.150, or each distributor of aircraft fuel required to file~~  
14 ~~periodic tax reports under RCW 82.42.040 must report to the~~  
15 ~~department the annual emissions of carbon dioxide from the complete~~  
16 ~~combustion or oxidation of the fuels listed in those reports as sold~~  
17 ~~in the state of Washington. The department shall not require~~  
18 ~~suppliers to use additional data to calculate greenhouse gas~~  
19 ~~emissions other than the data the suppliers report to the department~~  
20 ~~of licensing. The rules may allow this information to be aggregated~~  
21 ~~when reported to the department. The department and the department of~~  
22 ~~licensing shall enter into an interagency agreement to ensure~~  
23 ~~proprietary and confidential information is protected if the~~  
24 ~~departments share reported information. Any proprietary or~~  
25 ~~confidential information exempt from disclosure when reported to the~~  
26 ~~department of licensing is exempt from disclosure when shared by the~~  
27 ~~department of licensing with the department under this provision)).~~

28 (b)(i) Except as otherwise provided in this subsection, the rules  
29 adopted by the department under (a) of this subsection must be  
30 consistent with the regulations adopted by the United States  
31 environmental protection agency in 40 C.F.R. Part 98 (~~on September~~  
32 ~~22, 2009)).~~

33 (ii) The department may by rule include additional gases to the  
34 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has  
35 been designated as a greenhouse gas by the United States congress or  
36 by the United States environmental protection agency. Prior to  
37 including additional gases to the definition of "greenhouse gas" in  
38 RCW 70.235.010, the department shall notify the appropriate  
39 committees of the legislature. Decisions to amend the rule to include  
40 additional gases must be made prior to December 1st of any year and

1 the amended rule may not take effect before the end of the regular  
2 legislative session in the next year.

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

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

10 (v) The department may by rule modify methodologies established  
11 in 40 C.F.R. Part 98 to ensure that emissions occurring outside of  
12 Washington state are not reported to the department.

13 (vi) The department may by rule require a person to use a  
14 specific method established in 40 C.F.R. Part 98 to complete their  
15 report to the department.

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

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

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

37 (f) The energy facility site evaluation council shall,  
38 simultaneously with the department, adopt rules that impose  
39 greenhouse gas reporting requirements in site certifications on  
40 owners or operators of a facility permitted by the energy facility



1 site evaluation council. The greenhouse gas reporting requirements  
2 imposed by the energy facility site evaluation council must be the  
3 same as the greenhouse gas reporting requirements imposed by the  
4 department. The department shall share any information reported to it  
5 from facilities permitted by the energy facility site evaluation  
6 council with the council, including notice of a facility that has  
7 failed to report as required. The energy facility site evaluation  
8 council shall contract with the department to monitor the reporting  
9 requirements adopted under this section.

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

18 (h) The department may by rule require persons to have a third  
19 party verify their report to the department. The department retains  
20 final authority when determining the accuracy of reports submitted to  
21 the department.

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

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

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

35 NEW SECTION. Sec. 4. As curative, clarifying, and remedial, the  
36 legislature intends for sections 1 and 2 of this act to apply both  
37 prospectively and retroactively to all actions taken by the  
38 department of ecology on or after January 1, 2016.

1        NEW SECTION.    **Sec. 5.**    The provisions of section 3 of this act  
2    apply retroactively to any actions taken by the department of ecology  
3    after January 1, 2016.

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