
SUBSTITUTE SENATE BILL 6628

State of Washington

66th Legislature

2020 Regular Session

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

READ FIRST TIME 02/07/20.

1 AN ACT Relating to reducing greenhouse gas emissions from fossil
2 fuels; amending RCW 70.94.030, 70.94.331, and 43.157.010; adding a
3 new section to chapter 80.28 RCW; adding a new section to chapter
4 70.235 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that in *Association*
7 *of Washington Business v. Washington Department of Ecology* (No.
8 95885-8, January 16, 2020), the Washington supreme court held that
9 certain regulations establishing greenhouse gas emission standards
10 for producers and distributors of natural gas and petroleum products
11 were invalid because the department lacked sufficient statutory
12 authority under the state's clean air act to regulate such emissions
13 while upholding regulations of sources directly emitting greenhouse
14 gases. The legislature intends by this act to expressly provide such
15 authority under the clean air act.

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

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

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

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

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

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

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

18 (6) "Best available control technology" (BACT) means an emission
19 limitation based on the maximum degree of reduction for each air
20 pollutant subject to regulation under this chapter emitted from or
21 that results from any new or modified stationary source, that the
22 permitting authority, on a case-by-case basis, taking into account
23 energy, environmental, and economic impacts and other costs,
24 determines is achievable for such a source or modification through
25 application of production processes and available methods, systems,
26 and techniques, including fuel cleaning, clean fuels, or treatment or
27 innovative fuel combustion techniques for control of each such a
28 pollutant. In no event shall application of "best available control
29 technology" result in emissions of any pollutants that will exceed
30 the emissions allowed by any applicable standard under 40 C.F.R. Part
31 60 and Part 61, as they exist on July 25, 1993, or their later
32 enactments as adopted by reference by the director by rule. Emissions
33 from any source utilizing clean fuels, or any other means, to comply
34 with this subsection shall not be allowed to increase above levels
35 that would have been required under the definition of BACT as it
36 existed prior to enactment of the federal clean air act amendments of
37 1990.

38 (7) "Best available retrofit technology" (BART) means an emission
39 limitation based on the degree of reduction achievable through the
40 application of the best system of continuous emission reduction for

1 each pollutant that is emitted by an existing stationary facility.
2 The emission limitation must be established, on a case-by-case basis,
3 taking into consideration the technology available, the costs of
4 compliance, the energy and nonair quality environmental impacts of
5 compliance, any pollution control equipment in use or in existence at
6 the source, the remaining useful life of the source, and the degree
7 of improvement in visibility that might reasonably be anticipated to
8 result from the use of the technology.

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

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

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

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

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

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

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

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

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

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

37 (15) "Modification" means any physical change in, or change in
38 the method of operation of, a stationary source that increases the
39 amount of any air contaminant emitted by such source or that results
40 in the emission of any air contaminant not previously emitted. The

1 term modification shall be construed consistent with the definition
2 of modification in Section 7411, Title 42, United States Code, and
3 with rules implementing that section.

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

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

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

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

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

28 (21) "Silvicultural burning" means burning of wood fiber on
29 forestland consistent with the provisions of RCW (~~70.94.660~~)
30 70.94.6534.

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

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

39 (24) "Trigger level" means the ambient level of fine
40 particulates, measured in micrograms per cubic meter, that must be

1 detected prior to initiating a first or second stage of impaired air
2 quality under RCW 70.94.473.

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

10 **Sec. 3.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
11 read as follows:

12 (1) The department shall have all the powers as provided in RCW
13 70.94.141.

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

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

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

27 (c) Adopt by rule air quality standards and emission standards
28 for the control or prohibition of emissions to the outdoor atmosphere
29 of radionuclides, dust, fumes, mist, smoke, other particulate matter,
30 vapor, gas, odorous substances, or any combination thereof. Such
31 requirements may be based upon a system of classification by types of
32 emissions or types of sources of emissions, or combinations thereof,
33 which it determines most feasible for the purposes of this chapter.
34 The department may require persons who produce or distribute fossil
35 fuels or other products that emit greenhouse gases in Washington to
36 comply with air quality standards, emission standards, or emission
37 limitations on emissions of greenhouse gases. However, an industry,
38 or the air pollution control authority having jurisdiction, can
39 choose, subject to the submittal of appropriate data that the

1 industry has quantified, to have any limit on the opacity of
2 emissions from a source whose emission standard is stated in terms of
3 a weight of particulate per unit volume of air (e.g., grains per dry
4 standard cubic foot) be based on the applicable particulate emission
5 standard for that source, such that any violation of the opacity
6 limit accurately indicates a violation of the applicable particulate
7 emission standard. Any alternative opacity limit provided by this
8 section that would result in increasing air contaminants emissions in
9 any nonattainment area shall only be granted if equal or greater
10 emission reductions are provided for by the same source obtaining the
11 revised opacity limit. A reasonable fee may be assessed to the
12 industry to which the alternate opacity standard would apply. The fee
13 shall cover only those costs to the air pollution control authority
14 which are directly related to the determination on the acceptability
15 of the alternate opacity standard, including testing, oversight and
16 review of data.

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

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

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

38 (6) The department shall enforce the air quality standards and
39 emission standards throughout the state except where a local

1 authority is enforcing the state regulations or its own regulations
2 which are more stringent than those of the state.

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

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

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

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

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

31 NEW SECTION. Sec. 4. A new section is added to chapter 80.28
32 RCW to read as follows:

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

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.235
2 RCW to read as follows:

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

12 **Sec. 6.** RCW 43.157.010 and 2017 c 288 s 2 are each amended to
13 read as follows:

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

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

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

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

26 (4) "Manufacturing" shall have the meaning assigned it in RCW
27 82.62.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (I) In counties other than rural counties as defined by RCW
37 82.14.370, projected full-time employment positions after completion
38 of construction of one hundred or greater; or

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

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

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

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

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

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

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

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