

2SSB 5769 - S AMD 180

By Senators Rockefeller, Swecker

ADOPTED AS AMENDED 03/05/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 101.** (1) The legislature finds that generating
4 electricity from the combustion of coal produces large amounts of
5 harmful pollutants, including ammonia, arsenic, lead, mercury,
6 hydrochloric acid, nitrogen oxides, sulfuric acid, sulfur dioxide,
7 particulate matter, and several toxic heavy metals, all of which have
8 been determined by medical science to be harmful to human health and
9 safety. In addition, the emissions from the combustion of coal in the
10 state impact visibility in eight class I areas in the state. While the
11 emission of many of these pollutants continues to be addressed through
12 application of federal and state air quality laws, the emission of
13 greenhouse gases resulting from the combustion of coal has not been
14 addressed. Furthermore, these harmful by-products may be damaging the
15 cultural history of Washington and its people by eroding ancient native
16 American petroglyphs and pictographs and by accumulating in the soil
17 and waters of the usual and accustomed areas for tribal hunting,
18 fishing, gathering, and grazing.

19 (2) The legislature has previously found that greenhouse gas
20 emissions contribute to climate change and has found that Washington is
21 especially vulnerable to climate change. The legislature now finds
22 that coal-fired electricity generation is one of the largest sources of
23 greenhouse gas emissions in the state, and is the largest source of
24 such emissions from the generation of electricity in the state.

25 (3) The legislature finds coal-fired electric generation may
26 provide baseload power that is necessary in the near-term for the
27 stability and reliability of the electrical transmission grid and that
28 contributes to the availability of affordable power in the state. The
29 legislature further finds that efforts to transition power to other

1 fuels requires a reasonable period of time to ensure grid stability and
2 to maintain affordable electricity resources.

3 (4) The legislature finds that coal-fired baseload electric
4 generation facilities are a significant contributor to family-wage jobs
5 and economic health in parts of the state and that transition of these
6 facilities must address the economic future and the preservation of
7 jobs in affected communities.

8 (5) The legislature finds that coal-fired baseload electric
9 generation facilities are large industrial facilities that require
10 substantial planning and funding for closure and postclosure to ensure
11 that the site is fully restored and free of contamination.

12 (6) Therefore, it is the purpose of this act to provide for the
13 reduction of greenhouse gas emissions from large coal-fired baseload
14 electric power generation facilities, to effect an orderly transition
15 to cleaner fuels in a manner that ensures reliability of the state's
16 electrical grid, to ensure appropriate cleanup and site restoration
17 upon decommissioning of any of these facilities in the state, and to
18 provide assistance to host communities planning for new economic
19 development and mitigating the economic impacts of the closure of these
20 facilities.

21 **Sec. 102.** RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are
22 each reenacted and amended to read as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Attorney general" means the Washington state office of the
26 attorney general.

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

31 (3) "Average available greenhouse gas emissions output" means the
32 level of greenhouse gas emissions as surveyed and determined by the
33 energy policy division of the department of commerce under RCW
34 80.80.050.

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

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

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

11 (7) "Commission" means the Washington utilities and transportation
12 commission.

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

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

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

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

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

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

31 (14) "Greenhouse ((~~gases~~) gas)" includes carbon dioxide, methane,
32 nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur
33 hexafluoride.

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

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

37 (b) A new or renewed contract for baseload electric generation with

1 a term of five or more years for the provision of retail power or
2 wholesale power to end-use customers in this state.

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

7 (17) "Power plant" means a facility for the generation of
8 electricity that is permitted as a single plant by a jurisdiction
9 inside or outside the state.

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

20 (19) "Coal transition power" means the output of a coal-fired
21 electric generation facility located in Washington that is subject to
22 RCW 80.80.040(3)(c).

23 (20) "Memorandum of agreement" or "memorandum" means a binding and
24 enforceable contract entered into pursuant to section 106 of this act
25 between the governor on behalf of the state and an owner of a baseload
26 electric generation facility in the state that produces coal transition
27 power.

28 **Sec. 103.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to
29 read as follows:

30 (1) Beginning July 1, 2008, the greenhouse gas emissions
31 performance standard for all baseload electric generation for which
32 electric utilities enter into long-term financial commitments on or
33 after such date is the lower of:

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

36 (b) The average available greenhouse gas emissions output as
37 determined under RCW 80.80.050.

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

3 (3)(a) Except as provided in (c) of this subsection, all baseload
4 electric generation facilities in operation as of June 30, 2008, are
5 deemed to be in compliance with the greenhouse gas emissions
6 performance standard established under this section until the
7 facilities are the subject of long-term financial commitments.

8 (b) All baseload electric generation that commences operation after
9 June 30, 2008, and is located in Washington, must comply with the
10 greenhouse gas emissions performance standard established in subsection
11 (1) of this section.

12 (c)(i) A coal-fired baseload electric generation facility in
13 Washington that emitted more than one million tons of greenhouse gases
14 in calendar year 2005 must comply with the lower of the following
15 greenhouse gas emissions performance standard such that one generating
16 boiler is in compliance by December 31, 2020, and any other generating
17 boiler is in compliance by December 31, 2025:

18 (A) One thousand one hundred pounds of greenhouse gases per
19 megawatt-hour; or

20 (B) The average available greenhouse gas emissions output as
21 determined under RCW 80.80.050.

22 (ii) This subsection (3)(c) does not apply to a coal-fired baseload
23 electric generating facility in the event the department determines as
24 a requirement of state or federal law or regulation that selective
25 catalytic reduction technology must be installed on any of its boilers.

26 (4) All electric generation facilities or power plants powered
27 exclusively by renewable resources, as defined in RCW 19.280.020, are
28 deemed to be in compliance with the greenhouse gas emissions
29 performance standard established under this section.

30 (5) All cogeneration facilities in the state that are fueled by
31 natural gas or waste gas or a combination of the two fuels, and that
32 are in operation as of June 30, 2008, are deemed to be in compliance
33 with the greenhouse gas emissions performance standard established
34 under this section until the facilities are the subject of a new
35 ownership interest or are upgraded.

36 (6) In determining the rate of emissions of greenhouse gases for
37 baseload electric generation, the total emissions associated with
38 producing electricity shall be included.

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

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

11 (9) The department shall establish an output-based methodology to
12 ensure that the calculation of emissions of greenhouse gases for a
13 cogeneration facility recognizes the total usable energy output of the
14 process, and includes all greenhouse gases emitted by the facility in
15 the production of both electrical and thermal energy. In developing
16 and implementing the greenhouse gas emissions performance standard, the
17 department shall consider and act in a manner consistent with any rules
18 adopted pursuant to the public utilities regulatory policy act of 1978
19 (16 U.S.C. Sec. 824a-3), as amended.

20 (10) The following greenhouse gas emissions produced by baseload
21 electric generation owned or contracted through a long-term financial
22 commitment shall not be counted as emissions of the power plant in
23 determining compliance with the greenhouse gas emissions performance
24 standard:

25 (a) Those emissions that are injected permanently in geological
26 formations;

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

29 (c) Those emissions sequestered or mitigated as approved under
30 subsection (16) of this section.

31 (11) In adopting and implementing the greenhouse gas emissions
32 performance standard, the department of (~~community, trade, and~~
33 ~~economic development~~) commerce energy policy division, in consultation
34 with the commission, the department, the Bonneville power
35 administration, the western electricity (~~coordination~~ coordinating)
36 coordinating council, the energy facility site evaluation council,
37 electric utilities, public interest representatives, and consumer

1 representatives, shall consider the effects of the greenhouse gas
2 emissions performance standard on system reliability and overall costs
3 to electricity customers.

4 (12) In developing and implementing the greenhouse gas emissions
5 performance standard, the department shall, with assistance of the
6 commission, the department of (~~community, trade, and economic~~
7 ~~development~~) commerce energy policy division, and electric utilities,
8 and to the extent practicable, address long-term purchases of
9 electricity from unspecified sources in a manner consistent with this
10 chapter.

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

16 (14) In adopting the rules for implementing this section, the
17 energy facility site evaluation council and the department shall
18 include criteria to be applied in evaluating the carbon sequestration
19 plan, for baseload electric generation that will rely on subsection
20 (10) of this section to demonstrate compliance, but that will commence
21 sequestration after the date that electricity is first produced. The
22 rules shall include but not be limited to:

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

27 (b) Provisions for geological or other approved sequestration
28 commencing within five years of plant operation, including full and
29 sufficient technical documentation to support the planned
30 sequestration;

31 (c) Provisions for monitoring the effectiveness of the
32 implementation of the sequestration plan;

33 (d) Penalties for failure to achieve implementation of the plan on
34 schedule;

35 (e) Provisions for an owner to purchase emissions reductions in the
36 event of the failure of a sequestration plan under subsection (16) of
37 this section; and

1 (f) Provisions for public notice and comment on the carbon
2 sequestration plan.

3 (15)(a) Except as provided in (b) of this subsection, as part of
4 its role enforcing the greenhouse gas emissions performance standard,
5 the department shall determine whether sequestration or a plan for
6 sequestration will provide safe, reliable, and permanent protection
7 against the greenhouse gases entering the atmosphere from the power
8 plant and all ancillary facilities.

9 (b) For facilities under its jurisdiction, the energy facility site
10 evaluation council shall contract for review of sequestration or the
11 carbon sequestration plan with the department consistent with the
12 conditions under (a) of this subsection, consider the adequacy of
13 sequestration or the plan in its adjudicative proceedings conducted
14 under RCW 80.50.090(3), and incorporate specific findings regarding
15 adequacy in its recommendation to the governor under RCW 80.50.100.

16 (16) A project under consideration by the energy facility site
17 evaluation council by July 22, 2007, is required to include all of the
18 requirements of subsection (14) of this section in its carbon
19 sequestration plan submitted as part of the energy facility site
20 evaluation council process. A project under consideration by the
21 energy facility site evaluation council by July 22, 2007, that receives
22 final site certification agreement approval under chapter 80.50 RCW
23 shall make a good faith effort to implement the sequestration plan. If
24 the project owner determines that implementation is not feasible, the
25 project owner shall submit documentation of that determination to the
26 energy facility site evaluation council. The documentation shall
27 demonstrate the steps taken to implement the sequestration plan and
28 evidence of the technological and economic barriers to successful
29 implementation. The project owner shall then provide to the energy
30 facility site evaluation council notification that they shall implement
31 the plan that requires the project owner to meet the greenhouse gas
32 emissions performance standard by purchasing verifiable greenhouse gas
33 emissions reductions from an electric (~~generating~~) generation
34 facility located within the western interconnection, where the
35 reduction would not have occurred otherwise or absent this contractual
36 agreement, such that the sum of the emissions reductions purchased and
37 the facility's emissions meets the standard for the life of the
38 facility.

1 **Sec. 104.** RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are
2 each reenacted and amended to read as follows:

3 (1) No electrical company may enter into a long-term financial
4 commitment unless the baseload electric generation supplied under such
5 a long-term financial commitment complies with the greenhouse (~~gases~~
6 ~~gas~~) gas emissions performance standard established under RCW
7 80.80.040.

8 (2) In order to enforce the requirements of this chapter, the
9 commission shall review in a general rate case or as provided in
10 subsection (5) of this section any long-term financial commitment
11 entered into by an electrical company after June 30, 2008, to determine
12 whether the baseload electric generation to be supplied under that
13 long-term financial commitment complies with the greenhouse (~~gases~~
14 ~~gas~~) gas emissions performance standard established under RCW
15 80.80.040.

16 (3) In determining whether a long-term financial commitment is for
17 baseload electric generation, the commission shall consider the design
18 of the power plant and its intended use, based upon the electricity
19 purchase contract, if any, permits necessary for the operation of the
20 power plant, and any other matter the commission determines is relevant
21 under the circumstances.

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

28 (5) Upon application by an electrical company, the commission shall
29 determine whether the company's proposed decision to acquire electric
30 generation or enter into a power purchase agreement for electricity
31 complies with the greenhouse (~~gases~~~~gas~~) gas emissions performance
32 standard established under RCW 80.80.040. The commission shall not
33 decide in a proceeding under this subsection (5) issues involving the
34 actual costs to construct and operate the selected resource, cost
35 recovery, or other issues reserved by the commission for decision in a
36 general rate case or other proceeding for recovery of the resource or
37 contract costs.

1 (6) An electrical company may account for and defer for later
2 consideration by the commission costs incurred in connection with a
3 long-term financial commitment, including operating and maintenance
4 costs, depreciation, taxes, and cost of invested capital. The deferral
5 begins with the date on which the power plant begins commercial
6 operation or the effective date of the power purchase agreement and
7 continues for a period not to exceed twenty-four months; provided that
8 if during such period the company files a general rate case or other
9 proceeding for the recovery of such costs, deferral ends on the
10 effective date of the final decision by the commission in such
11 proceeding. Creation of such a deferral account does not by itself
12 determine the actual costs of the long-term financial commitment,
13 whether recovery of any or all of these costs is appropriate, or other
14 issues to be decided by the commission in a general rate case or other
15 proceeding for recovery of these costs. For the purpose of this
16 subsection (6) only, the term "long-term financial commitment" also
17 includes an electric company's ownership or power purchase agreement
18 with a term of five or more years associated with an eligible renewable
19 resource as defined in RCW 19.285.030.

20 (7) The commission shall consult with the department to apply the
21 procedures adopted by the department to verify the emissions of
22 greenhouse gases from baseload electric generation under RCW 80.80.040.
23 The department shall report to the commission whether baseload electric
24 generation will comply with the greenhouse (~~gases~~ [gas]) gas
25 emissions performance standard for the duration of the period the
26 baseload electric generation is supplied to the electrical company.

27 (8) The commission shall adopt rules for the enforcement of this
28 section with respect to electrical companies and adopt procedural rules
29 for approving costs incurred by an electrical company under subsection
30 (4) of this section.

31 (9) This section does not apply to a long-term financial commitment
32 for the purchase of coal transition power with termination dates
33 consistent with the applicable dates in RCW 80.80.040(3)(c).

34 (10) The commission shall adopt rules necessary to implement this
35 section by December 31, 2008.

36 **Sec. 105.** RCW 80.80.070 and 2007 c 307 s 9 are each amended to
37 read as follows:

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

5 (2) The governing board shall review and make a determination on
6 any long-term financial commitment by the utility, pursuant to this
7 chapter and after consultation with the department, to determine
8 whether the baseload electric generation to be supplied under that
9 long-term financial commitment complies with the greenhouse (~~gases~~)
10 gas emissions performance standard established under RCW 80.80.040. No
11 consumer-owned utility may enter into a long-term financial commitment
12 unless the baseload electric generation to be supplied under that long-
13 term financial commitment complies with the greenhouse (~~gases~~) gas
14 emissions performance standard established under RCW 80.80.040.

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

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

23 (a) Unanticipated electric system reliability needs; or (b)
24 catastrophic events or threat of significant financial harm that may
25 arise from unforeseen circumstances.

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

30 (6) For consumer-owned utilities, the auditor is responsible for
31 auditing compliance with this chapter and rules adopted under this
32 chapter that apply to those utilities and the attorney general is
33 responsible for enforcing that compliance.

34 (7) This section does not apply to long-term financial commitments
35 for the purchase of coal transition power with termination dates
36 consistent with the applicable dates in RCW 80.80.040(3)(c).

1 NEW SECTION. **Sec. 106.** A new section is added to chapter 80.80
2 RCW to read as follows:

3 (1) By January 1, 2012, the governor on behalf of the state shall
4 enter into a memorandum of agreement with the owners of a coal-fired
5 baseload facility in Washington that emitted more than one million tons
6 of greenhouse gases in calendar year 2005.

7 (2) The memorandum of agreement must:

8 (a) Incorporate by reference RCW 80.80.040, 80.80.060, and
9 80.80.070 as of the effective date of this section;

10 (b) Incorporate binding commitments to install selective
11 noncatalytic reduction pollution control technology in any coal-fired
12 generating boilers by January 1, 2013, after discussing the proper use
13 of ammonia in this technology.

14 (3)(a) The memorandum of agreement must include provisions by which
15 the facility owner will provide financial assistance:

16 (i) To the affected community for economic development and energy
17 efficiency and weatherization; and

18 (ii) For energy technologies with the potential to create
19 considerable energy, economic development, and air quality, haze, or
20 other environmental benefits.

21 (b) Except as described in (c) of this subsection, the financial
22 assistance in (a)(i) of this subsection must be in the amount of thirty
23 million dollars and the financial assistance in (a)(ii) of this
24 subsection must be in the amount of twenty-five million dollars, with
25 investments beginning January 1, 2012, and consisting of equal annual
26 investments through December 31, 2023, or until the full amount has
27 been provided. Only funds for energy efficiency and weatherization may
28 be spent prior to December 31, 2015.

29 (c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811
30 are repealed, any remaining financial assistance required by this
31 section is no longer required.

32 (4) The memorandum of agreement must:

33 (a) Specify that the investments in subsection (3) of this section
34 be held in independent accounts at an appropriate financial
35 institution; and

36 (b) Identify individuals to approve expenditures from the accounts.
37 Individuals must have relevant expertise and must include members

1 representing the community, employees at the facility, and the facility
2 owner.

3 (5) The memorandum of agreement must include a provision that
4 allows for the termination of the memorandum of agreement in the event
5 the department determines as a requirement of federal law or regulation
6 that selective catalytic reduction technology must be installed on any
7 of its boilers.

8 (6) The memorandum of agreement must include enforcement provisions
9 to ensure implementation of the agreement by the parties.

10 (7) If the memorandum of agreement is not signed by January 1,
11 2012, the governor must implement the provisions in subsection (2)(b)
12 of this section.

13 NEW SECTION. **Sec. 107.** A new section is added to chapter 80.80
14 RCW to read as follows:

15 No state agency or political subdivision of the state may adopt or
16 impose a greenhouse gas emission performance standard, or other
17 operating or financial requirement or limitation relating to greenhouse
18 gas emissions, on a coal-fired electric generation facility located in
19 Washington or upon an electric utility's long-term purchase of coal
20 transition power, that is inconsistent with or additional to the
21 provisions of RCW 80.80.040 or the memorandum of agreement entered into
22 under section 106 of this act.

23 NEW SECTION. **Sec. 108.** A new section is added to chapter 80.80
24 RCW to read as follows:

25 (1) A memorandum of agreement entered into pursuant to section 106
26 of this act may include provisions to assist in the financing of
27 emissions reductions that exceed those required by RCW 80.80.040(3)(c)
28 by providing for the recognition of such reductions in applicable state
29 policies and programs relating to greenhouse gas emissions, and by
30 encouraging and advocating for the recognition of the reductions in all
31 established and emerging emission reduction frameworks at the regional,
32 national, or international level.

33 (2) The governor may recommend actions by the legislature to
34 strengthen implementation of an agreement or a proposed agreement
35 relating to recognition of investments in early emissions reductions.

1 **Sec. 109.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
2 read as follows:

3 (1) The council shall report to the governor its recommendations as
4 to the approval or rejection of an application for certification within
5 twelve months of receipt by the council of such an application, or such
6 later time as is mutually agreed by the council and the applicant. In
7 the case of an application filed prior to December 31, 2025, for
8 certification of an energy facility proposed for construction,
9 modification, or expansion for the purpose of providing generating
10 facilities that meet the requirements of RCW 80.80.040 and are located
11 in a county with a coal-fired electric generating facility subject to
12 RCW 80.80.040(3)(c), the council shall expedite the processing of the
13 application pursuant to RCW 80.50.075 and shall report its
14 recommendations to the governor within one hundred eighty days of
15 receipt by the council of such an application, or a later time as is
16 mutually agreed by the council and the applicant. If the council
17 recommends approval of an application for certification, it shall also
18 submit a draft certification agreement with the report. The council
19 shall include conditions in the draft certification agreement to
20 implement the provisions of this chapter, including, but not limited
21 to, conditions to protect state or local governmental or community
22 interests affected by the construction or operation of the energy
23 facility, and conditions designed to recognize the purpose of laws or
24 ordinances, or rules or regulations promulgated thereunder, that are
25 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
26 amended.

27 (2)(a) Within sixty days of receipt of the council's report the
28 governor shall take one of the following actions:

29 (~~(a)~~) (i) Approve the application and execute the draft
30 certification agreement; or

31 (~~(b)~~) (ii) Reject the application; or

32 (~~(c)~~) (iii) Direct the council to reconsider certain aspects of
33 the draft certification agreement.

34 (b) The council shall reconsider such aspects of the draft
35 certification agreement by reviewing the existing record of the
36 application or, as necessary, by reopening the adjudicative proceeding
37 for the purposes of receiving additional evidence. Such
38 reconsideration shall be conducted expeditiously. The council shall

1 resubmit the draft certification to the governor incorporating any
2 amendments deemed necessary upon reconsideration. Within sixty days of
3 receipt of such draft certification agreement, the governor shall
4 either approve the application and execute the certification agreement
5 or reject the application. The certification agreement shall be
6 binding upon execution by the governor and the applicant.

7 (3) The rejection of an application for certification by the
8 governor shall be final as to that application but shall not preclude
9 submission of a subsequent application for the same site on the basis
10 of changed conditions or new information.

11 NEW SECTION. **Sec. 201.** The legislature finds that very large
12 coal-fired baseload electric generation facilities are major industrial
13 facilities whose closure, removal of structures, and site reclamation
14 requires significant planning and funding. In order to ensure that the
15 site of these facilities after closure is fully cleaned up, it is
16 necessary to require that the facility owner demonstrate during the
17 facility's operation that sufficient funding will be available for
18 closure and postclosure activities. Since the degree of cleanup
19 depends, in part, on the proposed future uses of a site, the closure
20 and postclosure requirements must consider the land use designations
21 and economic development plans of the host community. It is the intent
22 of the legislature to facilitate the transition of these facilities by
23 requiring facility decommissioning and site restoration plans that are
24 coordinated and consistent with economic development plans of affected
25 communities.

26 NEW SECTION. **Sec. 202.** (1) A facility subject to closure under
27 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of
28 this act, must provide the department of ecology with a plan for the
29 closure and postclosure of the facility at least twenty-four months
30 prior to its closure. This plan must be consistent with the rules
31 established by the energy facility site evaluation council for site
32 restoration and preservation applicable to facilities subject to a site
33 certification agreement under chapter 80.50 RCW and include but not be
34 limited to:

35 (a) A detailed estimate of the cost to implement the plan based on
36 the cost of hiring a third party to conduct all activities;

1 (b) Demonstrating financial assurance to fund the closure and
2 postclosure of the facility and providing methods by which this
3 assurance may be demonstrated;

4 (c) Methods for estimating closure costs, including full site
5 reclamation under all applicable federal and state clean-up standards;
6 and

7 (d) A decommissioning and site restoration plan that addresses
8 restoring physical topography, cleanup of all hazardous substances on
9 the site, potential future uses of the site following restoration, and
10 coordination with local and community plans for economic development in
11 the vicinity of the site.

12 (2) All cost estimates in the plan must be in current dollars and
13 may not include a net present value adjustment or offsets for salvage
14 value of wastes or other property.

15 (3) Adoption of the plan and significant revisions to the plan must
16 be approved by the department of ecology.

17 NEW SECTION. **Sec. 203.** (1) A facility subject to closure under
18 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of
19 this act, must guarantee funds are available to perform all activities
20 specified in the decommissioning plan developed under section 202 of
21 this act. The amount must equal the cost estimates specified in the
22 decommissioning plan and must be updated annually for inflation. All
23 guarantees under this section must be assumed by any successor owner,
24 parent company, or holding company.

25 (2) The guarantee required under subsection (1) of this section may
26 be accomplished by letter of credit, surety bond, or other means
27 acceptable to the department of ecology.

28 (3) The issuing institution of the letter of credit must be an
29 entity that has the authority to issue letters of credit and whose
30 letter of credit operations are regulated by a federal or state agency.

31 (4) A qualifying facility that uses a letter of credit to satisfy
32 the requirements of this act must also establish a standby trust fund
33 as a means to hold any funds issued from the letter of credit. Under
34 the terms of the letter of credit, all amounts paid pursuant to a draft
35 from the department of ecology must be deposited by the issuing
36 institution directly into the standby trust fund in accordance with

1 instructions from the department of ecology. This standby trust fund
2 must be approved by the department of ecology.

3 (5) The letter of credit must be irrevocable and issued for a
4 period of at least one year. The letter of credit must provide that
5 the expiration date will be automatically extended for a period of at
6 least one year unless, at least one hundred twenty days before the
7 current expiration date, the issuing institution notifies both the
8 qualifying facility and the department of ecology of a decision not to
9 extend the expiration date. Under the terms of the letter of credit,
10 the one hundred twenty days will begin on the date when both the
11 qualifying plant and the department of ecology have received the
12 notice, as evidenced by certified mail return receipts or by overnight
13 courier delivery receipts.

14 (6) If the qualifying facility does not establish an alternative
15 method of guaranteeing decommissioning funds are available within
16 ninety days after receipt by both the qualifying facility plant and the
17 department of ecology of a notice from the issuing institution that it
18 has decided not to extend the letter of credit beyond the current
19 expiration date, the department of ecology must draw on the letter of
20 credit. The department of ecology must approve any replacement or
21 substitute guarantee method before the expiration of the ninety-day
22 period.

23 (7) If a qualifying facility elects to use a letter of credit as
24 the sole method for guaranteeing decommissioning funds are available,
25 the face value of the letter of credit must meet or exceed the current
26 inflation-adjusted cost estimate.

27 (8) A qualifying facility must adjust the decommissioning costs and
28 financial guarantees annually for inflation and may use an amendment to
29 increase the face value of a letter of credit each year to account for
30 this inflation. A qualifying facility is not required to obtain a new
31 letter of credit to cover annual inflation adjustments.

32 NEW SECTION. **Sec. 204.** Sections 201 through 203 of this act
33 constitute a new chapter in Title 80 RCW.

34 NEW SECTION. **Sec. 301.** It is in the public interest to assist
35 local communities in which very large energy generating facilities may

1 be closed, in order to plan for future economic uses of the site and in
2 the community surrounding the site.

3 **Sec. 302.** RCW 43.160.076 and 2008 c 327 s 8 are each amended to
4 read as follows:

5 (1) Except as authorized to the contrary under subsection (2) of
6 this section, from all funds available to the board for financial
7 assistance in a biennium under this chapter, the board shall approve at
8 least seventy-five percent of the first twenty million dollars of funds
9 available and at least fifty percent of any additional funds for
10 financial assistance for projects in rural counties.

11 (2) If at any time during the last six months of a biennium the
12 board finds that the actual and anticipated applications for qualified
13 projects in rural counties are clearly insufficient to use up the
14 allocations under subsection (1) of this section, then the board shall
15 estimate the amount of the insufficiency and during the remainder of
16 the biennium may use that amount of the allocation for financial
17 assistance to projects not located in rural counties.

18 (3) The board shall solicit qualifying projects to plan, design,
19 and construct public facilities needed to attract new industrial and
20 commercial activities in areas impacted by the closure or potential
21 closure of large coal-fired electric generation facilities, which for
22 the purposes of this section means a facility that emitted more than
23 one million tons of greenhouse gases in calendar year 2005. The
24 projects should be consistent with any applicable plans for major
25 industrial activity on lands formerly used or designated for surface
26 coal mining and supporting uses under RCW 36.70A.368. When the board
27 receives timely and eligible project applications from a political
28 subdivision of the state for financial assistance for such projects,
29 the board from available funds shall provide a priority for funding
30 projects at the following levels:

31 (a) For the 2011-2013 biennium, at least two hundred fifty thousand
32 dollars;

33 (b) For the 2013-2015 biennium, at least two hundred fifty thousand
34 dollars;

35 (c) For the 2015-2017 biennium, at least one million dollars;

36 (d) For the 2017-2019 biennium, at least one million dollars;

37 (e) For the 2019-2021 biennium, at least two million dollars; and

1 (f) For the 2021-2023 biennium, at least two million dollars.

2 NEW SECTION. Sec. 303. A new section is added to chapter 43.155
3 RCW to read as follows:

4 The board shall solicit qualifying projects to plan, design, and
5 construct public works projects needed to attract new industrial and
6 commercial activities in areas impacted by the closure or potential
7 closure of large coal-fired electric generation facilities, which for
8 the purposes of this section means a facility that emitted more than
9 one million tons of greenhouse gases in calendar year 2005. The
10 projects should be consistent with any applicable plans for major
11 industrial activity on lands formerly used or designated for surface
12 coal mining and supporting uses under RCW 36.70A.368. When the board
13 receives timely and eligible project applications from a political
14 subdivision of the state for financial assistance for such projects,
15 the board from available funds shall provide a priority for funding
16 projects at the following levels:

17 (1) For the 2011-2013 biennium, at least two hundred fifty thousand
18 dollars;

19 (2) For the 2013-2015 biennium, at least two hundred fifty thousand
20 dollars;

21 (3) For the 2015-2017 biennium, at least one million dollars;

22 (4) For the 2017-2019 biennium, at least one million dollars;

23 (5) For the 2019-2021 biennium, at least two million dollars; and

24 (6) For the 2021-2023 biennium, at least two million dollars.

25 NEW SECTION. Sec. 304. A new section is added to chapter 80.80
26 RCW to read as follows:

27 The legislature finds that an electrical company's acquisition of
28 coal transition power helps to achieve the state's greenhouse gas
29 emission reduction goals by effecting an orderly transition to cleaner
30 fuels and supports the state's public policy.

31 NEW SECTION. Sec. 305. A new section is added to chapter 80.04
32 RCW to read as follows:

33 (1) On the petition of an electrical company, the commission shall
34 approve or disapprove a purchase power agreement for acquisition of
35 coal transition power, as defined in RCW 80.80.010, and the recovery of

1 related acquisition costs. No agreement for an electrical company's
2 acquisition of coal transition power takes effect until it is approved
3 by the commission.

4 (2) When a petition is filed, the commission shall provide notice
5 to the public and potentially affected parties and expedite the hearing
6 of that petition. The hearing of such a petition is not considered a
7 general rate case. However, the commission may require the utility to
8 file supporting testimony and exhibits. An administrative law judge of
9 the commission may enter an initial order including findings of fact
10 and conclusions of law, as provided in RCW 80.01.060(3). The
11 commission shall issue a final order that approves or disapproves the
12 acquisition of coal transition power within one hundred eighty days
13 after an electrical company files the petition.

14 (3) The commission must approve the acquisition of coal transition
15 power if it determines the resource is needed by the electrical company
16 to serve its ratepayers and the resource meets the need in a cost-
17 effective manner as determined under the lowest reasonable cost
18 resource standards under chapter 19.280 RCW. As part of these
19 determinations, the commission shall consider, among other factors:

20 (a) The long-term economic benefit to the electrical company and
21 its ratepayers of such a long-term purchase; and

22 (b) The environmental benefits attributable to the orderly
23 transition away from coal-fired electric generation power.

24 (4) If the commission has not issued a final order within one
25 hundred eighty days from the date the petition is filed, or if the
26 commission disapproves the petition, the agreement for purchase of coal
27 transition power is null and void. In the event the commission
28 approves the agreement upon conditions other than those set forth in
29 the petition, the electrical company has the right to reject the
30 agreement.

31 (5) Upon commission approval of an electrical company's acquisition
32 of coal transition power in accordance with this section, the
33 electrical company is allowed to earn its equity component of its
34 authorized rate of return in the same manner as if it had purchased or
35 built an equivalent plant plus the cost of the coal transition power
36 contract. For purposes of this section, the initial value of an
37 equivalent plant is a purchased or self-built electric generation plant
38 with equivalent capacity costs as compared to the electrical company's

1 integrated resource plan in effect at the time the petition is filed.
2 The equivalent plant determined in the approval process will be
3 amortized on a straight line calculation over the life of the coal
4 transition power contract for the determination of the equity return in
5 future proceedings. This recovery must be determined and approved in
6 the process set forth in subsections (1) and (2) of this section.

7 (6) An electrical company that purchases coal transition power, as
8 defined in RCW 80.80.010, under an agreement approved by the commission
9 pursuant to this section, may acquire other flexible capacity
10 resources, including for the purpose of integrating renewable
11 resources, and the purchase of coal transition power does not prohibit
12 the electrical company from acquiring other flexible capacity
13 resources. The commission shall not include the electric company's
14 purchase of coal transition power when considering the electrical
15 company's purchase of other flexible capacity resources.

16 **Sec. 306.** RCW 19.280.020 and 2009 c 565 s 19 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.

20 (1) "Commission" means the utilities and transportation commission.

21 (2) "Conservation and efficiency resources" means any reduction in
22 electric power consumption that results from increases in the
23 efficiency of energy use, production, transmission, or distribution.

24 (3) "Consumer-owned utility" includes a municipal electric utility
25 formed under Title 35 RCW, a public utility district formed under Title
26 54 RCW, an irrigation district formed under chapter 87.03 RCW, a
27 cooperative formed under chapter 23.86 RCW, a mutual corporation or
28 association formed under chapter 24.06 RCW, a port district formed
29 under Title 53 RCW, or a water-sewer district formed under Title 57
30 RCW, that is engaged in the business of distributing electricity to one
31 or more retail electric customers in the state.

32 (4) "Department" means the department of commerce.

33 (5) "Electric utility" means a consumer-owned or investor-owned
34 utility.

35 (6) "Full requirements customer" means an electric utility that
36 relies on the Bonneville power administration for all power needed to

1 supply its total load requirement other than that served by
2 nondispatchable generating resources totaling no more than six
3 megawatts or renewable resources.

4 (7) "Governing body" means the elected board of directors, city
5 council, commissioners, or board of any consumer-owned utility.

6 (8) "High efficiency cogeneration" means the sequential production
7 of electricity and useful thermal energy from a common fuel source,
8 where, under normal operating conditions, the facility has a useful
9 thermal energy output of no less than thirty-three percent of the total
10 energy output.

11 (9) "Integrated resource plan" means an analysis describing the mix
12 of generating resources and conservation and efficiency resources that
13 will meet current and projected needs at the lowest reasonable cost to
14 the utility and its ratepayers and that complies with the requirements
15 specified in RCW 19.280.030(1).

16 (10) "Investor-owned utility" means a corporation owned by
17 investors that meets the definition in RCW 80.04.010 and is engaged in
18 distributing electricity to more than one retail electric customer in
19 the state.

20 (11) "Lowest reasonable cost" means the lowest cost mix of
21 generating resources and conservation and efficiency resources
22 determined through a detailed and consistent analysis of a wide range
23 of commercially available resources. At a minimum, this analysis must
24 consider resource cost, market-volatility risks, demand-side resource
25 uncertainties, resource dispatchability, resource effect on system
26 operation, the risks imposed on the utility and its ratepayers, public
27 policies regarding resource preference adopted by Washington state or
28 the federal government, and the cost of risks associated with
29 environmental effects including emissions of carbon dioxide. The
30 analysis also must consider public policies adopted by Washington state
31 to reduce greenhouse gases from thermal electric generation facilities
32 in the long term by temporarily exempting certain of those facilities
33 from the provisions of RCW 80.80.060 and 80.80.070.

34 (12) "Plan" means either an "integrated resource plan" or a
35 "resource plan."

36 (13) "Renewable resources" means electricity generation facilities
37 fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal
38 energy; (e) landfill gas; (f) biomass energy utilizing animal waste,

1 solid organic fuels from wood, forest, or field residues or dedicated
2 energy crops that do not include wood pieces that have been treated
3 with chemical preservatives such as creosote, pentachlorophenol, or
4 copper-chrome-arsenic; (g) by-products of pulping or wood manufacturing
5 processes, including but not limited to bark, wood chips, sawdust, and
6 lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal
7 power; or (i) gas from sewage treatment facilities.

8 (14) "Resource plan" means an assessment that estimates electricity
9 loads and resources over a defined period of time and complies with the
10 requirements in RCW 19.280.030(2).

11 **Sec. 307.** RCW 19.280.030 and 2006 c 195 s 3 are each amended to
12 read as follows:

13 Each electric utility must develop a plan consistent with this
14 section.

15 (1) Utilities with more than twenty-five thousand customers that
16 are not full requirements customers shall develop or update an
17 integrated resource plan by September 1, 2008. At a minimum, progress
18 reports reflecting changing conditions and the progress of the
19 integrated resource plan must be produced every two years thereafter.
20 An updated integrated resource plan must be developed at least every
21 four years subsequent to the 2008 integrated resource plan. The
22 integrated resource plan, at a minimum, must include:

23 (a) A range of forecasts, for at least the next ten years, of
24 projected customer demand which takes into account econometric data and
25 customer usage;

26 (b) An assessment of commercially available conservation and
27 efficiency resources. Such assessment may include, as appropriate,
28 high efficiency cogeneration, demand response and load management
29 programs, and currently employed and new policies and programs needed
30 to obtain the conservation and efficiency resources;

31 (c) An assessment of commercially available, utility scale
32 renewable and nonrenewable generating technologies including a
33 comparison of the benefits and risks of purchasing power from existing
34 resources or building new resources;

35 (d) A comparative evaluation of renewable and nonrenewable
36 generating resources, including transmission and distribution delivery

1 costs, and conservation and efficiency resources using "lowest
2 reasonable cost" as a criterion;

3 (e) The integration of the demand forecasts and resource
4 evaluations into a long-range assessment describing the mix of supply
5 side generating resources and conservation and efficiency resources
6 that will meet current and projected needs at the lowest reasonable
7 cost and risk to the utility and its ratepayers; and

8 (f) A short-term plan identifying the specific actions to be taken
9 by the utility consistent with the long-range integrated resource plan.

10 (2) All other utilities may elect to develop a full integrated
11 resource plan as set forth in subsection (1) of this section or, at a
12 minimum, shall develop a resource plan that:

13 (a) Estimates loads for the next five and ten years;

14 (b) Enumerates the resources that will be maintained and/or
15 acquired to serve those loads; and

16 (c) Explains why the resources in (b) of this subsection were
17 chosen and, if the resources chosen are not renewable resources or
18 conservation and efficiency resources, why such a decision was made.

19 (3) An electric utility that is required to develop a resource plan
20 under this section must complete its initial plan by September 1, 2008.

21 (4) Resource plans developed under this section must be updated on
22 a regular basis, at a minimum on intervals of two years.

23 (5) Plans shall not be a basis to bring legal action against
24 electric utilities.

25 (6) Each electric utility shall publish its final plan either as
26 part of an annual report or as a separate document available to the
27 public. The report may be in an electronic form.

28 NEW SECTION. **Sec. 308.** No civil liability may be imposed by any
29 court on the state, its officers, employees, instrumentalities, or
30 subdivisions under section 101, 201, or 301 of this act.

31 NEW SECTION. **Sec. 309.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected."

ADOPTED AS AMENDED 03/05/2011

1 On page 1, line 1 of the title, after "facilities;" strike the
2 remainder of the title and insert "amending RCW 80.80.040, 80.80.070,
3 80.50.100, 43.160.076, 19.280.020, and 19.280.030; reenacting and
4 amending RCW 80.80.010 and 80.80.060; adding new sections to chapter
5 80.80 RCW; adding a new section to chapter 43.155 RCW; adding a new
6 section to chapter 80.04 RCW; adding a new chapter to Title 80 RCW; and
7 creating new sections."

EFFECT: Revises "coal transition" power definition to align with the new timelines in the amendment for compliance with the state's emission performance standard (EPS).

The EPS compliance timeline will be specified in statute (rather than left to a range of dates as in the Ways and Means substitute):

One boiler must meet the EPS by December 2020;

The other boiler must meet the EPS by December 2025.

The EPS requirements do not apply if the department of ecology determines that a specified (and more costly) type of nitrogen oxide pollution control technology -- called "selective catalytic reduction" or SCR -- is required by federal law to be installed on either boiler.

The governor must enter a memorandum of agreement (MOA) by January 2012 with the facility owner that includes binding commitments to:

Meet the EPS timelines set in statute;

Install "selective noncatalytic reduction" (SNCR) pollution controls;

Provide funding for community economic mitigation and clean energy technology development (totaling \$55 million over 12 years).

The MOA will terminate if SCR pollution control technology installation at the facility is required by federal law.

A "safe harbor" commitment is made in statute against any additional state-imposed greenhouse gas emission limits at the facility.

An exception is made in current law so that Washington utilities, through long-term power purchase agreements (PPA), may buy coal-fired electricity from a Washington facility.

The expedited energy facility site evaluation council (EFSEC) processing of siting review will apply to any application for new generation meeting the EPS standard where the facility will be sited in the same county as the coal-fired electric generating facility.

Ecology must use the facility decommissioning standards in EFSEC's

rules when reviewing the decommissioning plan for the Centralia facility.

The striking amendment retains the community economic revitalization board and public works trust fund allocations for economic redevelopment infrastructure over six biennia, totaling \$13 million.

The governor-appointed transition advisory board is deleted from the bill.

A six-month deadline is established for the UTC to complete rate review proceedings related to acquisition of coal transition power.

In a utilities and transportation commission (UTC) rate proceeding regarding a purchase agreement for coal transition power, a utility may earn its equity component of its authorized rate of return in the same manner as if it had built an equivalent plant, plus the power purchase agreement.

Integrated resource planning (IRP) statutes are amended to include consideration of the state's greenhouse gas emission reduction policies in the "lowest reasonable cost" analysis, as well as considering the relative benefits and risks of purchasing power from existing resources or building new generating resources.

--- END ---