H-0419.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1325**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Shea, Scott, Taylor, G. Hunt, Condotta, and McCaslin

AN ACT Relating to reevaluating the delegation of authority to state agencies in regards to programs that address greenhouse gas emissions; amending RCW 70.235.020, 70.235.040, 70.235.050, 70.235.060, 70.235.070, 70.120A.010, 70.120A.050, 70.94.151, 70.94.161, 80.80.040, 80.80.080, 47.01.440, 19.27A.020, and 19.27A.150; adding a new chapter to Title 70 RCW; and repealing RCW 70.235.030 and 80.80.030.

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

NEW SECTION. **Sec.**  (1) The legislature finds that state, regional, or federal programs designed to propose or implement a cap and trade system, regulate motor vehicle fuel economy, or otherwise address greenhouse gas emissions would have a substantial effect on the economy of the state of Washington and the livelihood of all Washingtonians.

(2) The legislature further finds that proper procedural safeguards to control arbitrary administrative action and the abuse of discretionary power at the administrative level do not currently exist in this area as necessary to protect the interests of the people of Washington. As such, it is the intent of the legislature to expressly limit any delegations to its various administrative agencies in regards to programs designed to implement a cap and trade system, regulate motor vehicle fuel economy, or otherwise address greenhouse gas emissions and to create a mechanism whereby the legislature can adequately fulfill its constitutional duty to ensure oversight of administrative action in this important regulatory area.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Greenhouse gas" means carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbon, or perfluorocarbon.

(2) "Western climate initiative" means the process that was initiated in February 2007 by the governors of Arizona, California, New Mexico, Oregon, and Washington to evaluate and implement ways to reduce their states' emissions of greenhouse gases.

NEW SECTION. **Sec.**  (1) No state agency may implement a cap and trade system, regulate motor vehicle fuel economy, regulate the carbon content of transportation fuels, take actions related to the implementation of a carbon tax, or otherwise address greenhouse gas emissions without direct and specific legislative authorization to conduct the activity.

(2) To qualify as direct and specific legislative authorization, the authorization must take the form of a section of substantive law or provision in a budget included as a session law published by the statute law committee in the year 2015 or later. Sections of legislation vetoed by the governor do not qualify as legislative authorization.

(3) To assist the legislature with evaluating agency activity in this area, state agencies may formally request legislation or budget items related to addressing greenhouse gas emissions. Any such request of the legislature from the executive branch must be accompanied by a comprehensive assessment of the fiscal and regulatory impacts of their proposal on Washington's budget, economy, consumers, families, and both large and small businesses.

NEW SECTION. **Sec.**  (1)(a) Any state agency either in the process of, or planning for, the implementation of a cap and trade system, regulation of motor vehicle fuel economy, regulation of the carbon content of transportation fuels, administration of a tax on greenhouse gases, or otherwise addressing greenhouse gas emissions as of the effective date of this section must suspend all activities related to those efforts, including the enforcing or administrating of any existing rules, until the conditions of section 3 of this act are satisfied.

(b) This section includes, but is not limited to, the implementation of chapter 70.120A RCW and any participation in the western climate initiative or other multijurisdictional partnerships to develop greenhouse gas regulations.

(2) Any state agency that must suspend an activity under this section or that has initiated or completed a related rule-making process within three months of either the effective date of this section or the release of any recommendations by the participants in the western climate initiative must provide a written report to the legislature, consistent with RCW 43.01.036, and to the governor, on the related activity. The report must include a detailed description of the affected program, a comprehensive analysis of the fiscal and regulatory impacts of the proposed program on Washington's budget, economy, consumers, families, and both small and large businesses, and the contents of any proposed legislation that could authorize the affected program for consideration under section 3 of this act.

NEW SECTION. **Sec.**  Any federal law, rule, order, or other act by the federal government violating the provisions of this chapter is declared to be invalid in this state, is not recognized by and is specifically rejected by this state, and is considered as null and void and of no effect in this state.

**Sec.**  RCW 70.235.020 and 2008 c 14 s 3 are each amended to read as follows:

(1)(a) Except as provided in section 4 of this act, the state shall limit emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels;

(ii) By 2035, reduce overall emissions of greenhouse gases in the state to twenty-five percent below 1990 levels;

(iii) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year.

(b) By December 1, 2008, the department shall submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Except as provided in section 4 of this act, actions taken using existing statutory authority may proceed prior to approval of the greenhouse gas reduction plan.

(c) Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Except as provided in section 4 of this act, and consistent with this directive, the department shall take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70.94.151; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress.

(2) Except as provided in section 4 of this act, by December 31st of each even-numbered year beginning in 2010, the department and the department of ((~~community, trade, and economic development~~)) commerce shall report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding two years, and totals in each major source sector. The department shall ensure the reporting rules adopted under RCW 70.94.151 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.

**Sec.**  RCW 70.235.040 and 2008 c 14 s 7 are each amended to read as follows:

Except as provided in section 4 of this act, within eighteen months of the next and each successive global or national assessment of climate change science, the department shall consult with the climate impacts group at the University of Washington regarding the science on human-caused climate change and provide a report to the legislature summarizing that science and make recommendations regarding whether the greenhouse gas emissions reductions required under RCW 70.235.020 need to be updated.

**Sec.**  RCW 70.235.050 and 2009 c 519 s 2 are each amended to read as follows:

(1) Except as provided in section 4 of this act, all state agencies shall meet the statewide greenhouse gas emission limits established in RCW 70.235.020 to achieve the following, using the estimates and strategy established in subsections (2) and (3) of this section:

(a) By July 1, 2020, reduce emissions by fifteen percent from 2005 emission levels;

(b) By 2035, reduce emissions to thirty-six percent below 2005 levels; and

(c) By 2050, reduce emissions to the greater reduction of fifty-seven and one-half percent below 2005 levels, or seventy percent below the expected state government emissions that year.

(2)(a) By June 30, 2010, all state agencies shall report estimates of emissions for 2005 to the department, including 2009 levels of emissions, and projected emissions through 2035.

(b) State agencies required to report under RCW 70.94.151 must estimate emissions from methodologies recommended by the department and must be based on actual operation of those agencies. Agencies not required to report under RCW 70.94.151 shall derive emissions estimates using an emissions calculator provided by the department.

(3) By June 30, 2011, each state agency shall submit to the department a strategy to meet the requirements in subsection (1) of this section. The strategy must address employee travel activities, teleconferencing alternatives, and include existing and proposed actions, a timeline for reductions, and recommendations for budgetary and other incentives to reduce emissions, especially from employee business travel.

(4) By October 1st of each even-numbered year beginning in 2012, each state agency shall report to the department the actions taken to meet the emission reduction targets under the strategy for the preceding fiscal biennium. The department may authorize the department of ((~~general administration~~)) enterprise services to report on behalf of any state agency having fewer than five hundred full-time equivalent employees at any time during the reporting period. The department shall cooperate with the department of ((~~general administration~~)) enterprise services and the department of ((~~community, trade, and economic development~~)) commerce to develop consolidated reporting methodologies that incorporate emission reduction actions taken across all or substantially all state agencies.

(5) All state agencies shall cooperate in providing information to the department, the department of ((~~general administration~~)) enterprise services, and the department of ((~~community, trade, and economic development~~)) commerce for the purposes of this section.

(6) The governor shall designate a person as the single point of accountability for all energy and climate change initiatives within state agencies. This position must be funded from current full-time equivalent allocations without increasing budgets or staffing levels. If duties must be shifted within an agency, they must be shifted among current full-time equivalent allocations. All agencies, councils, or work groups with energy or climate change initiatives shall coordinate with this designee.

**Sec.**  RCW 70.235.060 and 2009 c 519 s 5 are each amended to read as follows:

(1) Except as provided in section 4 of this act, the department shall develop an emissions calculator to assist state agencies in estimating aggregate emissions as well as in estimating the relative emissions from different ways in carrying out activities.

(2) The department may use data such as totals of building space occupied, energy purchases and generation, motor vehicle fuel purchases and total mileage driven, and other reasonable sources of data to make these estimates. The estimates may be derived from a single methodology using these or other factors, except that for the top ten state agencies in occupied building space and vehicle miles driven, the estimates must be based upon the actual and projected operations of those agencies. The estimates may be adjusted, and reasonable estimates derived, when agencies have been created since 1990 or functions reorganized among state agencies since 1990. The estimates may incorporate projected emissions reductions that also affect state agencies under the program authorized in RCW 70.235.020 and other existing policies that will result in emissions reductions.

(3) By December 31st of each even-numbered year beginning in 2010, the department shall report to the governor and to the appropriate committees of the senate and house of representatives the total state agencies' emissions of greenhouse gases for 2005 and the preceding two years and actions taken to meet the emissions reduction targets.

**Sec.**  RCW 70.235.070 and 2009 c 519 s 9 are each amended to read as follows:

Except as provided in section 4 of this act, beginning in 2010, when distributing capital funds through competitive programs for infrastructure and economic development projects, all state agencies must consider whether the entity receiving the funds has adopted policies to reduce greenhouse gas emissions. Agencies also must consider whether the project is consistent with:

(1) The state's limits on the emissions of greenhouse gases established in RCW 70.235.020;

(2) Statewide goals to reduce annual per capita vehicle miles traveled by 2050, in accordance with RCW 47.01.440, except that the agency shall consider whether project locations in rural counties, as defined in RCW 43.160.020, will maximize the reduction of vehicle miles traveled; and

(3) Applicable federal emissions reduction requirements.

**Sec.**  RCW 70.120A.010 and 2010 c 76 s 1 are each amended to read as follows:

(1) Except as provided in section 4 of this act, pursuant to the federal clean air act, the legislature adopts the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2005, except as provided in this chapter. The department of ecology shall adopt rules to implement the emission standards of the state of California for passenger cars, light duty trucks, and medium duty passenger vehicles, and shall amend the rules from time to time, to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Sec. 7507 (section 177 of the federal clean air act). Notwithstanding other provisions of this chapter, the department of ecology shall not adopt the zero emission vehicle program regulations contained in Title 13 section 1962 of the California Code of Regulations effective January 1, 2005. During rule development, the department of ecology shall convene an advisory group composed of industry and consumer group representatives. Any proposed rules or changes to rules shall be subject to review and comment by the advisory group, prior to rule adoption. The order of adoption for the rules required in this section shall include the signature of the governor. The rules shall be effective only for those model years for which the state of Oregon has adopted the California motor vehicle emission standards. This section does not limit the department of ecology's authority to regulate motor vehicle emissions for any other class of vehicle.

(2) Motor vehicles with a model year equal to or later than the first model year for which new vehicles sold to Washington state residents are required to comply with California motor vehicle emission standards are exempt from emission inspections under chapter 70.120 RCW.

(3) The provisions of this chapter do not apply with respect to the use by a resident of this state of a motor vehicle acquired and used while the resident is a member of the armed services and is stationed outside this state pursuant to military orders.

**Sec.**  RCW 70.120A.050 and 2014 c 76 s 8 are each amended to read as follows:

(1) Except as provided in section 4 of this act, no model year 2010 or subsequent model year new passenger car, light duty truck, or medium duty passenger vehicle may be sold in Washington unless there is securely and conspicuously affixed in a clearly visible location a label on which the manufacturer clearly discloses comparative greenhouse gas emissions for that new vehicle.

(2) The label required by this section should include a greenhouse gas index or rating system that contains quantitative and graphical information presented in a continuous, easy‑to‑read scale that compares the greenhouse gas emissions from the vehicle with the average projected greenhouse gas emissions from all passenger cars, light duty trucks, and medium duty passenger vehicles of the same model year. For reference purposes, the index or rating system should also identify the greenhouse gas emissions from the vehicle model of that same model year that has the lowest greenhouse gas emissions.

(3) The index or rating system included in the label under subsection (2) of this section shall be updated as necessary to ensure that the differences in greenhouse gas emissions among vehicles are readily apparent to the consumer.

(4) An automobile manufacturer may apply to the department of ecology for approval of an alternative to the disclosure labeling requirement that is at least as effective in providing notification and disclosure of the vehicle's greenhouse gas emissions as is the labeling required by this section.

(5) A label that complies with the requirements of the California greenhouse gas vehicle labeling program shall be deemed to meet the requirements of this section and any rules adopted under this section.

(6) The department of ecology may adopt such rules as are necessary to implement this section.

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

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

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70.235.010 the department shall, except as provided in section 4 of this act, adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required under subsection (5) of this section.

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

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

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

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

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

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

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

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

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

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

(iii) Emissions of carbon dioxide associated with the complete combustion or oxidation of liquid motor vehicle fuel, special fuel, or aircraft fuel that is sold in Washington where the annual emissions associated with that combustion or oxidation equal or exceed ten thousand metric tons be reported to the department. Each person who is required to file periodic tax reports of motor vehicle fuel sales under RCW 82.36.031 or special fuel sales under RCW 82.38.150, or each distributor of aircraft fuel required to file periodic tax reports under RCW 82.42.040 must report to the department the annual emissions of carbon dioxide from the complete combustion or oxidation of the fuels listed in those reports as sold in the state of Washington. The department shall not require suppliers to use additional data to calculate greenhouse gas emissions other than the data the suppliers report to the department of licensing. The rules may allow this information to be aggregated when reported to the department. The department and the department of licensing shall enter into an interagency agreement to ensure proprietary and confidential information is protected if the departments share reported information. Any proprietary or confidential information exempt from disclosure when reported to the department of licensing is exempt from disclosure when shared by the department of licensing with the department under this provision.

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

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

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

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

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

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

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

(f) The energy facility site evaluation council shall, except as provided in section 4 of this act, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

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

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

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

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

**Sec.**  RCW 70.94.161 and 2008 c 14 s 6 are each amended to read as follows:

The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection. However, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW 70.94.030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70.98 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW 70.94.395 shall be filed with the department. Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal-fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

(i) The number of sources;

(ii) The complexity of sources; and

(iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15)(a) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1, 1993, the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

(b) All fees identified in this section shall be due and payable on March 1, 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW 70.94.161 do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) Except as provided in section 4 of this act, emissions of greenhouse gases as defined in RCW 70.235.010 must be reported as required by RCW 70.94.151. The reporting provisions of RCW 70.94.151 shall not apply to any other emissions from any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program.

**Sec.**  RCW 80.80.040 and 2011 c 180 s 103 are each amended to read as follows:

(1) Except as provided in section 4 of this act, beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

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

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

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

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

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

(c)(i) A coal-fired baseload electric generation facility in Washington that emitted more than one million tons of greenhouse gases in any calendar year prior to 2008 must comply with the lower of the following greenhouse gas emissions performance standard such that one generating boiler is in compliance by December 31, 2020, and any other generating boiler is in compliance by December 31, 2025:

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 80.80.080 and 2007 c 307 s 10 are each amended to read as follows:

Except as provided in section 4 of this act, for the purposes of RCW 80.80.040 through 80.80.080 and 80.70.020, the department, in consultation with the department of ((~~community, trade, and economic development~~)) commerce energy policy division, the energy facility site evaluation council, the commission, and the governing boards of consumer-owned utilities, shall review the greenhouse ((~~gases~~)) gas emissions performance standard established in this chapter to determine need, applicability, and effectiveness no less than every five years following July 22, 2007, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electric utilities, and report to the legislature.

**Sec.**  RCW 47.01.440 and 2011 c 171 s 103 are each amended to read as follows:

To support the implementation of RCW 47.04.280 and 47.01.078(4), the department shall adopt broad statewide goals to reduce annual per capita vehicle miles traveled by 2050 consistent with the stated goals of executive order 07-02. Consistent with these goals, the department shall:

(1) Establish the following benchmarks using a statewide baseline of seventy-five billion vehicle miles traveled less the vehicle miles traveled attributable to vehicles licensed under RCW 46.16A.455 and weighing ten thousand pounds or more, which are exempt from this section:

(a) Decrease the annual per capita vehicle miles traveled by eighteen percent by 2020;

(b) Decrease the annual per capita vehicle miles traveled by thirty percent by 2035; and

(c) Decrease the annual per capita vehicle miles traveled by fifty percent by 2050;

(2) By July 1, 2008, establish and convene a collaborative process to develop a set of tools and best practices to assist state, regional, and local entities in making progress towards the benchmarks established in subsection (1) of this section. The collaborative process must provide an opportunity for public review and comment and must:

(a) Be jointly facilitated by the department, the department of ecology, and the department of ((~~community, trade, and economic development~~)) commerce;

(b) Provide for participation from regional transportation planning organizations, the Washington state transit association, the Puget Sound clean air agency, a statewide business organization representing the sale of motor vehicles, at least one major private employer that participates in the commute trip reduction program, and other interested parties, including but not limited to parties representing diverse perspectives on issues relating to growth, development, and transportation;

(c) Identify current strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state;

(d) Identify potential new revenue options for local and regional governments to authorize to finance vehicle miles traveled reduction efforts;

(e) Provide for the development of measurement tools that can, with a high level of confidence, measure annual progress toward the benchmarks at the local, regional, and state levels, measure the effects of strategies implemented to reduce vehicle miles traveled and adequately distinguish between common travel purposes, such as moving freight or commuting to work, and measure trends of vehicle miles traveled per capita on a five-year basis;

(f) Establish a process for the department to periodically evaluate progress toward the vehicle miles traveled benchmarks, measure achieved and projected emissions reductions, and, except as provided in section 4 of this act, recommend whether the benchmarks should be adjusted to meet the state's overall goals for the reduction of greenhouse gas emissions;

(g) Estimate, except as provided in section 4 of this act, the projected reductions in greenhouse gas emissions if the benchmarks are achieved, taking into account the expected implementation of existing state and federal mandates for vehicle technology and fuels, as well as expected growth in population and vehicle travel;

(h) Examine access to public transportation for people living in areas with affordable housing to and from employment centers, and make recommendations for steps necessary to ensure that areas with affordable housing are served by adequate levels of public transportation; and

(i) By December 1, 2008, provide a report to the transportation committees of the legislature on the collaborative process and resulting recommended tools and best practices to achieve the reduction in annual per capita vehicle miles traveled goals.

(3) Included in the December 1, 2008, report to the transportation committees of the legislature, the department shall identify strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state that recognize the differing urban and rural transportation requirements.

(4) Prior to implementation of the goals in this section, the department, in consultation with the department of ((~~community, trade, and economic development~~)) commerce, cities, counties, local economic development organizations, and local and regional chambers of commerce, shall provide a report to the appropriate committees of the legislature on the anticipated impacts of the goals established in this section on the following:

(a) The economic hardship on small businesses as it relates to the ability to hire and retain workers who do not reside in the county in which they are employed;

(b) Impacts on low-income residents;

(c) Impacts on agricultural employers and their employees, especially on the migrant farmworker community;

(d) Impacts on distressed rural counties; and

(e) Impacts in counties with more than fifty percent of the land base of the county in public or tribal lands.

**Sec.**  RCW 19.27A.020 and 2010 c 271 s 304 are each amended to read as follows:

(1) The state building code council shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall, except as provided in section 4 of this act, be designed to:

(a) Construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil-fuel greenhouse gas emission homes and buildings by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall be the 2006 edition of the Washington state energy code, or as amended by rule by the council.

(5) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 2006 edition, or as amended by the council by rule.

(6)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(7) The state building code council shall consult with the department of ((~~general administration~~)) enterprise services as provided in RCW 34.05.310 prior to publication of proposed rules. The director of the department of ((~~general administration~~)) enterprise services shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(8) The state building code council shall evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.

(9) The definitions in RCW 19.27A.140 apply throughout this section.

**Sec.**  RCW 19.27A.150 and 2010 c 271 s 306 are each amended to read as follows:

(1) To the extent that funding is appropriated specifically for the purposes of this section, the department of commerce shall, except as provided in section 4 of this act, develop and implement a strategic plan for enhancing energy efficiency in and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. The strategic plan must be used to help direct the future code increases in RCW 19.27A.020, with targets for new buildings consistent with RCW 19.27A.160. The strategic plan will identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in future energy code updates and through complementary policies.

(2) The department of commerce must complete and release the strategic plan to the legislature and the council by December 31, 2010, and update the plan every three years.

(3) The strategic plan must include recommendations to the council on energy code upgrades. At a minimum, the strategic plan must:

(a) Consider development of aspirational codes separate from the state energy code that contain economically and technically feasible optional standards that could achieve higher energy efficiency for those builders that elected to follow the aspirational codes in lieu of or in addition to complying with the standards set forth in the state energy code;

(b) Determine the appropriate methodology to measure achievement of state energy code targets using the United States environmental protection agency's target finder program or equivalent methodology;

(c) Address the need for enhanced code training and enforcement;

(d) Include state strategies to support research, demonstration, and education programs designed to achieve a seventy percent reduction in annual net energy consumption as specified in RCW 19.27A.160 and enhance energy efficiency and on-site renewable energy production in buildings;

(e) Recommend incentives, education, training programs and certifications, particularly state-approved training or certification programs, joint apprenticeship programs, or labor-management partnership programs that train workers for energy-efficiency projects to ensure proposed programs are designed to increase building professionals' ability to design, construct, and operate buildings that will meet the seventy percent reduction in annual net energy consumption as specified in RCW 19.27A.160;

(f) Address barriers for utilities to serve net zero energy homes and buildings and policies to overcome those barriers;

(g) Address the limits of a prescriptive code in achieving net zero energy use homes and buildings and propose a transition to performance-based codes;

(h) Identify financial mechanisms such as tax incentives, rebates, and innovative financing to motivate energy consumers to take action to increase energy efficiency and their use of on-site renewable energy. Such incentives, rebates, or financing options may consider the role of government programs as well as utility-sponsored programs;

(i) Address the adequacy of education and technical assistance, including school curricula, technical training, and peer-to-peer exchanges for professional and trade audiences;

(j) Develop strategies to develop and install district and neighborhood-wide energy systems that help meet net zero energy use in homes and buildings;

(k) Identify costs and benefits of energy efficiency measures on residential and nonresidential construction; and

(l) Investigate methodologies and standards for the measurement of the amount of embodied energy used in building materials.

(4) The department of commerce and the council shall convene a work group with the affected parties to inform the initial development of the strategic plan.

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

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 70.235.030 (Development of a design for a regional multisector market-based system to limit and reduce emissions of greenhouse gas—Information required to be submitted to the legislature) and 2008 c 14 s 4; and

(2) RCW 80.80.030 (Achieving greenhouse gases emissions reduction goals—Submission of policy recommendations to legislature by governor) and 2007 c 307 s 4.

NEW SECTION. **Sec.**  This act may be known and cited as the Washington state energy freedom act.

NEW SECTION. **Sec.**  Sections 1 through 5 and 22 of this act constitute a new chapter in Title 70 RCW.

**--- END ---**