

# HOUSE BILL REPORT

## HB 2602

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### As Reported by House Committee On: Environment

**Title:** An act relating to updating certain standards applicable to toxic air pollutants.

**Brief Description:** Updating certain standards applicable to toxic air pollutants.

**Sponsors:** Representatives Fey, Jinkins, Sawyer, Wylie, Tarleton, Pollet and Santos.

#### **Brief History:**

##### **Committee Activity:**

Environment: 1/16/18, 1/25/18 [DP].

#### **Brief Summary of Bill**

- Directs the Department of Ecology to update its rules governing levels of certain toxic pollutants that may be emitted by new or modified sources.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** Do pass. Signed by 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

**Staff:** Jacob Lipson (786-7196) and Nate Hickner (786-7290).

#### **Background:**

Regulation of new or modified sources of air pollution in Washington is carried out primarily at the state and local level pursuant to a mix of authority conferred by the federal and state Clean Air Acts. The Washington State Department of Ecology (ECY) and seven local air pollution control authorities (local air authorities) share this responsibility.

Before constructing or modifying a source or potential source of any air contaminant in the state, individuals must receive approval through the ECY or their local air authority.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Approval to construct is granted only if all applicable state and federal requirements are met. The particular requirements may vary by type of source and industry and the particular air quality designation of the surrounding area, but always include, for example, compliance with visible emissions standards, construction/demolition standards, and other health and safety standards. Additionally, every new or modified source must be equipped with the best available control technology (BACT) for each emitted regulated pollutant.

Additionally, under state-specific regulations, if the new or modified source or potential source emits more than de minimis quantities of any one of around 400 toxic air pollutants (TAPs), other pre-construction approval requirements apply. Examples of TAPs include carbon monoxide, asbestos, ammonia, and various lead compounds. New sources of TAPs applying for permits must:

- demonstrate use of the BACT for toxics;
- quantify the amounts of TAPs emitted; and
- demonstrate that the increase in emissions of TAPs is sufficiently low to protect human health and safety from potential carcinogenic effects, toxic effects, or both.

#### Department of Ecology's Three-Tier Review Process.

The ECY, by rule, has identified the TAPs that require the additional layer of review described above. The ECY is also responsible for setting the threshold "de minimis" quantities of each TAP as well as the maximum safe emission levels for each TAP.

The ECY has adopted a three-tiered approach to carrying out this responsibility.

#### First Tier.

The ECY, by rule, has established a general schedule that includes a list of air pollutants designated as TAPs, de minimis values of each TAP, and threshold safe concentration standards, Acceptable Source Impact Levels (ASILs), for each TAP.

A person seeking to construct or modify a source of TAPs must submit an application to the ECY or the local air authority. If an applicant demonstrates that the proposed emissions of TAPs are at or below the ASIL for each TAP, then the authority may approve the notice of construction application.

If the applicant cannot demonstrate that TAPs emitted by the new or modified source are at or below the ASILs for each TAP, the applicant may instead seek approval through the "second tier" and/or "third tier" review.

#### Second Tier.

After a pre-application conference, an applicant seeking second tier review must submit a detailed health risk report and a \$10,000 fee to the ECY, as well as comply with other requirements. A public hearing may be held. The ECY may approve the project if it determines from information submitted by the applicant that the increased emissions are not likely to result in an increased cancer risk of more than one in 100,000 and determines that the non-cancer hazard is found to be acceptable.

#### Third Tier.

If the applicant cannot prove that the proposed TAP will be below ASIL levels, the applicant may make a third tier review petition concurrently with the second tier review petition. The materials required for a third tier review are the same as for a second tier review. The ECY may approve a project under third-tier review if it determines that approval of the project will result in a greater environmental benefit to Washington.

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**Summary of Bill:**

The ECY is directed to review and update the rules that establish ASILs applicable to new and modified sources of TAPs. The ECY may do so in phases, with prioritization given to specific TAPs known to be in widespread commercial or industrial use, or that are known to pose comparatively high public health risks. The ECY may ignore and decline to review or update the acceptable source impact levels for individual TAPs. The ECY is not required to adopt new acceptable source impact levels for TAPs it evaluates, but the ECY must adopt new impact levels for at least a subset of TAPs by January 1, 2021.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Toxic air pollutants threaten public health. The state must keep current on the health and cancer risks presented by various air toxins. Residents are concerned with local air quality, especially when new emissions sources are proposed. When the state does not have up-to-date information, the public speculates or makes assumptions about what a proposed source's effects will be. It is important to have accurate information in place for these regulations that minimize, but do not prohibit, certain toxic emissions. This bill presents an opportunity for the ECY to carefully, scientifically, and, using peer-reviewed science, review which particular toxins might be of particular concern and which actions may be necessary.

(Opposed) Often, small businesses are the ones that have to deal with local air quality agencies. A business seeking to expand or install new equipment must comply with Maximum Achievable Control Technology requirements. Under the rules in place, these businesses may be confronted with the regulatory need to install expensive equipment such as Regenerative Thermal Oxidizers. A small business may technically meet the financial feasibility determination in the eyes of the Puget Sound Clean Air Agency, but still be extremely burdened by these requirements. If small businesses have to spend more money to meet these requirements, they may be disincentivized to do that.

**Persons Testifying:** (In support) Representative Fey, prime sponsor; Stu Clark, Department of Ecology; and Craig Kenworthy, Puget Sound Clean Air Agency.

(Opposed) Mary Catherine McAleer, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.