
HOUSE BILL 2769

State of Washington

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By Representatives Maycumber and Haler

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1 AN ACT Relating to regulatory relief from greenhouse gas
2 emissions rules for producers of agricultural commodities and food
3 products; amending RCW 70.94.151 and 70.94.331; adding a new section
4 to chapter 70.94 RCW; and adding a new section to chapter 43.31 RCW.

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

6 **Sec. 1.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to
7 read as follows:

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

19 (2) Except as provided in subsection (3) of this section, any
20 person operating or responsible for the operation of air contaminant
21 sources of any class for which the ordinances, resolutions, rules or

1 regulations of the department or board of the authority, require
2 registration or reporting shall register therewith and make reports
3 containing information as may be required by such department or board
4 concerning location, size and height of contaminant outlets,
5 processes employed, nature of the contaminant emission and such other
6 information as is relevant to air pollution and available or
7 reasonably capable of being assembled. In the case of emissions of
8 greenhouse gases as defined in RCW 70.235.010 the department shall
9 adopt rules requiring reporting of those emissions. The department or
10 board may require that such registration or reporting be accompanied
11 by a fee, and may determine the amount of such fee for such class or
12 classes: PROVIDED, That the amount of the fee shall only be to
13 compensate for the costs of administering such registration or
14 reporting program which shall be defined as initial registration and
15 annual or other periodic reports from the source owner providing
16 information directly related to air pollution registration, on-site
17 inspections necessary to verify compliance with registration
18 requirements, data storage and retrieval systems necessary for
19 support of the registration program, emission inventory reports and
20 emission reduction credits computed from information provided by
21 sources pursuant to registration program requirements, staff review,
22 including engineering or other reliable analysis for accuracy and
23 currentness, of information provided by sources pursuant to
24 registration program requirements, clerical and other office support
25 provided in direct furtherance of the registration program, and
26 administrative support provided in directly carrying out the
27 registration program: PROVIDED FURTHER, That any such registration
28 made with either the board or the department shall preclude a further
29 registration and reporting with any other board or the department,
30 except that emissions of greenhouse gases as defined in RCW
31 70.235.010 must be reported as required under subsection (5) of this
32 section.

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

37 (3) If a registration or report has been filed for a grain
38 warehouse or grain elevator as required under this section,
39 registration, reporting, or a registration program fee shall not,
40 after January 1, 1997, again be required under this section for the

1 warehouse or elevator unless the capacity of the warehouse or
2 elevator as listed as part of the license issued for the facility has
3 been increased since the date the registration or reporting was last
4 made. If the capacity of the warehouse or elevator listed as part of
5 the license is increased, any registration or reporting required for
6 the warehouse or elevator under this section must be made by the date
7 the warehouse or elevator receives grain from the first harvest
8 season that occurs after the increase in its capacity is listed in
9 the license.

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

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

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

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

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

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

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

38 (ii) Reporting will start in 2010 for 2009 emissions. Each annual
39 report must include emissions data for the preceding calendar year
40 and must be submitted to the department by October 31st of the year

1 in which the report is due. However, starting in 2011, a person who
2 is required to report greenhouse gas emissions to the United States
3 environmental protection agency under 40 C.F.R. Part 98, as adopted
4 on September 22, 2009, must submit the report required under this
5 section to the department concurrent with the submission to the
6 United States environmental protection agency. Except as otherwise
7 provided in this section, the data for emissions in Washington and
8 any corrections thereto that are reported to the United States
9 environmental protection agency must be the emissions data reported
10 to the department; and

11 (iii) Emissions of carbon dioxide associated with the complete
12 combustion or oxidation of liquid motor vehicle fuel, special fuel,
13 or aircraft fuel that is sold in Washington where the annual
14 emissions associated with that combustion or oxidation equal or
15 exceed ten thousand metric tons be reported to the department. Each
16 person who is required to file periodic tax reports of motor vehicle
17 fuel sales under RCW 82.36.031 or special fuel sales under RCW
18 82.38.150, or each distributor of aircraft fuel required to file
19 periodic tax reports under RCW 82.42.040 must report to the
20 department the annual emissions of carbon dioxide from the complete
21 combustion or oxidation of the fuels listed in those reports as sold
22 in the state of Washington. The department shall not require
23 suppliers to use additional data to calculate greenhouse gas
24 emissions other than the data the suppliers report to the department
25 of licensing. The rules may allow this information to be aggregated
26 when reported to the department. The department and the department of
27 licensing shall enter into an interagency agreement to ensure
28 proprietary and confidential information is protected if the
29 departments share reported information. Any proprietary or
30 confidential information exempt from disclosure when reported to the
31 department of licensing is exempt from disclosure when shared by the
32 department of licensing with the department under this provision.

33 (b)(i) Except as otherwise provided in this subsection, the rules
34 adopted by the department under (a) of this subsection must be
35 consistent with the regulations adopted by the United States
36 environmental protection agency in 40 C.F.R. Part 98 on September 22,
37 2009.

38 (ii) The department may by rule include additional gases to the
39 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
40 been designated as a greenhouse gas by the United States congress or

1 by the United States environmental protection agency. Prior to
2 including additional gases to the definition of "greenhouse gas" in
3 RCW 70.235.010, the department shall notify the appropriate
4 committees of the legislature. Decisions to amend the rule to include
5 additional gases must be made prior to December 1st of any year and
6 the amended rule may not take effect before the end of the regular
7 legislative session in the next year.

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

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

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

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

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

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

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

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

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

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

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

30 (6) Any rule regulating greenhouse gas emissions of producers of
31 agricultural commodities or food products must be consistent with
32 section 3 of this act. This subsection does not provide authority to
33 regulate greenhouse gas emissions by rule.

34 **Sec. 2.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
35 read as follows:

36 (1) The department shall have all the powers as provided in RCW
37 70.94.141.

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

4 (a) Adopt rules establishing air quality objectives and air
5 quality standards;

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

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

39 (3) The air quality standards and emission standards may be for
40 the state as a whole or may vary from area to area or source to

1 source, except that emission performance standards for new woodstoves
2 and opacity levels for residential solid fuel burning devices shall
3 be statewide, as may be appropriate to facilitate the accomplishment
4 of the objectives of this chapter and to take necessary or desirable
5 account of varying local conditions of population concentration, the
6 existence of actual or reasonably foreseeable air pollution,
7 topographic and meteorologic conditions and other pertinent
8 variables.

9 (4) The department is directed to cooperate with the appropriate
10 agencies of the United States or other states or any interstate
11 agencies or international agencies with respect to the control of air
12 pollution and air contamination, or for the formulation for the
13 submission to the legislature of interstate air pollution control
14 compacts or agreements.

15 (5) The department is directed to conduct or cause to be
16 conducted a continuous surveillance program to monitor the quality of
17 the ambient atmosphere as to concentrations and movements of air
18 contaminants and conduct or cause to be conducted a program to
19 determine the quantity of emissions to the atmosphere.

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

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

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

34 (9) The department shall establish rules requiring sources or
35 source categories to apply reasonable and available control methods.
36 Such rules shall apply to those sources or source categories that
37 individually or collectively contribute the majority of statewide air
38 emissions of each regulated pollutant. The department shall review,
39 and if necessary, update its rules every five years to ensure
40 consistency with current reasonable and available control methods.

1 The department shall have adopted rules required under this
2 subsection for all sources by July 1, 1996.

3 (10) Any rule regulating greenhouse gas emissions of producers of
4 agricultural commodities or food products must be consistent with
5 section 3 of this act. This subsection does not provide authority to
6 regulate greenhouse gas emissions by rule.

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

10 NEW SECTION. Sec. 3. A new section is added to chapter 70.94
11 RCW to read as follows:

12 (1) This section does not provide authority to regulate
13 greenhouse gas emissions by rule.

14 (2) If a rule is created that regulates greenhouse gas emissions
15 of agricultural activities and food processing, the producers of
16 agricultural commodities as defined in RCW 15.66.010 or producers of
17 food products as defined in RCW 69.04.008 may request the department
18 to calculate greenhouse gas emissions in a comparison of a specified
19 competitor's agricultural commodity or food product imported from
20 out-of-state against the same type of agricultural commodity if
21 obtained in the state. This calculation will include the gross
22 estimated carbon emissions, including transportation of the
23 agricultural commodity or food product to the state; the estimated
24 difference in carbon usage if the agricultural commodity or food
25 product was obtained within the state versus the comparable out-of-
26 state agricultural commodity or food product, including
27 transportation. Factors in the calculation may include labor,
28 business and occupation taxes, energy use of vehicles involved in
29 production or transport, and clean air credit purchasing.

30 (3) If the department determines that the greenhouse gas
31 emissions from the out-of-state produced agricultural commodity or
32 food product exceed the amount of greenhouse gas emissions of
33 producing the in-state agricultural commodity or food product, the
34 department must provide regulatory relief for the producer of the
35 agricultural commodity or food product to assure that the producer
36 remains competitive in the global market. This includes providing an
37 exemption from any rules addressing greenhouse gas emissions,
38 including any that limit emissions, price emissions, require purchase

1 of credits, or add additional costs to the production of the
2 agricultural commodity or food product.

3 (4) The producer of the agricultural commodity or food product
4 may provide the department with a comparison from a reputable
5 greenhouse gas emissions expert requesting regulatory relief in lieu
6 of requesting the department to make the calculation in subsection
7 (2) of this section.

8 (5) The department must report what regulatory relief the
9 department granted to producers pursuant to this section to the
10 appropriate committees of the legislature by November 30th of each
11 year.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.31
13 RCW to read as follows:

14 The department in consultation with the department of ecology,
15 transportation-industry experts, and other business related interests
16 must create a greenhouse gas emissions shipping modeling tool that
17 allows a producer of a product to estimate the amount of greenhouse
18 gas emissions produced when importing products and goods from out-of-
19 state locations. The model may address more than transportation
20 emissions, including differences in energy sources, environmental
21 regulations, and whether the product was created using emission
22 reducing technology that is comparable to state requirements.

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