

**SSB 6628 - S AMD 1046**  
By Senator Carlyle

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that in *Association*  
4 *of Washington Business v. Washington Department of Ecology* (No.  
5 95885-8, January 16, 2020), the Washington supreme court held that  
6 certain regulations establishing greenhouse gas emission standards  
7 for producers and distributors of natural gas and petroleum products  
8 were invalid because the department lacked sufficient statutory  
9 authority under the state's clean air act to regulate such emissions  
10 while upholding regulations of sources directly emitting greenhouse  
11 gases. The legislature intends by this act to expressly provide such  
12 authority under the clean air act.

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

15 The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

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

20 (2) "Air pollution" is presence in the outdoor atmosphere of one  
21 or more air contaminants in sufficient quantities and of such  
22 characteristics and duration as is, or is likely to be, injurious to  
23 human health, plant or animal life, or property, or which  
24 unreasonably interfere with enjoyment of life and property. For the  
25 purpose of this chapter, air pollution shall not include air  
26 contaminants emitted in compliance with chapter 17.21 RCW.

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

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

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

4 (6) "Best available control technology" (BACT) means an emission  
5 limitation based on the maximum degree of reduction for each air  
6 pollutant subject to regulation under this chapter emitted from or  
7 that results from any new or modified stationary source, that the  
8 permitting authority, on a case-by-case basis, taking into account  
9 energy, environmental, and economic impacts and other costs,  
10 determines is achievable for such a source or modification through  
11 application of production processes and available methods, systems,  
12 and techniques, including fuel cleaning, clean fuels, or treatment or  
13 innovative fuel combustion techniques for control of each such a  
14 pollutant. In no event shall application of "best available control  
15 technology" result in emissions of any pollutants that will exceed  
16 the emissions allowed by any applicable standard under 40 C.F.R. Part  
17 60 and Part 61, as they exist on July 25, 1993, or their later  
18 enactments as adopted by reference by the director by rule. Emissions  
19 from any source utilizing clean fuels, or any other means, to comply  
20 with this subsection shall not be allowed to increase above levels  
21 that would have been required under the definition of BACT as it  
22 existed prior to enactment of the federal clean air act amendments of  
23 1990.

24 (7) "Best available retrofit technology" (BART) means an emission  
25 limitation based on the degree of reduction achievable through the  
26 application of the best system of continuous emission reduction for  
27 each pollutant that is emitted by an existing stationary facility.  
28 The emission limitation must be established, on a case-by-case basis,  
29 taking into consideration the technology available, the costs of  
30 compliance, the energy and nonair quality environmental impacts of  
31 compliance, any pollution control equipment in use or in existence at  
32 the source, the remaining useful life of the source, and the degree  
33 of improvement in visibility that might reasonably be anticipated to  
34 result from the use of the technology.

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

36 (9) "Control officer" means the air pollution control officer of  
37 any authority.

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

39 (11) "Emission" means a release of air contaminants into the  
40 ambient air.

1 (12) "Emission standard" and "emission limitation" mean a  
2 requirement established under the federal clean air act or this  
3 chapter that limits the quantity, rate, or concentration of emissions  
4 of air contaminants on a continuous basis, including any requirement  
5 relating to the operation or maintenance of a source to assure  
6 continuous emission reduction, and any design, equipment, work  
7 practice, or operational standard adopted under the federal clean air  
8 act or this chapter.

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

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

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

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

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

23 (15) "Modification" means any physical change in, or change in  
24 the method of operation of, a stationary source that increases the  
25 amount of any air contaminant emitted by such source or that results  
26 in the emission of any air contaminant not previously emitted. The  
27 term modification shall be construed consistent with the definition  
28 of modification in Section 7411, Title 42, United States Code, and  
29 with rules implementing that section.

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

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

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

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

4 (20) "Reasonably available control technology" (RACT) means the  
5 lowest emission limit that a particular source or source category is  
6 capable of meeting by the application of control technology that is  
7 reasonably available considering technological and economic  
8 feasibility. RACT is determined on a case-by-case basis for an  
9 individual source or source category taking into account the impact  
10 of the source upon air quality, the availability of additional  
11 controls, the emission reduction to be achieved by additional  
12 controls, the impact of additional controls on air quality, and the  
13 capital and operating costs of the additional controls. RACT  
14 requirements for a source or source category shall be adopted only  
15 after notice and opportunity for comment are afforded.

16 (21) "Silvicultural burning" means burning of wood fiber on  
17 forestland consistent with the provisions of RCW ((70.94.660))  
18 70.94.6534.

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

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

27 (24) "Trigger level" means the ambient level of fine  
28 particulates, measured in micrograms per cubic meter, that must be  
29 detected prior to initiating a first or second stage of impaired air  
30 quality under RCW 70.94.473.

31 (25) "Emission," "emission standard," and "emission limitation,"  
32 as applied to greenhouse gases as defined in RCW 70.235.010, include  
33 indirect emissions of greenhouse gases resulting from production or  
34 distribution of petroleum products or natural gas, where the release  
35 of air contaminants into the ambient air occurs during the  
36 consumption, use, combustion, or oxidation of the petroleum products  
37 or natural gas.

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

1 (1) The department shall have all the powers as provided in RCW  
2 70.94.141.

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

6 (a) Adopt rules establishing air quality objectives and air  
7 quality standards;

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

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

1 shall cover only those costs to the air pollution control authority  
2 which are directly related to the determination on the acceptability  
3 of the alternate opacity standard, including testing, oversight and  
4 review of data.

5 (3) The air quality standards and emission standards may be for  
6 the state as a whole or may vary from area to area or source to  
7 source, except that emission performance standards for new woodstoves  
8 and opacity levels for residential solid fuel burning devices shall  
9 be statewide, as may be appropriate to facilitate the accomplishment  
10 of the objectives of this chapter and to take necessary or desirable  
11 account of varying local conditions of population concentration, the  
12 existence of actual or reasonably foreseeable air pollution,  
13 topographic and meteorologic conditions and other pertinent  
14 variables.

15 (4) The department is directed to cooperate with the appropriate  
16 agencies of the United States or other states or any interstate  
17 agencies or international agencies with respect to the control of air  
18 pollution and air contamination, or for the formulation for the  
19 submission to the legislature of interstate air pollution control  
20 compacts or agreements.

21 (5) The department is directed to conduct or cause to be  
22 conducted a continuous surveillance program to monitor the quality of  
23 the ambient atmosphere as to concentrations and movements of air  
24 contaminants and conduct or cause to be conducted a program to  
25 determine the quantity of emissions to the atmosphere.

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

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

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

1 (9) The department shall establish rules requiring sources or  
2 source categories to apply reasonable and available control methods.  
3 Such rules shall apply to those sources or source categories that  
4 individually or collectively contribute the majority of statewide air  
5 emissions of each regulated pollutant. The department shall review,  
6 and if necessary, update its rules every five years to ensure  
7 consistency with current reasonable and available control methods.  
8 The department shall have adopted rules required under this  
9 subsection for all sources by July 1, 1996.

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

13 (10) Any penalty imposed on a person who produces or distributes  
14 fossil fuels or other products that is in violation of the  
15 requirements on air quality standards, emission standards, or  
16 emission limitations on greenhouse gases, as provided in subsection  
17 (2)(c) of this section, must be deposited into the multimodal  
18 transportation account.

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

21 (1) In reviewing the utility compliance obligations associated  
22 with any rule that arises under the authority of section 1 of this  
23 act and RCW 70.94.030 and 70.94.331, the commission shall ensure that  
24 its processes and mechanisms allow timely cost recovery for prudent  
25 and reasonable costs associated with compliance with this act that  
26 are incurred by electrical companies and gas companies under its  
27 jurisdiction.

28 (2) If the commission finds that the rule would result in an  
29 undue burden on utility customers and also that there is no cost-  
30 effective alternative available, then the commission shall notify the  
31 department of ecology, which shall immediately suspend the compliance  
32 obligation of the utility under the rule until a mitigation measure  
33 is adopted.

34 NEW SECTION. Sec. 5. A new section is added to chapter 70.235  
35 RCW to read as follows:

36 (1) In exercising the authority provided under sections 2 and 3,  
37 chapter . . ., Laws of 2020 (sections 2 and 3 of this act), the  
38 department, consistent with the requirements of chapter 34.05 RCW and

1 in the context of cost-benefit and least burdensome analyses, must  
2 seek to integrate new state greenhouse gas requirements with existing  
3 requirements and rules. The department must seek to design new  
4 requirements in a way that helps compliance entities achieve emission  
5 reduction targets and comply with existing sources and rules at the  
6 lowest compliance cost possible.

7 (2) No rule adopted under the authority of sections 2 and 3,  
8 chapter . . . , Laws of 2020 (sections 2 and 3 of this act) may take  
9 effect prior to October 1, 2021.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.94  
11 RCW to read as follows:

12 No regional air quality agency, city, county, or other  
13 subdivision of the state may directly regulate greenhouse gas  
14 emissions through a cap, charge, low-carbon fuels standard, or clean  
15 fuels standard.

16 **Sec. 7.** RCW 43.157.010 and 2017 c 288 s 2 are each amended to  
17 read as follows:

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

21 (1) "Applicant" means a person applying to the department for  
22 designation of a development project as a project of statewide  
23 significance.

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

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

30 (4) "Manufacturing" shall have the meaning assigned it in RCW  
31 82.62.010.

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

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

36 (ii) A development project that will provide a net environmental  
37 benefit;



1 (iii) A development project in furtherance of the  
2 commercialization of innovations;

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

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

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

9 (vii) A project designated by the legislature and codified under  
10 this chapter.

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

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

14 (ii) The applicant must submit an application to the department  
15 for designation as a project of statewide significance to the  
16 department of commerce; and

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

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

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

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

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

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

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

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

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

1 (I) In counties other than rural counties as defined by RCW  
2 82.14.370, projected full-time employment positions after completion  
3 of construction of one hundred or greater; or

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

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

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

10 (III) The project resulted from or is in furtherance of  
11 innovation activities at a public research institution in the state  
12 or is in or resulted from innovation activities within an innovation  
13 partnership zone; or

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

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

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

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.94  
26 RCW to read as follows:

27 The department may not exercise the authority provided under  
28 sections 2 and 3, chapter . . ., Laws of 2020 (sections 2 and 3 of  
29 this act) if the legislature enacts a more comprehensive program  
30 addressing greenhouse gas emissions including, but not limited to, a  
31 cap and trade system or a tax on greenhouse gas emissions. For the  
32 purposes of this section, a more comprehensive greenhouse gas  
33 emission program is a program that puts a price on emissions  
34 associated with direct or indirect fossil fuel sources and that is  
35 designed to achieve emission reduction limits established in RCW  
36 70.235.020."

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By Senator Carlyle

1       On page 1, line 2 of the title, after "fuels;" strike the  
2 remainder of the title and insert "amending RCW 70.94.030, 70.94.331,  
3 and 43.157.010; adding a new section to chapter 80.28 RCW; adding a  
4 new section to chapter 70.235 RCW; adding new sections to chapter  
5 70.94 RCW; and creating a new section."

EFFECT: Provides that if the UTC finds that a regulation established under this act results in an undue burden on a utility customer or there is no cost-effective alternative available, then the UTC must notify Ecology, which must suspend the compliance obligation of the utility.

Delays the effect of any rule adopted under the authority of the act until after October 1, 2021.

Prohibits any local air agency, city, or county from directly regulating greenhouse gas emissions through a cap, charge, low-carbon fuel, or clean fuels standard.

Prohibits Ecology from using their authority provided under this act, if the Legislature enacts a more comprehensive program addressing greenhouse gas emissions.

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