

SENATE BILL REPORT

SHB 3141

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 26, 2004

Title: An act relating to mitigating carbon dioxide emissions resulting from fossil-fueled electrical generation.

Brief Description: Establishing a policy to mitigate carbon dioxide emissions.

Sponsors: House Committee on Technology, Telecommunications & Energy (originally sponsored by Representative Morris).

Brief History:

Committee Activity: Natural Resources, Energy & Water: 2/25/04, 2/26/04 [DPA, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass as amended.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Fraser, Hale and Oke.

Minority Report: Do not pass.

Signed by Senators Doumit and Hargrove.

Staff: Andrea McNamara (786-7483)

Background: The Energy Facility Site Evaluation Council (EFSEC) was created in 1970 to provide one-stop licensing for large energy projects. Council membership includes mandatory representation from five state agencies and discretionary representation from four additional state agencies. The council's membership may include representatives from the particular city, county, or port district where potential projects may be located.

EFSEC's jurisdiction includes the siting of, among other types of plants, electric thermal power plants above 350 megawatts. In 2003, EFSEC released a package of proposed rules designed to set standards for siting electric power plants. One of the proposed rules addresses the mitigation of carbon dioxide (CO₂) emissions resulting from operation of these plants. Carbon dioxide mitigation requirements have been included in all recent siting approvals for electric power plants.

New or expanding industrial and commercial sources of air pollution emissions, including fossil-fueled thermal power plants, must obtain an order of approval from the Department of Ecology (DOE) or a local air pollution control authority. The order may set limits on emissions, require monitoring, record keeping, reporting, and other compliance measures.

DOE is also developing rules for the mitigation of CO₂ emissions from fossil fueled thermal electric power plants not under the siting jurisdiction of EFSEC.

Summary of Amended Bill: Certain fossil fueled thermal power plants with a generating capacity of 25 megawatts (MW) or more must provide mitigation for 20 percent of the carbon dioxide (CO₂) emissions produced by the plant over a period of 30 years. The method for calculating total CO₂ emissions is specified, based on a 60 percent capacity factor.

This mitigation requirement applies to thermal power plants under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) and thermal power plants that must seek an order of approval from either the Department of Ecology (DOE) or a local air pollution control authority. It applies to new power plants being sited and existing plants larger than 350 MW certified by EFSEC that increase their production of CO₂ emissions by 15 percent. It also applies to any existing plants between 25-350 MW that increase their generating capability by at least 25 MW or their emissions by 15 percent or more, whichever is greater.

A CO₂ mitigation plan must be included as part of the certification agreement or order approving the plant or modification. The mitigation plan may allow mitigation in any combination of the following three categories: (1) payments to a third party to provide mitigation; (2) direct purchase of permanent carbon credits; and (3) direct investment in applicant-controlled CO₂ mitigation projects including cogeneration. An approved plan may be changed under specified circumstances. Failure to implement a mitigation plan is subject to enforcement.

The types of mitigation projects that may be approved are defined and include a variety of options such as energy efficiency, renewable resources, clean and efficient transportation measures, demand side management, carbon sequestration, cogeneration, and carbon credits.

Carbon credits must meet specified criteria relating to verification, acquisition date, and previous use. Credits may not be re-sold without approval.

Mitigation projects under both the payment to a third party option and direct investment option must: (1) provide a reasonable certainty that the performance requirements will be achieved; (2) minimize the extent to which external events can reduce the amount of CO₂ offset; (3) accomplish CO₂ reductions that would not otherwise take place; and (4) provide for mitigation of an appropriate duration.

Payment to a Third Party Option. The mitigation rate that must be paid is \$1.60 per ton of CO₂ emissions that must be mitigated. This rate is subject to adjustment by EFSEC in rule, no more often than every two years, and by no more than 50 percent during any adjustment. The mitigation rate must be set in consideration of EFSEC's obligation to assure abundant power at reasonable cost. Payments may be made either in a lump sum no later than 120 days prior to the start of construction or in partial payments over five years.

The council is directed to maintain a list of independent organizations qualified to receive mitigation payments and conduct mitigation projects. Accounting restrictions and accountability requirements are specified.

Direct Investment Option. Mitigation projects must be approved as part of the mitigation plan included in the certification agreement or order of approval for the plant. Projects must be in place in a reasonable time after the start of commercial operation. Implementation will be monitored by an independent entity, Ecology, or a local air authority, and no more than 20 percent of the funds invested may be used for selection, monitoring, and evaluation of the

mitigation project. If federal requirements for CO2 mitigation for fossil-fueled power plants are promulgated, they may be deemed by EFSEC, DOE, or local air authorities to be equivalent and a replacement for these mitigation investments.

Costs associated with implementing the new chapter shall be assessed against applicants and approved projects that are subject to the requirements of the chapter.

EFSEC, DOE, and local air authorities are directed to adopt rules to carry out the requirements of the act.

Amended Bill Compared to Substitute Bill: The striking amendment extends the mitigation requirement to existing plants of 25-350 MW that seek to increase production by at least 25 MW or CO2 emissions by 15 percent or more. It allows mitigation plans to be changed after put in place, subject to approval. The striking amendment adds several definitions, including: qualified alternative energy resources, carbon credits, carbon dioxide equivalents, cogeneration plants, and cogeneration credits. It adds a new section specifying additional requirements for carbon credits. The striking amendment provides that failure to implement an improved mitigation project is subject to enforcement. New sections are added to authorize EFSEC, DOE, and local air authorities to promulgate rules to implement the new chapter and to collect fees for the costs associated with the chapter. EFSEC may only assess costs against applicants and certificate holders that are subject to the mitigation requirements. Other clarifying and technical changes are made.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is a good first step to replace the ad hoc process of emissions mitigation that has been required under the EFSEC process over the last several years. It will provide project applicants with clear and certain standards, giving them predictability and a much more streamlined permitting process. It will resolve any questions about EFSEC's authority to regulate in this area and may save considerable amounts of money in avoided litigation costs. It will also result in cost savings to EFSEC and Ecology by avoiding the need to continue the rulemaking process.

Concerns: The general idea and direction of the bill is laudable, but it does not go as far as it should in requiring mitigation of CO2 emissions. There is strong support for requiring mitigation of significantly more than 20 percent of the emissions—even up to 100 percent of new plant emissions. The price per ton of \$1.60 is too low. Many energy companies are assuming in their long-range planning the need to pay up to \$8.00 per ton for future mitigation. The capacity factor of 60 percent used to calculate total emissions is too low. It should be at least 65 percent which is closer to what plants are actually operating at now. The 30-year life cycle assumption is also too low because most of these plants will run considerably longer than that.

Testimony Against: The bill deals with CO2 emissions unevenly in that it does not address emissions by existing power plants. It creates a competitive disadvantage to newer plants and could provide a disincentive to bring the new, cleaner plants on line. This could ultimately

work against the state's interest in accomplishing cleaner power production and reductions in emissions. At a minimum, a study or inventory of CO2 emissions from existing plants would be an appropriate component of this bill.

Testified: PRO: Dave Danner, Governor's Policy Adviser; Collins Sprague, Avista; Jim Luce, EFSEC; Kathleen Collins, PacifiCorp.; PRO w/ CONCERNS: Toni Potter, Audobon Society; Linda VerNoy, Global Warming Action; Donna Ewing, League of Women Voters; Bill LaBorde, Northwest Energy Coalition; KC Golden, Climate Solutions. CON: Dave Arbaugh, Calpine.