
SUBSTITUTE HOUSE BILL 3141

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Technology, Telecommunications & Energy
(originally sponsored by Representative Morris)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to mitigating carbon dioxide emissions resulting
2 from fossil-fueled electrical generation; adding a new section to
3 chapter 70.94 RCW; adding a new chapter to Title 80 RCW; and creating
4 a new section.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Applicant" has the meaning provided in RCW 80.50.020 and
9 includes a fossil-fueled thermal electric generation facility subject
10 to RCW 70.94.152.

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

14 (3) "Commercial operation" means the date that the first
15 electricity produced by a facility is delivered for commercial sale to
16 the power grid.

17 (4) "Council" means the energy facility site evaluation council
18 created by RCW 80.50.030.

19 (5) "Department" means the department of ecology.

1 (6) "Fossil-fueled thermal electric generation facility" means an
2 electric generation facility with an aggregate, net generating capacity
3 of twenty-five thousand kilowatts or more, measured using maximum
4 continuous electric generating capacity, less minimum auxiliary load,
5 at average ambient temperature and pressure.

6 (7) "Fossil fuel" means natural gas, petroleum, coal, or any form
7 of solid, liquid, or gaseous fuel derived from such material to produce
8 heat for the generation of electricity.

9 (8) "Mitigation project" means one or more of the following:

10 (a) Projects or actions that are implemented by the certificate
11 holder or order of approval holder, directly or through its agent, or
12 by an independent qualified organization to mitigate the emission of
13 carbon dioxide produced by the fossil-fueled thermal electric
14 generation facility. This term includes but is not limited to the use
15 of, energy efficiency measures, clean and efficient transportation
16 measures, renewable energy resources, demand side management of
17 electricity consumption, and carbon sequestration programs;

18 (b) Direct application of combined heat and power (cogeneration);
19 and

20 (c) Market carbon credits that can be traced to real and
21 identifiable carbon dioxide mitigation projects.

22 (9) "Total carbon dioxide emissions" means the amount of carbon
23 dioxide emitted over a thirty-year period that must be mitigated based
24 on the manufacturer's or designer's guaranteed total net generating
25 capacity, new equipment heat rate, and taking into account any
26 enforceable limitations on operational hours or fuel types and use.

27 NEW SECTION. **Sec. 2.** (1) The provisions of this chapter apply to
28 fossil-fueled thermal electric generation facilities:

29 (a) For which an application for site certification is made to the
30 council after July 1, 2004;

31 (b) For which an application for an order of approval has been
32 submitted under RCW 70.94.152 to the department or authority after July
33 1, 2004; or

34 (c) That have an existing site certification agreement or order of
35 approval and, after July 1, 2004, apply to the council, department, or
36 authority, as appropriate, to increase the output of the carbon dioxide

1 emissions by fifteen percent or more through permanent changes in
2 facility operations or modification of equipment.

3 (2)(a) A proposed site certification agreement submitted to the
4 governor under RCW 80.50.100 must include an approved carbon dioxide
5 mitigation plan.

6 (b) For fossil-fueled thermal electric generation facilities not
7 under jurisdiction of the council, the order of approval shall include
8 the approved carbon dioxide mitigation plan.

9 (3) An applicant for a fossil-fueled thermal electric generation
10 facility must include one of the following carbon dioxide mitigation
11 options as part of its mitigation plan:

12 (a) Payment to a third party; or

13 (b) Direct investment in carbon dioxide mitigation projects.

14 (4) Fossil-fueled thermal electric generation facilities that
15 receive site certification approval or orders of approval shall provide
16 mitigation for twenty percent of the total carbon dioxide emissions
17 produced by the facility.

18 (5) A capacity factor of sixty percent, or sixty percent of the
19 operational limitations contained in the order of approval issued under
20 RCW 70.94.152, shall be used in determining the total carbon dioxide
21 emissions.

22 (6) If the certificate holder or order of approval holder chooses
23 to pay a third party to provide the mitigation, the mitigation rate
24 shall be one dollar and sixty cents per metric ton of carbon dioxide
25 emitted.

26 (a) Through rule making, the council may adjust the rate per ton
27 biennially as long as any increase or decrease does not exceed fifty
28 percent of the current rate.

29 (b) In adjusting the rate the council shall consider, but is not
30 limited to, the current market price of a ton of carbon dioxide and the
31 economic feasibility for potential applicants for fossil-fueled thermal
32 electric generation facilities.

33 (7) The certificate holder or order of approval holder may choose
34 a lump sum payment or partial payment over a period of five years.

35 (a) Under the lump sum payment option, the payment amount is
36 determined using the per ton rate established under subsections (4) and
37 (5) of this section for total carbon dioxide emissions multiplied by
38 thirty years.

1 (b) No later than one hundred twenty days after the start of
2 commercial operation, the certificate holder or order of approval
3 holder shall make a one-time payment to the independent qualified
4 organization for the amount determined under subsection (6) of this
5 section.

6 (c) As an alternative to a one-time payment, the certificate holder
7 or order of approval holder may make a partial payment of twenty
8 percent of the amount determined under subsection (6) of this section
9 no later than one hundred twenty days after commercial operation and a
10 payment in the same amount or as adjusted according to subsection
11 (6)(a) of this section, on the anniversary date of the initial payment
12 in each of the following four years. With the initial payment, the
13 certificate holder or order of approval holder shall provide a letter
14 of credit or other comparable security acceptable to the council or the
15 department for the remaining eighty percent mitigation payment amount
16 including possible changes to the rate per metric ton from rule making
17 under subsection (6)(a) of this section.

18 NEW SECTION. **Sec. 3.** (1) The carbon dioxide mitigation option
19 that provides for direct investment by the certificate holder or order
20 of approval holder is implemented through mitigation projects conducted
21 directly by the certificate or order of approval holder.

22 (2) Mitigation projects must be approved by the council,
23 department, or authority, as appropriate, and included in the proposed
24 and final site certification agreement or order of approval. Direct
25 investment mitigation projects must meet the following criteria:

26 (a) The project plan provides a reasonable certainty that the
27 performance requirements of the carbon dioxide mitigation plan will be
28 achieved;

29 (b) The extent to which external events can reduce the amount of
30 carbon dioxide offset is minimized;

31 (c) The project plan accomplishes carbon dioxide reductions that
32 would otherwise not have taken place; and

33 (d) The project plan provides for carbon dioxide mitigation for the
34 appropriate duration based on the mitigation option that is included in
35 the site certification agreement or order of approval.

36 (3) Mitigation projects must be fully in place within a reasonable
37 time after the start of commercial operation.

1 (4) The certificate holder or order of approval holder may not use
2 more than twenty percent of the total funds for the selection,
3 monitoring, and evaluation of mitigation projects and the management
4 and enforcement of contracts.

5 (5) The implementation of a carbon dioxide mitigation project shall
6 be monitored by an independent entity for conformance with the
7 performance requirements of the carbon dioxide mitigation plan.

8 (6) If federal carbon dioxide legislation is adopted, compliance
9 with this section may entitle the certificate holder or order of
10 approval holder to benefits applicable to that legislation.

11 NEW SECTION. **Sec. 4.** (1) The council shall maintain a list of
12 independent qualified organizations with proven experience in emissions
13 mitigation activities and a demonstrated ability to carry out their
14 activities in an efficient, reliable, and cost-effective manner.

15 (2) An independent qualified organization shall not use more than
16 twenty percent of the total funds for selection, monitoring, and
17 evaluation of mitigation projects and the management and enforcement of
18 contracts. None of these funds shall be used to lobby federal, state,
19 and local agencies, their elected officials, officers, or employees.

20 (3) Before signing contracts to purchase offsets with funds from
21 certificate holders or order of approval holders, an independent
22 qualified organization must demonstrate to the council that the
23 mitigation projects it proposes to use meet the following criteria:

24 (a) The project plan provides a reasonable certainty that the
25 performance requirements of the carbon dioxide mitigation plan will be
26 achieved;

27 (b) The extent to which external events can reduce the amount of
28 carbon dioxide offset is minimized;

29 (c) The project plan accomplishes carbon dioxide reductions that
30 would otherwise not have taken place; and

31 (d) The project plan provides for carbon dioxide mitigation for the
32 appropriate duration based on the mitigation option that is included in
33 the site certification agreement or order of approval.

34 (4) The independent qualified organization shall permit the council
35 to appoint up to three persons to inspect plans, operation, and
36 compliance activities of the organization and to audit financial

1 records and performance measures for carbon dioxide mitigation projects
2 using carbon dioxide mitigation money paid by certificate holders or
3 order of approval holders under this chapter.

4 (5) An independent qualified organization must file biennial
5 reports with the council and the department on the performance of
6 carbon dioxide mitigation projects, including the amount of carbon
7 dioxide reductions achieved and a statement of cost for the mitigation
8 period.

9 NEW SECTION. **Sec. 5.** The following types of fossil-fueled thermal
10 electric generators are exempt from carbon dioxide requirements under
11 sections 2 through 4 of this act:

12 (1) Fossil-fueled thermal electric generation facilities that are
13 standby electric generation facilities including the physical
14 structures necessary to install and connect standby generators, that
15 provide temporary electric energy in the event of a power outage and
16 that are physically incapable of being interconnected with the
17 transmission grid; and

18 (2) Temporary electric generation facilities with electric
19 generation capacity of no more than five hundred kilowatts, measured
20 using maximum continuous electric generating capacity, less minimum
21 auxiliary load, at average ambient temperature and pressure, that are
22 located at a site for no more than one year.

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

25 (1) The department of ecology or local air pollution control
26 authority shall implement the carbon dioxide mitigation program for
27 fossil-fueled thermal electric generation facilities as described in
28 chapter 80.-- RCW (sections 1 through 5 of this act).

29 (2) For mitigation projects conducted directly by the applicant,
30 the department or local air authority shall conduct a public hearing on
31 the mitigation plan. Taking into consideration comments from the
32 public, the department or local air authority shall approve or deny the
33 mitigation plan.

34 (3) The department or authority may determine, assess, and collect
35 fees sufficient to cover the costs of administering the carbon dioxide
36 mitigation program requirements.

1 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute
2 a new chapter in Title 80 RCW.

3 NEW SECTION. **Sec. 8.** Nothing in this act shall be construed to
4 either expand or diminish statutory authority granted under other
5 provisions of state law.

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