

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 3141**

Chapter 224, Laws of 2004

58th Legislature  
2004 Regular Session

CARBON DIOXIDE EMISSIONS

EFFECTIVE DATE: 6/10/04

Passed by the House March 9, 2004  
Yeas 69 Nays 26

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate March 3, 2004  
Yeas 40 Nays 6

BRAD OWEN

**President of the Senate**

Approved March 31, 2004.

GARY F. LOCKE

**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 3141** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

**Chief Clerk**

FILED

March 31, 2004 - 10:33 a.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 3141**

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AS AMENDED BY THE SENATE

Passed Legislature - 2004 Regular Session

**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; and adding a new chapter to Title 80 RCW.

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

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

7            (1) "Applicant" has the meaning provided in RCW 80.50.020 and  
8 includes an applicant for a permit for a fossil-fueled thermal electric  
9 generation facility subject to RCW 70.94.152 and section 2(1) (b) or  
10 (d) of this act.

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) "Carbon credit" means a verified reduction in carbon dioxide or  
15 carbon dioxide equivalents that is registered with a state, national,  
16 or international trading authority or exchange that has been recognized  
17 by the council.

18            (4) "Carbon dioxide equivalents" means a metric measure used to

1 compare the emissions from various greenhouse gases based upon their  
2 global warming potential.

3 (5) "Cogeneration credit" means the carbon dioxide emissions that  
4 the council, department, or authority, as appropriate, estimates would  
5 be produced on an annual basis by a stand-alone industrial and  
6 commercial facility equivalent in operating characteristics and output  
7 to the industrial or commercial heating or cooling process component of  
8 the cogeneration plant.

9 (6) "Cogeneration plant" means a fossil-fueled thermal power plant  
10 in which the heat or steam is also used for industrial or commercial  
11 heating or cooling purposes and that meets federal energy regulatory  
12 commission standards for qualifying facilities under the public utility  
13 regulatory policies act of 1978.

14 (7) "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 (8) "Council" means the energy facility site evaluation council  
18 created by RCW 80.50.030.

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

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

23 (11) "Mitigation plan" means a proposal that includes the process  
24 or means to achieve carbon dioxide mitigation through use of mitigation  
25 projects or carbon credits.

26 (12) "Mitigation project" means one or more of the following:

27 (a) Projects or actions that are implemented by the certificate  
28 holder or order of approval holder, directly or through its agent, or  
29 by an independent qualified organization to mitigate the emission of  
30 carbon dioxide produced by the fossil-fueled thermal electric  
31 generation facility. This term includes but is not limited to the use  
32 of, energy efficiency measures, clean and efficient transportation  
33 measures, qualified alternative energy resources, demand side  
34 management of electricity consumption, and carbon sequestration  
35 programs;

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

37 (c) Verified carbon credits traded on a recognized trading  
38 authority or exchange; or

1 (d) Enforceable and permanent reductions in carbon dioxide or  
2 carbon dioxide equivalents through process change, equipment shutdown,  
3 or other activities under the control of the applicant and approved as  
4 part of a carbon dioxide mitigation plan.

5 (13) "Order of approval" means an order issued under RCW 70.94.152  
6 with respect to a fossil-fueled thermal electric generation facility  
7 subject to section 2(1) (b) or (d) of this act.

8 (14) "Permanent" means that emission reductions used to offset  
9 emission increases are assured for the life of the corresponding  
10 increase, whether unlimited or limited in duration.

11 (15) "Qualified alternative energy resource" has the same meaning  
12 as in RCW 19.29A.090.

13 (16) "Station generating capability" means the maximum load a  
14 generator can sustain over a given period of time without exceeding  
15 design limits, and measured using maximum continuous electric  
16 generation capacity, less net auxiliary load, at average ambient  
17 temperature and barometric pressure.

18 (17) "Total carbon dioxide emissions" means:

19 (a) For a fossil-fueled thermal electric generation facility  
20 described under section 2(1) (a) and (b) of this act, the amount of  
21 carbon dioxide emitted over a thirty-year period based on the  
22 manufacturer's or designer's guaranteed total net station generating  
23 capability, new equipment heat rate, an assumed sixty percent capacity  
24 factor for facilities under the council's jurisdiction or sixty percent  
25 of the operational limitations on facilities subject to an order of  
26 approval, and taking into account any enforceable limitations on  
27 operational hours or fuel types and use; and

28 (b) For a fossil-fueled thermal electric generation facility  
29 described under section 2(1) (c) and (d) of this act, the amount of  
30 carbon dioxide emitted over a thirty-year period based on the proposed  
31 increase in the amount of electrical output of the facility that  
32 exceeds the station generation capability of the facility prior to the  
33 applicant applying for certification or an order of approval pursuant  
34 to section 2(1) (c) and (d) of this act, new equipment heat rate, an  
35 assumed sixty percent capacity factor for facilities under the  
36 council's jurisdiction or sixty percent of the operational limitations  
37 on facilities subject to an order of approval, and taking into account  
38 any enforceable limitations on operational hours or fuel types and use.

1        NEW SECTION.    **Sec. 2.**    (1) The provisions of this chapter apply to:

2        (a) New fossil-fueled thermal electric generation facilities with  
3 station-generating capability of three hundred fifty thousand kilowatts  
4 or more and fossil-fueled floating thermal electric generation  
5 facilities of one hundred thousand kilowatts or more under RCW  
6 80.50.020(14)(a), for which an application for site certification is  
7 made to the council after July 1, 2004;

8        (b) New fossil-fueled thermal electric generation facilities with  
9 station-generating capability of more than twenty-five thousand  
10 kilowatts, but less than three hundred fifty thousand kilowatts, except  
11 for fossil-fueled floating thermal electric generation facilities under  
12 the council's jurisdiction, for which an application for an order of  
13 approval has been submitted after July 1, 2004;

14        (c) Fossil-fueled thermal electric generation facilities with  
15 station-generating capability of three hundred fifty thousand kilowatts  
16 or more that have an existing site certification agreement and, after  
17 July 1, 2004, apply to the council to increase the output of carbon  
18 dioxide emissions by fifteen percent or more through permanent changes  
19 in facility operations or modification or equipment; and

20        (d) Fossil-fueled thermal electric generation facilities with  
21 station-generating capability of more than twenty-five thousand  
22 kilowatts, but less than three hundred fifty thousand kilowatts, except  
23 for fossil-fueled floating thermal electric generation facilities under  
24 the council's jurisdiction, that have an existing order of approval  
25 and, after July 1, 2004, apply to the department or authority, as  
26 appropriate, to permanently modify the facility so as to increase its  
27 station-generating capability by at least twenty-five thousand  
28 kilowatts or to increase the output of carbon dioxide emissions by  
29 fifteen percent or more, whichever measure is greater.

30        (2)(a) A proposed site certification agreement submitted to the  
31 governor under RCW 80.50.100 and a final site certification agreement  
32 issued under RCW 80.50.100 shall include an approved carbon dioxide  
33 mitigation plan.

34        (b) For fossil-fueled thermal electric generation facilities not  
35 under jurisdiction of the council, the order of approval shall require  
36 an approved carbon dioxide mitigation plan.

37        (c) Site certification agreement holders or order of approval  
38 holders may request, at any time, a change in conditions of an approved

1 carbon dioxide mitigation plan if the council, department, or  
2 authority, as appropriate, finds that the change meets all requirements  
3 and conditions for approval of such plans.

4 (3) An applicant for a fossil-fueled thermal electric generation  
5 facility shall include one or a combination of the following carbon  
6 dioxide mitigation options as part of its mitigation plan:

7 (a) Payment to a third party to provide mitigation;

8 (b) Direct purchase of permanent carbon credits; or

9 (c) Investment in applicant-controlled carbon dioxide mitigation  
10 projects, including combined heat and power (cogeneration).

11 (4) Fossil-fueled thermal electric generation facilities that  
12 receive site certification approval or an order of approval shall  
13 provide mitigation for twenty percent of the total carbon dioxide  
14 emissions produced by the facility.

15 (5) If the certificate holder or order of approval holder chooses  
16 to pay a third party to provide the mitigation, the mitigation rate  
17 shall be one dollar and sixty cents per metric ton of carbon dioxide to  
18 be mitigated. For a cogeneration plant, the monetary amount is based  
19 on the difference between twenty percent of the total carbon dioxide  
20 emissions and the cogeneration credit.

21 (a) Through rule making, the council may adjust the rate per ton  
22 biennially as long as any increase or decrease does not exceed fifty  
23 percent of the current rate. The department or authority shall use the  
24 adjusted rate established by the council pursuant to this subsection  
25 for fossil-fueled thermal electric generation facilities subject to the  
26 provisions of this chapter.

27 (b) In adjusting the mitigation rate the council shall consider,  
28 but is not limited to, the current market price of a ton of carbon  
29 dioxide. The council's adjusted mitigation rate shall be consistent  
30 with RCW 80.50.010(3).

31 (6) The applicant may choose to make to the third party a lump sum  
32 payment or partial payment over a period of five years.

33 (a) Under the lump sum payment option, the payment amount is  
34 determined by multiplying the total carbon dioxide emissions by the  
35 twenty percent mitigation requirement under subsection (4) of this  
36 section and by the per ton mitigation rate established under subsection  
37 (5) of this section.

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 (5) 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 (5) 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 (5)(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 (5)(a) of this section.

18 NEW SECTION. **Sec. 3.** (1) Carbon dioxide mitigation plans relying  
19 on purchase of permanent carbon credits must meet the following  
20 criteria:

21 (a) Credits must derive from real, verified, permanent, and  
22 enforceable carbon dioxide or carbon dioxide equivalents emission  
23 mitigation not otherwise required by statute, regulation, or other  
24 legal requirements;

25 (b) The credits must be acquired after July 1, 2004; and

26 (c) The credits may not have been used for other carbon dioxide  
27 mitigation projects.

28 (2) Permanent carbon credits purchased for project mitigation shall  
29 not be resold unless approved by the council, department, or authority.

30 NEW SECTION. **Sec. 4.** (1) The carbon dioxide mitigation option  
31 that provides for direct investment shall be implemented through  
32 mitigation projects conducted directly by, or under the control of, the  
33 certificate holder or order of approval holder.

34 (2) Mitigation projects must be approved by the council,  
35 department, or authority, as appropriate, and made a condition of the  
36 proposed and final site certification agreement or order of approval.

1 Direct investment mitigation projects shall be approved if the  
2 mitigation projects provide a reasonable certainty that the performance  
3 requirements of the mitigation projects will be achieved and the  
4 mitigation projects were implemented after July 1, 2004. No  
5 certificate holder or order of approval holder shall be required to  
6 make direct investments that would exceed the cost of making a lump sum  
7 payment to a third party, had the certificate holder or order of  
8 approval holder chosen that option under section 2 of this act.

9 (3) Mitigation projects must be fully in place within a reasonable  
10 time after the start of commercial operation. Failure to implement an  
11 approved mitigation plan is subject to enforcement under chapter 80.50  
12 or 70.94 RCW.

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

17 (5)(a) For facilities under the jurisdiction of the council, the  
18 implementation of a carbon dioxide mitigation project, other than  
19 purchase of a carbon credit shall be monitored by an independent entity  
20 for conformance with the performance requirements of the carbon dioxide  
21 mitigation plan. The independent entity shall make available the  
22 mitigation project monitoring results to the council.

23 (b) For facilities under the jurisdiction of the department or  
24 authority pursuant to section 2(1) (b) or (c) of this act, the  
25 implementation of a carbon dioxide mitigation project, other than a  
26 purchase of carbon dioxide equivalent emission reduction credits, shall  
27 be monitored by the department or authority issuing the order of  
28 approval.

29 (6) Upon promulgation of federal requirements for carbon dioxide  
30 mitigation for fossil-fueled thermal electric generation facilities,  
31 those requirements may be deemed by the council, department, or  
32 authority to be equivalent and a replacement for the requirements of  
33 this section.

34 NEW SECTION. **Sec. 5.** (1) The council shall maintain a list of  
35 independent qualified organizations with proven experience in emissions  
36 mitigation activities and a demonstrated ability to carry out their  
37 activities in an efficient, reliable, and cost-effective manner.



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

6 (3) Before signing contracts to purchase offsets with funds from  
7 certificate holders or order of approval holders, an independent  
8 qualified organization must demonstrate to the council that the  
9 mitigation projects it proposes to use provides a reasonable certainty  
10 that the performance requirements of the carbon dioxide mitigation  
11 projects will be achieved.

12 (4) The independent qualified organization shall permit the council  
13 to appoint up to three persons to inspect plans, operation, and  
14 compliance activities of the organization and to audit financial  
15 records and performance measures for carbon dioxide mitigation projects  
16 using carbon dioxide mitigation money paid by certificate holders or  
17 order of approval holders under this chapter.

18 (5) An independent qualified organization must file biennial  
19 reports with the council, the department, or authority on the  
20 performance of carbon dioxide mitigation projects, including the amount  
21 of carbon dioxide reductions achieved and a statement of cost for the  
22 mitigation period.

23 NEW SECTION. **Sec. 6.** Reasonable and necessary costs incurred by  
24 the council in implementing and administering this chapter shall be  
25 assessed against applicants and holders of site certification  
26 agreements that are subject to the requirements of this chapter.

27 NEW SECTION. **Sec. 7.** The council, department, and authority shall  
28 adopt rules to carry out this chapter.

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

31 (1) For fossil-fueled electric generation facilities having more  
32 than twenty-five thousand kilowatts station generating capability but  
33 less than three hundred fifty thousand kilowatts station generation  
34 capability, except for fossil-fueled floating thermal electric  
35 generation facilities under the jurisdiction of the energy facility

1 site evaluation council pursuant to RCW 80.50.010, the department or  
2 authority shall implement a carbon dioxide mitigation program  
3 consistent with the requirements of chapter 80.-- RCW (sections 1  
4 through 7 of this act).

5 (2) For mitigation projects conducted directly by or under the  
6 control of the applicant, the department or local air authority shall  
7 approve or deny the mitigation plans, as part of its action to approve  
8 or deny an application submitted under RCW 70.94.152 based upon whether  
9 or not the mitigation plan is consistent with the requirements of  
10 chapter 80.-- RCW (sections 1 through 7 of this act).

11 (3) The department or authority may determine, assess, and collect  
12 fees sufficient to cover the costs to review and approve or deny the  
13 carbon dioxide mitigation plan components of an order of approval  
14 issued under RCW 70.94.152. The department or authority may also  
15 collect fees sufficient to cover its additional costs to monitor  
16 conformance with the carbon dioxide mitigation plan components of the  
17 registration and air operating permit programs authorized in RCW  
18 70.94.151 and 70.94.161. The department or authority shall track its  
19 costs related to review, approval, and monitoring conformance with  
20 carbon dioxide mitigation plans.

21 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute  
22 a new chapter in Title 80 RCW.

Passed by the House March 9, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 31, 2004.

Filed in Office of Secretary of State March 31, 2004.