ESSB 6001 - H AMD
By Representative Representative

ADOPTED AND ENGROSSED 04/12/2007

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that:

(a) Washington is especially vulnerable to climate change because of the state's dependence on snow pack for summer stream flows and because the expected rise in sea levels threatens our coastal communities. Extreme weather, a warming Pacific Northwest, reduced snow pack, and sea level rise are four major ways that climate change is disrupting Washington's economy, environment, and communities;

(b) Washington's greenhouse gases emissions are continuing to increase, despite international scientific consensus that worldwide emissions must be reduced significantly below current levels to avert catastrophic climate change;

(c) Washington state greenhouse gases are substantially caused by the transportation sector of the economy;

(d) Washington has been a leader in actions to slow the increase of greenhouse gases emissions, such as being the first state in the nation to adopt a carbon dioxide mitigation program for new thermal electric plants, mandating integrated resource planning for electric utilities to include life-cycle costs of carbon dioxide emissions, adopting clean car standards and stronger appliance energy efficiency standards, increasing production and use of renewable liquid fuels, and increasing renewable energy sources by electric utilities;

(e) A greenhouse gases emissions performance standard will work in unison with the state's carbon dioxide mitigation policy, chapter 80.70 RCW and its related rules, for fossil-fueled thermal electric generation facilities located in the state;

(f) While these actions are significant, there is a need to assess the trend of greenhouse gases emissions statewide over the next several

decades, and to take sufficient actions so that Washington meets its responsibility to contribute to the global actions needed to reduce the impacts and the pace of global warming;

(g) Actions to reduce greenhouse gases emissions will spur technology development and increase efficiency, thus resulting in benefits to Washington's economy and businesses; and

(h) The state of Washington has an obligation to provide clear guidance for the procurement of baseload electric generation to alleviate regulatory uncertainty while addressing risks that can affect the ability of electric utilities to make necessary and timely investments to ensure an adequate, reliable, and cost-effective supply of electricity.

(2) The legislature finds that companies that generate greenhouse gases emissions or manufacture products that generate such emissions are purchasing carbon credits from landowners and from other companies that provide carbon credits. Companies that are purchasing carbon credits would benefit from a program to trade and to bank carbon credits. Washington forests are one of the most effective resources that can absorb carbon dioxide from the atmosphere. Forests, and other planted lands and waters, provide carbon storage and mitigate greenhouse gases emissions. Washington contains the most productive forests in the world and both public and private landowners could benefit from a carbon storage trading and banking program.

(3) The legislature intends by this act to establish statutory goals for the statewide reduction in greenhouse gases emissions and to adopt the recommendations provided by the Washington climate change challenge stakeholder group, which is charged with designing and recommending a comprehensive set of policies to the legislature and the governor on how to achieve the goals. The legislature further intends by this act to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

(4) The legislature finds that:

(a) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the state will rely on clean and efficient fossil fuel-fired generation and will encourage the development of cost-effective, highly efficient, and environmentally sound supply resources to provide reliability and consistency with the state's energy priorities;

(b) It is vital to ensure all electric utilities internalize the significant and underrecognized cost of emissions and to reduce Washington consumers' exposure to costs associated with future regulation of these emissions, which is consistent with the objectives of integrated resource planning by electric utilities under chapter 19.280 RCW; and

(c) The state of California recently enacted a law establishing a greenhouse gases emissions performance standard for electric utility procurement of baseload electric generation that is based on the emissions of a combined-cycle thermal electric generation facility fueled by natural gas.

(5) The legislature finds that the climate change challenge stakeholder group provides a process for identifying the policies necessary to achieve the economic and emissions reduction goals in section 3 of this act in a manner that maximizes economic opportunities and job creation in Washington.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of community, trade, and economic development under section 7 of this act.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

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

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council or a local jurisdiction.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of the effective date of this section, but may result in incidental increases in generation capacity.

NEW SECTION. **Sec. 3.** (1) The following greenhouse gases emissions reduction and clean energy economy goals are established for Washington state:

(a) By 2020, reduce overall greenhouse gases emissions in the state to 1990 levels;

(b) By 2035, reduce overall greenhouse gases emissions in the state to twenty-five percent below 1990 levels;

(c) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year; and

(d) By 2020, increase the number of clean energy sector jobs to twenty-five thousand from the eight thousand four hundred jobs the state had in 2004.

(2)(a) By December 31, 2007, the departments of ecology and community, trade, and economic development shall report to the appropriate committees of the senate and house of representatives the total greenhouse gases emissions for 1990 and the totals in each major sector for 1990.

(b) By December 31st of each even-numbered year beginning in 2010, the departments of ecology and community, trade, and economic development shall report to the governor and the appropriate committees

of the senate and house of representatives the total greenhouse gases emissions for the preceding two years, and totals in each major source sector.

NEW SECTION. **Sec. 4.** (1) The governor shall develop policy recommendations to the legislature on how the state can achieve the greenhouse gases emissions reduction goals established under section 3 of this act. These recommendations must include, but are not limited to:

(a) How market mechanisms, such as a load-based cap and trade system, would assist in achieving the greenhouse gases emissions reduction goals;

(b) How geologic injection, forest sequestration, and other carbon sequestration options could be used to achieve state greenhouse gases emissions reduction goals;

(c) A process for replacing the highest emitting thermal electric plants that have exceeded their expected useful life with newer technologies that have lower greenhouse gases emissions levels;

(d) Methods to utilize indigenous resources, such as landfill gas, geothermal resources, and other assets that might reduce greenhouse gases emissions consistent with the purposes of this act;

(e) How regulatory and tax policies for electric utilities could be improved to help achieve these goals in a manner that is equitable for electric utilities and consumers.

(2) Recommendations under subsection (1) of this section shall be submitted to the appropriate committees of the house of representatives and the senate for consideration in the 2008 legislative session.

NEW SECTION. **Sec. 5.** (1) Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gases emissions output as determined under section 7 of this act.

(2) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases

emissions performance standard established under this section until the facilities are the subject of long-term financial commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gases emissions performance standard established in subsection (1) of this section.

(3) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section.

(4) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(5) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(6) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gases emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(7) The following greenhouse gases emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (13) of this section.

(8) In adopting and implementing the greenhouse gases emissions performance standard, the department of community, trade, and economic development energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordination council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gases emissions performance standard on system reliability and overall costs to electricity customers.

(9) In developing and implementing the greenhouse gases emissions performance standard, the department shall, with assistance of the commission, the department of community, trade, and economic development energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(10) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gases emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(11) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (7) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (13) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(12)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gases emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(13) A project under consideration by the energy facility site evaluation council by the effective date of this section is required to include all of the requirements of subsection (11) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by the effective date of this section that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires

the project owner to meet the greenhouse gases emissions performance standard by purchasing verifiable greenhouse gases emissions reductions from an electric generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

NEW SECTION. **Sec. 6.** A new section is added to chapter 80.50 RCW to read as follows:

The governor may approve or otherwise take action on an amendment to a site certification under the provisions of section 5 of this act.

NEW SECTION. **Sec. 7.** The energy policy division of the department of community, trade, and economic development shall provide an opportunity for interested parties to comment on the development of a survey of new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States to determine the average rate of emissions of greenhouse gases for these turbines. The department of community, trade, and economic development shall report the results of its survey to the legislature every five years, beginning June 30, 2013. The department of community, trade, and economic development shall adopt by rule the average available greenhouse gases emissions output every five years beginning five years after the effective date of this act.

NEW SECTION. **Sec. 8.** (1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that

long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gases emissions performance standard established under section 5 of this act, whether the company has a need for the resource, and whether the specific resource selected is appropriate. The commission shall take into consideration factors such as the company's forecasted loads, need for energy, power plant technology, expected costs, and other associated investment decisions. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs. A proceeding under this subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part IV). The commission shall adopt rules to provide that the schedule for a proceeding under this subsection takes into account both (a) the needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and (b) the procedural rights to be provided to parties in chapter 34.05 RCW (part IV), including intervention, discovery, briefing, and hearing.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with the long-term financial commitment, including operating and maintenance

costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under section 5 of this act. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) The commission shall adopt rules necessary to implement this section by December 31, 2008.

NEW SECTION. **Sec. 9.** (1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act. No consumer-owned utility may enter into a long-term financial

commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under section 5 of this act.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under section 5 of this act, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

NEW SECTION. **Sec. 10.** For the purposes of sections 5 through 10 of this act and RCW 80.70.020, the department, in consultation with the department of community, trade, and economic development energy policy division, the energy facility site evaluation council, the commission, and the governing boards of consumer-owned utilities, shall review the greenhouse gases emissions performance standard established in this chapter to determine need, applicability, and effectiveness no less than every five years following the effective date of this section, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electric utilities, and report to the legislature.

NEW SECTION. **Sec. 11.** By December 31, 2007, the governor shall report to the legislature regarding the potential benefits of creating tax incentives to encourage baseload electric facilities to upgrade

their equipment to reduce carbon dioxide emissions, the nature and level of tax incentives likely to produce the greatest benefits, and the cost of providing such incentives.

NEW SECTION. **Sec. 12.** Sections 1 through 5 and 7 through 10 of this act constitute a new chapter in Title 80 RCW."

Correct the title.

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