

HOUSE BILL REPORT

E2SSB 5735

As Reported by House Committee On:

Ecology & Parks
Ways & Means

Title: An act relating to reducing greenhouse gas emissions.

Brief Description: Reducing greenhouse gas emissions.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rockefeller, Hargrove, Jacobsen, Ranker, Fraser, Keiser, Jarrett, Franklin, Shin, Kohl-Welles, Regala, McAuliffe and Kline; by request of Governor Gregoire).

Brief History:

Committee Activity:

Ecology & Parks: 3/17/09, 3/27/09 [DPA];
Ways & Means: 4/4/09 [DPA(WAYS w/o EPAR)].

Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Directs the Office of the Governor and the Department of Ecology (DOE) to represent the state's interests in the development of a national program to reduce greenhouse gas emissions.
- Requires the DOE to develop its best estimate of emissions levels in 2012 for persons that emit 25,000 metric tons of carbon dioxide equivalent or greater each year and the trajectory of emissions reductions necessary in order to meet the 2020 emission reduction requirements.
- Requires that the DOE develop an assessment of the state's emissions sources and assess economic sectors where reductions in greenhouse gasses cannot be realized as well as an assessment on the sectors that are necessary to the economic vitality of the state.
- Requires the Governor to designate a currently employed full-time-equivalent person as the single point of accountability for all energy and climate change initiatives within state agencies.
- Requires the DOE to develop recommendations for the state's policy for forestry and agricultural offset projects within Washington.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Requires the DOE to develop recommendations for financial incentives for forestry and forest products that will recognize and encourage forest land management and use of forest products that will maintain or increase carbon sequestration.
- Requires by 2015, coal-fired power plants within Washington that burn over 1 million tons of coal per year to reduce greenhouse gas emissions by 1 million metric tons.
- Authorizes an alternative fuels corridor pilot project capable of supporting electric vehicle charging, battery exchange technologies, and providing alternative fuel distribution.
- Requires the Office of the Governor to develop a project for the electrification of the West Coast Interstate and associated metropolitan centers.
- Directs the Department of General Administration to work with California, Oregon, other states, federal agencies, local governments, and private fleet owners to encourage aggregate purchasing of electric vehicles to the maximum extent possible.
- Requires regional transportation planning organizations with at least one county with a population greater than 245,000 to adopt a regional transportation plan that implements the goals to reduce annual per capita vehicle miles traveled.
- Requires the DOE to consult with tribal governments on elements of the state's climate change program that may impact tribal governments.
- Provides a severability clause.

HOUSE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 9 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Chase, Dickerson, Dunshee, Eddy, Finn, Hudgins and Morris.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Kretz, Kristiansen, Orcutt and Shea.

Staff: Jaclyn Ford (786-7339)

Background:

Western Climate Initiative.

In 2007 the governors of Arizona, California, New Mexico, Oregon, and Washington formed the Western Climate Initiative (WCI). They were later joined by Montana and Utah, and the Canadian provinces of British Columbia, Manitoba, Ontario, and Quebec. Other U.S. and Mexican states have joined as observers.

Governor Gregoire's Executive Order Setting Greenhouse Gas Emissions Goals.

On February 7, 2007 the Governor issued an Executive Order establishing goals for greenhouse gas (GHG) emissions reductions, for increasing clean energy sector jobs, and for reducing expenditures on imported fuel. The Executive Order also directed the Department

of Ecology (DOE) and the Department of Community, Trade and Economic Development (DCTED) to lead stakeholders in a process to consider a full range of policies and strategies to achieve the emissions goals.

Climate Action Team and Carbon Market Work Groups.

In response to the Governor's Executive Order, the DOE and the DCTED formed the Washington Climate Advisory Team to assist with the development of the recommendations for climate change mitigation policies and plans for Washington. In 2008 the Washington Climate Advisory Team was renamed the Climate Action Team (CAT). The CAT's primary activity in 2008 was focused on finding solutions on how to achieve GHG emissions reductions through the work of Implementation Working Groups (IWGs) covering four subcategories: Beyond Waste, Energy Efficiency and Green Buildings, Transportation, and the State Environmental Policy Act (SEPA). The CAT also had two design work groups that focused on how forestry and agriculture within Washington could participate in an offset program. These two groups were known as the Forest Sector Carbon Market Work Group and the Agriculture Sector Carbon Market Work Group. Both work groups submitted recommendations in late 2008.

State Greenhouse Gas Emission Reduction Requirements.

The DOE, in coordination with the WCI, developed a design for a regional multisector market-based system to limit and reduce GHG emissions. The DOE and the DCTED were required to provide the Legislature with specific recommendations for implementing the design for the multisector market-based system in Washington.

The state must limit GHG emissions to achieve the following statewide emission reductions:

- by 2020 reduce overall GHG emissions in the state to 1990 levels;
- by 2035 reduce overall GHG emissions in the state to 25 percent below 1990 levels; and
- by 2050 reduce overall GHG emissions in the state to 50 percent below 1990 levels, or 70 percent below the state's expected GHG emissions that year.

Summary of Amended Bill:

Greenhouse Gas Reduction Programs.

The Office of the Governor and the DOE are required to represent the state's interests in the development of a national program to reduce GHG emissions. As part of this effort, the DOE must continue to participate in the WCI to develop a regional program to reduce GHG emissions. This regional program must be used to influence the national program to reduce GHG emissions.

Emission Trajectories.

The DOE must develop its best estimate of emissions levels in 2012 for persons that the DOE reasonably believes emit 25,000 metric tons of carbon dioxide equivalent or greater each year and the trajectory of emissions reductions necessary to meet the 2020 requirement of reducing the state's GHG emissions to 1990 levels.

The DOE must develop the estimated 2012 emissions levels and the 2020 reduction trajectories in consultation with business and other interested stakeholders by December 15, 2009. The reduction trajectories must reflect the DOE's best estimate of each person's proportionate share of the 2020 reductions and must consider each person's use of industry best practices and of fuels that are either carbon neutral or that do not emit GHGs. Consideration may be given to industries whose processes are inherently energy intensive.

The DOE must provide each person with its estimate of the person's 2012 emissions levels and the 2020 reduction trajectory as soon as they are available, but no later than December 15, 2009. Each person or groups of persons representing a sector of Washington's economy may recommend strategies or actions to the DOE that they believe would achieve the needed reductions. The recommendations must be provided to the DOE by June 15, 2010.

The DOE must provide a report to the Legislature by December 31, 2010, that includes the 2012 emissions estimates, the 2020 reduction trajectories, and the strategies and actions, including complementary policies, that collectively will achieve the state's 2020 mandatory emission reductions. The report must also include a description of any additional authority that is needed to implement the identified strategies or actions.

Emissions Not Considered a Greenhouse Gas.

Emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, including pulping liquor, and wood residuals may not be considered a GHG as long as the region's silvicultural sequestration capacity is maintained or increased.

Accountability.

The Governor must designate a currently employed full-time-equivalent person as the single point of accountability for all energy and climate change initiatives within state agencies. All agencies, councils, or work groups with energy or climate change initiatives must coordinate with this designee. This position must be funded from current full-time-equivalent allocations without increasing budgets or staffing levels. If duties must be shifted in the agency, they must be shifted to current full-time-equivalent allocations.

Forestry Offset Policy.

The DOE, in consultation with the Department of Natural Resources (DNR) and the Forest Sector Carbon Market Work Group, must develop recommendations for the state's policy for forestry offset projects within Washington. The agencies and the Forest Sector Carbon Market Work Group must use the 2008 report of the Forest Sector Carbon Market Work Group as the starting point in developing the policy. The final policy must be submitted to the Legislature by December 31, 2010. The policy recommendations must address:

- specific standards and guidelines that will support carbon accounting in managed forests participating in an offset program;
- recommendations on how any carbon that is reduced or sequestered by a forestry offset project may be eligible for an offset credit available to coal-fired power plants, and within regional and federal climate policies;
- recognition of management activities that increase carbon stocks including, but not limited to, thinning, lengthening rotations, increased retention of trees after harvest,

- fertilization, genetics, timber stand improvement, fire management, and specific site class and productivity of a managed forest;
- specific standards and guidelines to support wood products accounting, recognizing that carbon is stored in products after trees are harvested, including the use of the 100-year method which estimates the amount of carbon stored in the wood products that are projected to remain in use over 100 years;
 - guidelines on how transfer of development rights or on-site cluster development projects may be used to create forestry offset projects;
 - guidelines on how forestry offset projects and forestry financial incentive programs can work together so that Washington's forest landowners will not be disadvantaged in comparison to other jurisdictions participating in a national or regional cap and trade program;
 - how to verify or certify carbon stocks in a manner that will not be administratively burdensome; and
 - specific standards for how landowners who are no longer able or willing to meet their offset obligations can opt out of the program. The specific standards must require the landowner to procure other allowances or offsets equal to the offsets issued under the management plan for any offsets they have sold and surrender those offsets and any unsold offsets to the state.

Financial Incentives for Forestry.

The DOE, in consultation with the DNR and the Forest Sector Carbon Market Work Group, must develop and deliver to the Legislature by December 31, 2010, recommendations for financial incentives for forestry and forest products that will recognize and encourage forest land management and use of forest products that will maintain or increase carbon sequestration, including:

- thinning, lengthening of rotations, increased retention of trees at harvest, fertilization, genetics, timber stand improvement, and fire management;
- production of wood products while maintaining or increasing carbon stocks on the ground; and
- retention of high carbon stocks where there is no obligation to retain the stocks.

Agricultural Offset Policy.

The DOE, in consultation with Washington State University (WSU), the Washington State Department of Agriculture, and the Agriculture Sector Carbon Market Work Group, must develop recommendations for agricultural offset projects within Washington. The agencies and the Agriculture Sector Carbon Market Work Group must use the 2008 report of the Agriculture Sector Carbon Market Work Group as the starting point in developing the policy. The final recommendations of the Agriculture Sector Carbon Market Work Group must be submitted to the Legislature by December 31, 2010. The policy recommendations must address:

- a process and timeline to survey, catalog, and map Washington soils in a manner that describes the carbon soil sequestration level of the soils;
- activities that would increase carbon sequestration in soils and therefore potentially qualify as offset projects; and
- recommendations on how any carbon that is reduced or sequestered by an agricultural offset project may be eligible for an offset credit available to coal-fired power plants, and within regional and federal climate policies.

Standards for Coal-Fired Power Plants.

By 2015, coal-fired power plants within Washington that burn over 1 million tons of coal per year must reduce GHG emissions by 1 million metric tons unless the state is participating in a national or regional cap and trade program by or during 2012 that covers the emissions from these plants.

The DOE must negotiate and implement a compliance agreement with the coal-fired power plants that describes how the required emissions reduction will be accomplished. The compliance agreement may include measures such as the substitution of biomass and other renewable resources for more carbon-intensive fuels, as well as the limited use of offset projects. However, no more than 49 percent of the total emissions reductions from the coal-fired power plants may be satisfied with offsets. The DOE must report to the Legislature on the status and content of the compliance agreement by December 31, 2010.

If the compliance agreement requires substitution of biomass or other renewable resources for more carbon intensive fuels, the substitution does not constitute an upgrade under the baseload electric generation performance standard.

If an order or approval is required as a result of the reductions required, the DOE must issue the order or approval within 60 days of receipt of a complete application that demonstrates to the DOE's satisfaction that the coal-fired power plant will achieve the emissions reduction required.

Within 30 days after issuing an order or approval, the DOE must submit to the Legislature notice of the issuance of an order or approval and the findings that led to the issuance of the order or approval. The DOE must also post the notice of the issuance of an order or approval and the findings that led to the issuance of the order or approval on their website.

If a coal-fired power plant has begun to reduce its emissions and the state subsequently participates in a national or regional cap and trade program, the state must advocate for appropriate credit to be given for the early reductions.

Alternative Fuels Corridor Pilot.

An alternative fuels corridor pilot project capable of supporting electric vehicle charging, battery exchange technologies, and providing alternative fuel distribution is authorized by the Legislature.

The Washington State Department of Transportation (WSDOT) must pursue partnership agreements with other public and private entities for the use of land and facilities along state routes and within interstate highway rights-of-way for an alternative fuels corridor pilot project. The WSDOT must strive to have the partnership agreement in place by June 30, 2010. At a minimum, the pilot project must:

- limit renewable fuel and vehicle technology offerings to those with a forecasted demand over the next 15 years and approved by the WSDOT;
- ensure that a pilot project site does not compete with existing retail businesses in the same geographic area for the provision of the same refueling services, recharging technologies, or other retail commercial activities;

- provide existing truck stop operators and retail truck refueling businesses with an absolute right of first refusal over the offering of refueling and recharging services to class six trucks with a maximum gross vehicle weight of 26,000 pounds within the same geographic area identified for a possible pilot project site;
- reach agreement with the Department of Services for the Blind ensuring that any activities at host sites do not materially affect the revenues forecasted from their vending operations;
- regulate the internal rate of return from the partnership, including provisions to reduce or eliminate the level of state support once the partnership attains economic self-sufficiency;
- be limited to not more than five locations on state-owned land within federal interstate rights-of-way or state highway rights-of-way in Washington; and
- be limited in duration to a term of years reasonably necessary for the partnership to recover the cost of capital investments, plus the regulated internal rate of return.

The WSDOT is not responsible for providing capital equipment or operating refueling or recharging services.

The WSDOT must provide periodic status reports on the pilot project to the Office of Financial Management and the Legislature at least every biennium.

Electrification of the West Coast Interstate.

The Office of the Governor, in consultation with the DCTED, the DOE, the Department of General Administration (GA), the WSDOT, and WSU, must develop a project for the electrification of the West Coast Interstate and associated metropolitan centers. The project should be developed in collaboration with representatives of Oregon and California, the federal government, and the private sector.

Aggregate Purchasing of Electric Vehicles.

The GA is directed to work with California, Oregon, other states, federal agencies, local governments, and private fleet owners to encourage aggregate purchasing of electric vehicles to the maximum extent possible.

Federal Funds.

The state must seek federal funds for purchasing electric vehicles and the installation of public infrastructure for electric and other high-efficiency, zero or low-carbon vehicles. The DOE must also seek funds to expand the network of truck stop electrification facilities and port electrification facilities.

Regional Transportation Planning.

Regional transportation planning organizations encompassing at least one county with a population greater than 245,000 must adopt a regional transportation plan that implements the goals to reduce annual per capita vehicle miles traveled.

The regional transportation planning organizations must review and document consistency with locally adopted comprehensive plans of all jurisdictions within the boundary of the organization and must identify any potential conflicts between the locally adopted

comprehensive plans and regional efforts to reduce per capital vehicle miles.

Tribal Government Consultation.

The DOE must consult with tribal governments upon request on elements of the state's climate change program that may impact tribal governments, such as their voluntary development of offset projects.

Severability Clause.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Amended Bill Compared to Original Bill:

The amended bill deletes the:

- requirement for the DOE to recommend a GHG emissions reduction program that sets statewide and sector emission caps;
- requirement for the DOE to report to the Legislature on alternative strategies the state may implement in order to meet the mandatory emission reduction requirements;
- requirement for the DOE to recommend criteria for issuing and accepting offset credits for offset projects; and
- creation of an Emissions Reduction Assistance Account.

The amended bill adds the:

- requirement that the DOE develop its best estimate of emissions levels in 2012 for persons that emit 25,000 metric tons of carbon dioxide equivalent or greater each year and the trajectory of emissions reductions necessary in order to meet the 2020 emission reduction requirements;
- requirement that the Governor designate a currently employed full-time-equivalent person as the single point of accountability for all energy and climate change initiatives within state agencies;
- requirement that the DOE develop recommendations for the state's policy for agricultural offset projects within Washington;
- requirement that by 2015, coal-fired power plants within Washington that burn over 1 million tons of coal per year reduce GHG emissions by 1 million metric tons;
- requirement that regional transportation planning organizations with at least one county with a population greater than 245,000 adopt a regional transportation plan that implements the goals to reduce annual per capita vehicle miles traveled; and
- severability clause.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Repercussions from climate change are eminent. By continuing Washington's leadership, Washington will benefit economically and environmentally. Washington must stay in a strong position to influence the federal program. The bill needs to be stronger than when it left the Senate. A carbon control program is coming and Washington should shape that program. Washington should continue to lead and innovate. The cost of inaction will cost more than the transition cost to this program. It does not make any sense to continue to spend over \$18 billion on imported fossil fuels. Washington needs to be self-sufficient. Washington's actions have repercussions throughout the world. There will be changes in weather patterns. If Washington does not pay the cost today, its children will pay the cost tomorrow. There needs to be a strong Washington position.

(In support with concerns) Washington needs a program that will help meet Washington's climate reduction goals. This bill needs to be strengthened because it does not go far enough. A firm cap on emissions is needed. Washington is ready to take action. Washington's competitors are already more efficient than Washington is. Washington has an opportunity to continue its leadership role. This bill should move Washington forward. Washington should invest in a clean energy economy. This bill will protect Washington's children and Washington's future. The world needs to stop global warming. Washington needs to reduce its dependence on foreign oil. Future generations will suffer without Washington's leadership. States need to keep pressure on the federal government. Climate change is a reality of today not a hypothetical in the future. The Legislature should approve all aspects of the program. Washington's efforts should be spent at the federal level. Washington should not implement any program alone.

(Neutral) There were high hopes for this bill; this bill needs to be significantly strengthened. Cap-and-trade may not work. Washington cannot reduce emissions by switching from coal to natural gas. There should be no preference for Washington forests in the offset section.

(With concerns) A federal program is preferable to a regional program. There should be unlimited offsets. Industry needs flexibility to meet the 2020 emission reduction goal. Industrial sectors have made significant reductions already. Early action should be recognized back to 1999. Washington should not export jobs to China. Science should be sound and action should be careful. An economic analysis should be done before the program details are laid out.

(Opposed) This is untimely; Washington should wait for the federal program. This would complicate investment decisions. Since Washington has a seat at the federal table, this legislation is not needed. Washington should be able to measure whether man-made carbon-dioxide is changing the climate before it acts. Incentives should be provided to synthetic fuels. Models are not accurate and the theory of climate change is incorrect.

Persons Testifying: (In support) Senator Rockefeller, prime sponsor; Governor Gregoire; Chris Boerger, Northwest Washington Synod Evangelical Lutheran Church; Jeff Berner, Earth Ministry; Ann Eachus, United Methodist Women; and Craig Partridge, Department of Natural Resources.

(In support with concerns) Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; Jessica Finn Coven, Climate Solutions; Llewellyn Matthews, Northwest Pulp and Paper Association; Debora Munguia, Washington Forest Protection Association; Stewart Henderson, Third Way Consulting Group; John Little, Northwest Carpenters; Colm Gent, New Earth Renewable Energy Inc.; Beth Anderson, Seattle University School of Theology and Ministry; Chris Olsen, Lutheran Volunteer Corps; Loretta Jancoski, Earth Ministry; Tim Boyd, Port Blakely Tree Farms, Boise Cascade, Boise Inc., Vaagen Brothers Lumber, and Industrial Customers of Northwest Utilities; Bruce Chattin, Washington Aggregates and Concrete Association; and Nancy Hiteshue, Washington Roundtable.

(Neutral) Mary Moore, League of Women Voters; and Todd Myers, Washington Policy Center.

(With concerns) Grant Nelson, Association of Washington Business; Greg Hanon, Western States Petroleum Association; Sean O'Sullivan, Association of Western Pulp and Paper Workers; and John Stuhlmiller, Washington Farm Bureau.

(Opposed) Tom Crowninshield, Lafarge; Tim Hunt, East King County Chambers of Commerce Legislative Coalition; Mike Fox and Gary Troyer, American Nuclear Society; and Gary Ritchie.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Ecology & Parks. Signed by 13 members: Representatives Linville, Chair; Ericks, Vice Chair; Cody, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 7 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Priest, Ross and Schmick.

Staff: Owen Rowe (786-7391)

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Ecology & Parks:

The date for the report due to the Legislature on the status and content of the compliance agreement for coal-fired power plants is changed from December 31, 2010, to December 31, 2011. The bill requires the Department of Ecology (DOE) to develop an assessment of the state's emissions sources, as well as an assessment of the sectors where reductions in the state's greenhouse gas emissions cannot be realized, and an assessment on the sectors that are necessary to ensure the economic vitality of the state. A standard null and void clause is added so that if funding for this legislation is not included in the budget the bill is not enacted.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill was requested by Governor Gregoire. The Governor believes that the time is critical for work on climate change. This is reflected in her investment of \$1.1 million in her budget. The Senate budget includes \$1.2 million for this bill. It is clear that there will be a federal program in the works that will have significant impacts for the state's interests. This bill will help to provide more information on how to achieve the 2020 emission reduction goals that are currently in statute. We need to know more about the best way to move forward as we head into the federal debate. The development of criteria for carbon offsets for the Agricultural and Forestry will be an important revenue stream for these sectors. This state is among the leaders in the world right now in developing these concepts because of the investments this Legislature has made in the past. Continuing this work is especially critical so that when a carbon control program is initiated our economy is poised to benefit. We need to get going now to reduce transportation emissions, which account for 50 percent of the emissions in this state.

(In support with concerns) We are concerned about the costs to local governments associated with the regional transportation requirements under this bill. Whatever Washington does will become part of the federal program that is currently in the works. We need a robust forest offset program in this state.

The City of Seattle strongly supports a cap and trade program with an auction of emissions. We are disappointed that this bill does not include these provisions. If Washington becomes part of a program that becomes part of historic emissions we will be greatly compromised. We hope this body will pass legislation that will keep this state on course for the reduction of greenhouse gas emissions.

(Opposed) State revenues are attained by harvesting profits of the private sector economy. When the economy contracts, state revenues decline. The way out of the state's present revenue shortfall is the revitalization of the private sector economy. This bill incrementally increases the burdens on the private sector's efforts to recover in this economy. If you must implement this bill, redesign it to maximize private sector participation in all aspects of policy formation. This will help to mitigate the effects on the private sector economy.

We oppose section 10 that hands over the responsibility to reduce Vehicle Miles Traveled to the Regional Transportation Planning Organizations. This is a major policy issue that should be thoroughly vetted by state agencies and stakeholder groups. Then this issue could be brought back to the Legislature. These policies will have a major impact in the way we live and work in our communities.

Persons Testifying: (In support) Ted Sturdevant, Department of Ecology.

(In support with concerns) Josh Weiss, Washington Association of Counties; Dave Williams, Association of Washington Cities; Debora Munguia, Washington Forest Protection Association; and Genesee Adkins, City of Seattle.

(Opposed) Ed Moats, Snohomish County Farm Bureau; and Greg Hanon, National Association of Industrial and Office Properties-Commercial Real Estate Development Association.

Persons Signed In To Testify But Not Testifying: None.