
HOUSE BILL 2813

State of Washington 61st Legislature 2010 Regular Session

By Representatives Ericksen and Orcutt

Read first time 01/14/10. Referred to Committee on Finance.

1 AN ACT Relating to encouraging the construction of low-carbon
2 energy generation facilities through tax and regulatory incentives;
3 amending RCW 80.70.020 and 80.80.040; adding a new section to chapter
4 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new
5 section to chapter 80.50 RCW; and providing expiration dates.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.08 RCW
8 to read as follows:

9 (1) The tax levied by RCW 82.08.020 does not apply to sales of
10 machinery and equipment used directly in generating electricity at a
11 low-carbon generation facility or to sales of or charges made for labor
12 and services rendered in respect to installing such machinery and
13 equipment. The seller shall retain a copy of the certificate for the
14 seller's files.

15 (2) The definitions in this subsection apply throughout this
16 section unless the context clearly requires otherwise.

17 (a) "Low-carbon generation facility" means: (i) A cogeneration
18 facility as defined in RCW 80.04.010 that when fully constructed,
19 provides at least five hundred megawatts of electrical or mechanical

1 power; or (ii) an electricity generation facility that emits less than
2 0.8 pounds of carbon dioxide per kilowatt hour of electricity
3 generated.

4 (b)(i) "Machinery and equipment" includes industrial fixtures,
5 devices, and support facilities that are integral and necessary to the
6 generation of electricity at a low-carbon generation facility.

7 (ii) "Machinery and equipment" does not include: (A) Hand-powered
8 tools; (B) property with a useful life of less than one year; (C)
9 repair parts required to restore machinery and equipment to normal
10 working order; (D) replacement parts that do not increase productivity,
11 improve efficiency, or extend the useful life of machinery and
12 equipment; (E) buildings; or (F) building fixtures that are not
13 integral and necessary to the generation of electricity that are
14 permanently affixed to and become a physical part of a building.

15 (c) "Used directly" means machinery and equipment that is used
16 directly in generating electricity at a low-carbon generation facility
17 if it provides any part of the process that generates electrical
18 energy, converts that energy to electricity, and stores, transforms, or
19 transmits that electricity for entry into or operation in parallel with
20 electric transmission and distribution systems.

21 (3) This section expires June 30, 2013.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.12 RCW
23 to read as follows:

24 (1) The provisions of this chapter do not apply with respect to the
25 use of machinery and equipment used directly in generating electricity
26 at a low-carbon generation facility or to the use of labor and services
27 rendered in respect to installing such machinery and equipment.

28 (2) The definitions in section 1 of this act apply to this section.

29 (3) This section expires June 30, 2013.

30 **Sec. 3.** RCW 80.70.020 and 2004 c 224 s 2 are each amended to read
31 as follows:

32 (1) The provisions of this chapter apply to:

33 (a) New fossil-fueled thermal electric generation facilities with
34 station-generating capability of three hundred fifty thousand kilowatts
35 or more and fossil-fueled floating thermal electric generation

1 facilities of one hundred thousand kilowatts or more under RCW
2 80.50.020(~~(14)~~) (15)(a), for which an application for site
3 certification is made to the council after July 1, 2004;

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

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

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

26 (2)(a) A proposed site certification agreement submitted to the
27 governor under RCW 80.50.100 and a final site certification agreement
28 issued under RCW 80.50.100 shall include an approved carbon dioxide
29 mitigation plan.

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

33 (c) Site certification agreement holders or order of approval
34 holders may request, at any time, a change in conditions of an approved
35 carbon dioxide mitigation plan if the council, department, or
36 authority, as appropriate, finds that the change meets all requirements
37 and conditions for approval of such plans.

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

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

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

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

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

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

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

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

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

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

35 (b) No later than one hundred twenty days after the start of
36 commercial operation, the certificate holder or order of approval
37 holder shall make a one-time payment to the independent qualified

1 organization for the amount determined under subsection (5) of this
2 section.

3 (c) As an alternative to a one-time payment, the certificate holder
4 or order of approval holder may make a partial payment of twenty
5 percent of the amount determined under subsection (5) of this section
6 no later than one hundred twenty days after commercial operation and a
7 payment in the same amount or as adjusted according to subsection
8 (5)(a) of this section, on the anniversary date of the initial payment
9 in each of the following four years. With the initial payment, the
10 certificate holder or order of approval holder shall provide a letter
11 of credit or other comparable security acceptable to the council or the
12 department for the remaining eighty percent mitigation payment amount
13 including possible changes to the rate per metric ton from rule making
14 under subsection (5)(a) of this section.

15 (7) The provisions of this chapter do not apply to a low-carbon
16 generation facility as defined in section 1 of this act.

17 **Sec. 4.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to read
18 as follows:

19 (1) Beginning July 1, 2008, the greenhouse gas emissions
20 performance standard for all baseload electric generation for which
21 electric utilities enter into long-term financial commitments on or
22 after such date is the lower of:

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

25 (b) The average available greenhouse gas emissions output as
26 determined under RCW 80.80.050.

27 (2) This chapter does not apply to long-term financial commitments
28 with the Bonneville power administration.

29 (3) All baseload electric generation facilities in operation as of
30 June 30, 2008, are deemed to be in compliance with the greenhouse gas
31 emissions performance standard established under this section until the
32 facilities are the subject of long-term financial commitments. All
33 baseload electric generation that commences operation after June 30,
34 2008, and is located in Washington, must comply with the greenhouse gas
35 emissions performance standard established in subsection (1) of this
36 section.

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

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

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

14 (7) In no case shall a long-term financial commitment be determined
15 to be in compliance with the greenhouse gas emissions performance
16 standard if the commitment includes more than twelve percent of
17 electricity from unspecified sources.

18 (8) For a long-term financial commitment with multiple power
19 plants, each specified power plant must be treated individually for the
20 purpose of determining the annualized plant capacity factor and net
21 emissions, and each power plant must comply with subsection (1) of this
22 section, except as provided in subsections (3) through (5) of this
23 section.

24 (9) The department shall establish an output-based methodology to
25 ensure that the calculation of emissions of greenhouse gases for a
26 cogeneration facility recognizes the total usable energy output of the
27 process, and includes all greenhouse gases emitted by the facility in
28 the production of both electrical and thermal energy. In developing
29 and implementing the greenhouse gas emissions performance standard, the
30 department shall consider and act in a manner consistent with any rules
31 adopted pursuant to the public utilities regulatory policy act of 1978
32 (16 U.S.C. Sec. 824a-3), as amended.

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

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

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

5 (c) Those emissions sequestered or mitigated as approved under
6 subsection (16) of this section.

7 (11) In adopting and implementing the greenhouse gas emissions
8 performance standard, the department of (~~community, trade, and~~
9 ~~economic development~~) commerce energy policy division, in consultation
10 with the commission, the department, the Bonneville power
11 administration, the western electricity (~~coordination~~ ~~[coordinating]~~)
12 coordinating council, the energy facility site evaluation council,
13 electric utilities, public interest representatives, and consumer
14 representatives, shall consider the effects of the greenhouse gas
15 emissions performance standard on system reliability and overall costs
16 to electricity customers.

17 (12) In developing and implementing the greenhouse gas emissions
18 performance standard, the department shall, with assistance of the
19 commission, the department of (~~community, trade, and economic~~
20 ~~development~~) commerce energy policy division, and electric utilities,
21 and to the extent practicable, address long-term purchases of
22 electricity from unspecified sources in a manner consistent with this
23 chapter.

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

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

36 (a) Provisions for financial assurances, as a condition of plant
37 operation, sufficient to ensure successful implementation of the carbon

1 sequestration plan, including construction and operation of necessary
2 equipment, and any other significant costs;

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

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

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

11 (e) Provisions for an owner to purchase emissions reductions in the
12 event of the failure of a sequestration plan under subsection (16) of
13 this section; and

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

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

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

29 (16) A project under consideration by the energy facility site
30 evaluation council by July 22, 2007, is required to include all of the
31 requirements of subsection (14) of this section in its carbon
32 sequestration plan submitted as part of the energy facility site
33 evaluation council process. A project under consideration by the
34 energy facility site evaluation council by July 22, 2007, that receives
35 final site certification agreement approval under chapter 80.50 RCW
36 shall make a good faith effort to implement the sequestration plan. If
37 the project owner determines that implementation is not feasible, the
38 project owner shall submit documentation of that determination to the

1 energy facility site evaluation council. The documentation shall
2 demonstrate the steps taken to implement the sequestration plan and
3 evidence of the technological and economic barriers to successful
4 implementation. The project owner shall then provide to the energy
5 facility site evaluation council notification that they shall implement
6 the plan that requires the project owner to meet the greenhouse gas
7 emissions performance standard by purchasing verifiable greenhouse gas
8 emissions reductions from an electric generating facility located
9 within the western interconnection, where the reduction would not have
10 occurred otherwise or absent this contractual agreement, such that the
11 sum of the emissions reductions purchased and the facility's emissions
12 meets the standard for the life of the facility.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.50 RCW
14 to read as follows:

15 (1) The council must complete action on any further amendments to
16 the certification issued for a low-carbon generation facility as
17 defined in section 1 of this act within sixty days. If the sixty-day
18 deadline is not satisfied due to council inaction, the amendments are
19 deemed approved.

20 (2) This section expires June 30, 2013.

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