

SSB 5343 - H AMD TO ENVI COMM AMD (H-2362.1/11) 565  
By Representative Morris

NOT CONSIDERED 04/22/2011

1 On page 1, beginning on line 3 of the amendment, strike all  
2 material through "2012." on line 26 and insert the following:

3 "Sec. 1. RCW 70.94.152 and 1996 c 67 s 1 and 1996 c 29 s 1 are  
4 each reenacted and amended to read as follows:

5 (1)(a) The department (~~(of ecology)~~) or board of any authority may  
6 require notice of the establishment of any proposed new sources,  
7 except:

8 (i) Single-family and duplex dwellings (~~(of)~~);

9 (ii) De minimis new sources as defined in rules adopted under  
10 subsection (11) of this section; and

11 (iii) New and existing sources that are exempt under subsection  
12 (13) of this section.

13 (b) The department (~~(of ecology)~~) or board may require such notice  
14 to be accompanied by a fee, and determine the amount of (~~(such)~~) the  
15 fee(~~(:— PROVIDED, That the amount of)~~). The fee may not exceed the  
16 cost of reviewing the plans, specifications, and other information and  
17 administering (~~(such)~~) the notice(~~(:— PROVIDED FURTHER, That)~~). Any  
18 such notice given or notice of construction application submitted to  
19 either the board or to the department (~~(of ecology)~~) shall preclude  
20 ((a)) further submittal of a duplicate application to any board or to  
21 the department (~~(of ecology)~~).

22 (2) The department shall, after opportunity for public review and  
23 comment, adopt rules that establish a workload-driven process for  
24 determination and review of the fee covering the direct and indirect  
25 costs of processing a notice of construction application and a  
26 methodology for tracking revenues and expenditures. All new source  
27 fees collected by (~~(the delegated local air)~~) authorities from sources  
28 shall be deposited in the dedicated accounts of their respective  
29 treasuries. All new source fees collected by the department from  
30 sources shall be deposited in the air pollution control account.

1           (3) Within thirty days of receipt of a notice of construction  
2 application, the department ((~~of ecology~~)) or board may require, as a  
3 condition precedent to the establishment of the new source or sources  
4 covered thereby, the submission of plans, specifications, and such  
5 other information as it deems necessary to determine whether the  
6 proposed new source will be in accord with applicable rules and  
7 regulations in force under this chapter. If, on the basis of plans,  
8 specifications, or other information required under this section, the  
9 department ((~~of ecology~~)) or board determines that the proposed new  
10 source will not be in accord with this chapter or the applicable  
11 ordinances, resolutions, rules, and regulations adopted under this  
12 chapter, it shall issue an order denying permission to establish the  
13 new source. If, on the basis of plans, specifications, or other  
14 information required under this section, the department ((~~of ecology~~))  
15 or board determines that the proposed new source will be in accord with  
16 this chapter, and the applicable rules and regulations adopted under  
17 this chapter, it shall issue an order of approval for the establishment  
18 of the new source or sources, which order may provide such conditions  
19 as are reasonably necessary to assure the maintenance of compliance  
20 with this chapter and the applicable rules and regulations adopted  
21 under this chapter. Every order of approval under this chapter must be  
22 reviewed prior to issuance by a professional engineer or staff under  
23 the supervision of a professional engineer in the employ of the  
24 department ((~~of ecology~~)) or board.

25           (4) The determination required under subsection (3) of this section  
26 shall include a determination of whether the operation of the new air  
27 contaminant source at the location proposed will cause any ambient air  
28 quality standard to be exceeded.

29           (5) New source review of a modification shall be limited to the  
30 emission unit or units proposed to be modified and the air contaminants  
31 whose emissions would increase as a result of the modification.

32           (6) Nothing in this section shall be construed to authorize the  
33 department ((~~of ecology~~)) or board to require the use of emission  
34 control equipment or other equipment, machinery, or devices of any  
35 particular type, from any particular supplier, or produced by any  
36 particular manufacturer.

37           (7) Any features, machines, and devices constituting parts of or

1 called for by plans, specifications, or other information submitted  
2 pursuant to subsection (1) or (3) of this section shall be maintained  
3 and operate in good working order.

4 (8) The absence of an ordinance, resolution, rule, or regulation,  
5 or the failure to issue an order pursuant to this section shall not  
6 relieve any person from his or her obligation to comply with applicable  
7 emission control requirements or with any other provision of law.

8 (9) Within thirty days of receipt of a notice of construction  
9 application the department (~~(of ecology)~~) or board shall either notify  
10 the applicant in writing that the application is complete or notify the  
11 applicant in writing of all additional information necessary to  
12 complete the application. Within sixty days of receipt of a complete  
13 application the department or board shall either (a) issue a final  
14 decision on the application, or (b) for those projects subject to  
15 public notice, initiate notice and comment on a proposed decision,  
16 followed as promptly as possible by a final decision. A person seeking  
17 approval to construct or modify a source that requires an operating  
18 permit may elect to integrate review of the operating permit  
19 application or amendment required by RCW 70.94.161 and the notice of  
20 construction application required by this section. A notice of  
21 construction application designated for integrated review shall be  
22 processed in accordance with operating permit program procedures and  
23 deadlines.

24 (10) A notice of construction approval required under subsection  
25 (3) of this section shall include a determination that the new source  
26 will achieve best available control technology. If more stringent  
27 controls are required under federal law, the notice of construction  
28 shall include a determination that the new source will achieve the more  
29 stringent federal requirements. Nothing in this subsection is intended  
30 to diminish other state authorities under this chapter.

31 (11) No person is required to submit a notice of construction or  
32 receive approval for a new source that is deemed by the department (~~(of~~  
33 ~~ecology)~~) or board to have de minimis impact on air quality. The  
34 department (~~(of ecology)~~) shall adopt and periodically update rules  
35 identifying categories of de minimis new sources. The department (~~(of~~  
36 ~~ecology)~~) may identify de minimis new sources by category, size, or  
37 emission thresholds.

1 (12) For purposes of this section, "de minimis new sources" means  
2 new sources with trivial levels of emissions that do not pose a threat  
3 to human health or the environment.

4 (13)(a) One or more generators operating at an electric generating  
5 project are exempt from the requirements of this section if:

6 (i) The generators are fueled solely by biogas that:

7 (A) Is produced by an anaerobic digester that qualifies for the  
8 solid waste permitting exemption specified in RCW 70.95.330; and

9 (B) Contains less than 0.1 percent sulfur after a startup period  
10 not exceeding one hundred eighty days;

11 (ii) The aggregate heat input from the generators does not exceed  
12 ten million British thermal units per hour; and

13 (iii) The exemption is permissible under federal law.

14 (b) A modified generator may retain an exemption under this  
15 subsection if the generator continues to meet the requirements  
16 specified in (a) of this subsection.

17 (c) For the purposes of this subsection: (i) "Anaerobic digester"  
18 means a vessel that processes organic material into biogas and  
19 digestate using microorganisms in a decomposition process within a  
20 closed, oxygen-free container; and (ii) "generator" means an internal  
21 combustion engine that converts biogas into electricity, and includes  
22 any backup combustion device to burn biogas when an engine is idled for  
23 maintenance.

24 (d) For generators exempted under this subsection or permitted  
25 under this section, the department shall measure emission outputs using  
26 SCREEN3 air modeling software approved by the United States  
27 environmental protection agency or another air modeling software that  
28 is no more stringent than SCREEN3 that is approved by the United States  
29 environmental protection agency.

30 (e) This subsection is void and has no force or effect when the  
31 department adopts rules consistent with the final rules promulgated by  
32 the United States environmental protection agency concerning: (i) New  
33 thresholds for greenhouse gas emissions that define when permits under  
34 the new source review and Title V operating permits program under the  
35 federal clean air act would be required for new or existing industrial  
36 facilities; and (ii) any changes to national ambient air quality  
37 standards after the United States environmental protection agency  
38 reviews biomass technologies.

1       (f) The exemption created in this subsection applies retroactively  
2 to January 1, 2004, with respect to generators that were subject to  
3 requirements imposed under this section prior to the effective date of  
4 this section."

EFFECT: Removes the rule-making requirements in the underlying bill. Exempts certain qualifying generators from the notice of construction permitting requirements under the state clean air act and makes this exemption retroactive to January 1, 2004. Requires the department of ecology (DOE) to measure emission outputs of exempt and permitted generators using air modeling software that is no more stringent than SCREEN3 software. Provides that the exemption is void and has no force or effect when the DOE adopts rules consistent with the United States environmental protection agency's (EPA) final rules concerning: (1) new thresholds for greenhouse gas emissions under the federal clean air act; and (2) any changes to national ambient air quality standards after the EPA reviews biomass technologies.

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