
HOUSE BILL 1825

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By Representatives Lias, Morris, Upthegrove, Rolfes, Fitzgibbon, Frockt, McCoy, Billig, Goodman, Moscoso, Pedersen, Reykdal, Jinkins, Maxwell, Green, Hudgins, and Darneille

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1 AN ACT Relating to strengthening local economies by reducing
2 emissions from coal-fired power generation through decommissioning;
3 amending RCW 43.160.076; adding a new section to chapter 70.94 RCW;
4 adding a new section to chapter 43.155 RCW; and adding a new chapter to
5 Title 80 RCW.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
8 combustion of coal creates significant health hazards for the citizens
9 of Washington. Coal combustion produces large amounts of harmful by-
10 products, including ammonia, arsenic, lead, mercury, hydrochloric acid,
11 nitrogen oxides, sulfuric acid, sulfur dioxide, particulate matter,
12 greenhouse gases, and an assortment of toxic heavy metals, all of which
13 have been determined by medical science to be harmful to human health
14 and safety. When coal is combusted in great quantities for the purpose
15 of generating electricity, these health impacts increase exponentially
16 and in proportion to the quantities combusted.

17 (2) Although some of these harmful materials are collected, stored,
18 or treated during the process of coal combustion for generating
19 electricity, thousands of pounds of these harmful substances are

1 released into the air, travel many miles beyond the site of combustion,
2 precipitate into rivers, lakes, and streams, and permeate the ground
3 every year, creating public health hazards that may be present for many
4 generations. Some of these materials also pose a threat to the
5 cultural history of Washington and its peoples by causing damage to
6 ancient native American petroglyphs and pictographs present in the
7 state.

8 (3) The legislature also finds that coal-powered electricity
9 generation is one of the largest sources of greenhouse gas emissions in
10 the state, accounting for approximately ten percent of the state's
11 total greenhouse gas emissions and nearly eighty percent of such
12 emissions from the generation of electricity in the state. In 2007,
13 the legislature found that Washington was especially vulnerable to
14 climate change caused by greenhouse gases and in 2008 enacted chapter
15 14, Laws of 2008 that established statewide limits for reducing overall
16 greenhouse gas emissions to 1990 levels by 2020.

17 (4) The legislature further finds that very large coal-fired
18 electric generating facilities, together with nearby coal mines that
19 have historically supplied coal to the facilities, are major industrial
20 facilities with a limited useful life. At the end of the useful life,
21 the closure of these facilities, including the removal of structures,
22 site reclamation, and preparation of the site for future beneficial
23 usage, requires significant planning and funding. To ensure that all
24 toxic materials are removed from these facilities and that the
25 surrounding communities are fully assured that all applicable and
26 appropriate remediation standards are met, it is necessary to require
27 that the facility owner demonstrate during the facility's operation
28 that sufficient funding will be available for closure and postclosure
29 activities.

30 (5) To that end, the legislature intends that the state ensure
31 that: (a) Facilities related to the combustion of coal for producing
32 electricity be decommissioned in such a manner as to bring the
33 potential public health hazard to a minimum; (b) environmental
34 inspection and monitoring as is necessary for verifying the status of
35 decommissioned facilities be conducted; and (c) the local community be
36 actively involved in the process of planning for the eventual closure
37 of the facility and postclosure activities.

1 (6) The legislature also finds that it is in the public interest:
2 To assist local communities in which such very large facilities may be
3 closed; to provide for future economic uses of the site; and to
4 increase economic opportunities in the community.

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

7 (1) "Authorized decommissioning plan" means the plan to accomplish
8 transition and decommissioning that has been approved by the advisory
9 board created in section 6 of this act.

10 (2) "Decommissioning" means actions taken to reduce or eliminate
11 the potential public health and safety impacts of a building,
12 structure, or plant that has permanently ceased operations, including,
13 but not limited to, actions such as decontamination, demolition,
14 disposition of waste materials, and rehabilitation or preparation of
15 the facility for future use.

16 (3) "Department" means the department of ecology.

17 (4) "Facility" includes all buildings, structures, plants,
18 processes, and operations on one contiguous site under control of the
19 same owner or operator within ten years prior to the effective date of
20 this section.

21 (5) "Fungible infrastructure" includes roads, sewer lines, power
22 lines, interconnects to public infrastructure, and all infrastructure
23 that is not specific to coal combustion and which may be used for
24 purposes other than coal-fired electricity generation and transmission.

25 (6) "Nonfungible infrastructure" includes any structure or
26 infrastructure that is integrally specific to, and which is used
27 primarily for, coal-fired electricity generation and transmission.

28 (7) "Qualifying plant" means a facility within Washington that, in
29 each of the five years preceding the effective date of this section,
30 combusted more than one million tons of coal per year for the purpose
31 of generating electricity for sale.

32 (8) "Toxic materials" means materials determined by the department,
33 in accordance with federal health standards, to be harmful to human
34 health based on composition, quantity, or both.

35 NEW SECTION. **Sec. 3.** (1) Every qualifying plant shall prepare a
36 preliminary decommissioning plan. By July 1, 2013, the department

1 shall adopt rules for the preparation of a preliminary decommissioning
2 plan. The department shall consult with the energy facility site
3 evaluation council to harmonize the standards developed by the council
4 for site restoration and preservation applicable to facilities subject
5 to a site certification agreement under chapter 80.50 RCW with the
6 rules developed under this section. The department shall also consult
7 with the department of natural resources to harmonize the standards
8 required by this section with the site reclamation requirements under
9 the surface mining requirements of chapter 78.44 RCW.

10 (2) The rules required under subsection (1) of this section must
11 require the preliminary decommissioning plan to address the following:
12 Decontamination of toxic materials at the facility; dismantling and
13 disposal of nonfungible infrastructure, equipment, and material; either
14 repurposing or rehabilitation, or both, of fungible infrastructure; and
15 preparation of the facility for either future use or sale, or both.
16 The department shall perform necessary inspection and monitoring as
17 required by this section and the rules adopted under this section. All
18 preliminary decommissioning plans must be written in conformance with
19 the format prescribed by the rules adopted under this section. The
20 rules must require the preliminary decommissioning plan to include, but
21 not be limited to:

22 (a) A written policy articulating management and corporate support
23 for the preliminary decommissioning plan, both at the local subsidiary
24 level and at the parent corporation level, and a commitment to
25 implementing planned activities and achieving established goals;

26 (b) The preliminary decommissioning plan scope and objectives;

27 (c) A full description of toxic materials at the site and plans for
28 decontamination and disposal of the material, in accordance with all
29 relevant local, state, and federal requirements;

30 (d) A full description of infrastructure at the site that may be
31 useful for purposes other than coal combustion and analysis of how that
32 infrastructure may be used or sold;

33 (e) A selection of options to be implemented in accordance with
34 this section;

35 (f) An analysis of impediments to implementing the options.
36 Impediments that are considered acceptable include, but are not limited
37 to: Adverse impacts to human health and safety, legal, or contractual
38 obligations, economic practicality, and technical feasibility;

1 (g) Specific performance goals for preserving, repurposing, or
2 improving fungible infrastructure that will remain at the site after
3 decommissioning;

4 (h) Plans for coordinating with the local community for the future
5 of the site and facilities, including but not limited to relevant
6 economic development in the vicinity of the site;

7 (i) A description of how toxic materials will be recycled, managed,
8 and disposed;

9 (j) A financial description of the preliminary decommissioning
10 plan;

11 (k) A preliminary decommissioning plan implementation schedule;

12 (l) Documentation of toxic material reduction efforts completed
13 before commencement of decommissioning; and

14 (m) An executive summary of the preliminary decommissioning plan,
15 which must include, but not be limited to:

16 (i) The information required by (c), (e), (g), (h) and (l) of this
17 subsection; and

18 (ii) A summary of the information required by (d) and (f) of this
19 subsection.

20 (3) Upon completion of a preliminary decommissioning plan, the
21 owner, chief executive officer, or other person with the authority to
22 commit management to the preliminary decommissioning plan shall sign
23 and submit the preliminary decommissioning plan, including an executive
24 summary of the preliminary decommissioning plan, to the department and
25 to the transition and decommissioning advisory board created in section
26 6 of this act. The preliminary decommissioning plan must be updated
27 and revised in coordination with the department and the advisory board
28 created in section 6 of this act.

29 NEW SECTION. **Sec. 4.** (1)(a) Every qualifying plant must, on or
30 before September 1, 2012, and on or before December 31st of each year
31 thereafter until coal combustion at the plant ceases, pay to the trust
32 account required by section 5 of this act a fee for the purpose of
33 decommissioning such a facility.

34 (b) The department may receive no more than five percent of fee
35 proceeds from 2012 to perform the duties required by section 3 of this
36 act.

1 (2) The fee must be assessed on total annual electricity generated
2 from the combustion of coal in the amount of one dollar per megawatt
3 hour.

4 (3) The ultimate parent corporation or holding company that owns or
5 operates a qualifying plant is responsible for any costs associated
6 with eliminating toxic contamination at the facility, dismantling
7 infrastructure at the facility, or disposing of waste created by the
8 dismantling of infrastructure at the facility if those costs exceed the
9 amount reserved in the trust account required by section 5 of this act.

10 NEW SECTION. **Sec. 5.** (1) All moneys to be paid by a qualifying
11 plant for the purpose of decommissioning must be promptly deposited by
12 the qualifying plant or its parent entity in a trust account,
13 maintained for the purpose of holding such decommissioning funds, with
14 a financial institution as defined by RCW 30.22.041 or licensed escrow
15 agent located in Washington. Except as provided in subsection (2) of
16 this section, all interest paid on trust account deposits must be
17 reinvested in the account. The qualifying plant shall provide the
18 department and the advisory board created in section 6 of this act with
19 a written accounting of all relevant deposits and provide written
20 notice of the name, address, and location of the depository and any
21 subsequent change thereof. If ownership of the qualifying plant is
22 transferred to another person, entity, or corporation, any sums in the
23 trust account affected by such a transfer must simultaneously be
24 transferred to an equivalent trust account of the successor owner, and
25 the successor owner shall promptly notify the department and the
26 advisory board created in section 6 of this act of the transfer and of
27 the name, address, and location of the new depository. No creditor of
28 the qualifying plant has a superior claim to any moneys deposited under
29 this section, including a trustee in bankruptcy or receiver.

30 (2) All moneys paid in excess of the yearly deposits required by
31 this chapter as security for performance of the qualifying plant's
32 decommissioning obligations must be deposited into the account required
33 by subsection (1) of this section. The interest accruing on deposits
34 in the account, minus fees charged to administer the account, must be
35 reinvested in the account. All other provisions of subsection (1) of
36 this section apply to deposits under this subsection.

1 (3) Expenditures from the trust account may only be made in
2 accordance with an authorized decommissioning plan.

3 NEW SECTION. **Sec. 6.** (1) The coal plant transition and
4 decommissioning advisory board is created consisting of nine members.

5 (2)(a) Five members of the advisory board are voting members who
6 are appointed by the governor. One voting member must be a
7 representative of the owner of the qualifying plant. One voting member
8 must be a representative of the county economic development council
9 where the qualifying plant is located. One voting member must be a
10 representative of the majority of employees at the qualifying plant,
11 chosen by those employees or a bargaining entity established to
12 represent those employees. The remaining two voting board members, who
13 represent the general public, may not have a financial or regulatory
14 interest in remediating toxicity at the facility. The governor shall
15 appoint one of the general public members of the board as the chair.

16 (b) In making the appointments to the advisory board, the governor
17 shall seek a board membership that collectively provide the expertise
18 necessary to provide strong fiscal and environmental oversight of the
19 decommissioning plan and that provides extensive knowledge of local
20 government processes and functions and an understanding of issues
21 relevant to the environment and economic development in Washington
22 state. The governor shall appoint the voting members of the board by
23 October 1, 2011. Vacant positions on the board must be filled in the
24 same manner as the original appointments. The governor may only remove
25 members of the board for good cause.

26 (3) In addition to the five voting members of the advisory board,
27 the following four government officials shall serve as ex officio
28 nonvoting members of the board: The director of the department of
29 ecology; the mayor of the city in which the qualifying plant is
30 located; a representative of the city council in which the qualifying
31 plant is located; and the chair of the county council in which the
32 qualifying plant is located. The government officials serving in an ex
33 officio capacity may designate a representative of their respective
34 agencies to serve on the board in their behalf. Such a designation
35 must be made in writing and in such a manner as is specified by the
36 board.

1 (4) The advisory board has the following powers and duties related
2 to transition and decommissioning of a qualifying plant:

3 (a) To review and authorize the decommissioning plan required by
4 this chapter; and

5 (b) To set its meeting schedules and convene at scheduled times, or
6 meet at the request of a majority of its members or the chair.

7 (5) Decisions of the advisory board must be made by a majority of
8 its total voting membership.

9 (6) Members of the board must be reimbursed as provided by RCW
10 43.03.050 and 43.03.060.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.94 RCW
12 to read as follows:

13 (1) This section only applies to power plants within Washington
14 that, in any of the five years preceding the effective date of this
15 section, combusted more than one million tons of coal per year for the
16 purpose of generating electricity.

17 (2) Power plants that meet the criteria established by subsection
18 (1) of this section are not deemed to be in compliance with the
19 greenhouse gas emissions performance standard established under RCW
20 80.80.040(3) and, without regard to the existence of long-term
21 financial commitments, must meet the greenhouse gas emissions
22 performance standard under RCW 80.80.040(1) by December 31, 2015, or if
23 the Bonneville power administration determines that there are technical
24 barriers related to operation and reliability of the electrical
25 transmission grid as a result of meeting the performance standard by
26 December 31, 2015, then by December 31, 2017.

27 (3) The state may not require early or additional reductions of
28 greenhouse gas emissions for coal-fired power plants except as may be
29 required for these plants under a federal program.

30 **Sec. 8.** RCW 43.160.076 and 2008 c 327 s 8 are each amended to read
31 as follows:

32 (1) Except as authorized to the contrary under subsection (2) of
33 this section, from all funds available to the board for financial
34 assistance in a biennium under this chapter, the board shall approve at
35 least seventy-five percent of the first twenty million dollars of funds

1 available and at least fifty percent of any additional funds for
2 financial assistance for projects in rural counties.

3 (2) If at any time during the last six months of a biennium the
4 board finds that the actual and anticipated applications for qualified
5 projects in rural counties are clearly insufficient to use up the
6 allocations under subsection (1) of this section, then the board shall
7 estimate the amount of the insufficiency and during the remainder of
8 the biennium may use that amount of the allocation for financial
9 assistance to projects not located in rural counties.

10 (3) The board shall solicit qualifying projects to plan, design,
11 and construct public facilities needed to attract new industrial and
12 commercial activities in areas impacted by the closure or potential
13 closure of large coal-fired electric generating facilities, which for
14 purposes of this section means a facility that has combusted more than
15 one million tons per year of coal in each of the calendar years 2006
16 through 2010. When the board receives timely and eligible project
17 applications from a political subdivision of the state for financial
18 assistance for such projects, the board, from available funds, shall
19 provide a priority for funding projects at the following levels:

20 (a) For the 2011-2013 biennium, at least five hundred thousand
21 dollars;

22 (b) For the 2013-2015 biennium, at least five hundred thousand
23 dollars;

24 (c) For the 2015-2017 biennium, at least one million dollars;

25 (d) For the 2017-2019 biennium, at least one million dollars;

26 (e) For the 2019-2021 biennium, at least two million dollars; and

27 (f) For the 2021-2023 biennium, at least two million dollars.

28 NEW SECTION. Sec. 9. A new section is added to chapter 43.155 RCW
29 to read as follows:

30 The board shall solicit qualifying projects to plan, design, and
31 construct public works projects needed to attract new industrial and
32 commercial activities in areas impacted by the closure or potential
33 closure of large coal-fired electric generating facilities, which for
34 purposes of this section means a facility that has combusted more than
35 one million tons per year of coal in each of the calendar years 2006
36 through 2010. When the board receives timely and eligible project

1 applications from a political subdivision of the state for financial
2 assistance for these projects, the board, from available funds, shall
3 provide a priority for funding projects at the following levels:

4 (1) For the 2011-2013 biennium, at least five hundred thousand
5 dollars;

6 (2) For the 2013-2015 biennium, at least five hundred thousand
7 dollars;

8 (3) For the 2015-2017 biennium, at least one million dollars;

9 (4) For the 2017-2019 biennium, at least one million dollars;

10 (5) For the 2019-2021 biennium, at least two million dollars; and

11 (6) For the 2021-2023 biennium, at least two million dollars.

12 NEW SECTION. **Sec. 10.** Sections 1 through 6 of this act constitute
13 a new chapter in Title 80 RCW.

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