
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5769

State of Washington

62nd Legislature

2011 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rockefeller, Pridemore, Kohl-Welles, White, Chase, Murray, Ranker, Regala, Fraser, Shin, and Kline)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to coal-fired electric generation facilities;
2 amending RCW 80.80.040, 80.80.070, 80.50.100, and 43.160.076;
3 reenacting and amending RCW 80.80.010 and 80.80.060; adding new
4 sections to chapter 80.80 RCW; adding a new section to chapter 43.155
5 RCW; adding a new section to chapter 43.06 RCW; adding a new section to
6 chapter 80.04 RCW; adding a new section to chapter 80.70 RCW; adding a
7 new chapter to Title 80 RCW; creating new sections; and providing an
8 expiration date.

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

10 NEW SECTION. **Sec. 101.** (1) The legislature finds that generating
11 electricity from the combustion of coal produces large amounts of
12 harmful pollutants, including ammonia, arsenic, lead, mercury,
13 hydrochloric acid, nitrogen oxides, sulfuric acid, sulfur dioxide,
14 particulate matter, and several toxic heavy metals, all of which have
15 been determined by medical science to be harmful to human health and
16 safety. In addition, the emissions from the combustion of coal in the
17 state impact visibility in eight class I areas in the state. While the
18 emission of many of these pollutants continues to be addressed through
19 application of federal and state air quality laws, the emission of

1 greenhouse gases resulting from the combustion of coal has not been
2 addressed. Furthermore, these harmful by-products may be damaging the
3 cultural history of Washington and its people by eroding ancient native
4 American petroglyphs and pictographs and by accumulating in the soil
5 and waters of the usual and accustomed areas for tribal hunting,
6 fishing, gathering, and grazing.

7 (2) The legislature has previously found that greenhouse gas
8 emissions contribute to climate change and has found that Washington is
9 especially vulnerable to climate change. The legislature now finds
10 that coal-fired electricity generation is one of the largest sources of
11 greenhouse gas emissions in the state, and is the largest source of
12 such emissions from the generation of electricity in the state.

13 (3) The legislature finds coal-fired electric generation may
14 provide baseload power that is necessary in the near-term for the
15 stability and reliability of the electrical transmission grid and that
16 contributes to the availability of affordable power in the state. The
17 legislature further finds that efforts to transition power to other
18 fuels requires a reasonable period of time to ensure grid stability and
19 to maintain affordable electricity resources.

20 (4) The legislature finds that coal-fired baseload electric
21 generation facilities are a significant contributor to family-wage jobs
22 and economic health in parts of the state and that transition of these
23 facilities must address the economic future and the preservation of
24 jobs in affected communities.

25 (5) The legislature finds that coal-fired baseload electric
26 generation facilities are large industrial facilities that require
27 substantial planning and funding for closure and postclosure to ensure
28 that the site is fully restored and free of contamination.

29 (6) Therefore, it is the purpose of this act to provide for the
30 reduction of greenhouse gas emissions from large coal-fired baseload
31 electric power generation facilities, to effect an orderly transition
32 to cleaner fuels in a manner that ensures reliability of the state's
33 electrical grid, to ensure appropriate cleanup and site restoration
34 upon decommissioning of any of these facilities in the state, and to
35 provide assistance to host communities planning for new economic
36 development and mitigating the economic impacts of the closure of these
37 facilities.

1 **Sec. 102.** RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are
2 each reenacted and amended to read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

11 (3) "Average available greenhouse gas emissions output" means the
12 level of greenhouse gas emissions as surveyed and determined by the
13 energy policy division of the department of commerce under RCW
14 80.80.050.

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

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

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

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

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

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

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

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

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

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

10 (14) "Greenhouse (~~gases~~) gas" includes carbon dioxide, methane,
11 nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur
12 hexafluoride.

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

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

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

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

23 (17) "Power plant" means a facility for the generation of
24 electricity that is permitted as a single plant by a jurisdiction
25 inside or outside the state.

26 (18) "Upgrade" means any modification made for the primary purpose
27 of increasing the electric generation capacity of a baseload electric
28 generation facility. "Upgrade" does not include routine or necessary
29 maintenance, installation of emission control equipment, installation,
30 replacement, or modification of equipment that improves the heat rate
31 of the facility, or installation, replacement, or modification of
32 equipment for the primary purpose of maintaining reliable generation
33 output capability that does not increase the heat input or fuel usage
34 as specified in existing generation air quality permits as of July 22,
35 2007, but may result in incidental increases in generation capacity.

36 (19) "Coal transition power" means the output of a coal-fired
37 electric generation facility located in Washington that is subject to
38 RCW 80.80.040(3)(c).

1 (20) "Memorandum of agreement" or "memorandum" means a binding and
2 enforceable contract entered into pursuant to section 106 of this act
3 between the governor on behalf of the state and an owner of a baseload
4 electric generation facility in the state that produces coal transition
5 power.

6 **Sec. 103.** RCW 80.80.040 and 2009 c 448 s 2 are each amended to
7 read as follows:

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

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

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

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

18 (3)(a) Except as provided in (c) of this subsection, all baseload
19 electric generation facilities in operation as of June 30, 2008, are
20 deemed to be in compliance with the greenhouse gas emissions
21 performance standard established under this section until the
22 facilities are the subject of long-term financial commitments.

23 (b) All baseload electric generation that commences operation after
24 June 30, 2008, and is located in Washington, must comply with the
25 greenhouse gas emissions performance standard established in subsection
26 (1) of this section.

27 (c)(i) A coal-fired baseload electric generation facility in
28 Washington that emitted more than one million tons of greenhouse gases
29 in calendar year 2005 must comply with the lower of the following
30 greenhouse gas emissions performance standard such that one generating
31 boiler is in compliance by December 31, 2020, and any other generating
32 boiler is in compliance by December 31, 2025:

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

35 (B) The average available greenhouse gas emissions output as
36 determined under RCW 80.80.050.

1 (ii) This subsection (3)(c) does not apply to a coal-fired baseload
2 electric generating facility in the event the department determines as
3 a requirement of state or federal law or regulation that selective
4 catalytic reduction technology must be installed on any of its boilers.

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

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

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

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

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

28 (9) The department shall establish an output-based methodology to
29 ensure that the calculation of emissions of greenhouse gases for a
30 cogeneration facility recognizes the total usable energy output of the
31 process, and includes all greenhouse gases emitted by the facility in
32 the production of both electrical and thermal energy. In developing
33 and implementing the greenhouse gas emissions performance standard, the
34 department shall consider and act in a manner consistent with any rules
35 adopted pursuant to the public utilities regulatory policy act of 1978
36 (16 U.S.C. Sec. 824a-3), as amended.

37 (10) The following greenhouse gas emissions produced by baseload
38 electric generation owned or contracted through a long-term financial

1 commitment shall not be counted as emissions of the power plant in
2 determining compliance with the greenhouse gas emissions performance
3 standard:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (16) A project under consideration by the energy facility site
32 evaluation council by July 22, 2007, is required to include all of the
33 requirements of subsection (14) of this section in its carbon
34 sequestration plan submitted as part of the energy facility site
35 evaluation council process. A project under consideration by the
36 energy facility site evaluation council by July 22, 2007, that receives
37 final site certification agreement approval under chapter 80.50 RCW
38 shall make a good faith effort to implement the sequestration plan. If

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

16 **Sec. 104.** RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are
17 each reenacted and amended to read as follows:

18 (1) No electrical company may enter into a long-term financial
19 commitment unless the baseload electric generation supplied under such
20 a long-term financial commitment complies with the greenhouse (~~gases~~
21 ~~gas~~) gas emissions performance standard established under RCW
22 80.80.040.

23 (2) In order to enforce the requirements of this chapter, the
24 commission shall review in a general rate case or as provided in
25 subsection (5) of this section any long-term financial commitment
26 entered into by an electrical company after June 30, 2008, to determine
27 whether the baseload electric generation to be supplied under that
28 long-term financial commitment complies with the greenhouse (~~gases~~
29 ~~gas~~) gas emissions performance standard established under RCW
30 80.80.040.

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

1 (4) Upon application by an electric utility, the commission may
2 provide a case-by-case exemption from the greenhouse (~~(gases-[gas])~~)
3 gas emissions performance standard to address: (a) Unanticipated
4 electric system reliability needs; (b) extraordinary cost impacts on
5 utility ratepayers; or (c) catastrophic events or threat of significant
6 financial harm that may arise from unforeseen circumstances.

7 (5) Upon application by an electrical company, the commission shall
8 determine whether the company's proposed decision to acquire electric
9 generation or enter into a power purchase agreement for electricity
10 complies with the greenhouse (~~(gases-[gas])~~) gas emissions performance
11 standard established under RCW 80.80.040. The commission shall not
12 decide in a proceeding under this subsection (5) issues involving the
13 actual costs to construct and operate the selected resource, cost
14 recovery, or other issues reserved by the commission for decision in a
15 general rate case or other proceeding for recovery of the resource or
16 contract costs.

17 (6) An electrical company may account for and defer for later
18 consideration by the commission costs incurred in connection with a
19 long-term financial commitment, including operating and maintenance
20 costs, depreciation, taxes, and cost of invested capital. The deferral
21 begins with the date on which the power plant begins commercial
22 operation or the effective date of the power purchase agreement and
23 continues for a period not to exceed twenty-four months; provided that
24 if during such period the company files a general rate case or other
25 proceeding for the recovery of such costs, deferral ends on the
26 effective date of the final decision by the commission in such
27 proceeding. Creation of such a deferral account does not by itself
28 determine the actual costs of the long-term financial commitment,
29 whether recovery of any or all of these costs is appropriate, or other
30 issues to be decided by the commission in a general rate case or other
31 proceeding for recovery of these costs. For the purpose of this
32 subsection (6) only, the term "long-term financial commitment" also
33 includes an electric company's ownership or power purchase agreement
34 with a term of five or more years associated with an eligible renewable
35 resource as defined in RCW 19.285.030.

36 (7) The commission shall consult with the department to apply the
37 procedures adopted by the department to verify the emissions of
38 greenhouse gases from baseload electric generation under RCW 80.80.040.

1 The department shall report to the commission whether baseload electric
2 generation will comply with the greenhouse (~~gases~~) gas
3 emissions performance standard for the duration of the period the
4 baseload electric generation is supplied to the electrical company.

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

9 (9) This section does not apply to a long-term financial commitment
10 for the purchase of coal transition power with termination dates
11 consistent with the applicable dates in RCW 80.80.040(3)(c).

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

14 **Sec. 105.** RCW 80.80.070 and 2007 c 307 s 9 are each amended to
15 read as follows:

16 (1) No consumer-owned utility may enter into a long-term financial
17 commitment unless the baseload electric generation supplied under such
18 a long-term financial commitment complies with the greenhouse (~~gases~~)
19 gas emissions performance standard established under RCW 80.80.040.

20 (2) The governing board shall review and make a determination on
21 any long-term financial commitment by the utility, pursuant to this
22 chapter and after consultation with the department, to determine
23 whether the baseload electric generation to be supplied under that
24 long-term financial commitment complies with the greenhouse (~~gases~~)
25 gas emissions performance standard established under RCW 80.80.040. No
26 consumer-owned utility may enter into a long-term financial commitment
27 unless the baseload electric generation to be supplied under that long-
28 term financial commitment complies with the greenhouse (~~gases~~) gas
29 emissions performance standard established under RCW 80.80.040.

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

36 (4) The governing board may provide a case-by-case exemption from
37 the greenhouse (~~gases~~) gas emissions performance standard to address:

1 (a) Unanticipated electric system reliability needs; or (b)
2 catastrophic events or threat of significant financial harm that may
3 arise from unforeseen circumstances.

4 (5) The governing board shall apply the procedures adopted by the
5 department to verify the emissions of greenhouse gases from baseload
6 electric generation under RCW 80.80.040, and may request assistance
7 from the department in doing so.

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

12 (7) This section does not apply to long-term financial commitments
13 for the purchase of coal transition power with termination dates
14 consistent with the applicable dates in RCW 80.80.040(3)(c).

15 NEW SECTION. Sec. 106. A new section is added to chapter 80.80
16 RCW to read as follows:

17 (1) By January 1, 2012, the governor on behalf of the state shall
18 enter into a memorandum of agreement with the owners of a coal-fired
19 baseload facility in Washington that emitted more than one million tons
20 of greenhouse gases in calendar year 2005.

21 (2) The memorandum of agreement must:

22 (a) Incorporate by reference RCW 80.80.040, 80.80.060, and
23 80.80.070 as of the effective date of this section;

24 (b) Incorporate binding commitments to install selective
25 noncatalytic reduction pollution control technology in any coal-fired
26 generating boilers by January 1, 2013, after discussing the proper use
27 of ammonia in this technology.

28 (3)(a) The memorandum of agreement must include provisions by which
29 the facility owner will provide financial assistance:

30 (i) To the affected community for economic development and energy
31 efficiency and weatherization; and

32 (ii) For energy technologies with the potential to create
33 considerable energy, economic development, and air quality, haze, or
34 other environmental benefits.

35 (b) Except as described in (c) of this subsection, the financial
36 assistance in (a)(i) of this subsection must be in the amount of thirty
37 million dollars and the financial assistance in (a)(ii) of this

1 subsection must be in the amount of twenty-five million dollars, with
2 investments beginning January 1, 2012, and consisting of equal annual
3 investments through December 31, 2023, or until the full amount has
4 been provided. Only funds for energy efficiency and weatherization may
5 be spent prior to December 31, 2015.

6 (c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811
7 are repealed, any remaining financial assistance required by this
8 section is no longer required.

9 (4) The memorandum of agreement must:

10 (a) Specify that the investments in subsection (3) of this section
11 be held in independent accounts at an appropriate financial
12 institution; and

13 (b) Identify individuals to approve expenditures from the accounts.
14 Individuals must have relevant expertise and must include members
15 representing the Lewis economic development council, local elected
16 officials, employees at the facility, and the facility owner.

17 (5) The memorandum of agreement must include a provision that
18 allows for the termination of the memorandum of agreement in the event
19 the department determines as a requirement of federal law or regulation
20 that selective catalytic reduction technology must be installed on any
21 of its boilers.

22 (6) The memorandum of agreement must include enforcement provisions
23 to ensure implementation of the agreement by the parties.

24 (7) If the memorandum of agreement is not signed by January 1,
25 2012, the governor must implement the provisions in subsection (2)(b)
26 of this section.

27 NEW SECTION. **Sec. 107.** A new section is added to chapter 80.80
28 RCW to read as follows:

29 No state agency or political subdivision of the state may adopt or
30 impose a greenhouse gas emission performance standard, or other
31 operating or financial requirement or limitation relating to greenhouse
32 gas emissions, on a coal-fired electric generation facility located in
33 Washington or upon an electric utility's long-term purchase of coal
34 transition power, that is inconsistent with or additional to the
35 provisions of RCW 80.80.040 or the memorandum of agreement entered into
36 under section 106 of this act.

1 NEW SECTION. **Sec. 108.** A new section is added to chapter 80.80
2 RCW to read as follows:

3 (1) A memorandum of agreement entered into pursuant to section 106
4 of this act may include provisions to assist in the financing of
5 emissions reductions that exceed those required by RCW 80.80.040(3)(c)
6 by providing for the recognition of such reductions in applicable state
7 policies and programs relating to greenhouse gas emissions, and by
8 encouraging and advocating for the recognition of the reductions in all
9 established and emerging emission reduction frameworks at the regional,
10 national, or international level.

11 (2) The governor may recommend actions by the legislature to
12 strengthen implementation of an agreement or a proposed agreement
13 relating to recognition of investments in early emissions reductions.

14 **Sec. 109.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
15 read as follows:

16 (1) The council shall report to the governor its recommendations as
17 to the approval or rejection of an application for certification within
18 twelve months of receipt by the council of such an application, or such
19 later time as is mutually agreed by the council and the applicant. In
20 the case of an application filed prior to December 31, 2025, for
21 certification of an energy facility proposed for construction,
22 modification, or expansion for the purpose of providing generating
23 facilities that meet the requirements of RCW 80.80.040 and are located
24 in a county with a coal-fired electric generating facility subject to
25 RCW 80.80.040(3)(c), the council shall expedite the processing of the
26 application pursuant to RCW 80.50.075 and shall report its
27 recommendations to the governor within one hundred eighty days of
28 receipt by the council of such an application, or a later time as is
29 mutually agreed by the council and the applicant. If the council
30 recommends approval of an application for certification, it shall also
31 submit a draft certification agreement with the report. The council
32 shall include conditions in the draft certification agreement to
33 implement the provisions of this chapter, including, but not limited
34 to, conditions to protect state or local governmental or community
35 interests affected by the construction or operation of the energy
36 facility, and conditions designed to recognize the purpose of laws or

1 ordinances, or rules or regulations promulgated thereunder, that are
2 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter
3 amended.

4 (2)(a) Within sixty days of receipt of the council's report the
5 governor shall take one of the following actions:

6 (~~(a)~~) (i) Approve the application and execute the draft
7 certification agreement; or

8 (~~(b)~~) (ii) Reject the application; or

9 (~~(c)~~) (iii) Direct the council to reconsider certain aspects of
10 the draft certification agreement.

11 (b) The council shall reconsider such aspects of the draft
12 certification agreement by reviewing the existing record of the
13 application or, as necessary, by reopening the adjudicative proceeding
14 for the purposes of receiving additional evidence. Such
15 reconsideration shall be conducted expeditiously. The council shall
16 resubmit the draft certification to the governor incorporating any
17 amendments deemed necessary upon reconsideration. Within sixty days of
18 receipt of such draft certification agreement, the governor shall
19 either approve the application and execute the certification agreement
20 or reject the application. The certification agreement shall be
21 binding upon execution by the governor and the applicant.

22 (3) The rejection of an application for certification by the
23 governor shall be final as to that application but shall not preclude
24 submission of a subsequent application for the same site on the basis
25 of changed conditions or new information.

26 NEW SECTION. **Sec. 201.** The legislature finds that very large
27 coal-fired baseload electric generation facilities are major industrial
28 facilities whose closure, removal of structures, and site reclamation
29 requires significant planning and funding. In order to ensure that the
30 site of these facilities after closure is fully cleaned up, it is
31 necessary to require that the facility owner demonstrate during the
32 facility's operation that sufficient funding will be available for
33 closure and postclosure activities. Since the degree of cleanup
34 depends, in part, on the proposed future uses of a site, the closure
35 and postclosure requirements must consider the land use designations
36 and economic development plans of the host community. It is the intent
37 of the legislature to facilitate the transition of these facilities by

1 requiring facility decommissioning and site restoration plans that are
2 coordinated and consistent with economic development plans of affected
3 communities.

4 NEW SECTION. **Sec. 202.** (1) A facility subject to closure under
5 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of
6 this act, must provide the department of ecology with a plan for the
7 closure and postclosure of the facility at least twenty-four months
8 prior to its closure. This plan must be consistent with the rules
9 established by the energy facility site evaluation council for site
10 restoration and preservation applicable to facilities subject to a site
11 certification agreement under chapter 80.50 RCW and include but not be
12 limited to:

13 (a) A detailed estimate of the cost to implement the plan based on
14 the cost of hiring a third party to conduct all activities;

15 (b) Demonstrating financial assurance to fund the closure and
16 postclosure of the facility and providing methods by which this
17 assurance may be demonstrated;

18 (c) Methods for estimating closure costs, including full site
19 reclamation under all applicable federal and state clean-up standards;
20 and

21 (d) A decommissioning and site restoration plan that addresses
22 restoring physical topography, cleanup of all hazardous substances on
23 the site, potential future uses of the site following restoration, and
24 coordination with local and community plans for economic development in
25 the vicinity of the site.

26 (2) All cost estimates in the plan must be in current dollars and
27 may not include a net present value adjustment or offsets for salvage
28 value of wastes or other property.

29 (3) Adoption of the plan and significant revisions to the plan must
30 be approved by the department of ecology.

31 NEW SECTION. **Sec. 203.** (1) A facility subject to closure under
32 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of
33 this act, must guarantee funds are available to perform all activities
34 specified in the decommissioning plan developed under section 202 of
35 this act. The amount must equal the cost estimates specified in the

1 decommissioning plan and must be updated annually for inflation. All
2 guarantees under this section must be assumed by any successor owner,
3 parent company, or holding company.

4 (2) The guarantee required under subsection (1) of this section may
5 be accomplished by letter of credit, surety bond, or other means
6 acceptable to the department of ecology.

7 (3) The issuing institution of the letter of credit must be an
8 entity that has the authority to issue letters of credit and whose
9 letter of credit operations are regulated by a federal or state agency.

10 (4) A qualifying facility that uses a letter of credit to satisfy
11 the requirements of this act must also establish a standby trust fund
12 as a means to hold any funds issued from the letter of credit. Under
13 the terms of the letter of credit, all amounts paid pursuant to a draft
14 from the department of ecology must be deposited by the issuing
15 institution directly into the standby trust fund in accordance with
16 instructions from the department of ecology. This standby trust fund
17 must be approved by the department of ecology.

18 (5) The letter of credit must be irrevocable and issued for a
19 period of at least one year. The letter of credit must provide that
20 the expiration date will be automatically extended for a period of at
21 least one year unless, at least one hundred twenty days before the
22 current expiration date, the issuing institution notifies both the
23 qualifying facility and the department of ecology of a decision not to
24 extend the expiration date. Under the terms of the letter of credit,
25 the one hundred twenty days will begin on the date when both the
26 qualifying plant and the department of ecology have received the
27 notice, as evidenced by certified mail return receipts or by overnight
28 courier delivery receipts.

29 (6) If the qualifying facility does not establish an alternative
30 method of guaranteeing decommissioning funds are available within
31 ninety days after receipt by both the qualifying facility plant and the
32 department of ecology of a notice from the issuing institution that it
33 has decided not to extend the letter of credit beyond the current
34 expiration date, the department of ecology must draw on the letter of
35 credit. The department of ecology must approve any replacement or
36 substitute guarantee method before the expiration of the ninety-day
37 period.

1 (7) If a qualifying facility elects to use a letter of credit as
2 the sole method for guaranteeing decommissioning funds are available,
3 the face value of the letter of credit must meet or exceed the current
4 inflation-adjusted cost estimate.

5 (8) A qualifying facility must adjust the decommissioning costs and
6 financial guarantees annually for inflation and may use an amendment to
7 increase the face value of a letter of credit each year to account for
8 this inflation. A qualifying facility is not required to obtain a new
9 letter of credit to cover annual inflation adjustments.

10 NEW SECTION. **Sec. 204.** Sections 201 through 203 of this act
11 constitute a new chapter in Title 80 RCW.

12 NEW SECTION. **Sec. 301.** It is in the public interest to assist
13 local communities in which very large energy generating facilities may
14 be closed, in order to plan for future economic uses of the site and in
15 the community surrounding the site.

16 **Sec. 302.** RCW 43.160.076 and 2008 c 327 s 8 are each amended to
17 read as follows:

18 (1) Except as authorized to the contrary under subsection (2) of
19 this section, from all funds available to the board for financial
20 assistance in a biennium under this chapter, the board shall approve at
21 least seventy-five percent of the first twenty million dollars of funds
22 available and at least fifty percent of any additional funds for
23 financial assistance for projects in rural counties.

24 (2) If at any time during the last six months of a biennium the
25 board finds that the actual and anticipated applications for qualified
26 projects in rural counties are clearly insufficient to use up the
27 allocations under subsection (1) of this section, then the board shall
28 estimate the amount of the insufficiency and during the remainder of
29 the biennium may use that amount of the allocation for financial
30 assistance to projects not located in rural counties.

31 (3) The board shall solicit qualifying projects to plan, design,
32 and construct public facilities needed to attract new industrial and
33 commercial activities in areas impacted by the closure or potential
34 closure of large coal-fired electric generation facilities, which for
35 the purposes of this section means a facility that emitted more than

one million tons of greenhouse gases in calendar year 2005. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall provide a priority for funding projects at the following levels:

(a) For the 2011-2013 biennium, at least two hundred fifty thousand dollars;

(b) For the 2013-2015 biennium, at least two hundred fifty thousand dollars;

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

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

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

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

NEW SECTION. Sec. 303. A new section is added to chapter 43.155 RCW to read as follows:

The board shall solicit qualifying projects to plan, design, and construct public works projects needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in calendar year 2005. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall provide a priority for funding projects at the following levels:

(1) For the 2011-2013 biennium, at least two hundred fifty thousand dollars;

(2) For the 2013-2015 biennium, at least two hundred fifty thousand dollars;

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

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

- 1 (5) For the 2019-2021 biennium, at least two million dollars; and
2 (6) For the 2021-2023 biennium, at least two million dollars.

3 NEW SECTION. **Sec. 304.** A new section is added to chapter 80.80
4 RCW to read as follows:

5 The legislature finds that an electrical company's acquisition of
6 coal transition power helps to achieve the state's greenhouse gas
7 emission reduction goals by effecting an orderly transition to cleaner
8 fuels and supports the state's public policy.

9 NEW SECTION. **Sec. 305.** A new section is added to chapter 80.04
10 RCW to read as follows:

11 (1) On the petition of an electrical company, the commission shall
12 approve or disapprove a purchase power agreement for acquisition of
13 coal transition power, as defined in RCW 80.80.010, and the recovery of
14 related acquisition costs. No agreement for an electrical company's
15 acquisition of coal transition power takes effect until it is approved
16 by the commission.

17 (2) When a petition is filed, the commission shall provide notice
18 to the public and potentially affected parties and expedite the hearing
19 of that petition. The hearing of such a petition is not considered a
20 general rate case. However, the commission may require the utility to
21 file supporting testimony and exhibits. An administrative law judge of
22 the commission may enter an initial order including findings of fact
23 and conclusions of law, as provided in RCW 80.01.060(3). The
24 commission shall issue a final order that approves or disapproves the
25 acquisition of coal transition power within one hundred eighty days
26 after an electrical company files the petition.

27 (3) The commission must approve the acquisition of coal transition
28 power if it determines the resource is needed by the electrical company
29 to serve its ratepayers and the resource meets the need in a cost-
30 effective manner as determined under the lowest reasonable cost
31 resource standards under chapter 19.280 RCW. As part of these
32 determinations, the commission shall consider, among other factors:

33 (a) The long-term economic benefit to the electrical company and
34 its ratepayers of such a long-term purchase; and

35 (b) The environmental benefits attributable to the orderly
36 transition away from coal-fired electric generation power.

1 (4) If the commission has not issued a final order within one
2 hundred eighty days from the date the petition is filed, or if the
3 commission disapproves the petition, the agreement for purchase of coal
4 transition power is null and void. In the event the commission
5 approves the agreement upon conditions other than those set forth in
6 the petition, the electrical company has the right to reject the
7 agreement.

8 (5) Upon commission approval of an electrical company's acquisition
9 of coal transition power in accordance with this section, the
10 electrical company is allowed to earn its equity component of its
11 authorized rate of return in the same manner as if it had purchased or
12 built an equivalent plant plus the cost of the coal transition power
13 contract. For purposes of this section, the initial value of an
14 equivalent plant is a purchased or self-built electric generation plant
15 with equivalent capacity costs as compared to the electrical company's
16 integrated resource plan in effect at the time the petition is filed.
17 The equivalent plant determined in the approval process will be
18 amortized on a straight line calculation over the life of the coal
19 transition power contract for the determination of the equity return in
20 future proceedings. This recovery must be determined and approved in
21 the process set forth in subsections (1) and (2) of this section.

22 (6) An electrical company that purchases coal transition power, as
23 defined in RCW 80.80.010, under an agreement approved by the commission
24 pursuant to this section, may acquire other flexible capacity
25 resources, including for the purpose of integrating renewable
26 resources, and the purchase of coal transition power does not prohibit
27 the electrical company from acquiring other flexible capacity
28 resources. The commission shall not include the electric company's
29 purchase of coal transition power when considering the electrical
30 company's purchase of other flexible capacity resources.

31 **Sec. 306.** RCW 19.280.020 and 2009 c 565 s 19 are each amended to
32 read as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Commission" means the utilities and transportation commission.

36 (2) "Conservation and efficiency resources" means any reduction in

1 electric power consumption that results from increases in the
2 efficiency of energy use, production, transmission, or distribution.

3 (3) "Consumer-owned utility" includes a municipal electric utility
4 formed under Title 35 RCW, a public utility district formed under Title
5 54 RCW, an irrigation district formed under chapter 87.03 RCW, a
6 cooperative formed under chapter 23.86 RCW, a mutual corporation or
7 association formed under chapter 24.06 RCW, a port district formed
8 under Title 53 RCW, or a water-sewer district formed under Title 57
9 RCW, that is engaged in the business of distributing electricity to one
10 or more retail electric customers in the state.

11 (4) "Department" means the department of commerce.

12 (5) "Electric utility" means a consumer-owned or investor-owned
13 utility.

14 (6) "Full requirements customer" means an electric utility that
15 relies on the Bonneville power administration for all power needed to
16 supply its total load requirement other than that served by
17 nondispatchable generating resources totaling no more than six
18 megawatts or renewable resources.

19 (7) "Governing body" means the elected board of directors, city
20 council, commissioners, or board of any consumer-owned utility.

21 (8) "High efficiency cogeneration" means the sequential production
22 of electricity and useful thermal energy from a common fuel source,
23 where, under normal operating conditions, the facility has a useful
24 thermal energy output of no less than thirty-three percent of the total
25 energy output.

26 (9) "Integrated resource plan" means an analysis describing the mix
27 of generating resources and conservation and efficiency resources that
28 will meet current and projected needs at the lowest reasonable cost to
29 the utility and its ratepayers and that complies with the requirements
30 specified in RCW 19.280.030(1).

31 (10) "Investor-owned utility" means a corporation owned by
32 investors that meets the definition in RCW 80.04.010 and is engaged in
33 distributing electricity to more than one retail electric customer in
34 the state.

35 (11) "Lowest reasonable cost" means the lowest cost mix of
36 generating resources and conservation and efficiency resources
37 determined through a detailed and consistent analysis of a wide range
38 of commercially available resources. At a minimum, this analysis must

1 consider resource cost, market-volatility risks, demand-side resource
2 uncertainties, resource dispatchability, resource effect on system
3 operation, the risks imposed on the utility and its ratepayers, public
4 policies regarding resource preference adopted by Washington state or
5 the federal government, and the cost of risks associated with
6 environmental effects including emissions of carbon dioxide. The
7 analysis also must consider public policies adopted by Washington state
8 to reduce greenhouse gases from thermal electric generation facilities
9 in the long term by temporarily exempting certain of those facilities
10 from the provisions of RCW 80.80.060 and 80.80.070.

11 (12) "Plan" means either an "integrated resource plan" or a
12 "resource plan."

13 (13) "Renewable resources" means electricity generation facilities
14 fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal
15 energy; (e) landfill gas; (f) biomass energy utilizing animal waste,
16 solid organic fuels from wood, forest, or field residues or dedicated
17 energy crops that do not include wood pieces that have been treated
18 with chemical preservatives such as creosote, pentachlorophenol, or
19 copper-chrome-arsenic; (g) by-products of pulping or wood manufacturing
20 processes, including but not limited to bark, wood chips, sawdust, and
21 lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal
22 power; or (i) gas from sewage treatment facilities.

23 (14) "Resource plan" means an assessment that estimates electricity
24 loads and resources over a defined period of time and complies with the
25 requirements in RCW 19.280.030(2).

26 **Sec. 307.** RCW 19.280.030 and 2006 c 195 s 3 are each amended to
27 read as follows:

28 Each electric utility must develop a plan consistent with this
29 section.

30 (1) Utilities with more than twenty-five thousand customers that
31 are not full requirements customers shall develop or update an
32 integrated resource plan by September 1, 2008. At a minimum, progress
33 reports reflecting changing conditions and the progress of the
34 integrated resource plan must be produced every two years thereafter.
35 An updated integrated resource plan must be developed at least every
36 four years subsequent to the 2008 integrated resource plan. The
37 integrated resource plan, at a minimum, must include:

1 (a) A range of forecasts, for at least the next ten years, of
2 projected customer demand which takes into account econometric data and
3 customer usage;

4 (b) An assessment of commercially available conservation and
5 efficiency resources. Such assessment may include, as appropriate,
6 high efficiency cogeneration, demand response and load management
7 programs, and currently employed and new policies and programs needed
8 to obtain the conservation and efficiency resources;

9 (c) An assessment of commercially available, utility scale
10 renewable and nonrenewable generating technologies including a
11 comparison of the benefits and risks of purchasing power from existing
12 resources or building new resources;

13 (d) A comparative evaluation of renewable and nonrenewable
14 generating resources, including transmission and distribution delivery
15 costs, and conservation and efficiency resources using "lowest
16 reasonable cost" as a criterion;

17 (e) The integration of the demand forecasts and resource
18 evaluations into a long-range assessment describing the mix of supply
19 side generating resources and conservation and efficiency resources
20 that will meet current and projected needs at the lowest reasonable
21 cost and risk to the utility and its ratepayers; and

22 (f) A short-term plan identifying the specific actions to be taken
23 by the utility consistent with the long-range integrated resource plan.

24 (2) All other utilities may elect to develop a full integrated
25 resource plan as set forth in subsection (1) of this section or, at a
26 minimum, shall develop a resource plan that:

27 (a) Estimates loads for the next five and ten years;

28 (b) Enumerates the resources that will be maintained and/or
29 acquired to serve those loads; and

30 (c) Explains why the resources in (b) of this subsection were
31 chosen and, if the resources chosen are not renewable resources or
32 conservation and efficiency resources, why such a decision was made.

33 (3) An electric utility that is required to develop a resource plan
34 under this section must complete its initial plan by September 1, 2008.

35 (4) Resource plans developed under this section must be updated on
36 a regular basis, at a minimum on intervals of two years.

37 (5) Plans shall not be a basis to bring legal action against
38 electric utilities.

1 (6) Each electric utility shall publish its final plan either as
2 part of an annual report or as a separate document available to the
3 public. The report may be in an electronic form.

4 NEW SECTION. **Sec. 308.** A new section is added to chapter 80.70
5 RCW to read as follows:

6 An applicant for a natural gas-fired generation plant to be
7 constructed in a county with a coal-fired electric generation facility
8 subject to RCW 80.80.040(3)(c) is exempt from this chapter if the
9 application is filed before December 31, 2025.

10 NEW SECTION. **Sec. 309.** No civil liability may be imposed by any
11 court on the state, its officers, employees, instrumentalities, or
12 subdivisions under section 101, 201, or 301 of this act.

13 NEW SECTION. **Sec. 310.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

--- END ---