
Environment & Energy Committee

HB 2892

Brief Description: Authorizing the department of ecology to regulate greenhouse gas emissions associated with persons who produce or distribute fossil fuel products that emit greenhouse gases in Washington.

Sponsors: Representatives Fitzgibbon, Doglio, Ramel and Pollet; by request of Office of the Governor.

Brief Summary of Bill

- Revises the state Clean Air Act's (CAA) definition of "emission" and "emission standard" to include both direct and indirect emissions.
- Authorizes the Department of Ecology to require persons who produce or distribute fossil fuels or other products that emit greenhouse gases in Washington to comply with air quality standards, emission standards, or emission limits on greenhouse gases under the CAA.

Hearing Date: 2/3/20

Staff: Jacob Lipson (786-7196).

Background:

State and Federal Clean Air Acts.

Under the federal Clean Air Act, the United States Environmental Protection Agency (EPA) is responsible for establishing and enforcing standards and limits on air pollutants. Individual states and tribes may receive delegated authority to implement the federal program and may adopt their own rules and regulations at least as stringent as those set by the EPA. In Washington, the Department of Ecology (Ecology) and seven local air pollution control authorities (local air authorities) have each received approval from the EPA to administer aspects of the federal Clean Air Act in Washington. Local air authorities have primary responsibility for administering the state and federal Clean Air Acts in counties which have elected to activate a

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local air authority or to form a multicounty air authority. In other areas of the state, Ecology is responsible for administering state and federal Clean Air Act programs.

The state Clean Air Act directs Ecology to adopt air quality standards and emission standards for the control of air contaminants. Air quality standards and emission standards must be based upon a system of classification by types of emissions or types of sources of emissions.

- Air quality standards are defined as an established concentration, exposure time, and frequency of occurrence of an air contaminant or contaminants in the ambient air which must not be exceeded. Ecology has adopted air quality standards for lead, sulfur oxides, and ozone, among other contaminants.
- Emission is defined as a release of air contaminants into the ambient air, and emission standards and emission limits refer to requirements that limit the quantity, rate, or concentration of emissions of air contaminants on a continuous basis. Ecology has adopted a variety of emission standards, including gasoline vapor control requirements applicable to gasoline storage tanks, emission standards for sources of volatile organic compounds, and emission standards for combustion and incineration units.

Violations of Clean Air Act requirements are punishable by a variety of criminal and civil penalties. Civil penalties of up to \$10,000 per violation are authorized by the state Clean Air Act. Penalties recovered by Ecology (rather than by a local air authority) are paid into the Air Pollution Control Account in the State Treasury, and may be used by Ecology to implement the Clean Air Act.

Federal and State Regulation of Greenhouse Gases.

The EPA and Ecology identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures.

Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO₂e). Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of carbon dioxide equivalent report their emissions to the EPA. At the state level, GHGs are regulated by Ecology under the state Clean Air Act. This state law requires facilities, sources, and sites whose emissions exceed 10,000 metric tons of carbon dioxide equivalent each year to report their annual emissions to Ecology or to local air pollution control authorities that implement the state Clean Air Act. Ecology has adopted rules governing the reporting of GHG emissions that specify the GHG emissions calculation methodology for covered facilities.

Clean Air Rule.

In September 2016, Ecology adopted a rule under state Clean Air Act authority (the Clean Air Rule) to limit emissions of GHGs from certain stationary emission sources and from fuel supplied by petroleum product producers and importers and natural gas distributors.

For purposes of meeting compliance obligations under the Clean Air Rule, parties that are required to reduce GHG emissions may directly reduce their own emissions or earn or acquire emission reduction units, which represent the emission of one metric ton of CO₂e. With the exception of certain designated "EITE Covered parties," which are assigned alternative emission reduction requirements based on an efficiency improvement rate, parties subject to the Clean Air Rule must reduce their greenhouse gas emissions relative to baseline emission levels by 1.7 percent per year. Entities that emit more than 100,000 metric tons per year were subject to emission reduction requirements at the program's outset, with progressively smaller emitters being brought into the program over time until 2035.

After adoption, the Clean Air Rule was challenged in both state (Thurston County Superior Court) and federal court (United States District Court for the Eastern District of Washington). The federal court challenge was stayed, pending the resolution of the state court case. Implementation of the Clean Air Rule was also suspended while the court challenges proceeded.

In December 2017, the Thurston County Superior Court invalidated the Clean Air Rule on the basis that it exceeded Ecology's statutory authority by regulating petroleum product producers and importers and natural gas distributors. Ecology appealed that decision directly to the Washington Supreme Court, which issued a decision on January 16, 2020 that affirmed the Thurston County Court in part and reversed in part. The Washington Supreme Court invalidated the rule to the extent that it regulated indirect emitters or nonemitters via an emission standard. However, in determining that the Clean Air Rule was severable, the Washington Supreme Court invalidated only the part of the rule that the court determined had exceeded Ecology's statutory authority and remanded the case to Thurston County Superior Court.

Summary of Bill:

For purposes of the state Clean Air Act, "emission" and "emission standards" include both direct or indirect releases of air contaminants. The Department of Ecology may require persons who produce or distribute fossil fuels or other products that emit greenhouse gases in Washington to comply with air quality standards, emission standards, or emission limits on greenhouse gases.

Appropriation: None.

Fiscal Note: Requested on January 28, 2020.

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