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**HOUSE BILL 2073**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Slatter, Fitzgibbon, Berry, Reed, Ramel, Doglio, Hackney, and Pollet

AN ACT Relating to emissions of greenhouse gases from sources other than methane and carbon dioxide; amending RCW 70A.45.010 and 70A.15.2200; adding a new section to chapter 43.21A RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that a great deal of emphasis in greenhouse gas emissions policymaking in the state has appropriately focused on reducing sources of carbon dioxide, methane, and refrigerant gases, which remain the most significant types of greenhouse gases emitted in the state. However, the legislature also finds it prudent not to overlook meaningful opportunities to reduce emissions of other types of greenhouse gases from more niche sources, whether they be used as pesticides or as anesthetic gases.

(a) The legislature finds that certain gases used as an anesthetic in medical, dental, and veterinary contexts, including desflurane, isoflurane, sevoflurane, halothane, and nitrous oxide, are potent greenhouse gases. Efforts in the medical community are already underway to minimize the emissions from these gases, including by national and international anesthesiologist associations. In other jurisdictions, including Scotland and England, efforts are also underway to phase out the use of the anesthetic gases with the greatest potential greenhouse gas emissions.

(b) The legislature finds that sulfuryl fluoride, a chemical typically used as a fumigant pesticide, was relatively recently discovered to be a potent greenhouse gas. Due to the recency of these scientific findings, emissions of this gas have not previously been required to be reported to the department of ecology in a manner similar to other greenhouse gases like carbon dioxide and methane. In addition, it is uncertain whether any safer alternatives to sulfuryl fluoride exist that do not result in greenhouse gas emissions or that would result in lower greenhouse gas emissions.

(2) Therefore, it is the intent of the legislature to reduce emissions from these sources of greenhouse gases, in spite of their obscurity, by:

(a) Studying these gases;

(b) Developing guidance to reduce emissions of greenhouse gases used for anesthetic purposes; and

(c) Initiating data gathering and alternatives evaluations for the use of sulfuryl fluoride.

NEW SECTION. **Sec.**  (1) The department of ecology must commission a study to be completed by July 1, 2025, that:

(a) Analyzes the evidence supporting the inclusion of sulfuryl fluoride as a greenhouse gas;

(b) Determines the potential sources of sulfuryl fluoride and gases with a high global warming potential that are used for anesthetic purposes within Washington;

(c) Determines how these gases are used in Washington;

(d) Estimates the quantity of emissions;

(e) Recommends potential points of regulation for each of these gases; and

(f) Recommends measures for reducing or eliminating emissions of these gases.

(2) By October 1, 2025, the department of ecology, in consultation with the department of health and considering the results of the study commissioned under subsection (1) of this section and the alternatives assessment carried out consistent with section 6 of this act, must submit recommendations to the appropriate committees of the legislature regarding any further statutory changes needed in order to appropriately and effectively reduce greenhouse gas emissions associated with the use of sulfuryl fluoride or anesthetic gases, including any recommendations to prohibit the manufacture, distribution, sale, or use of specific anesthetic gases.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21A RCW to read as follows:

(1) By January 1, 2026, the department must develop and publish a guidance document intended to reduce greenhouse gas emissions associated with the use of gases with a high global warming potential that are used for anesthetic purposes in medical, dental, veterinary, or other similar facilities and settings. Gases subject to the guidance document must include, at minimum: Sevoflurane; desflurane; isoflurane; halothane; and nitrous oxide. In developing the guidance document, the department of ecology must consult with the department of health, and solicit the input from the following:

(a) The state board of health;

(b) The Washington medical commission;

(c) The Washington state board of nursing;

(d) The dental quality assurance commission;

(e) The board of osteopathic medicine and surgery;

(f) The veterinary board of governors;

(g) Associations representing medical, dental, or veterinary practitioners that use anesthetic gases;

(h) Associations representing facilities at which anesthetic gases are used;

(i) Environmental organizations with a focus on efforts to reduce greenhouse gas emissions; and

(j) Subject matter experts with knowledge of the most efficient and effective methods to reduce greenhouse gas emissions from anesthetic gas use.

(2) In developing the guidance document, the department must consider:

(a) The efforts of other jurisdictions, including those in Europe, to restrict the use of high global warming potential greenhouse gases or to otherwise reduce greenhouse gas emissions associated with the use of anesthesia;

(b) The guidance documents or best practices prepared by national and international anesthesiology professionals, including the American society of anesthesiologists, the world federation of societies of anaesthesiologists, and the association of anesthetists; and guidance documents published in peer-reviewed medical journals; and

(c) Existing practices in place at facilities and by practitioners in Washington to limit greenhouse gas emissions associated with anesthesia use.

(3) The goal of the guidance document must be to reduce greenhouse gas emissions associated with the use of anesthetic gases, but without unduly limiting the judgment or needs of medical, dental, or veterinary professionals in providing safe and effective care.

(4) By July 1, 2026, facilities at which anesthetic gases are used, and the medical, dental, or veterinary practitioners that use such gases, may only use anesthesia in a manner consistent with the guidance document published under this section.

**Sec.**  RCW 70A.45.010 and 2021 c 315 s 3 are each amended to read as follows:

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

(1) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(2) "Carbon sequestration" means the process of capturing and storing atmospheric carbon dioxide through biologic, chemical, geologic, or physical processes.

(3) "Climate advisory team" means the stakeholder group formed in response to executive order 07-02.

(4) "Climate impacts group" means the University of Washington's climate impacts group.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department.

(7) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, sulfuryl fluoride, and any other gas or gases designated by the department by rule.

(8) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of the state.

(9) "Program" means the department's climate change program.

(10) "Western climate initiative" means the collaboration of states, Canadian provinces, Mexican states, and tribes to design a multisector market-based mechanism as directed under the western regional climate action initiative signed by the governor on February 22, 2007.

**Sec.**  RCW 70A.15.2200 and 2022 c 181 s 9 are each amended to read as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70A.45.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70A.45.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than 10,000,000 bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW 70A.45.010 where those emissions from a single facility, or from electricity or fossil fuels sold in Washington by a single supplier or local distribution company, meet or exceed 10,000 metric tons of carbon dioxide equivalent annually. The rules adopted by the department must support implementation of the program created in RCW 70A.65.060. In addition, the rules must require that:

(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass; and

(ii) Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by March 31st of the year in which the report is due, except for an electric power entity, which must submit its report by June 1st of the year in which the report is due. Each annual report must include emissions data related to sulfuryl fluoride, beginning with the reporting required under this section covering calendar year 2025 emissions data.

(b)(i) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has been designated as a greenhouse gas by the United States congress, by the United States environmental protection agency, or included in external greenhouse gas emission trading programs with which Washington has pursuant to RCW 70A.65.210. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70A.45.010, the department shall notify the appropriate committees of the legislature.

(ii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than 10,000 metric tons carbon dioxide equivalent annually.

(iii) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c)(i) The department shall review and if necessary update its rules whenever:

(A) The United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases; or

(B) Needed to ensure consistency with emissions reporting requirements for jurisdictions with which Washington has entered a linkage agreement.

(ii) The department shall not amend its rules in a manner that conflicts with this section.

(d) The department shall share any reporting information reported to it with the local air authority in which the person reporting under the rules adopted by the department operates.

(e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements. When a person that holds a compliance obligation under RCW 70A.65.080 fails to submit an emissions data report or fails to obtain a positive emissions data verification statement in accordance with (g)(ii) of this subsection, the department may assign an emissions level for that person.

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

(g)(i) The department must establish by rule the methods of verifying the accuracy of emissions reports.

(ii) Verification requirements apply at a minimum to persons required to report under (a) of this subsection with emissions that equal or exceed 25,000 metric tons of carbon dioxide equivalent emissions, including carbon dioxide from biomass-derived fuels, or to persons who have a compliance obligation under RCW 70A.65.080 in any year of the current compliance period. The department may adopt rules to accept verification reports from another jurisdiction with a linkage agreement pursuant to RCW 70A.65.180 in cases where the department deems that the methods or procedures are substantively similar.

(h)(i) The definitions in RCW 70A.45.010 apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) Suppliers that produce, import, or deliver, or any combination of producing, importing, or delivering, a quantity of fuel products in Washington that, if completely combusted, oxidized, or used in other processes, would result in the release of greenhouse gases in Washington equivalent to or higher than the threshold established under (a) of this subsection; ((~~and~~)) (B) suppliers of carbon dioxide that produce, import, or deliver a quantity of carbon dioxide in Washington that, if released, would result in emissions equivalent to or higher than the threshold established under (a) of this subsection; and (C) beginning January 1, 2025, persons that produce or supply sulfuryl fluoride for use in Washington in an amount that, if released, would result in emissions equivalent to or greater than the threshold established under (a) of this subsection.

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator of a facility; (B) a supplier; or (C) an electric power entity.

(iv) For the purpose of this subsection (5), the term "facility" includes facilities that directly emit greenhouse gases in Washington equivalent to the threshold established under (a) of this subsection with at least one source category listed in the United States environmental protection agency's mandatory greenhouse gas reporting regulation, 40 C.F.R. Part 98 Subparts C through II and RR through UU, as adopted on April 25, 2011.

(v) For the purpose of this subsection (5), the term "electric power entity" includes any of the following that supply electric power in Washington with associated emissions of greenhouse gases equal to or above the threshold established under (a) of this subsection: (A) Electricity importers and exporters; (B) retail providers, including multijurisdictional retail providers; and (C) first jurisdictional deliverers, as defined in RCW 70A.65.010, not otherwise included here.

NEW SECTION. **Sec.**  (1) The department of ecology, in consultation with the department of agriculture, must identify the availability and feasibility of safer alternatives to the use of sulfuryl fluoride as a fumigant. The department of ecology must solicit the input of potentially affected stakeholders, including manufacturers, importers, distributors, and users of sulfuryl fluoride, in carrying out the requirements of this section.

(2) The department of ecology may order a manufacturer, distributor, or importer of sulfuryl fluoride or potential safer alternatives to submit a notice to the department that contains the information specified in RCW 70A.430.060 (1) through (6) or other information relevant to the determination of the volume of a chemical used, its expected greenhouse gas emissions associated with use, or to the department's determination of the hazard to human health or the environment associated with a chemical. The information ordered under this section must be submitted to the department of ecology no later than four months after receipt of such a demand from the department.

(3) The department of ecology, in consultation with the department of agriculture, must submit a report to the appropriate committees of the legislature containing the findings regarding the availability of safer alternatives to sulfuryl fluoride, including recommendations for any actions to reduce sulfuryl fluoride emissions, by October 1, 2025.

(4) For the purposes of this section, "safer alternative" means an alternative that is less hazardous to humans or the environment than sulfuryl fluoride. A safer alternative to sulfuryl fluoride may include: (a) A change in pest management practices that eliminates the need for a chemical alternative; (b) a chemical alternative whose use does not result in greenhouse gas emissions; or (c) a chemical alternative whose use results in lower greenhouse gas emissions, including through the use of a chemical alternative with a lower global warming potential than sulfuryl fluoride or a lower volume of application in order to achieve intended purposes.

(5) This section expires July 1, 2026.

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

**--- END ---**