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**SUBSTITUTE SENATE BILL 5735**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Rockefeller, Hargrove, Jacobsen, Ranker, Fraser, Keiser, Jarrett, Franklin, Shin, Kohl-Welles, Regala, McAuliffe, and Kline; by request of Governor Gregoire)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to reducing greenhouse gas emissions; adding new  
2 sections to chapter 70.235 RCW; and creating new sections.

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

4       NEW SECTION.   **Sec. 1.**   (1) The legislature reaffirms the state  
5 limits on greenhouse gas emissions adopted in RCW 70.235.020. The  
6 legislature finds that the recent downturn in economic activity has  
7 reduced the rate of growth in greenhouse gas emissions and that it is  
8 unnecessary at this time to adopt new regulatory limits across  
9 significant sectors of emissions sources. The legislature further  
10 finds that full implementation of current policies regarding energy  
11 efficiency, new clean energy technologies, efficient building  
12 practices, new energy efficient transportation technologies, and other  
13 policies and programs may achieve nearly one-half of the estimated  
14 statewide emissions reductions needed to meet the state's 2020  
15 emissions limits. The legislature further finds that these policies  
16 and additional complementary policies should be accelerated and  
17 expanded in order to delay the need for adoption of a multisector  
18 regulatory framework of emissions reductions. The legislature further  
19 finds that the state should assist emissions sources in achieving

1 reductions that may be recognized in the event that a national program  
2 of emissions reductions is adopted and applies to the state or in the  
3 event that the legislature authorizes the state's participation in a  
4 regional emissions reduction program.

5 (2) Therefore, it is the intent of the legislature by this act to:

6 (a) Begin immediately to adopt statewide emissions planning targets  
7 by which to assess the state's progress toward meeting the emissions  
8 limits in RCW 70.235.020;

9 (b) Assist persons with significant emissions to monitor and record  
10 their emissions reductions and to advocate for recognition of such  
11 reductions in the event a national or other program applies to  
12 emissions in this state;

13 (c) Direct state agencies to vigorously implement existing policies  
14 and programs that provide emissions reduction benefits;

15 (d) Provide for early identification of additional complementary  
16 measures that maximize the state's emissions reductions, including  
17 incentives, assistance, and other actions to replace electricity  
18 generated by the traditional combustion of coal with other sources of  
19 generation, to expedite the transition to electric vehicles and other  
20 low-emission transportation systems, and to increase energy efficiency  
21 in buildings and business applications;

22 (e) Assess the advantages and disadvantages of participating in a  
23 regional market-based or other regulatory framework of emissions  
24 reductions; and

25 (f) To provide a thorough review and set of recommendations to the  
26 2011 legislature regarding the merits of implementing a multisector  
27 emissions reduction program in this state, as well as recommended  
28 actions by the state to reflect the interests of emissions sectors in  
29 this state in the event that a national emissions reduction framework  
30 is adopted that will apply in this state.

31 NEW SECTION. **Sec. 2.** When presenting the state's position on any  
32 regional or national emissions reduction program that relies on a  
33 multisector, market-based approach to regulating greenhouse gas  
34 emissions, the state shall adhere to the following policies:

35 (1) In the event the state participates in a regional cap and trade  
36 program, no allowances may be auctioned by the state while it  
37 participates in that program;

1 (2) Biomass combustion for electricity or process steam production  
2 is carbon neutral;

3 (3) The point of regulation of emissions from the electricity  
4 sector in Washington shall be applied only to the source of emissions  
5 located within the state;

6 (4) New entrants to the program represent economic development and  
7 must be encouraged, but not to the detriment of existing covered  
8 entities and sectors;

9 (5) Combustion of residential and commercial fuel must be regulated  
10 outside a cap and trade program through complementary policies that  
11 promote energy efficiency;

12 (6) The financial integrity of the state's electric utilities must  
13 be protected from adverse compliance costs that will arise from the  
14 interaction of cap and trade regulation and low water conditions that  
15 reduce power production, but not in any manner that reduces the  
16 allocation of allowances to other covered entities or sectors;

17 (7) Cost containment and market design mechanisms must be included  
18 in a cap and trade system to protect the state's economy from volatile  
19 and escalating costs of allowances or offsets;

20 (8) Early actions taken by regulated and potentially regulated  
21 entities to reduce their greenhouse gas emissions must be rewarded;

22 (9) Regulations must be designed in such a manner as to minimize  
23 their economic impact on regulated entities and consumers and to  
24 preserve employment in Washington's manufacturing, agriculture, and  
25 export industries, while promoting opportunities for green jobs,  
26 especially in energy efficiency; and

27 (10) A national cap and trade system must take precedence over a  
28 regional cap and trade program.

29 NEW SECTION. **Sec. 3.** The department shall design voluntary annual  
30 statewide emissions targets beginning with calendar year 2009. The  
31 purpose of the targets is to assess interim progress toward meeting the  
32 emissions limits in RCW 70.235.020. The department may design  
33 additional targets specific to sectors or categories of emissions  
34 solely for the purpose of assisting emissions sources in tracking their  
35 emissions and obtaining recognition for early reductions and subsequent  
36 reductions as provided in section 4 of this act. The targets should be

1 established at levels that provide for comparable reductions in each  
2 calendar year so that there will not be a disproportionate level of  
3 reductions needed in the years immediately prior to 2020.

4 NEW SECTION. **Sec. 4.** (1) The department shall design a voluntary  
5 Washington emissions reduction registry, whose sole purpose is to  
6 assist persons in achieving recognition for emissions reductions. The  
7 department's design shall provide protocols for reporting and measuring  
8 emissions and emissions reductions, including criteria for determining  
9 that the emissions reductions have occurred and are adjusted for  
10 reductions in activity, changes in business location, or other factors  
11 indicating the reductions are additional to the estimated business as  
12 usual emissions levels for that source. Emissions and emissions  
13 reductions reported under this section must be for calendar year  
14 periods only. The department's design may include protocols for  
15 reporting and measuring reductions for previous emissions and  
16 reductions of emissions, but may not register reductions taking place  
17 prior to January 1, 2000.

18 (2) Beginning January 1, 2011, the department's design may include  
19 in the registry the voluntary reporting by persons sponsoring offset  
20 projects or purchasing offset credits. The department shall adopt  
21 protocols for recognition of offset projects and credits, and for  
22 determining the equivalence to emissions reductions.

23 (3) For emissions reductions or equivalent offset projects or  
24 credits satisfying the department's protocols, the department's design  
25 shall provide a certification of emissions reductions. Beginning with  
26 certifications issued for reductions in calendar year 2010, the  
27 department's design shall prioritize financial and technical assistance  
28 to emissions sources whose reductions equal or exceed the percentage  
29 reductions established in the statewide targets under section 3 of this  
30 act. These sources must receive enhanced certification of reductions.

31 (4) By December 1, 2009, the department shall provide a report to  
32 the standing climate committees in the senate and house of  
33 representatives providing recommendations to increase state assistance  
34 and to prioritize financial, regulatory, and other incentives for those  
35 emissions sources receiving enhanced certification.

1        NEW SECTION.    **Sec. 5.**    By December 1, 2010, the department of  
2 ecology must provide a report to the standing climate committees in the  
3 senate and house of representatives recommending additional policies  
4 that may accelerate emissions reductions in the state, that may delay  
5 the need for a multisector regulatory program, and that would better  
6 position the state in the event that a national emissions reduction  
7 program is implemented. The report should include but should not be  
8 limited to:

9        (1) Recommendations for substantially reducing greenhouse gas  
10 emissions from the electricity sector, including measures to facilitate  
11 the transition from electricity generation derived from any coal-fired  
12 facility to generation with significantly reduced emissions;

13        (2) Recommendations for greatly expediting the transition to  
14 transportation technologies and infrastructure with reduced emissions,  
15 including programs providing incentives and assistance to the  
16 deployment of electric vehicles and the necessary infrastructure for  
17 such vehicles, and policies directing the increased use of these  
18 vehicles within the state agency fleets; and

19        (3) Recommendations for reducing emissions by increasing energy  
20 efficiency in buildings and commercial and industrial applications.

21        NEW SECTION.    **Sec. 6.**    (1) The department shall establish criteria  
22 for recognizing voluntary offset credits for offset projects that may  
23 be used to report equivalent emissions reductions under section 4 of  
24 this act or that may be projects sponsored in this state that may be  
25 offered in emerging carbon markets where state recognition will enhance  
26 the market value of the projects. In developing the criteria for  
27 offset projects, priority must be given to investigating and developing  
28 criteria for offset projects within the forestry, agriculture, and  
29 waste management sectors. The department shall present the state's  
30 policy on forestry offset projects established under section 7 of this  
31 act as the state's position when developing the criteria for forestry  
32 offset projects within any other regional or national emissions  
33 reduction program.

34        (2) Upon recognition by the department of a voluntary offset credit  
35 that is reported under section 4 of this act for the purpose of  
36 receiving certification of emissions reductions, the department shall  
37 retire the voluntary offset credit.

1 (3) The department shall ensure that all voluntary offset credits  
2 that it recognizes are tracked to ensure that the department knows who  
3 holds a given offset credit and when it is retired.

4 NEW SECTION. **Sec. 7.** The department of ecology, in consultation  
5 with the forest practices board, the department of natural resources,  
6 and the forest carbon working group, shall develop the state's policy  
7 for forestry offset projects within Washington. The agencies and the  
8 working group shall use the 2008 report of the forest carbon working  
9 group as the starting point in developing the policy. The final policy  
10 must be completed by December 31, 2009, unless the department of  
11 ecology notifies the agencies and working group that the policy is  
12 needed sooner. The public must be provided with the opportunity to  
13 review and comment on the policy as it is developed. The policy must  
14 include:

15 (1) Specific standards and guidelines that will support carbon  
16 accounting in managed forests participating in an offset program;

17 (2) How to ensure that any carbon that is reduced or sequestered by  
18 a forestry offset project is eligible for an offset credit within a  
19 regional or national emissions reduction program;

20 (3) Recognition of management activities that increase carbon  
21 stocks including, but not limited to, thinning, lengthening rotations,  
22 increased retention of trees after harvest, fertilization, genetics,  
23 timber stand improvement, fire management, and specific site class and  
24 productivity of a managed forest;

25 (4) Specific standards and guidelines to support wood products  
26 accounting, recognizing that carbon is stored in products after trees  
27 are harvested including the use of the one hundred year method which  
28 estimates the amount of carbon stored in the wood products that are  
29 projected to remain in use after one hundred years;

30 (5) Guidelines on how forestry offset projects and forestry  
31 financial incentive programs can work together so that Washington's  
32 forest landowners will not be disadvantaged in comparison to other  
33 jurisdictions participating in a regional or national emissions  
34 reduction program; and

35 (6) Recommendations for how to verify or certify carbon stocks that  
36 will not be administratively burdensome.

1           NEW SECTION.   **Sec. 8.**   The department of ecology, in consultation  
2 with the forest practices board, the department of natural resources,  
3 and the forest carbon working group, shall develop and deliver to the  
4 legislature by December 31, 2010, legislation to implement a financial  
5 incentives program for forestry and forest products that will recognize  
6 activities such as:

7           (1) Forest landowners maintaining and actively managing their  
8 forest land using management activities such as thinning, lengthening  
9 of rotations, increased retention of trees at harvest, fertilization,  
10 genetics, timber stand improvement, and fire management;

11           (2) Forest landowners continuing the production of wood products  
12 while maintaining or increasing their carbon stocks on the ground;

13           (3) Retention by forest landowners of high carbon stocks where  
14 there is no obligation to retain such stocks; and

15           (4) The use by developers and builders of wood building materials  
16 instead of more intensive fossil fuel products such as concrete and  
17 steel.

18           NEW SECTION.   **Sec. 9.**   (1) By December 31, 2010, the department of  
19 ecology shall report to the legislature on how the state may  
20 participate in a regional or national emissions reduction program.

21           (2) The report must include an analysis of an auction design,  
22 including the following:

23           (a) Elements that minimize allowance price volatility, guard  
24 against bidder collusion, and minimize the potential for market  
25 manipulation;

26           (b) Provisions to ensure that bidders are financially able to  
27 purchase allowances if they are the successful bidder;

28           (c) Provisions to limit the number of allowances any one party may  
29 purchase as necessary to help ensure that available allowances go to  
30 persons with a voluntary compliance obligation; and

31           (d) A flexible process that allows for ongoing modification of the  
32 auction design and procedures in response to allowance market  
33 conditions and allowance market monitoring data, provided that the  
34 process allows for public review and comment.

35           (3) The report must include an analysis of measures to ensure a  
36 functional and efficient market, including the following provisions:

1 (a) Requiring or conducting audits, investigations, and  
2 surveillance of the market;

3 (b) Actions to prohibit conflicts of interest between emitters,  
4 verifiers, monitors, auditors, investigators, or surveillance persons;

5 (c) Establishment of measures to address market emergencies;

6 (d) Prevention of fraud to the greatest extent possible;

7 (e) Prevention of speculators from unfairly affecting the price of  
8 allowances in the program to the greatest extent possible;

9 (f) Issuance of orders, and penalties established by rule,  
10 sufficient to address market manipulation; and

11 (g) Other conditions or provisions necessary to prevent market  
12 manipulation.

13 (4) The report must incorporate an economic analysis by the  
14 forecasting office of the office of financial management, in  
15 consultation with members of the governor's council of economic  
16 advisors, of the impact to Washington consumers, businesses, and  
17 citizens if Washington entered into a regional or federal emissions  
18 reduction program. The economic analysis must include:

19 (a) Various economic scenarios, such as when Washington has a  
20 robust economy and when Washington is in an economic downturn;

21 (b) The economic impact sector by sector, including the impact to  
22 the forest products manufacturing sector and Washington's port  
23 districts;

24 (c) How to address trade competition from countries and states that  
25 are not participating in an emissions reduction program;

26 (d) How to ensure that economic benefits are available to both  
27 urban and rural communities; and

28 (e) The impact on the cost and affordability of food, housing,  
29 energy, transportation, and other routine expenses on low and moderate-  
30 income people.

31 NEW SECTION. **Sec. 10.** The director is authorized to monitor and  
32 discuss with representatives of other jurisdictions within the western  
33 climate initiative the formation of an organization, including a  
34 nonprofit corporation that may carry out the following administrative  
35 functions:

36 (1) Coordination of a regional auction of allowances;



1 (2) Tracking of emissions and providing of public information about  
2 progress towards the regional greenhouse gas reduction goals;

3 (3) Monitoring and reporting on market activity, including  
4 potential market manipulation;

5 (4) Serving as a forum for jurisdictions within the capped region  
6 to update one another on program progress;

7 (5) Coordination of review and adoption of protocols for offsets;

8 (6) Coordination of review and adoption of updated reporting  
9 protocols for greenhouse gas emissions;

10 (7) Coordination of review and issuance of offset credits; and

11 (8) Suggesting criteria and means to accredit service providers to  
12 deliver validation and verification services.

13 NEW SECTION. **Sec. 11.** The department of ecology, in consultation  
14 with Washington State University and the Washington state department of  
15 agriculture, shall reestablish the agriculture carbon working group to  
16 develop recommendations for agricultural offset projects within  
17 Washington. A report on the progress of the agriculture carbon working  
18 group must be submitted to the legislature for review by July 1, 2010.  
19 The policy recommendations must include:

20 (1) A process and timeline to survey and catalog Washington soils  
21 in order to establish the carbon emissions soil sequestration level of  
22 the soils;

23 (2) Activities that would qualify for carbon emissions soil  
24 sequestration offset projects;

25 (3) Guidelines and standards for carbon emissions soil  
26 sequestration offset projects; and

27 (4) How Washington agricultural lands can participate in a  
28 regional, national, and international offset market.

29 NEW SECTION. **Sec. 12.** The voluntary climate emissions reduction  
30 incentives account is created in the state treasury. All federal funds  
31 provided to the state for developing and promoting renewable energy,  
32 all federal funds for the reduction of greenhouse gas emissions, and  
33 any other moneys directed to the account by the legislature must be  
34 deposited into the account. Moneys in the account may be spent only  
35 after appropriation. The first priority for expenditures from the  
36 account is for providing technical and financial assistance to persons

1 reporting emissions reductions and receiving enhanced certification  
2 under section 4 of this act. Expenditures from the account may also be  
3 used for activities and programs that achieve emissions reductions and  
4 carbon sequestration in agriculture, forestry, waste management, and  
5 other sectors.

6 NEW SECTION. **Sec. 13.** The department shall report to the  
7 legislature its designs under sections 3 and 4 of this act by December  
8 1, 2009. The designs may not be implemented until approved by the  
9 legislature.

10 NEW SECTION. **Sec. 14.** Sections 2 through 4, 6, 10, 12, and 13 of  
11 this act are each added to chapter 70.235 RCW.

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