

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6373

61st Legislature
2010 Regular Session

Passed by the Senate March 8, 2010
YEAS 41 NAYS 4

President of the Senate

Passed by the House March 3, 2010
YEAS 79 NAYS 19

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6373** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6373

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Ranker, Rockefeller, Swecker, Pridemore, Marr, Kline, and Fraser; by request of Department of Ecology)

READ FIRST TIME 02/01/10.

1 AN ACT Relating to reporting of emissions of greenhouse gases; and
2 amending RCW 70.235.010 and 70.94.151.

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

4 **Sec. 1.** RCW 70.235.010 and 2008 c 14 s 2 are each amended to read
5 as follows:

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

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

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

13 (3) "Climate impacts group" means the University of Washington's
14 climate impacts group.

15 (4) "Department" means the department of ecology.

16 (5) (~~"Direct emissions" means emissions of greenhouse gases from~~
17 ~~sources of emissions, including stationary combustion sources, mobile~~
18 ~~combustion emissions, process emissions, and fugitive emissions.~~

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

1 ((+7)) (6) "Greenhouse gas" and "greenhouse gases" includes carbon
2 dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,
3 ((and)) sulfur hexafluoride, and any other gas or gases designated by
4 the department by rule.

5 ~~((+8)) "Indirect emissions" means emissions of greenhouse gases~~
6 ~~associated with the purchase of electricity, heating, cooling, or~~
7 ~~steam.~~

8 (+9)) (7) "Person" means an individual, partnership, franchise
9 holder, association, corporation, a state, a city, a county, or any
10 subdivision or instrumentality of the state.

11 ((+10)) (8) "Program" means the department's climate change
12 program.

13 ~~((+11)) "Total emissions of greenhouse gases" means all direct~~
14 ~~emissions and all indirect emissions.~~

15 (+12)) (9) "Western climate initiative" means the collaboration of
16 states, Canadian provinces, Mexican states, and tribes to design a
17 multisector market-based mechanism as directed under the western
18 regional climate action initiative signed by the governor on February
19 22, 2007.

20 **Sec. 2.** RCW 70.94.151 and 2008 c 14 s 5 are each amended to read
21 as follows:

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

33 (2) Except as provided in subsection (3) of this section, any
34 person operating or responsible for the operation of air contaminant
35 sources of any class for which the ordinances, resolutions, rules or
36 regulations of the department or board of the authority, require
37 registration or reporting shall register therewith and make reports

1 containing information as may be required by such department or board
2 concerning location, size and height of contaminant outlets, processes
3 employed, nature of the contaminant emission and such other information
4 as is relevant to air pollution and available or reasonably capable of
5 being assembled. In the case of emissions of greenhouse gases as
6 defined in RCW 70.235.010 the department shall adopt rules requiring
7 reporting of those emissions. The department or board may require that
8 such registration or reporting be accompanied by a fee, and may
9 determine the amount of such fee for such class or classes: PROVIDED,
10 That the amount of the fee shall only be to compensate for the costs of
11 administering such registration or reporting program which shall be
12 defined as initial registration and annual or other periodic reports
13 from the source owner providing information directly related to air
14 pollution registration, on-site inspections necessary to verify
15 compliance with registration requirements, data storage and retrieval
16 systems necessary for support of the registration program, emission
17 inventory reports and emission reduction credits computed from
18 information provided by sources pursuant to registration program
19 requirements, staff review, including engineering or other reliable
20 analysis for accuracy and currentness, of information provided by
21 sources pursuant to registration program requirements, clerical and
22 other office support provided in direct furtherance of the registration
23 program, and administrative support provided in directly carrying out
24 the registration program: PROVIDED FURTHER, That any such registration
25 made with either the board or the department shall preclude a further
26 registration and reporting with any other board or the department,
27 except that emissions of greenhouse gases as defined in RCW 70.235.010
28 must be reported as required under subsection (5) of this section.

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

33 (3) If a registration or report has been filed for a grain
34 warehouse or grain elevator as required under this section,
35 registration, reporting, or a registration program fee shall not, after
36 January 1, 1997, again be required under this section for the warehouse
37 or elevator unless the capacity of the warehouse or elevator as listed
38 as part of the license issued for the facility has been increased since

1 the date the registration or reporting was last made. If the capacity
2 of the warehouse or elevator listed as part of the license is
3 increased, any registration or reporting required for the warehouse or
4 elevator under this section must be made by the date the warehouse or
5 elevator receives grain from the first harvest season that occurs after
6 the increase in its capacity is listed in the license.

7 This subsection does not apply to a grain warehouse or grain
8 elevator if the warehouse or elevator handles more than ten million
9 bushels of grain annually.

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

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

16 (b) A "license" is a license issued by the department of
17 agriculture licensing a facility as a grain warehouse or grain elevator
18 under chapter 22.09 RCW or a license issued by the federal government
19 licensing a facility as a grain warehouse or grain elevator for
20 purposes similar to those of licensure for the facility under chapter
21 22.09 RCW; and

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

23 (5)(a) The department shall adopt rules requiring ~~((the reporting~~
24 ~~of))~~ persons to report emissions of greenhouse gases as defined in RCW
25 70.235.010~~((.~~ ~~The rules must include a de minimis amount of emissions~~
26 ~~below which reporting will not be required for both indirect and direct~~
27 ~~emissions. The rules must require that emissions of greenhouse gases~~
28 ~~resulting from the burning of fossil fuels be reported separately from~~
29 ~~emissions of greenhouse gases resulting from the burning of biomass.~~
30 ~~Except as provided in (b) of this subsection, the department shall,~~
31 ~~under the authority granted in subsection (1) of this section, adopt~~
32 ~~rules requiring any owner or operator: (i) Of a fleet of on-road motor~~
33 ~~vehicles that as a fleet emit at least twenty five hundred metric tons~~
34 ~~of greenhouse gas annually in the state to report the emissions of~~
35 ~~greenhouse gases generated from or emitted by that fleet; or (ii) of a~~
36 ~~source or combination of sources that emit at least ten thousand metric~~
37 ~~tons of greenhouse gas annually in the state to report their total~~
38 ~~annual emissions of greenhouse gases. In calculating emissions of~~

1 greenhouse gases for purposes of determining whether or not reporting
2 is required, only direct emissions shall be included. For purposes of
3 reporting emissions of greenhouse gases in chapter 14, Laws of 2008,
4 "source" means any stationary source as defined in RCW 70.94.030, or
5 mobile source used for transportation of people or cargo. The
6 emissions of greenhouse gases must be reported as carbon dioxide
7 equivalents. The rules must require that persons report 2009 emissions
8 starting in 2010. The rules must establish an annual reporting
9 schedule that takes into account the time needed to allow the owner or
10 operator reporting emissions of greenhouse gases to gather the
11 information needed and to verify the emissions being reported.
12 However, in no event may reports be submitted later than October 31st
13 of the year in which the report is due. The department may phase in
14 the reporting requirements for sources or combinations of sources under
15 (a)(ii) of this subsection until the reporting threshold is met, which
16 must be met by January 1, 2012. The department may from time to time
17 amend the rules to include other persons that emit less than the annual
18 greenhouse gas emissions levels set out in this subsection if necessary
19 to comply with any federal reporting requirements for emissions of
20 greenhouse gases.

21 (b) In its rules, the department may defer the reporting
22 requirement under (a) of this subsection for emissions associated with
23 interstate and international commercial aircraft, rail, truck, or
24 marine vessels until (i) there is a federal requirement to report these
25 emissions; or (ii) the department finds that there is a generally
26 accepted reporting protocol for determining interstate emissions from
27 these sources.) where those emissions from a single facility, source,
28 or site, or from fossil fuels sold in Washington by a single supplier
29 meet or exceed ten thousand metric tons of carbon dioxide equivalent
30 annually. The department may phase in the requirement to report
31 greenhouse gas emissions until the reporting threshold in this
32 subsection is met, which must occur by January 1, 2012. In addition,
33 the rules must require that:

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

37 (ii) Reporting will start in 2010 for 2009 emissions. Each annual
38 report must include emissions data for the preceding calendar year and

1 must be submitted to the department by October 31st of the year in
2 which the report is due. However, starting in 2011, a person who is
3 required to report greenhouse gas emissions to the United States
4 environmental protection agency under 40 C.F.R. Part 98, as adopted on
5 September 22, 2009, must submit the report required under this section
6 to the department concurrent with the submission to the United States
7 environmental protection agency. Except as otherwise provided in this
8 section, the data for emissions in Washington and any corrections
9 thereto that are reported to the United States environmental protection
10 agency must be the emissions data reported to the department; and

11 (iii) Emissions of carbon dioxide associated with the complete
12 combustion or oxidation of liquid motor vehicle fuel, special fuel, or
13 aircraft fuel that is sold in Washington where the annual emissions
14 associated with that combustion or oxidation equal or exceed ten
15 thousand metric tons be reported to the department. Each person who is
16 required to file periodic tax reports of motor vehicle fuel sales under
17 RCW 82.36.031 or special fuel sales under RCW 82.38.150, or each
18 distributor of aircraft fuel required to file periodic tax reports
19 under RCW 82.42.040 must report to the department the annual emissions
20 of carbon dioxide from the complete combustion or oxidation of the
21 fuels listed in those reports as sold in the state of Washington. The
22 department shall not require suppliers to use additional data to
23 calculate greenhouse gas emissions other than the data the suppliers
24 report to the department of licensing. The rules may allow this
25 information to be aggregated when reported to the department. The
26 department and the department of licensing shall enter into an
27 interagency agreement to ensure proprietary and confidential
28 information is protected if the departments share reported information.
29 Any proprietary or confidential information exempt from disclosure when
30 reported to the department of licensing is exempt from disclosure when
31 shared by the department of licensing with the department under this
32 provision.

33 (b)(i) Except as otherwise provided in this subsection, the rules
34 adopted by the department under (a) of this subsection must be
35 consistent with the regulations adopted by the United States
36 environmental protection agency in 40 C.F.R. Part 98 on September 22,
37 2009.

1 (ii) The department may by rule include additional gases to the
2 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
3 been designated as a greenhouse gas by the United States congress or by
4 the United States environmental protection agency. Prior to including
5 additional gases to the definition of "greenhouse gas" in RCW
6 70.235.010, the department shall notify the appropriate committees of
7 the legislature. Decisions to amend the rule to include additional
8 gases must be made prior to December 1st of any year and the amended
9 rule may not take effect before the end of the regular legislative
10 session in the next year.

11 (iii) The department may by rule exempt persons who are required
12 to report greenhouse gas emissions to the United States environmental
13 protection agency and who emit less than ten thousand metric tons
14 carbon dioxide equivalent annually.

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

18 (c) The department shall review and if necessary update its rules
19 whenever the United States environmental protection agency adopts final
20 amendments to 40 C.F.R. Part 98 to ensure consistency with federal
21 reporting requirements for emissions of greenhouse gases. However, the
22 department shall not amend its rules in a manner that conflicts with
23 (a) of this subsection.

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

27 ((+d)) (e) The fee provisions in subsection (2) of this section
28 apply to reporting of emissions of greenhouse gases. ((Owners and
29 operators)) Persons required to report under (a) of this subsection who
30 fail to report or pay the fee required in subsection (2) of this
31 section are subject to enforcement penalties under this chapter. The
32 department shall enforce the reporting rule requirements unless it
33 approves a local air authority's request to enforce the requirements
34 for ((sources)) persons operating within the authority's jurisdiction.
35 However, neither the department nor a local air authority approved
36 under this section are authorized to assess enforcement penalties on
37 persons required to report under (a) of this subsection until six
38 months after the department adopts its reporting rule in 2010.

1 ~~((e))~~ (f) The energy facility site evaluation council shall,
2 simultaneously with the department, adopt rules that impose greenhouse
3 gas reporting requirements in site certifications on owners or
4 operators of a facility permitted by the energy facility site
5 evaluation council. The greenhouse gas reporting requirements imposed
6 by the energy facility site evaluation council must be the same as the
7 greenhouse gas reporting requirements imposed by the department. The
8 department shall share any information reported to it from facilities
9 permitted by the energy facility site evaluation council with the
10 council, including notice of a facility that has failed to report as
11 required. The energy facility site evaluation council shall contract
12 with the department to monitor the reporting requirements adopted under
13 this section.

14 ~~((f) In developing its rules, the department shall, with the
15 assistance of the department of transportation, identify a mechanism to
16 report an aggregate estimate of the annual emissions of greenhouse
17 gases generated from or emitted by otherwise unreported on-road motor
18 vehicles.))~~

19 (g) The inclusion or failure to include any person, source, classes
20 of persons or sources, or types of emissions of greenhouse gases into
21 the department's rules for reporting under this section does not
22 indicate whether such a person, source, or category is appropriate for
23 inclusion in ~~((the multisector market based system designed under RCW
24 70.235.020))~~ state, regional, or national greenhouse gas reduction
25 programs or strategies. Furthermore, aircraft fuel purchased in the
26 state may not be considered equivalent to aircraft fuel combusted in
27 the state.

28 ~~((Should the federal government adopt rules sufficient to track
29 progress toward the emissions reductions required by chapter 14, Laws
30 of 2008 governing the reporting of greenhouse gases, the department
31 shall amend its rules, as necessary, to seek consistency with the
32 federal rules to ensure duplicate reporting is not required. Nothing
33 in this section requires the department to increase the reporting
34 threshold established in (a) of this subsection or otherwise require
35 the department's rules be identical to the federal rules in scope.))~~

36 (i) The definitions in RCW 70.235.010 apply throughout this subsection
37 (5) unless the context clearly requires otherwise.

1 (ii) For the purpose of this subsection (5), the term "supplier"
2 includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel
3 importer, as those terms are defined in RCW 82.36.010; (B) a special
4 fuel supplier or a special fuel importer, as those terms are defined in
5 RCW 82.38.020; and (C) a distributor of aircraft fuel, as those terms
6 are defined in RCW 82.42.010.

7 (iii) For the purpose of this subsection (5), the term "person"
8 includes: (A) An owner or operator, as those terms are defined by the
9 United States environmental protection agency in its mandatory
10 greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted on
11 September 22, 2009; and (B) a supplier.

--- END ---