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**SUBSTITUTE SENATE BILL 5769**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

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

READ FIRST TIME 02/21/11.

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 chapter to Title 80 RCW; creating new  
7 sections; and providing an expiration date.

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

9 NEW SECTION. **Sec. 101.** (1) Under RCW 70.235.020, the legislature  
10 required that statewide overall greenhouse gas emissions be reduced to  
11 1990 levels by 2020.

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

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

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

15 (4) The legislature finds coal-fired electric generation may  
16 provide baseload power that is necessary for the stability and  
17 reliability of the electrical transmission grid and that contributes to  
18 the availability of affordable power in the state. The legislature  
19 further finds that efforts to transition power to other fuels requires  
20 the deliberate development of replacement generation, and any necessary  
21 transmission facilities, over a reasonable period of time to ensure  
22 grid stability and to maintain affordable electricity resources.

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

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

32 (7) Therefore, it is the purpose of this act to provide for the  
33 reduction of greenhouse gas emissions from large coal-fired baseload  
34 electric power generation facilities, to effect an orderly transition  
35 of these facilities to cleaner fuels in a manner that ensures  
36 reliability of the state's electrical grid, to ensure appropriate  
37 cleanup and site restoration upon decommissioning of any of these

1 facilities in the state, and to provide assistance to host communities  
2 planning for new economic development and mitigating the economic  
3 impacts of the closure of these facilities.

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

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

8 (1) "Attorney general" means the Washington state office of the  
9 attorney general.

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

14 (3) "Average available greenhouse gas emissions output" means the  
15 level of greenhouse gas emissions as surveyed and determined by the  
16 energy policy division of the department of commerce under RCW  
17 80.80.050.

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

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

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

31 (7) "Commission" means the Washington utilities and transportation  
32 commission.

33 (8) "Consumer-owned utility" means a municipal utility formed under  
34 Title 35 RCW, a public utility district formed under Title 54 RCW, an  
35 irrigation district formed under chapter 87.03 RCW, a cooperative  
36 formed under chapter 23.86 RCW, a mutual corporation or association  
37 formed under chapter 24.06 RCW, or port district within which an

1 industrial district has been established as authorized by Title 53 RCW,  
2 that is engaged in the business of distributing electricity to more  
3 than one retail electric customer in the state.

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

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

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

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

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

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

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

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

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

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

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

30 (18) "Upgrade" means any modification made for the primary purpose  
31 of increasing the electric generation capacity of a baseload electric  
32 generation facility. "Upgrade" does not include routine or necessary  
33 maintenance, installation of emission control equipment, installation,  
34 replacement, or modification of equipment that improves the heat rate  
35 of the facility, or installation, replacement, or modification of  
36 equipment for the primary purpose of maintaining reliable generation  
37 output capability that does not increase the heat input or fuel usage

1 as specified in existing generation air quality permits as of July 22,  
2 2007, but may result in incidental increases in generation capacity.

3 (19) "Clean fuel transition power" means the power purchased by an  
4 electric utility or other entity as part of implementing a memorandum  
5 of agreement entered under sections 106 and 107 of this act to achieve  
6 early emissions reductions of greenhouse gases.

7 (20) "Memorandum of agreement" or "memorandum" means a binding and  
8 enforceable contract between the governor and an owner of a baseload  
9 electric generation facility in the state that provides for early  
10 greenhouse gas emissions reductions from the facility through the use  
11 of clean fuel transition power.

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

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

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

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

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

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

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

33 (c) A coal-fired baseload electric generation facility in  
34 Washington that has emitted more than one million tons of greenhouse  
35 gases annually in calendar year 2005 must comply with the following  
36 greenhouse gas emissions performance standard by December 31, 2020,

1 unless extended by order of the governor pursuant to section 109 of  
2 this act:

3 (i) One thousand one hundred pounds of greenhouse gases per  
4 megawatt-hour; or

5 (ii) The average available greenhouse gas emissions output as  
6 determined under RCW 80.80.050.

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

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

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

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

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

30 (9) The department shall establish an output-based methodology to  
31 ensure that the calculation of emissions of greenhouse gases for a  
32 cogeneration facility recognizes the total usable energy output of the  
33 process, and includes all greenhouse gases emitted by the facility in  
34 the production of both electrical and thermal energy. In developing  
35 and implementing the greenhouse gas emissions performance standard, the  
36 department shall consider and act in a manner consistent with any rules  
37 adopted pursuant to the public utilities regulatory policy act of 1978  
38 (16 U.S.C. Sec. 824a-3), as amended.

1 (10) The following greenhouse gas emissions produced by baseload  
2 electric generation owned or contracted through a long-term financial  
3 commitment shall not be counted as emissions of the power plant in  
4 determining compliance with the greenhouse gas emissions performance  
5 standard:

6 (a) Those emissions that are injected permanently in geological  
7 formations;

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

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

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

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

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

34 (14) In adopting the rules for implementing this section, the  
35 energy facility site evaluation council and the department shall  
36 include criteria to be applied in evaluating the carbon sequestration  
37 plan, for baseload electric generation that will rely on subsection

1 (10) of this section to demonstrate compliance, but that will commence  
2 sequestration after the date that electricity is first produced. The  
3 rules shall include but not be limited to:

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

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

12 (c) Provisions for monitoring the effectiveness of the  
13 implementation of the sequestration plan;

14 (d) Penalties for failure to achieve implementation of the plan on  
15 schedule;

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

19 (f) Provisions for public notice and comment on the carbon  
20 sequestration plan.

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

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

34 (16) A project under consideration by the energy facility site  
35 evaluation council by July 22, 2007, is required to include all of the  
36 requirements of subsection (14) of this section in its carbon  
37 sequestration plan submitted as part of the energy facility site  
38 evaluation council process. A project under consideration by the



1 energy facility site evaluation council by July 22, 2007, that receives  
2 final site certification agreement approval under chapter 80.50 RCW  
3 shall make a good faith effort to implement the sequestration plan. If  
4 the project owner determines that implementation is not feasible, the  
5 project owner shall submit documentation of that determination to the  
6 energy facility site evaluation council. The documentation shall  
7 demonstrate the steps taken to implement the sequestration plan and  
8 evidence of the technological and economic barriers to successful  
9 implementation. The project owner shall then provide to the energy  
10 facility site evaluation council notification that they shall implement  
11 the plan that requires the project owner to meet the greenhouse gas  
12 emissions performance standard by purchasing verifiable greenhouse gas  
13 emissions reductions from an electric (~~generating~~) generation  
14 facility located within the western interconnection, where the  
15 reduction would not have occurred otherwise or absent this contractual  
16 agreement, such that the sum of the emissions reductions purchased and  
17 the facility's emissions meets the standard for the life of the  
18 facility.

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

21 (1) No electrical company may enter into a long-term financial  
22 commitment unless the baseload electric generation supplied under such  
23 a long-term financial commitment complies with the greenhouse (~~gases~~  
24 ~~gas~~) gas emissions performance standard established under RCW  
25 80.80.040.

26 (2) In order to enforce the requirements of this chapter, the  
27 commission shall review in a general rate case or as provided in  
28 subsection (5) of this section any long-term financial commitment  
29 entered into by an electrical company after June 30, 2008, to determine  
30 whether the baseload electric generation to be supplied under that  
31 long-term financial commitment complies with the greenhouse (~~gases~~  
32 ~~gas~~) gas emissions performance standard established under RCW  
33 80.80.040.

34 (3) In determining whether a long-term financial commitment is for  
35 baseload electric generation, the commission shall consider the design  
36 of the power plant and its intended use, based upon the electricity

1 purchase contract, if any, permits necessary for the operation of the  
2 power plant, and any other matter the commission determines is relevant  
3 under the circumstances.

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

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

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

1 (7) The commission shall consult with the department to apply the  
2 procedures adopted by the department to verify the emissions of  
3 greenhouse gases from baseload electric generation under RCW 80.80.040.  
4 The department shall report to the commission whether baseload electric  
5 generation will comply with the greenhouse (~~(gases—[gas])~~) gas  
6 emissions performance standard for the duration of the period the  
7 baseload electric generation is supplied to the electrical company.

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

12 (9) This section does not apply to a long-term financial commitment  
13 for the purchase of clean fuel transition power.

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

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

18 (1) No consumer-owned utility 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 emissions performance standard established under RCW 80.80.040.

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

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

1 (4) The governing board may provide a case-by-case exemption from  
2 the greenhouse (~~gases~~) gas emissions performance standard to address:  
3 (a) Unanticipated electric system reliability needs; or (b)  
4 catastrophic events or threat of significant financial harm that may  
5 arise from unforeseen circumstances.

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

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

14 (7) This section does not apply to long-term financial commitments  
15 for the purchase of clean fuel transition power.

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

18 (1) The governor shall seek to enter into a memorandum of agreement  
19 with the owners of a coal-fired baseload facility that has emitted more  
20 than one million tons of greenhouse gases annually in calendar year  
21 2005.

22 (2) The memorandum of agreement must incorporate binding  
23 commitments to achieve the early reductions required by this section  
24 and include a schedule of major steps and investments necessary to  
25 achieve the reductions. The agreement must provide for the following  
26 minimum levels of emission reductions when measured on a calendar year  
27 basis as a percentage of the average annual emissions in calendar year  
28 2005:

29 (a) Between January 1, 2012, and December 31, 2016, the facility  
30 must achieve at least a ten percent average reduction; and

31 (b) Beginning January 1, 2017, the facility must achieve further  
32 significant reductions as specified in the memorandum of agreement.

33 (3) The memorandum of agreement must be consistent with the  
34 requirement that the facility meet the emissions performance standard  
35 by the applicable date in RCW 80.80.040(3)(c).

36 (4) The memorandum of agreement must include provisions by which  
37 the facility owners will provide financial assistance to the community

1 for planning for future site uses and preserving jobs. The financial  
2 assistance must be equivalent to the financial benefits to the facility  
3 from the tax exemptions provided under RCW 82.08.811 and 82.12.811.

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

6 (1) A memorandum of agreement formed under section 106 of this act  
7 may describe the potential sources and types of fuel for electricity  
8 generation that may qualify as clean fuel transition power. When  
9 negotiating the issue of clean fuel transition power in any memorandum  
10 of agreement, the governor may consult with any entity necessary to  
11 ensure a regional dialogue concerning replacement power, transmission  
12 reliability, natural gas pipeline capacity, or any other relevant  
13 issue. An interested entity may become a party to the memorandum of  
14 agreement.

15 (2) No state agency or political subdivision of the state may adopt  
16 a greenhouse gas emission performance standard, or other operating  
17 requirement or limitation, that is inconsistent with the provisions of  
18 a memorandum of agreement entered pursuant to this section. The  
19 memorandum of agreement may provide for its termination or suspension,  
20 or require modification to the satisfaction of the parties to the  
21 memorandum of agreement, in the event that a conflicting emission or  
22 performance standard, or other operational requirement or limitation  
23 directly addressing greenhouse gas emissions, is imposed by federal  
24 law, rules, or regulatory requirements.

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

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

35 (2) Where the agreement includes the provisions referred to in  
36 subsection (1) of this section, electric utilities serving customers in

1 this state must be afforded an opportunity to manage their future  
2 carbon regulatory risk through investments in early emission reductions  
3 under the agreement. Such an investment must be treated as if it were  
4 an equal reduction in the emissions generated by the utility and of any  
5 emissions resulting from the consumption of electricity by the  
6 utility's customers.

7 (3) The governor may recommend actions by the legislature to  
8 strengthen implementation of an agreement or a proposed agreement  
9 relating to recognition of investments in early emissions reductions.

10 NEW SECTION. **Sec. 109.** A new section is added to chapter 80.80  
11 RCW to read as follows:

12 (1) Upon petition by the baseload electric generation facility  
13 owner, the governor may grant an extension of the compliance date  
14 applicable under RCW 80.80.040(3)(c) when the governor determines under  
15 the provisions of this section that such an extension would be in the  
16 public interest. An extension of the compliance date may not be  
17 granted beyond December 31, 2025.

18 (2) The governor shall broadly seek information and positions upon  
19 the petition, including the views of agencies and entities engaged in  
20 the management of the generation, transmission, and distribution of  
21 electricity. A reasonable opportunity to provide comments must be  
22 afforded to all interested persons.

23 (3) The governor shall consider all relevant information submitted  
24 in support of or opposing the petition, including but not limited to  
25 such considerations as:

26 (a) Impacts upon baseload and peak load electricity supplies in the  
27 state and throughout the region;

28 (b) Impacts upon the reliability and the operational costs of the  
29 region's electrical transmission system;

30 (c) Impacts of the compliance date upon retail electric rates;

31 (d) Impacts upon employment and other economic impacts in the  
32 community hosting the baseload electric generation facility;

33 (e) Financial impact upon the baseload electric generation facility  
34 owner; and

35 (f) Environmental effects of continued operation of the coal-fired  
36 baseload electric generation facility.

1 (4) The governor shall issue a draft order that must identify the  
2 information relied upon to support the order. The draft order must be  
3 made available to the public and a reasonable time afforded for review  
4 and comments to be submitted to the governor.

5 (5) Following the public comment period in subsection (4) of this  
6 section, the governor must grant or deny the petition by order.

7 (6) The governor must act on a petition within one hundred twenty  
8 days of its receipt.

9 (7) The governor may designate an official of state government to  
10 perform the duties under this section, except that the governor must  
11 review the information submitted and issue the final decision whether  
12 to grant or deny the petition.

13 **Sec. 110.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to  
14 read as follows:

15 (1) The council shall report to the governor its recommendations as  
16 to the approval or rejection of an application for certification within  
17 twelve months of receipt by the council of such an application, or such  
18 later time as is mutually agreed by the council and the applicant. In  
19 the case of an application for certification of an energy facility  
20 proposed for construction, modification, or expansion for the purpose  
21 of providing clean fuel transition power assisting in implementing  
22 provisions of a memorandum of agreement entered pursuant to section 106  
23 of this act, the council shall expedite the processing of the  
24 application pursuant to RCW 80.50.075 and shall report its  
25 recommendations to the governor within one hundred eighty days of  
26 receipt by the council of such an application, or a later time as is  
27 mutually agreed by the council and the applicant. If the council  
28 recommends approval of an application for certification, it shall also  
29 submit a draft certification agreement with the report. The council  
30 shall include conditions in the draft certification agreement to  
31 implement the provisions of this chapter, including, but not limited  
32 to, conditions to protect state or local governmental or community  
33 interests affected by the construction or operation of the energy  
34 facility, and conditions designed to recognize the purpose of laws or  
35 ordinances, or rules or regulations promulgated thereunder, that are  
36 preempted or superseded pursuant to RCW 80.50.110 as now or hereafter  
37 amended.

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

3       (~~(a)~~) (i) Approve the application and execute the draft  
4 certification agreement; or

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

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

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

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

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



1        NEW SECTION.    **Sec. 202.**    (1) A facility subject to closure under  
2 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of  
3 this act, must provide the department of ecology with a plan for the  
4 closure and postclosure of the facility at least twenty-four months  
5 prior to its closure. This plan must include but not be limited to:

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

8        (b) Demonstrating financial assurance to fund the closure and  
9 postclosure of the facility and providing methods by which this  
10 assurance may be demonstrated;

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

14        (d) A decommissioning and site restoration plan that addresses  
15 restoring physical topography, cleanup of all hazardous substances on  
16 the site, potential future uses of the site following restoration, and  
17 coordination with local and community plans for economic development in  
18 the vicinity of the site.

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

22        (3) Adoption of the plan and significant revisions to the plan must  
23 be approved by the department of ecology following consultation with  
24 the advisory board created in section 302 of this act.

25        NEW SECTION.    **Sec. 203.**    (1) A facility subject to closure under  
26 RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of  
27 this act, must guarantee funds are available to perform all activities  
28 specified in the decommissioning plan developed under section 202 of  
29 this act. The amount must equal the cost estimates specified in the  
30 decommissioning plan and must be updated annually for inflation. All  
31 guarantees under this section must be assumed by any successor owner,  
32 parent company, or holding company.

33        (2) The guarantee required under subsection (1) of this section may  
34 be accomplished by letter of credit that is acceptable to the  
35 department of ecology.

36        (3) The issuing institution of the letter of credit must be an

1 entity that has the authority to issue letters of credit and whose  
2 letter of credit operations are regulated by a federal or state agency.

3 (4) A qualifying facility that uses a letter of credit to satisfy  
4 the requirements of this act must also establish a standby trust fund.  
5 Under the terms of the letter of credit, all amounts paid pursuant to  
6 a draft from the department of ecology must be deposited by the issuing  
7 institution directly into the standby trust fund in accordance with  
8 instructions from the department of ecology. This standby trust fund  
9 must be approved by the department of ecology.

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

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

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

34 (8) A qualifying facility may use an amendment to increase the face  
35 value of a letter of credit each year to account for inflation. A  
36 qualifying facility is not required to obtain a new letter of credit to  
37 cover annual inflation adjustments.



1 concerning any potential conflicts of interest. The governor shall  
2 appoint one of the general public members of the board as the chair.

3 (b) In making the appointments to the advisory board, the governor  
4 shall seek a board membership that collectively provides strong fiscal  
5 and environmental oversight of the facility transition to cleaner  
6 fuels, that provides extensive knowledge of local government processes,  
7 and that has an understanding of issues relevant to the environment and  
8 economic development in Washington state. Vacant positions on the  
9 advisory board must be filled in the same manner as the original  
10 appointments. Advisory board members appointed by the governor shall  
11 serve for terms coextensive with the term of the governor. All  
12 advisory board members may be removed for cause.

13 (3) In addition to the five voting members of the advisory board,  
14 the following shall serve as ex officio nonvoting members of the  
15 advisory board: The director of the department of ecology; the mayor  
16 of the city in which the qualifying facility is located; a  
17 representative from the city council in which the facility is located;  
18 and the chair of the county council in which the facility is located.  
19 The members serving in an ex officio capacity may designate a  
20 representative from their respective agencies or offices to serve on  
21 the board on their behalf. Such a designation must be made in writing.

22 (4) The advisory board has the following powers and duties related  
23 to decommissioning of the facility and planning for future site uses:

24 (a) To review and provide comments regarding the decommissioning  
25 and site restoration plan required by this chapter;

26 (b) To advise the department of ecology on whether the  
27 decommissioning and site restoration plan is coordinated and consistent  
28 with economic development plans of affected communities; and

29 (c) To set its meeting schedules and convene at scheduled times or  
30 meet at the request of a majority of its members or the chair.

31 (5) Decisions of the advisory board must be made by a majority of  
32 its total voting membership.

33 (6) Members of the board must be reimbursed as provided by RCW  
34 43.03.050 and 43.03.060.

35 (7) This section expires three years after the applicable date in  
36 RCW 80.80.040(3)(c). The governor's office must notify the code  
37 reviser's office in writing of the final expiration date.

1           **Sec. 303.** RCW 43.160.076 and 2008 c 327 s 8 are each amended to  
2 read as follows:

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

9           (2) If at any time during the last six months of a biennium the  
10 board finds that the actual and anticipated applications for qualified  
11 projects in rural counties are clearly insufficient to use up the  
12 allocations under subsection (1) of this section, then the board shall  
13 estimate the amount of the insufficiency and during the remainder of  
14 the biennium may use that amount of the allocation for financial  
15 assistance to projects not located in rural counties.

16           (3) The board shall solicit qualifying projects to plan, design,  
17 and construct public facilities needed to attract new industrial and  
18 commercial activities in areas impacted by the closure or potential  
19 closure of large fossil fuel electric generation facilities, which for  
20 the purposes of this section means a facility that has emitted more  
21 than one million tons per year of greenhouse gases in calendar year  
22 2005. The projects should be consistent with any applicable plans for  
23 major industrial activity on lands formerly used or designated for  
24 surface coal mining and supporting uses under RCW 36.70A.368. When the  
25 board receives timely and eligible project applications from a  
26 political subdivision of the state for financial assistance for such  
27 projects, the board from available funds shall provide a priority for  
28 funding projects at the following levels:

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 304.**    A new section is added to chapter 43.155  
2    RCW to read as follows:

3        The board shall solicit qualifying projects to plan, design, and  
4    construct public works projects needed to attract new industrial and  
5    commercial activities in areas impacted by the closure or potential  
6    closure of large fossil fuel electric generation facilities, which for  
7    the purposes of this section means a facility that has emitted more  
8    than one million tons per year of greenhouse gases in calendar year  
9    2005. The projects should be consistent with any applicable plans for  
10   major industrial activity on lands formerly used or designated for  
11   surface coal mining and supporting uses under RCW 36.70A.368. When the  
12   board receives timely and eligible project applications from a  
13   political subdivision of the state for financial assistance for such  
14   projects, the board from available funds shall provide a priority for  
15   funding projects at the following levels:

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

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

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

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

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

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

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

26        (1) In any rate proceeding of an electrical company, the commission  
27    must allow the company to recover the cost to acquire clean fuel  
28    transition power, as defined in RCW 80.80.010, provided the power is  
29    needed by the company to serve its ratepayers and the acquisition is  
30    economical for the company and its ratepayers.

31        (2) In determining whether the acquisition of clean fuel transition  
32    power is economical, the commission may consider:

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 production of  
36    clean fuel transition power.

1        NEW SECTION.    **Sec. 306.**    No civil liability may be imposed by any  
2    court on the state, its officers, employees, instrumentalities, or  
3    subdivisions under sections 101, 201, or 301 of this act.

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