

Initiative Measure No. 801 filed November 20, 2015

AN ACT Relating to clean energy; adding a new chapter into Title 70 (public health and safety; amending RCW 70.235 (greenhouse gas emissions reductions - reporting requirements); deleting RCW 70.235.040 (consultation with climate impact group at the University of Washington - Report to the legislature); and providing an effective date.

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

PART I. INTENT, POLICIES AND DEFINITIONS

NEW SECTION. **Sec. 1. Intent.**

(1) The intent of this act is to support the State's clean energy economy by (a) making investments in clean energy, clean water and clean air projects, funded by a pollution mitigation fee on the largest emitters of certain dangerous air pollutants, and (b) requiring reductions of certain dangerous air pollution. These actions are designed to provide support for Washington's clean energy economy and eliminate the barriers to clean energy development, including historic subsidies to dirty energy.

NEW SECTION. **Sec. 2. Finding and declaration of policy.**

(1) The people find that the transition to a clean energy economy requires investments in clean energy, clean water, and clean air projects. The transition to a clean energy economy is further supported by funding these projects through a pollution mitigation fee system on dangerous air pollutants. This fee is designed to support clean energy development by reducing the subsidy given to companies using and selling more polluting energy products. In particular, such companies' combustion of fossil fuels releases dangerous air pollutants that negatively impact air and water quality, and they should take responsibility for such pollution.

(2) The State is hereby directed to make investments in clean energy, clean water and clean air, as set forth in this act, as a means to support the transition to a clean energy economy while reducing the impacts of dangerous air pollution on public health, the economy and the environment.

(3) The State is hereby directed to fund such investments with a pollution mitigation fee on certain dangerous air pollutants, with a fee designed to support the clean energy economy and regulate dangerous air pollutants. The pollution mitigation fee on certain dangerous air pollutants that are also greenhouse gas emissions is set forth in section 11 through 13. The pollution mitigation fee on certain other dangerous air pollutants is set forth in section 15.

(4) The State is hereby directed to reduce the emissions of certain dangerous air pollutants. The requirements and mechanism for reducing certain dangerous air pollutants that are also greenhouse gases is set forth in section 16. The requirements and mechanism for reducing certain other dangerous air pollutants is set forth in section 15.

NEW SECTION. **Sec. 3. Definitions.**

The following definitions apply throughout this act.

“Dangerous air pollutants” means the following air pollutants that have been determined to have a dangerous impact on human health and/or the environment: (a) hazardous air pollutants as defined by 42 U.S.C. 7412(b) of the Clean Air Act; and (b) greenhouse gases as defined by RCW 70.235.010(6). This definition applies only to such dangerous air pollutants when released from fossil fuel combustion.

“Department,” unless otherwise specified, means the Department of Ecology.

“Disadvantaged communities” means a disadvantaged community identified by the Department of Ecology pursuant to section 9.

PART II. SUPPORTING THE CLEAN ENERGY ECONOMY BY MAKING COST EFFECTIVE INVESTMENTS IN CLEAN ENERGY, CLEAN WATER AND CLEAN AIR

NEW SECTION. **Sec. 4. Creating a clean energy account.**

A clean energy account is created in the state treasury, funded through a pollution mitigation fee system designed to support clean energy development. The investments from the clean energy account shall be used as follows:

(a) build a clean energy economy through (i) directing investment to clean energy projects, (i) assisting businesses, workers and low-income consumers in transitioning to clean energy;

(b) make investments in clean water to mitigate against the impacts of dangerous air pollution on water resources and water quality; and

(c) make investments in clean air through reducing wildfires and promoting forest health.

NEW SECTION. **Sec. 5. Requiring investments in Clean Energy.**

(1) Sixty-five percent of available investment funds in the clean energy account shall be placed within a clean air subaccount to make investments in clean energy and air pollution prevention projects within the State of Washington through the program set forth in this section. These investments in the clean energy economy will also reduce the amount of dangerous pollution entering our air and lakes, rivers and streams.

(2) To qualify for such payments, a project must demonstrate that it will result in a quantifiable and verifiable reduction of air pollution emissions in the State.

(3) The reduction amount will be quantified by equivalencies of greenhouse gas pollution, although projects reducing greenhouse gas pollution will often have a co-benefit of reducing the release of other dangerous pollutants to our air and waterways.

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(a) For air pollution reduction projects based on renewable electricity production, including solar and wind projects, air pollution reduction amounts will be calculated as a reduction of the pollution associated with electricity production in the NWPP eGRID sub-region, as defined by the US EPA.

(b) For air pollution reduction projects in the transportation sector, air pollution reduction amounts will be calculated as a reduction in the greenhouse gas equivalency of gasoline, diesel or other fossil-based fuels.

(c) For air pollution reduction projects in the industrial and thermal energy sectors, air pollution reduction amounts will be calculated as a reduction in the greenhouse gas equivalency of the combustion of fossil fuels.

(d) As an indicator for the value of air pollution reduction projects, the Department shall set an initial Investment Price equivalent to the Environmental Protection Agency's social cost of carbon adjusted by a 2.5% discount rate. The Investment Price will be re-calculated every five years by the Department of Commerce, in consultation with the Department, in order to achieve greenhouse gas emission targets, as defined by state law and best available climate science. The Department of Commerce will provide incentive payments based on the measure-life of air pollution reductions. The incentive payment will have a 0% discount rate. Incentive payments may not exceed 70% of total project cost. The Investment Price will be modified in the following manner:

(i) For air pollution reduction projects based on renewable electricity generation, the Investment Price will be increased by a factor of 1.2 for distributed generation projects less than 100KW in capacity.

(ii) For air pollution reduction projects based on manufacturing, the Investment Price will be increased by a factor of 1.25 for products that are manufactured in Washington State.

(e) Up to five percent of the available investment funds in the clean air subaccount shall be eligible solely for air pollution reduction projects at facilities located in Washington State that generate more than 100,000 tons of carbon emissions.

NEW SECTION. **Sec. 6. Requiring investments in Clean Water.**

(1) Twenty percent of available investment funds in the clean energy account shall be placed in the clean water subaccount and used to mitigate the impact of dangerous air pollutants through clean water projects, including water delivery infrastructure addressing long term impacts of air pollution on water quality and quantity.

(2) To qualify for funding, all proposals demonstrate quantifiable and verifiable reductions of pollutant loading and/or flood control. Funds shall be distributed in equal amounts to:

(a) Storm water project design, construction, and other activities that reduce pollution from existing development and utilize innovative approaches including but not limited to low impact development, green infrastructure techniques, and high-efficiency street sweeping.

(b) Reducing flood risk and restoring natural floodplain function, with preference given to projects that achieve multiple benefits including habitat, agricultural viability, water quality, public open space/recreation access, salmon recovery, economic development and/or similarly important local benefits.

(c) Integrated water supply projects and planning, provided such project is demonstrated to be cost effective and to achieve multiple benefits, including: enhance fish and wildlife habitat; Improve efficiency and conservation of water delivery and use; and enhance water supplies for multiple uses.

(3) Project selection must consider cost effectiveness and ability to leverage other private and government investments and markets, recommendations by multi-stakeholder and integrated planning processes and government agencies, and providing multiple benefits to

communities and the environment, and, for projects within the Puget Sound watershed, whether the project is determined by the Puget Sound Partnership to be consistent with its Puget Sound Action Agenda.

NEW SECTION. Sec. 7. Investing in Clean Air and Clean Water through improving forest health.

(1) Ten percent of available investment funds in the clean energy account shall be placed in the clean air subaccount and used for projects improving forest health to prevent wildfires and to increase forests' ability to filter pollutants from the air naturally, sequester dangerous air pollutants, and prevent the release of dangerous air pollutants. Funds may be used for:

(a) Preventing wildfires and enhancing community preparedness and firefighting capabilities.

(b) Improving forest health through thinning or prescribed fire, with priority given to projects proposed pursuant to a forest collaborative planning process establishing ecological and public safety goals across local, state, federal and/or private ownerships.

(c) Establishing and funding a Working Forest Conservation Easement Program, to protect working private forestland to benefit air and water quality, wildlife habitat and public recreation. Funding for the working forest conservation easement program may be used on an ongoing basis as funds accrue. The program shall be administered through the Washington State Recreation and Conservation Office. The Recreation and Conservation Office shall consult appropriate agencies and stakeholders when developing program requirements. Program requirements will be finalized no later than July 1, 2017, and must include: (i) a ranking system in which the primary program goal is to maximize the amount of carbon sequestered over the easement's first 100 years; (ii) secondary consideration shall include habitat values, connectivity, water quality benefits, forest species composition, ecosystem functioning and habitat benefits, risk of conversion, and wildfire prevention benefits. The ranking of easement opportunities under the program must evaluate wet western Washington forests

separately from dry eastern Washington forests. The Recreation and Conservation Office must develop rules governing the ranking system, including scientifically based carbon sequestration calculations and market based appraisal methods.

NEW SECTION. Sec. 8. Making clean air investments in disadvantaged communities.

(1) Five percent of available investment funds in the clean energy account shall be placed in the clean air subaccount and disbursed for efforts to identify and implement projects to reduce dangerous air pollutants within disadvantaged communities. Projects shall be identified and prioritized through the study set forth in section 14.

NEW SECTION. Sec. 9. Overlay investment criteria.

(1) The following overlay investment criteria shall apply to the investments funds expended pursuant to sections 4 and 5 of this act:

(a) A minimum of twenty-five percent of such funds shall be used for projects that provide benefits to disadvantaged communities.

(b) A minimum of ten percent of such funds shall be used to fund projects located within disadvantaged communities.

(c) The Department of Ecology shall identify disadvantaged communities based on geographic, socioeconomic, public health, and environmental hazard criteria, including but not limited to (i) areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation; and (ii) areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

(d) Each contract for construction, reconstruction, alteration, repair, improvement or maintenance of a public building or public works made by a public agency or through a public/private partnership shall contain a provision that the iron, steel, or manufactured goods

used or supplied in the performance of the contract or any subcontract shall be manufactured in the United States unless these are inconsistent with the public interest, unavailable in sufficient quantities, or would increase the cost of the overall project by more than 25%.

NEW SECTION. **Sec. 10. Ensuring a just transition.**

(1) To facilitate the just transition to a clean energy economy, the clean energy account shall:

(a) Give preference to investments and expenditures that provide income and benefit support to displaced workers in the fossil fuel field and energy intensive and trade exposed industries as a just transition to the clean energy economy.

(b) Assist working families in participating in the clean energy economy and pollution prevention efforts. The clean energy transition assistance program is hereby created and will be administered by the Department of Revenue. The program must be funded by the clean energy account to provide eligible working families with support in the amount equal to two hundred percent of the exemption that such family would be entitled to under the working families' tax exemption program, RCW 82.08.0206. Clean energy transition assistance will be distributed to individuals and families who qualify for an exemption under RCW 82.08.026, using procedures consistent with RCW 82.08.026. The Department of Revenue shall adopt rules to carry out this program based upon RCW 82.08.026 as of this initiative's effective date.

(c) Give preference for projects that promote job creation and career training opportunities for Washington residents through community workforce agreements, and that use domestic content.

(d) The costs of complying this section and all administrative costs to carry out this act shall be paid from the clean energy account, and no costs shall be incurred under this section until adequate funds have been collected by the

clean energy account. Funds remaining in that account after these expenditures constitute the available investment funds to be invested pursuant to sections 5 to 8 of this act.

PART III. REGULATING POLLUTION AND MITIGATING ITS IMPACTS THROUGH A POLLUTION MITIGATION FEE.

NEW SECTION. Sec.11. Findings.

(1) A significant barrier to clean energy production is that the public currently subsidizes the dirty energy economy by paying for many of the costs associated with its release of pollutants. By requiring polluters to pay the costs of pollution, rather than the public, this act promotes clean energy production.

(2) The people hereby adopt a pollution mitigation fee program to require polluters to pay the costs of their pollution. The pollution mitigation fee has an overriding purpose of regulating the release of certain dangerous air pollutants into our environment and mitigating the impacts caused by such pollutants. This act does not create any new tax or increase any tax.

(3) The pollution mitigation fee will be collected from the largest emitters of dangerous air pollutants as set forth in this part.

NEW SECTION. Sec. 12. Definitions.

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

(1) "Carbon calculation" means a calculation made by the Department for purposes of calculating the pollution mitigation fee. Among other resources, the Department may consider carbon dioxide content measurements for fossil fuels from the United States Energy Information Administration or the United States Environmental Protection Agency.

(2) "Carbon content inherent in electricity" means the carbon dioxide generated by the production of electricity from

fossil fuels.

(3) "Fossil fuel" means petroleum products, motor vehicle fuel, special fuel, aircraft fuel, natural gas, petroleum, coal or coke of any kind, or any form of solid, liquid, or gaseous fuel derived from these products, including without limitation still gas, propane, and petroleum residuals including bunker fuel.

(4) "Inflation" is the inflation rate determined by the consumer price index.

(5) "Motor vehicle fuel" has the same meaning as provided in RCW 82.38.020.

(6) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate.

(7) "Petroleum product" has the same meaning as in RCW 82.23A.010.

(8) "Qualified sequestration" means sequestration qualified for credit pursuant to RCW 80.70.020 or in accordance with a method established by the Department with reference to methods approved by the United States Environmental Protection Agency or its successor.

(9) "Special fuel" has the same meaning as in RCW 82.38.020 and includes fuel that is sold or used to propel vessels.

NEW SECTION. Sec. 13. Requiring the largest emitters to pay a pollution mitigation fee.

(1) The Department must collect a pollution mitigation fee based upon (a) the carbon content of fossil fuels sold or used within this state, including but not limited to the embodied emissions of refined gasoline and diesel, and (b) the carbon content inherent in electricity generated within Washington or imported into Washington.

(2) The amount of the fee shall be equal to fifteen dollars per metric ton of carbon dioxide as of July 1, 2017, increasing by seven percent annually until 2046.

(3) The Department must determine the pollution mitigation fee

in each case by applying a carbon calculation, which it shall establish by rule.

(4) The pollution mitigation fee is imposed only once and only upon the largest emitters within the state. For the purposes of this fee, the largest emitters within the state means the entities that import fossil fuels into this state for use and/or processing within the state.

(5) The Department shall adopt rules to ensure that the pollution mitigation fee is imposed only once and only upon the largest emitters within the state, as defined in paragraph four.

(6) The pollution mitigation fee must be reduced or refunded based upon the fraction of emissions that is demonstrated to not contribute to increasing atmospheric carbon dioxide concentration, for example by reason of qualified sequestration.

(7) The Department must adopt rules as necessary to implement the pollution mitigation fee provided for in this section. The Department must develop and make available worksheets and guidance documents necessary to calculate the pollution mitigation fee for various fossil fuels. The Department must adopt rules and provide forms with respect to the reporting of consumption of fossil fuels in accordance with, as applicable: 82.08RCW; 82.12RCW; 82.36 RCW; 82.36 RCW; 82.38 RCW; 82.42 RCW; 82.23A RCW; and 82.23A RCW.

NEW SECTION. **Sec. 14.**

The pollution mitigation fee adopted by section 13 applies only to certain dangerous air pollutants. It does not apply to the dangerous air pollutants released by a fossil fuel that is (a) brought into this state in the fuel supply tank for a motor vehicle, vessel, locomotive, or aircraft; (b) beyond the legal jurisdiction of the State of Washington such that the State may not legally impose a fee upon it; (c) intended for export outside this state; or (d) for twenty years after the effective date of this act:

(i) fuel used solely for agricultural purposes;

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(ii) fuel that is purchased for the purpose of public transportation and for which the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1) (f) and (g) or 82.38.180(3) (b);

(iii) fuel that is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and for which the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1) (d) or 82.38.180(3) (a);

(iv) fuel purchased by the Washington state ferry system for use in a state-owned ferry; and

(v) fuel purchased for school buses defined in RCW 46.04.521 and used for the purposes therein set forth.

(3) (a) An optional phase in the program will be available to Energy Intensive and Trade Exposed businesses. The Department of Commerce will adopt a rule establishing criteria for Energy Intensive and Trade Exposed Businesses and will thereafter determine which businesses meet such criteria. Such criteria shall at a minimum require the business to have an emissions intensity of over thirty percent and a trade share of over thirty percent.

(b) To be eligible to participate in this program, a business must (i) maintain its status as an energy intensive and trade exposed business, and (ii) establish a plan, approved by the Department of Ecology, to implement all methods for reducing emissions of dangerous air pollutants that are cost effective, taking into consideration community impacts and the social costs of carbon; and (iii) adopting such pollution prevention technology upon a timeline of no longer than five years. The Department of Ecology will adopt and periodically update rules identifying those pollution prevention methods that are deemed cost effective for each industry sector.

(c) During its first year in the program, a participating business shall be exempt from ninety percent of the fee that it would otherwise be responsible for under section 12 of this act.

That exemption shall be reduced by two percent annually thereafter. If the participating business purchases fossil fuels and/or electricity on which the pollution mitigation fee has been paid, it shall be entitled to a rebate of the appropriate percentage of the pollution mitigation fee that had been paid on such fuels and/or electricity.

PART IV. LIMITING EMISSIONS OF CERTAIN DANGEROUS AIR POLLUTANTS.

NEW SECTION. **Sec. 15. Limiting certain dangerous air pollutants, funded by a pollution mitigation fee on dangerous air pollutants.**

(1) To encourage clean energy production, the state shall take steps to reduce certain dangerous air pollutants released in our State.

(2) The Department must adopt a program for reducing the emission of dangerous air pollutants from fossil fuel combustion. The program for reducing dangerous pollutants that are greenhouse gases is provided for through the structure of the pollution mitigation fee established in Part III of this act and through Section 16. The program for reducing dangerous air pollutants that are not greenhouse gases is provided for in paragraph three through five of this section.

(3) Within one month after the effective date of this act, the Department must begin studying the impacts of dangerous air pollutants on disadvantaged communities throughout the state. The study must identify the stationary and mobile sources of dangerous air pollutants that impact disadvantaged communities throughout the state. Within twelve months after the effective date of this act, the Department must complete the study and inventory and prioritize projects to reduce such impacts.

(4) The Department shall impose a \$500 pollution mitigation fee on each Title Five clean air permit for the largest emitters of dangerous air pollutants in the state. The costs of completing the study required by this section will be paid for out of the pollution

mitigation fees under this paragraph, with remaining costs paid out of the amounts placed in the clean air subaccount set forth in section 7.

(5) Prioritized projects shall be funded through the funds placed in the clean air subaccount set forth in section 7.

Sec. 16. Limiting other dangerous air pollutants.

RCW 70.235.020 is hereby amended as follows:

(1) (a) By July 1, 2017, the state shall must adopt a program to limit emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels;

(ii) By 2035, reduce overall emissions of greenhouse gases in the state to twenty-five percent below 1990 levels;

(iii) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year.

(b) ~~By December 1, 2008, the department shall submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Actions taken using existing statutory authority may proceed prior to approval of the greenhouse gas reduction plan.~~ By January 1, 2019, and on January 1 of every fourth year thereafter, the state must adopt an updated program to limit the emissions of greenhouse gases within the state to achieve the greater of (a) the reductions set forth in paragraph 1(a) of this section or (b) that reduction that is determined necessary based upon available data and best available climate science.

(c) Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Consistent with this directive, the department shall take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70.94.151; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress.

(2) By December 31st of each even-numbered year beginning in 2010, the department and the *department of community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding two years, and totals in each major source sector. The department shall ensure the reporting rules adopted under RCW 70.94.151 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.

(4) The Department must adopt rules to implement and enforce the program required by paragraph 1 of this section and to ensure that the state meets the emissions reductions required by paragraph 1 of this section. The Department thereafter must enforce such rules to achieve the emissions reductions required by paragraph 1 of this section. In developing such rules, the Department may (a) institute an economy wide cap; (b) regulate carbon emissions; (c) limit the carbon load of imported electricity. The Department may adopt a compliance flexibility system applicable to stationary sources provided that such facility (ii) establishes a plan, approved by the Department of Ecology, to implement all methods for reducing emissions of dangerous air pollutants that are cost effective,

taking into consideration community impacts and the social costs of carbon; and (iii) adopting such pollution prevention technology upon a timeline no longer than five years.

PART V. OVERSIGHT AND ACCOUNTABILITY

NEW SECTION. **Sec. 17.**

(1) An oversight board is created to oversee the implementation of this act including the investments made under this act. The oversight board must be broadly representative of stakeholders, including consumers, business, labor, health advocates, tribes, and government. A minimum of 35% of members shall be selected from disadvantaged and impacted communities and workers. The board shall have subcommittees for the primary investment areas (a) clean energy; (b) clean air; and (c) clean water, and shall strive to ensure that some of its members have technical expertise in the investment area. The board and its subcommittees shall be provided sufficient resources and technical support to carry out their duties. Investment decisions shall also be informed by public and local community input.

(2) There shall be an economic and environmental justice subcommittee ("EEJ subcommittee") to the oversight board. The EEJ subcommittee shall have 15 voting members. The voting members will be nominated by statewide organizations representing the following constituencies: six members from organizations representing disadvantaged communities; three members from organization representing labor; one member from an organization representing business; one member from an organization representing public health issues; and one member who is an elected official. The voting members shall have geographic and gender balance and shall be appointed by the governor, who may also appoint non-voting members. The EEJ subcommittee will be housed within the Department and shall make recommendations to the Governor, the legislature, and the oversight board as appropriate. The EEJ subcommittee shall make recommendations and oversee investments under sections 8 (overlay investment criteria)

and section 9 (just transition) and evaluate the equitable implementation of this act.

(3) To prevent unlawful profiteering in dirty energy markets that create unfair competition with clean energy production, the Attorney General's Office will receive two million dollars annually from the clean energy fund to enforce anti-price gouging and consumer protection laws in the oil and gasoline sectors.

PART VI. MISCELLANEOUS

NEW SECTION. **Sec. 18.** RCW 70.235.040 (consultation with climate impact group at the University of Washington - Report to the legislature) is hereby deleted.

NEW SECTION. **Sec. 19.** Nothing in this Act shall be construed to impose fees or limitations or have other impacts upon any energy facility that has entered into a binding memorandum of understanding with the State of Washington pursuant to RCW 80.80.100.

NEW SECTION. **Sec. 20.** RULE MAKING. (1) The Department, with the Department of Commerce and Department of Revenue and necessary and appropriate, shall develop rules necessary to implement this act. The Department shall utilize negotiated rulemaking, pursuant to RCW 34.05.310(2) (a) , and expedited rulemaking pursuant to RCW 34.05.353. Rules must be finalized by July 1, 2017.

NEW SECTION. **Sec. 21.** This chapter may be known and cited as the Washington clean energy act.

NEW SECTION. **Sec. 22.** This act takes effect January 1, 2017.

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