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**HOUSE BILL 2997**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Doglio, Tarleton, Appleton, Morris, Fitzgibbon, and Pollet

AN ACT Relating to Washington's clean, affordable, and reliable energy future; adding new sections to chapter 19.285 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding new sections to chapter 82.16 RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that Washington is the nation's leading producer of electricity from hydroelectric sources. The legislature finds that the residents, businesses, and industries of the state have benefited from the relatively low operating costs and reliability of this abundant, renewable energy resource. This legacy of clean hydroelectricity is the foundation upon which the state has built a diverse, vibrant clean technology sector that includes research and development in breakthrough technologies, as well as investment in other renewable energy resources. The legislature finds that Washington should continue its leadership in conservation, renewable energy, and climate change mitigation by increasing energy efficiency across the state and encouraging investment in the state's clean energy future.

(2) By building on the state's foundation of renewable hydroelectric generation with additional conservation and renewable energy resources, the legislature declares that Washington can: Promote energy independence; create high-quality jobs in the clean technology sector; maintain stable and affordable electric rates for all customers; and protect clean air and water in the Pacific Northwest.

NEW SECTION. **Sec.**  The definitions in this section apply throughout sections 3 through 6 of this act unless the context clearly requires otherwise.

(1) "Coal-fired resource" means a facility that uses coal-fired generating units, or that uses units fired in whole or in part by coal as feedstock, to generate electricity.

(2) "Consumer-owned utility" has the same meaning as defined in RCW 19.29A.010.

(3) "Electric utility" has the same meaning as defined in RCW 19.29A.010.

(4) "Fossil fuel" means petroleum products that are intended for combustion, including natural gas, crude oil, petroleum, coal, or coke of any kind, or any form of solid, liquid, or gaseous fuel derived from these products including but not limited to motor vehicle fuel, special fuel, aircraft fuel, marine fuel, still gas, propane, and petroleum residuals such as bunker fuel.

(5) "Fossil fuel generating resource" is an electric generating unit that generates electricity from the combustion or oxidation of fossil fuels.

(6) "Low-income" means household income as defined by the department or commission, provided that the definition may not exceed eighty percent of area median household income, adjusted for household size.

(7) "Market customer" means a nonresidential customer of an electric utility that: (a) Purchases electricity from an entity or entities other than the electric utility with which it is directly interconnected; or (b) generates electricity to meet its own needs.

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

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

(10) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

NEW SECTION. **Sec.**  (1)(a) On or before January 1, 2030, all electric utilities must eliminate from electric rates all costs associated with delivering electricity to Washington customers that is generated from a coal-fired resource. This does not include costs associated with decommissioning and remediation of these facilities.

(b) The commission may accelerate depreciation schedules for any coal-fired resource owned by investor-owned utilities to a date no later than January 1, 2030.

(2) The commission may not extend the depreciation schedule for any fossil fuel generating resource.

(3) Electric utilities and market customers must demonstrate that they have reduced the total number of megawatt hours from fossil fuel generating resources delivered to Washington customers compared to a 2017 baseline approved by the commission, for investor-owned utilities and market customers of investor-owned utilities, and the department, for consumer-owned utilities and market customers of consumer-owned utilities, used to serve the utility's load by the following annual targets:

(a) At least a twenty-five percent reduction from 2017 levels by January 1, 2030, and each year thereafter through December 31, 2034;

(b) At least a fifty percent reduction from 2017 levels by January 1, 2035, and each year thereafter through December 31, 2039;

(c) At least a seventy-five percent reduction from 2017 levels by January 1, 2040, and each year thereafter through December 31, 2044; and

(d) One hundred percent reduction by January 1, 2045, and each year thereafter.

(4) In order to achieve the targets under subsection (3) of this section, electric utilities and market customers shall demonstrate that they have achieved all feasible conservation measures or investments, reductions in demand, and demand management prior to making new investments to meet projected demand; and, to the maximum extent feasible, shall:

(a) Achieve the targets under subsection (3) of this section at the lowest reasonable cost;

(b) Avoid the imposition of the pollution mitigation charge under section 4(1)(a) of this act; and

(c) In the construction of new resources:

(i) Maximize the creation of family wage jobs, insofar as doing so is consistent with (a) of this subsection; and

(ii) Rely on renewable resources and storage.

(5) Any resource for which the environmental attribute or attributes have been sold, transferred, or used for other purposes, except for an electric utility's own compliance with the annual renewable energy targets under RCW 19.285.040, is considered a fossil fuel generating resource for the purposes of this act.

(6) Hydroelectric generation may not include new diversions, new impoundments, new bypass reaches, or expansion of existing reservoirs constructed after the effective date of this section unless the diversions, bypass reaches, or reservoir expansions are necessary for the operation of a pumped storage facility that: (a) Does not conflict with existing state or federal fish recovery plans; and (b) complies with all local, state, and federal laws and regulations.

NEW SECTION. **Sec.**  (1)(a) An electric utility or market customer shall pay a pollution mitigation charge to the department for fossil fuel megawatt hours in excess of limits established in section 3(3) of this act. This charge must be set per megawatt hour and increase according to the following schedule:

|  |  |
| --- | --- |
| **Year** | **Pollution mitigation charge (Dollars per megawatt-hour)** |
| 2030 | Fifty dollars/MWh |
| 2040 | Seventy-five dollars/MWh |
| 2045 | One hundred dollars/MWh |

(b) All dollar amounts set forth in (a) of this subsection are in 2018 dollars. Beginning on the effective date of this section, this charge must be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2)(a) For an investor-owned utility, the commission shall determine compliance with the provisions of this chapter and assess charges as provided in subsection (1) of this section.

(b) For a consumer-owned utility, the department is responsible for assessing charges as provided in subsection (1) of this section. The auditor shall determine compliance with the provisions of this chapter and the attorney general is responsible for enforcing compliance.

(c) For a market customer, the auditor shall determine compliance with this chapter and the attorney general is responsible for enforcing compliance, except that the commission shall determine compliance with section 3 of this act for a market customer of an investor-owned utility.

(3)(a) By June 1, 2025, and annually thereafter, each electric utility and market customer shall report to the department on progress towards the reduction in the total number of megawatt hours from fossil fuel generating resources under section 3 of this act.

(b) Each investor-owned utility shall also report all information required in (a) of this subsection to the commission.

(c) All electric utilities shall also make reports required in this section available to its customers and each market customer shall make all information required in this subsection available to the attorney general.

(4) Moneys collected from electric utilities and market customers pursuant to subsection (1)(a) of this section must be expended by the department to assist electric utilities and market customers in eliminating future payments of the pollution mitigation charge in the following manner:

(a) One-third of revenue must be expended on projects that reduce energy spending by low-income electricity customers, with priority for distributed generation and conservation projects in excess of existing requirements; and

(b) The remaining funds must be expended for projects that assist electric utilities and market customers in meeting the fossil fuel reduction requirements in section 3 of this act including, but not limited to: (i) Smart grid and grid modernization projects; (ii) research and deployment of renewable resources with capacity factors above fifty percent; and (iii) forest health and carbon sequestration.

NEW SECTION. **Sec.**  (1)(a) The legislature finds and declares all of the following:

(i) There is insufficient information available to fully realize the potential of solar photovoltaic energy generation to serve low-income customers, including those in disadvantaged communities.

(ii) There is insufficient understanding of the barriers to access for low-income customers to all forms of renewable energy being generated in the state.

(iii) There is insufficient understanding of the barriers to access for low-income customers to energy efficiency investments.

(iv) There is insufficient understanding of the barriers to access for low-income customers to zero emission and near-zero emission transportation options.

(b) By January 1, 2019, the department, with input from relevant state agencies and the public, shall develop and publish a study on:

(i) Barriers for low-income customers, including those in disadvantaged communities, to energy efficiency and weatherization investments, as well as recommendations on how to increase access to energy efficiency and weatherization investments to low-income customers; and

(ii) Barriers for low-income customers, including those in disadvantaged communities, to zero emission and near-zero emission transportation options, as well as recommendations on how to increase access to zero emission and near-zero emission transportation options to low-income customers, including those in disadvantaged communities.

(2) By January 1, 2025, the department, with input from relevant state agencies and the public, shall develop and publish a study on:

(a) The impact of this act on utility rates as it affects individuals of varying income levels, ethnic backgrounds, and racial backgrounds; and

(b) Projected and current worker hours in construction, manufacturing, operations, and maintenance created as a result of compliance with the requirements of this act. The study shall also include estimates of direct, indirect, and induced job creation. The study must be repeated every five years.

(3) The definitions in RCW 19.285.030 apply throughout this section.

(4) This section expires July 1, 2026.

NEW SECTION. **Sec.**  The commission, in the case of investor-owned utilities, and the department, in the case of consumer-owned utilities, shall adopt rules to implement sections 3 and 4 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

(1) Subject to the limitations in this section, a person who has paid the tax imposed by RCW 82.08.020 is eligible for an exemption from the full amount of state tax in the form of a remittance for charges made for labor and services rendered by any person in respect to the constructing, expanding, upgrading, or improving of an eligible renewable energy investment project, or to sales of tangible personal property that becomes an ingredient or component of an eligible renewable energy investment project.

(2) The exemption in this section is available in the form of a remittance. The total amount of remittance a person may receive under this section and section 8 of this act is limited to one million dollars per eligible renewable energy investment project.

(3) A person may claim the exemption by submitting a remittance application, in a form and manner as required by the department, specifying the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. A person may not apply for a remittance more frequently than once per quarter. The person must retain, in adequate detail to enable the department to determine whether the purchases meet the criteria under this section: Invoices; proof of tax paid; documents describing the location and size of new structures; and construction invoices and documents.

(4) The department must determine eligibility under this section based on information provided by the person claiming the remittance and through audit and other administrative records. The department must on a quarterly basis remit exempted amounts to a person submitting remittance applications during the previous quarter.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Eligible renewable energy investment project" means an investment project that either initiates a new renewable energy generation facility or expands, upgrades, or improves a current renewable energy generation facility by increasing its energy efficiency or energy capacity, and includes new or upgraded transmission and distribution infrastructure necessary to connect the project to the electrical grid.

(b) "Renewable energy generation facility" means an electric generation facility powered by a renewable resource, as that term is defined in RCW 19.285.030.

(6) This section applies to state sales taxes billed to a person claiming the remittance on or after January 1, 2019.

(7) The exemption under this section expires January 1, 2029. The department may not approve any remittance claimed after December 31, 2029.

(8) The legislature intends for the tax preference in this section to expire; therefore, this section is not subject to the provisions of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec.**  A new section is added to chapter 82.12 RCW to read as follows:

(1) Subject to the limitations in this section, a person who has paid the tax imposed by RCW 82.12.020 is eligible for an exemption from the full amount of state tax in the form of a remittance for the use of tangible personal property that becomes an ingredient or component of an eligible renewable energy investment project.

(2) The exemption in this section is available in the form of a remittance. The total amount of remittance a person may receive under this section and section 7 of this act is limited to one million dollars per eligible renewable energy investment project.

(3) A person may claim the exemption by submitting a remittance application, in a form and manner as required by the department, specifying the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. A person may not apply for a remittance more frequently than once per quarter. The person must retain, in adequate detail to enable the department to determine whether the purchases meet the criteria under this section: Invoices; proof of tax paid; documents describing the location and size of new structures; and construction invoices and documents.

(4) The department must determine eligibility under this section based on information provided by the person claiming the remittance and through audit and other administrative records. The department must on a quarterly basis remit exempted amounts to a person submitting remittance applications during the previous quarter.

(5) The definitions in section 7 of this act apply to this section.

(6) This section applies to tangible personal property acquired on or after January 1, 2019.

(7) The exemption under this section expires January 1, 2029. The department may not approve any remittance claimed after December 31, 2029.

(8) The legislature intends for the tax preference in this section to expire; therefore, this section is not subject to the provisions of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

The definitions in this section apply throughout this section and sections 10, 11, and 12 of this act, unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Consumer-owned energy utility" means any consumer-owned gas distribution business or consumer-owned light and power business.

(3) "Consumer-owned gas distribution business" means any gas distribution business not subject to regulation by the commission of the rates, tolls, rentals, contracts or charges, or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any gas plant owned and operated by such gas distribution business.

(4) "Consumer-owned light and power business" means any light and power business not subject to regulation by the commission of the rates, tolls, rentals, contracts or charges, or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any electric plant owned and operated by such light and power business.

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

(6) "Gas distribution business" has the same meaning as provided in RCW 82.16.010.

(7) "Investor-owned energy utility" means any investor-owned gas distribution business or investor-owned light and power business.

(8) "Investor-owned gas distribution business" means any gas distribution business subject to regulation by the commission of the rates, tolls, rentals, contracts or charges, or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any gas plant owned and operated by such gas distribution business.

(9) "Investor-owned light and power business" means any light and power business subject to regulation by the commission of the rates, tolls, rentals, contracts or charges, or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any electric plant owned and operated by such light and power business.

(10) "Light and power business" has the same meaning as provided in RCW 82.16.010.

(11) "Low-income" means an annual income, adjusted for household size, that is at or below the greater of: (a) Eighty percent of the area median income; or (b) two hundred percent of the federal poverty level.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1)(a) Beginning July 1, 2019, an investor-owned energy utility or a consumer-owned energy utility is allowed a credit against taxes due under this chapter in an amount equal to the total amount of clean energy investment expenditures approved pursuant to this section.

(b) The total amount of credit statewide that may be taken in any fiscal biennium shall not exceed ten million dollars.

(c) Credit earned under this section may equal or exceed the tax otherwise due under this chapter for the tax reporting period. Any unused credit may be accrued and carried over until it is used.

(2)(a) To be eligible for the credit under this section, an investor-owned energy utility must, as of the date the credit is claimed, have received approval by the commission of a clean energy investment plan pursuant to section 11 of this act.

(b) Each investor-owned energy utility claiming a credit under this section must establish and maintain a separate clean energy investment account into which it must deposit amounts equal to the credit taken under this section. Moneys in the clean energy investment account must be deposited in an interest-bearing account in a financial institution as defined by RCW 30A.22.040 that is separate from other accounts and that credits all interest earned on the funds to that account. Moneys in the clean energy investment account may only be expended for the purposes identified in this chapter.

(c) An investor-owned energy utility may not earn a rate of return from the portion of investments paid for with moneys from the clean energy investment account.

(d) Moneys in the separate clean energy investment account are considered gross operating revenue for the purposes of RCW 80.24.010, and may not be considered gross income for the purposes of this chapter and chapter 82.04 RCW.

(3)(a) To be eligible for the credit under this section, a consumer-owned energy utility must, as of the date the credit is claimed, have a plan, developed pursuant to section 12 of this act and approved by the governing body of the consumer-owned utility, to reinvest an equivalent amount of revenues collected from customers during that year, the preceding year, or any of the three subsequent years.

(b) Each consumer-owned energy utility claiming a credit under this section must establish and maintain a separate clean energy investment account into which it must deposit amounts equal to the credit taken under this section. Moneys in this account must be kept separate from other accounts, and may only be expended for the purposes identified in this chapter. Interest accrued on this account must be expended only for purposes identified in this chapter.

(c) Moneys retained in the separate clean energy investment account are not considered gross income for the purposes of this chapter.

(4) Credits may not be earned under this section after December 31, 2029. Credits must be claimed under this section by December 31, 2030.

(5) The legislature intends for the tax preference in this section to expire; therefore, this section is not subject to the provisions of RCW 82.32.805 and 82.32.808.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) To be eligible for the tax credit under section 10 of this act, an investor-owned energy utility must develop and maintain an approved clean energy investment plan, which identifies approved funding for clean energy investments over a ten-year period, pursuant to subsections (4) and (6) of this section, as part of the investor-owned energy utility's integrated resource plan required under chapter 19.280 RCW or WAC 480-90-238.

(2) When developing and updating its clean energy investment plan, an investor-owned energy utility must solicit public input through public processes under the oversight of the commission.

(3) Beginning July 1, 2019, an investor-owned energy utility seeking a credit under section 10 of this act must submit:

(a) A clean energy investment plan as part of its integrated resource plan;

(b) A summary of the public input received during development of the plan; and

(c) A schedule for independent evaluation of activities financed through the clean energy investment plan, including verification of carbon emissions reductions. The reasonable costs of such independent evaluations may be included in a utility's clean energy investment plan and paid for from a utility's clean energy investment account.

(4) Each clean energy investment plan must include the following:

(a) A demonstration that the portfolio of funded activities will achieve significant reductions in carbon dioxide emissions at a reasonable cost over the shortest reasonable time frame;

(b) An estimate of the cost per ton of emissions reductions for the portfolio of projects in the clean energy investment plan;

(c) A demonstration that expenditures in the clean energy investment plan will be additional to expenditures necessary to meet other emissions reduction, energy conservation, low-income programs, or renewable energy requirements; and

(d) Sufficient funding, as determined by the commission, to mitigate increases in electric costs to qualifying low-income customers as a result of complying with the requirements of sections 3 and 4 of this act. Such moneys must be additional to other funding for low-income energy assistance.

(5) Each clean energy investment plan may include the following:

(a) A customer education and outreach program to promote widespread participation by consumers and businesses; and

(b) Up to ten percent of the expenditures in the clean energy investment account established pursuant to section 10 of this act may be dedicated for research and development by the investor-owned energy utility that will promote energy conservation or the deployment of zero-emission energy resources.

(6)(a) A clean energy investment plan must include programs for investments or expenditures that are incremental to investments or expenditures required by existing regulations on the effective date of this section; and

(i) Reduce greenhouse gas emissions of the investor-owned energy utility; or

(ii) Advance market transformation, educate consumers, invest in forest health, develop new low carbon fuels such as renewable natural gas, increase participation in programs that incentivize consumers to choose low carbon alternatives, or increase carbon sequestration.

(b) Eligible investments may include contributions in aid of construction or expenditures for the following:

(i) Additional conservation in excess of the targets established under RCW 19.285.040, other state obligations, or other obligations established by the commission in effect on the effective date of this section;

(ii) Market transformation for energy efficiency products;

(iii) Eligible renewable resources as defined in RCW 19.285.030, in excess of the targets established under RCW 19.285.040 in effect on the effective date of this section;

(iv) Low-income weatherization;

(v) Measures to support electrification of the transportation sector;

(vi) Investment in clean distributed energy resources and grid modernization to facilitate distributed energy resources and improved grid resiliency;

(vii) Research and development that will promote energy conservation, or the deployment of zero-emission energy resources;

(viii) Investments in renewable natural gas production, including equipment to collect or condition biogas, or equipment used solely for the purpose of delivering biogas for consumption;

(ix) Incentives for small businesses to support energy efficiency and the replacement of equipment; and

(x) Contributions to self-directed investments in the following measures to serve the sites of large industrial gas and electrical customers: Conservation; new renewable energy resources; behind-the-meter technology that facilitates demand response cooperation to reduce peak loads; infrastructure to support electrification of transportation needs and heating loads; or renewable natural gas production, including gas conditioning equipment for biogas.

(7) Funds from a clean energy investment account may be expended by an investor-owned energy utility to replace all or part of the debt financing portion of capital projects identified in the utility's approved clean energy investment plan, if the commission determines that such treatment would reduce the overall cost of the project to customers, and is otherwise consistent with the purposes of this section.

(8) Investments in new infrastructure or facilities to process or liquefy fossil fuels are not eligible for inclusion in a clean energy investment plan.

(9) Upon approval of a clean energy investment plan, an investor-owned energy utility must expend moneys from its clean energy investment account in accordance with the clean energy investment plan approved by the commission.

(10) In order to maintain eligibility for the tax credit under section 8 of this act and to retain authority to expend money from a clean energy investment account, an investor-owned energy utility must submit and receive approval of an updated clean energy investment plan every two years, and submit annual reports to the commission, including:

(a) The status of projects approved in the previous clean energy investment plan;

(b) Demonstration that the plan has met performance standards established by the commission by rule or order;

(c) An accounting of verified emissions reductions, and the cost per ton of emissions reductions compared to estimates of the cost per ton in emissions reductions contained in the clean energy investment plan; and

(d) An updated estimate of future emissions reductions and the estimated cost per ton.

(11) If the commission determines that the plan or any project in the plan did not meet performance standards, the commission may require the utility to remit remaining tax moneys dedicated for the nonperforming plan or project to the department of revenue.

(12) The commission must annually provide the department of revenue a report summarizing which investor-owned energy utilities are entitled to the credit, over what timeline, any required adjustments to credit previously issued, and any further information required to assist the department of revenue in administering the credit allowed under section 10 of this act.

(13) By July 1, 2019, the commission must adopt rules concerning the process, timelines, reporting, and documentation required to ensure proper implementation of this section. Such rules must also establish requirements for review, approval, performance standards, and independent monitoring and evaluation of clean energy investment plans of investor-owned energy utilities.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) To be eligible for the tax credit under section 10 of this act, a consumer-owned energy utility must develop and maintain a clean energy investment plan that is approved by its governing body as part of its integrated resource plan or other resource plan required under chapter 19.280 RCW, if applicable.

(2) When developing and updating its clean energy investment plan, a consumer-owned energy utility must solicit public input through public processes under the oversight of its governing body.

(3) Each clean energy investment plan must include:

(a) A summary of the public input received during development of the plan; and

(b) A schedule for independent evaluation of activities financed through the clean energy investment plan, including verification of carbon emissions reductions. The reasonable costs of such independent evaluations may be included in a utility's clean energy investment plan and paid for from a utility's clean energy investment account.

(4) A clean energy investment plan must include:

(a) Programs for investments or expenditures that:

(i) Are incremental to investments or expenditures required by existing regulations on the effective date of this section; and

(ii)(A) Reduce carbon dioxide emissions of the utility; or

(B) Advance market transformation, educate consumers, invest in forest health, develop new low carbon fuels such as renewable natural gas, increase participation in programs that incentivize consumers to choose low carbon alternatives, or increase carbon sequestration;

(b) A demonstration that the portfolio of funded activities can reasonably be expected to achieve reductions in greenhouse gas emissions;

(c) An estimate of the metric tons of emissions reductions and the cost per metric ton of emissions reductions for the portfolio of projects in the clean energy investment plan;

(d) A demonstration that expenditures in the clean energy investment plan will be additional to expenditures necessary to meet other emissions reduction, energy conservation, or renewable energy requirements;

(e) A customer education and outreach program; and

(f) Sufficient funding, as determined by the department, to mitigate increases in electric costs to qualifying low-income customers as a result of meeting the requirements of sections 3 and 4 of this act. Such moneys must be additional to other funding for low-income energy assistance.

(5) A clean energy investment plan may only include the following types of investments or expenditures:

(a) Additional conservation in excess of the targets established under RCW 19.285.040, or other state obligations;

(b) Market transformation of energy efficiency products;

(c) Eligible renewable resources as defined in RCW 19.285.030, in excess of the targets established under RCW 19.285.040;

(d) Low-income weatherization;

(e) Measures to support electrification of the transportation sector;

(f) Investments in forest health and increased carbon sequestration;

(g) Investments in clean distributed energy resources and grid modernization to facilitate distributed energy resources and improved grid resiliency;

(h) Research and development that will promote energy conservation or the deployment of zero-emission energy resources;

(i) Investments in renewable natural gas production, including gas conditioning equipment for biogas;

(j) Investments in the following measures to serve the sites of large industrial gas and electrical customers: Conservation; new renewable energy resources; behind-the-meter technology that facilitates demand response cooperation to reduce peak loads; infrastructure to support electrification of transportation needs and heating loads; or renewable natural gas production, including gas conditioning equipment for biogas;

(k) Investments in zero-carbon emission resources, including installing generation capacity at levies, irrigation canals, and existing unpowered dams that comply with all federal and state permitting requirements;

(l) Investments that lower net emissions through fuel switching;

(m) Incentives for small businesses to support energy efficiency and the replacement of equipment;

(n) Other measures as determined by the governing body to meet the requirements of this section; and

(o) The reasonable costs of administration of the clean energy investment program.

(6) In order to maintain eligibility for the tax credit under section 8 of this act and to continue to retain authority to expend money from the utility's clean energy investment account, a consumer-owned energy utility must submit and receive approval from its governing body of an updated clean energy investment plan every two years.

(7)(a) A consumer-owned energy utility may enter into an agreement with a joint operating agency organized under chapter 43.52 RCW on or before January 1, 2017, to aggregate claims for the credit allowed under section 10 of this act and to develop and implement a joint clean energy investment plan. Implementation of a joint clean energy investment plan may not begin until the governing bodies of all member utilities have approved the plan through a public process.

(b) A consumer-owned energy utility that is not a member of a joint operating agency may enter into an agreement with a nonprofit organization to aggregate claims for the credit allowed under section 10 of this act and to develop and implement a joint clean energy investment plan. Implementation of a joint clean energy investment plan may not begin until the governing bodies of all participating utilities have approved the plan through a public process.

(c) Each utility that enters into an agreement authorized under (a) or (b) of this subsection must empower the joint operating agency or nonprofit organization to, on their behalf, claim the credit allowed under section 10 of this act. The joint operating agency or nonprofit organization must establish and maintain a separate clean energy investment account and deposit into that account amounts equal to the credits taken under this subsection. Moneys in this account must be kept separate from other accounts, and may only be expended for the purposes identified in this chapter.

(8) A consumer-owned energy utility must submit annual reports to the department including, but not limited to:

(a) The status of projects approved in the previous clean energy investment plan; and

(b) Using performance metrics established by the department:

(i) An accounting of greenhouse gas emissions reductions achieved and the cost per metric ton of emissions reductions compared to estimates of the cost per metric ton in emissions reductions contained in the clean energy investment plan; and

(ii) An updated estimate of future greenhouse gas emissions reductions and the estimated cost per metric ton.

(9) The state auditor is responsible for auditing compliance with the approved plan for consumer-owned energy utilities that are subject to the jurisdiction of the state auditor and the attorney general is responsible for enforcing that compliance. An independent auditor selected by a consumer-owned energy utility that is not subject to the jurisdiction of the state auditor is responsible for auditing compliance with the approved plan and the attorney general is responsible for enforcing that compliance.

(10) If the department determines that the plan or any project in the plan did not meet performance metrics, the department must notify the department of revenue. The department of revenue may require the utility to remit remaining tax moneys dedicated for the nonperforming plan or project.

(11) By July 1, 2019, the department must adopt rules concerning only the process, timelines, reporting, documentation, and performance metrics required to ensure the proper implementation of this section. Such rules may include rules associated with the development, implementation, and evaluation of clean energy investment plans. The department and the commission must, to the extent practicable, adopt rules that are similar enough to ensure coordinated and consistent implementation of this section and section 11 of this act for consumer-owned and investor-owned energy utilities.

NEW SECTION. **Sec.**  Sections 2 through 6 of this act are each added to chapter 19.285 RCW.

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

**--- END ---**