

---

**SUBSTITUTE SENATE BILL 5539**

---

**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Environment, Energy & Water (originally sponsored by Senators Honeyford, Eide, Patterson, Fraser, Regala, Hale, Oke and Winsley; by request of Governor Locke)

READ FIRST TIME 02/26/01.

1 AN ACT Relating to tax credits for new facilities that provide  
2 electricity for direct service industrial customers; adding a new  
3 section to chapter 82.04 RCW; adding a new section to chapter 82.12  
4 RCW; and adding a new section to chapter 82.16 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW  
7 to read as follows:

8 (1) Unless the context clearly requires otherwise, the definitions  
9 in this subsection apply throughout this section.

10 (a) "Direct service industrial customer" means a person who is an  
11 industrial customer that contracts for the purchase of power from the  
12 Bonneville power administration for direct consumption as of the  
13 effective date of this section. "Direct service industrial customer"  
14 includes a person who is a subsidiary that is more than fifty percent  
15 owned by a direct service industrial customer and who receives power  
16 from the Bonneville power administration pursuant to the parent's  
17 contract for power.

18 (b) "Facility" means a gas turbine electrical generation facility  
19 that does not exist on the effective date of this section and is owned

1 by a direct service industrial customer for the purpose of producing  
2 electricity to be consumed by the direct service industrial customer.

3 (c) "Average annual employment" means the total employment in this  
4 state for a calendar year at the direct service industrial customer's  
5 location where electricity from the facility will be consumed.

6 (2) Effective July 1, 2004, a credit is allowed against the tax due  
7 under this chapter to a direct service industrial customer who  
8 purchases natural or manufactured gas from a gas distribution business  
9 subject to the public utility tax under chapter 82.16 RCW. The credit  
10 is equal to the value of natural or manufactured gas purchased from a  
11 gas distribution business and used to generate electricity at the  
12 facility multiplied by the rate in effect for the public utility tax on  
13 gas distribution businesses under RCW 82.16.020. This credit may be  
14 used each reporting period for sixty months following the first month  
15 natural or manufactured gas was purchased from a gas distribution  
16 business by a direct service industrial customer who constructs a  
17 facility.

18 (3) This credit is available only to a person who meets the  
19 requirements for diversification of resources, as required in a  
20 legislative act enacted in the 2001 legislative session. If such a  
21 requirement is not enacted, this subsection (3) has no effect.

22 (4) For any direct service industrial customer electing between  
23 January 1, 2000, and October 1, 2001, to have the Bonneville power  
24 administration repurchase or remarket power not delivered to the  
25 company for use in its operations, this credit is available only to a  
26 person who uses resale proceeds or agrees with the Bonneville power  
27 administration to use net remarketing proceeds for the following  
28 purposes:

29 (a) Expenditures or costs related to curtailing production,  
30 including at a minimum compensation, benefits, other expenditures  
31 related to employee layoffs, maintaining additional employees not  
32 required for operations at the reduced level, or job reassignments as  
33 a result of reduced operations; and

34 (b) Expenditures or costs incurred related to plans for securing a  
35 future power supply and enhancement of operations at facilities located  
36 in Washington, including expenses related to new nonfederal power  
37 sources and expenses to upgrade facilities to achieve energy  
38 conservation, operating efficiencies, environmental benefits, or  
39 preserving jobs.

1 (5) Subsection (4) of this section may not be construed to  
2 disqualify a direct service industrial customer that uses resale  
3 proceeds or that agrees with the Bonneville power administration to use  
4 net remarketing proceeds for additional purposes beyond those specified  
5 in subsection (4) of this section.

6 (6) Application for credit shall be made by the direct service  
7 industrial consumer before the first purchase of natural or  
8 manufactured gas. The application shall be in a form and manner  
9 prescribed by the department and shall include but is not limited to  
10 information regarding the location of the facility, the projected date  
11 of first purchase of natural or manufactured gas to generate  
12 electricity at the facility, the date construction is projected to  
13 begin or did begin, the applicant's average annual employment in the  
14 state for the six calendar years immediately preceding the year in  
15 which the application is made, and affirm the applicant's status as a  
16 direct service industrial customer. The department shall rule on the  
17 application within thirty days of receipt.

18 (7) Credit under this section is limited to the amount of tax  
19 imposed under this chapter. Refunds shall not be given in place of  
20 credits and credits may not be carried over to subsequent calendar  
21 years.

22 (8) All or part of the credit shall be disallowed and must be paid  
23 if the average of the direct service industrial customer's average  
24 annual employment for the five calendar years subsequent to the  
25 calendar year containing the first month of purchase of natural or  
26 manufactured gas to generate electricity at a facility is less than the  
27 six-year average annual employment stated on the application for credit  
28 under this section. The direct service industrial customer will  
29 certify to the department by June 1st of the sixth calendar year  
30 following the calendar year in which the month of first purchase of gas  
31 occurs the average annual employment for each of the five prior  
32 calendar years. All or part of the credit that shall be disallowed and  
33 must be paid is commensurate with the decrease in the five-year average  
34 of average annual employment as follows:

<u>Decrease in Average Annual</u>	
<u>Employment Over</u>	
<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%

1	25% or more but less than 50%	50%
2	50% or more but less than 75%	75%
3	75% or more	100%

4 (9)(a) The direct service industrial customer shall begin paying  
5 the credit that is disallowed and is to be paid in the sixth calendar  
6 year following the calendar year in which the month following the month  
7 of first purchase of natural or manufactured gas to generate  
8 electricity at the facility occurs. The first payment will be due on  
9 or before December 31st with subsequent annual payments due on or  
10 before December 31st of the following four years according to the  
11 following schedule:

12	<u>Payment Year</u>	<u>% of Credit to be Paid</u>
13	1	10%
14	2	15%
15	3	20%
16	4	25%
17	5	30%

18 (b) The department may authorize an accelerated payment schedule  
19 upon request of the taxpayer.

20 (c) Interest shall not be charged on the credit that is disallowed  
21 for the sixty-month period the credit may be taken, although all other  
22 penalties and interest applicable to delinquent excise taxes may be  
23 assessed and imposed. The debt for credit that is disallowed and must  
24 be paid will not be extinguished by insolvency or other failure of the  
25 direct service industrial customer. Transfer of ownership of the  
26 facility does not affect eligibility for this credit. However, the  
27 credit is available to the successor only if the eligibility conditions  
28 of this section are met.

29 (10) The employment security department shall make, and certify to  
30 the department of revenue, all determinations of employment under this  
31 section as requested by the department.

32 (11) A person claiming this credit shall supply to the department  
33 quarterly reports containing information necessary to document the  
34 total volume of natural or manufactured gas purchased in the quarter,  
35 the value of that total volume, and the percentage of the total volume  
36 used to generate electricity at the facility.

1 (12) A direct service industrial customer claiming credit under  
2 this section may not claim a deferral under section 2 of this act nor  
3 be the beneficiary of a credit allowed under section 3 of this act.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.12 RCW  
5 to read as follows:

6 (1) Unless the context clearly requires otherwise, the definitions  
7 in this subsection apply throughout this section.

8 (a) "Direct service industrial customer" means a person who is an  
9 industrial customer that contracts for the purchase of power from the  
10 Bonneville power administration for direct consumption as of the  
11 effective date of this section. "Direct service industrial customer"  
12 includes a person who is a subsidiary that is more than fifty percent  
13 owned by a direct service industrial customer and who receives power  
14 from the Bonneville power administration pursuant to the parent's  
15 contract for power.

16 (b) "Facility" means a gas turbine electrical generation facility  
17 that does not exist on the effective date of this section and is owned  
18 by a direct service industrial customer for the purpose of producing  
19 electricity to be consumed by the direct service industrial customer.

20 (c) "Average annual employment" means the total employment in this  
21 state for a calendar year at the direct service industrial customer's  
22 location where electricity from the facility will be consumed.

23 (2) Effective July 1, 2004, the tax levied in RCW 82.12.022 on the  
24 first sixty months' use of natural or manufactured gas by a direct  
25 service industrial customer that owns a facility shall be deferred.  
26 This deferral is limited to the tax on natural or manufactured gas used  
27 or consumed to generate electricity at the facility.

28 (3) This deferral is available only to a person who meets the  
29 requirements for diversification of resources, as required in a  
30 legislative act enacted in the 2001 legislative session. If such a  
31 requirement is not enacted, this subsection (3) has no effect.

32 (4) For any direct service industrial customer electing between  
33 January 1, 2000, and October 1, 2001, to have the Bonneville power  
34 administration repurchase or remarket power not delivered to the  
35 company for use in its operations, this deferral is available only to  
36 a person who uses resale proceeds or agrees with the Bonneville power  
37 administration to use net remarketing proceeds for the following  
38 purposes:

1 (a) Expenditures or costs related to curtailing production,  
2 including at a minimum compensation, benefits, other expenditures  
3 related to employee layoffs, maintaining additional employees not  
4 required for operations at the reduced level, or job reassignments as  
5 a result of reduced operations; and

6 (b) Expenditures or costs incurred related to plans for securing a  
7 future power supply and enhancement of operations at facilities located  
8 in Washington, including expenses related to new nonfederal power  
9 sources and expenses to upgrade facilities to achieve energy  
10 conservation, operating efficiencies, environmental benefits, or  
11 preserving jobs.

12 (5) Subsection (4) of this section may not be construed to  
13 disqualify a direct service industrial customer that uses resale  
14 proceeds or that agrees with the Bonneville power administration to use  
15 net remarketing proceeds for additional purposes beyond those specified  
16 in subsection (4) of this section.

17 (6) Application for deferral shall be made by the direct service  
18 industrial customer before the first use of natural or manufactured  
19 gas. The application shall be in a form and manner prescribed by the  
20 department and shall include but is not limited to information  
21 regarding the location of the facility, the projected date of first use  
22 of natural or manufactured gas to generate electricity at the facility,  
23 the date construction is projected to begin or did begin, the  
24 applicant's average annual employment in the state for the six calendar  
25 years immediately preceding the year in which the application is made,  
26 and shall affirm the applicant's status as a direct service industrial  
27 customer. The department shall rule on the application within thirty  
28 days of receipt.

29 (7)(a) The direct service industrial customer shall begin paying  
30 the deferred tax in the sixth calendar year following the calendar year  
31 in which the month of first use of natural or manufactured gas to  
32 generate electricity at the facility occurs. The first payment will be  
33 due on or before December 31st with subsequent annual payments due on  
34 or before December 31st of the following four years according to the  
35 following schedule:

36	<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
37	1	10%
38	2	15%
39	3	20%

1                   4                                   25%  
 2                   5                                   30%

3           (b) The department may authorize an accelerated payment schedule  
 4 upon request of the taxpayer.

5           (c) Interest shall not be charged on the tax deferred under this  
 6 section for the period of deferral, although all other penalties and  
 7 interest applicable to delinquent excise taxes may be assessed and  
 8 imposed. The debt for deferred tax will not be extinguished by  
 9 insolvency or other failure of the direct service industrial customer.  
 10 Transfer of ownership of the facility does not affect deferral  
 11 eligibility. However, the deferral is available to the successor only  
 12 if the eligibility conditions of this section are met.

13           (8)(a) If the average of the direct service industrial customer's  
 14 average annual employment for the five calendar years subsequent to the  
 15 calendar year containing the first month of use of natural or  
 16 manufactured gas to generate electricity at a facility is equal to or  
 17 exceeds the six-year average annual employment stated on the  
 18 application for deferral under this section, the tax deferred need not  
 19 be paid. The direct service industrial customer shall certify to the  
 20 department by June 1st of the sixth calendar year following the  
 21 calendar year in which the month of first use of gas occurs the average  
 22 annual employment for each of the five prior calendar years.

23           (b) If the five-year average calculated in (a) of this subsection  
 24 is less than the average annual employment stated on the application  
 25 for deferral under this section, the tax deferred under this section  
 26 shall be paid in the amount as follows:

<u>Decrease in Average Annual</u>	<u>% of Deferred</u>
<u>Employment Over</u>	<u>Tax to be Paid</u>
<u>Five-Year Period</u>	
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

35           (c) Tax paid under this subsection shall be paid according to the  
 36 schedule in subsection (7)(a) of this section and under the terms and  
 37 conditions of subsection (7)(b) and (c) of this section.

1 (9) The employment security department shall make, and certify to  
2 the department of revenue, all determinations of employment under this  
3 section as requested by the department.

4 (10) A person claiming this deferral shall supply to the department  
5 quarterly reports containing information necessary to document the  
6 total volume of natural or manufactured gas purchased in the quarter,  
7 the value of that total volume, and the percentage of the total volume  
8 used to generate electricity at the facility.

9 (11) A direct service industrial customer claiming a deferral under  
10 this section may not claim a credit under section 1 of this act nor be  
11 the beneficiary of a credit allowed under section 3 of this act.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.16 RCW  
13 to read as follows:

14 (1) Unless the context clearly requires otherwise, the definitions  
15 in this subsection apply throughout this section.

16 (a) "Direct service industrial customer" means a person who is an  
17 industrial customer that contracts for the purchase of power from the  
18 Bonneville power administration for direct consumption as of the  
19 effective date of this section. "Direct service industrial customer"  
20 includes a person who is a subsidiary that is more than fifty percent  
21 owned by a direct service industrial customer and who receives power  
22 from the Bonneville power administration pursuant to the parent's  
23 contract for power.

24 (b) "Facility" means a gas turbine electrical generation facility  
25 that does not exist on the effective date of this section.

26 (c) "Average annual employment" means the total employment in this  
27 state for a calendar year at the direct service industrial customer's  
28 location where electricity from the facility will be consumed.

29 (2) Effective July 1, 2004, a credit is allowed against the tax due  
30 under this chapter on sales of electricity made from a facility to a  
31 direct service industrial customer if the contract for sale of  
32 electricity to a direct service industrial customer contains the  
33 following terms:

34 (a) Sales of electricity from the facility to the direct service  
35 industrial customer will be made for ten consecutive years or more;

36 (b) The price charged for the electricity will be reduced by an  
37 amount equal to the tax credit; and



1 (c) Disallowance of all or part of the credit under subsection (8)  
2 of this section is a breach of contract and the damages to be paid by  
3 the direct service industrial customer to the facility are the amount  
4 of tax credit disallowed.

5 (3) The credit is equal to the gross proceeds from the sale of the  
6 electricity to a direct service industrial customer multiplied by the  
7 rate in effect at the time of the sale for the public utility tax on  
8 light and power businesses under RCW 82.16.020. The credit may be used  
9 each reporting period for sixty months following the first month  
10 electricity is sold from a facility to a direct service industrial  
11 customer. Credit under this section is limited to the amount of tax  
12 imposed under this chapter. Refunds shall not be given in place of  
13 credits and credits may not be carried over to subsequent calendar  
14 years.

15 (4) This credit is available only to a person who meets the  
16 requirements for diversification of resources, as required in a  
17 legislative act enacted in the 2001 legislative session. If such a  
18 requirement is not enacted, this subsection (4) has no effect.

19 (5) For any direct service industrial customer electing between  
20 January 1, 2000, and October 1, 2001, to have the Bonneville power  
21 administration repurchase or remarket power not delivered to the  
22 company for use in its operations, this exemption is available only to  
23 a person who uses resale proceeds or agrees with the Bonneville power  
24 administration to use net remarketing proceeds for the following  
25 purposes:

26 (a) Expenditures or costs related to curtailing production,  
27 including at a minimum compensation, benefits, other expenditures  
28 related to employee layoffs, maintaining additional employees not  
29 required for operations at the reduced level, or job reassignments as  
30 a result of reduced operations; and

31 (b) Expenditures or costs incurred related to plans for securing a  
32 future power supply and enhancement of operations at facilities located  
33 in Washington, including expenses related to new nonfederal power  
34 sources and expenses to upgrade facilities to achieve energy  
35 conservation, operating efficiencies, environmental benefits, or  
36 preserving jobs.

37 (6) Subsection (5) of this section may not be construed to  
38 disqualify a direct service industrial customer that uses resale  
39 proceeds or that agrees with the Bonneville power administration to use

1 net remarketing proceeds for additional purposes beyond those specified  
2 in subsection (5) of this section.

3 (7) Application for credit shall be made before the first sale of  
4 electricity from a facility to a direct service industrial customer.  
5 The application shall be in a form and manner prescribed by the  
6 department and shall include but is not limited to information  
7 regarding the location of the facility, identification of the direct  
8 service industrial customer who will receive electricity from the  
9 facility, the projected date of the first sale of electricity to a  
10 direct service industrial customer, the date construction is projected  
11 to begin or did begin, and the average annual employment in the state  
12 of the direct service industrial customer who will receive electricity  
13 from the facility for the six calendar years immediately preceding the  
14 year in which the application is made. A copy of the contract for sale  
15 of electricity must be attached to the application. The department  
16 shall rule on the application within thirty days of receipt.

17 (8) All or part of the credit shall be disallowed and must be paid  
18 if the average of the direct service industrial customer's average  
19 annual employment for the five calendar years subsequent to the  
20 calendar year containing the first month of sale of electricity from a  
21 facility to a direct service industrial customer is less than the six-  
22 year average annual employment stated on the application for credit  
23 under this section. The direct service industrial customer shall  
24 certify to the department and to the facility by June 1st of the sixth  
25 calendar year following the calendar year in which the month of first  
26 sale occurs the average annual employment for each of the five prior  
27 calendar years. All or part of the credit that shall be disallowed and  
28 must be paid is commensurate with the decrease in the five-year average  
29 of average annual employment as follows:

<u>Decrease in Average Annual</u>	
<u>Employment Over</u>	
<u>Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

1 (9)(a) Payments on credit that is disallowed shall begin in the  
2 sixth calendar year following the calendar year in which the month  
3 following the first month of sale of electricity from a facility to a  
4 direct service industrial customer occurs. The first payment will be  
5 due on or before December 31st with subsequent annual payments due on  
6 or before December 31st of the following four years according to the  
7 schedule in this subsection.

8	<u>Payment Year</u>	<u>% of Credit to be Paid</u>
9	1	10%
10	2	15%
11	3	20%
12	4	25%
13	5	30%

14 (b) The department may authorize an accelerated payment schedule  
15 upon request of the taxpayer.

16 (c) Interest shall not be charged on the credit that is disallowed  
17 for the sixty-month period the credit may be taken, although all other  
18 penalties and interest applicable to delinquent excise taxes may be  
19 assessed and imposed. The debt for credit that is disallowed and must  
20 be paid will not be extinguished by insolvency or other failure of the  
21 taxpayer. Transfer of ownership of the facility does not affect  
22 eligibility for this credit. However, the credit is available to the  
23 successor only if the eligibility conditions of this section are met.

24 (10) The employment security department shall make, and certify to  
25 the department of revenue, all determinations of employment under this  
26 section as requested by the department.

27 (11) A direct service industrial customer benefiting from a credit  
28 allowed under this section may not claim a credit under section 1 of  
29 this act nor a deferral under section 2 of this act.

--- END ---