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**SUBSTITUTE HOUSE BILL 2081**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Technology, Energy & Communications (originally sponsored by Representatives VanDeWege, Blake, Moeller, McCoy, Takko and Hudgins)

READ FIRST TIME 2/28/07.

1            AN ACT Relating to tax credits for cogeneration facilities; and  
2 adding a new chapter to Title 82 RCW.

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

4            NEW SECTION.    **Sec. 101.**    INTENT.    The state of Washington has a  
5 large and growing need for electrical energy. The state of Washington  
6 possesses a great potential for the generation of electrical or  
7 mechanical power and useful heat energy through the process of  
8 cogeneration. It is the purpose and intent of the legislature to  
9 promote the growth of cogeneration in the state of Washington.

10           NEW SECTION.    **Sec. 102.**    DEFINITIONS.    As used in this chapter, the  
11 following terms have the meanings indicated unless the context clearly  
12 requires otherwise.

13           (1) "Certificate" means a cogeneration tax credit certificate  
14 granted by the department.

15           (2) "Cogeneration" means a system that uses the same energy source  
16 for the simultaneous or sequential generation of electricity and steam  
17 or other forms of useful thermal energy, including heating and cooling  
18 applications.

1 (3) "Cogeneration facility" means any machinery, equipment,  
2 structure, process, or property, or any part thereof, installed or  
3 acquired for the primary purpose of high-efficiency cogeneration with  
4 an efficiency level above seventy percent by a person or corporation  
5 other than an electric utility.

6 (4) "Cost" means only the cost of a cogeneration facility which is  
7 in addition to the cost that the applicant otherwise would incur to  
8 meet the applicant's demands for useful heat. "Cost" does not include  
9 expenditures which are offset by cost savings, including but not  
10 limited to savings resulting from early retirement of existing  
11 equipment.

12 (5) "Department" means the department of revenue.

13 (6) "Electric utility" means any person, corporation, or  
14 governmental subdivision authorized and operating under the  
15 Constitution and laws of the state of Washington which is primarily  
16 engaged in the generation or sale of electric energy.

17 NEW SECTION. **Sec. 103.** ADMINISTRATION. (1) No certificate  
18 including a supplement thereto may be issued for a cogeneration  
19 facility with a generating capacity of more than one hundred megawatts.

20 (2) The department shall keep a running tabulation of the total  
21 cogeneration facility credits claimed.

22 (3) The total amount of credits claimed shall not exceed one  
23 hundred million dollars.

24 (4) The department may adopt any rules under chapter 34.05 RCW  
25 necessary for the administration of this chapter.

26 NEW SECTION. **Sec. 104.** TAX CREDIT. When a cogeneration facility  
27 is operational and a certificate pertaining thereto has been issued, a  
28 credit may be claimed against taxes imposed under chapter 82.04 RCW, if  
29 the due date for payment of the taxes is after the effective date of  
30 the certificate. However, the date on which the facility is  
31 operational may not be more than four years after the date of issuance  
32 of the certificate. The amount of the credit shall be three percent of  
33 the cost of a facility covered by the certificate for each year the  
34 certificate remains in force. The credits shall be cumulative and shall  
35 be subject only to the following limitations:

1 (1) The tax credit shall apply to capital costs only and shall not  
2 apply to operating costs.

3 (2) A person, firm, corporation, or organization which acquires a  
4 cogeneration facility shall be entitled to the credit only to the  
5 extent that it has previously not been taken. Under no circumstances  
6 may a credit be taken more than once against any cost or portion  
7 thereof of a cogeneration facility. An operator of a cogeneration  
8 facility shall be entitled to the credit if the operator is operating  
9 the cogeneration facility for an electric utility that is not eligible  
10 to receive the credit.

11 (3) No credit exceeding fifty percent of the taxes payable under  
12 chapter 82.04 RCW shall be allowed in any reporting period.

13 (4) The total cumulative amount of the credits allowed for any  
14 cogeneration facility constructed before June 30, 2007, covered by a  
15 certificate may not exceed fifty percent of the cost of the  
16 cogeneration facility or five million dollars, whichever is less.

17 (5) The total cumulative amount of the credits allowed for any  
18 cogeneration facility constructed after June 30, 2007, covered by a  
19 certificate may not exceed fifty percent of the cost of the  
20 cogeneration facility or seven million five hundred thousand dollars,  
21 whichever is less.

22 (6) State credits may not become available until one year after  
23 final cost verification by the department.

24 NEW SECTION. **Sec. 105.** CERTIFICATE ISSUANCE. The department  
25 shall send a certificate or supplement, when issued, by certified mail  
26 to the applicant. Notice of the department's refusal to issue a  
27 certificate or supplement shall likewise be sent to the applicant by  
28 certified mail.

29 NEW SECTION. **Sec. 106.** CERTIFICATE REVOCATION. (1) Except as  
30 provided in subsection (2) of this section, the department shall revoke  
31 any certificate issued under this chapter if it finds that any of the  
32 following have occurred with respect to the certificate:

33 (a) The certificate was obtained by fraud or deliberate  
34 misrepresentation;

35 (b) The certificate was obtained through the use of inaccurate data  
36 but without any intention to commit fraud or misrepresentation;

1 (c) The facility was constructed or operated in violation of any  
2 provision of this chapter or provision imposed by the department as a  
3 condition of certification; or

4 (d) The cogeneration facility is no longer capable of being  
5 operated for the primary purpose of cogeneration.

6 (2) If the department finds that there are few inaccuracies under  
7 subsection (1)(b) of this section and that cumulatively they are  
8 insignificant in terms of the cost or operation of the facility or that  
9 the inaccurate data is not attributable to carelessness or negligence  
10 and its inclusion was reasonable under the circumstances, then the  
11 department may provide for the continuance of the certificate and  
12 whatever modification it considers in the public interest.

13 (3) Any person, firm, corporation, or organization that obtains a  
14 certificate revoked under this section shall be liable for the total  
15 amount of money saved by claiming the credits provided under this  
16 chapter. The total amount of the credits shall be collected as  
17 delinquent business and occupation taxes. Interest shall accrue on the  
18 amounts of the credits and exemptions from the date the taxes were  
19 otherwise due.

20 (4) The department of community, trade, and economic development  
21 shall provide technical assistance to the department in carrying out  
22 its responsibilities under this section.

23 NEW SECTION. **Sec. 107.** SEVERABILITY. If any provision of this  
24 act or its application to any person or circumstance is held invalid,  
25 the remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 108.** Captions used in this act are not any part  
28 of the law.

29 NEW SECTION. **Sec. 109.** Sections 101 through 108 of this act  
30 constitute a new chapter in Title 82 RCW.

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