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SECOND SUBSTITUTE HOUSE BILL 1257

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State of Washington                      66th Legislature                      2019 Regular Session

**By** House Finance (originally sponsored by Representatives Doglio, Tarleton, Lekanoff, Fitzgibbon, Dolan, Fey, Mead, Peterson, Kloba, Riccelli, Macri, Hudgins, Morris, Stanford, Appleton, Slatter, Tharinger, Jinkins, Pollet, and Goodman; by request of Governor Inslee)

READ FIRST TIME 02/28/19.

1            AN ACT Relating to energy efficiency; amending RCW 19.27A.140,  
2 19.27A.170, 19.27A.015, 19.27A.025, and 19.27.540; adding new  
3 sections to chapter 19.27A RCW; adding a new section to chapter 82.16  
4 RCW; adding new sections to chapter 80.28 RCW; creating new sections;  
5 prescribing penalties; and providing an expiration date.

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

7            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that state  
8 policy encouraging energy efficiency has been extremely successful in  
9 reducing energy use, avoiding costly investment in new generating  
10 capacity, lowering customer energy bills, and reducing air pollution  
11 and greenhouse gas emissions. The state's 2019 biennial energy report  
12 indicates that utility conservation investments under chapter 19.285  
13 RCW, the energy independence act, now save consumers more than seven  
14 hundred fifty million dollars annually, helping to keep Washington's  
15 electricity prices among the lowest in the nation.

16            (2) Studies by the Northwest power and conservation council and  
17 by individual Washington utilities repeatedly show that efficiency is  
18 the region's largest, cheapest, lowest risk energy resource; that  
19 without it, the Northwest would have needed to invest in additional  
20 natural gas-fired generation; and that, looking ahead, efficiency can  
21 approach the size of the region's hydropower system as a regional

1 resource. The Northwest power and conservation council forecasts that  
2 with an aggressive new energy efficiency policy, the region can  
3 potentially meet one hundred percent of its electricity load growth  
4 over the next twenty years with energy efficiency.

5 (3) Energy efficiency investments that reduce energy use in  
6 buildings bring cobenefits that directly impact Washingtonians'  
7 quality of life. These benefits include improved indoor air quality,  
8 more comfortable homes and workplaces, and lower tenant energy bills.  
9 The legislature notes that according to the United States department  
10 of energy's energy and employment report, 2017, the energy efficiency  
11 sector has created more than sixty-five thousand jobs in the state,  
12 more than two-thirds of which are in the construction sector, and  
13 that the number continues to grow.

14 (4) Considering the benefits of and the need for additional  
15 energy efficiency to meet regional energy demand, the legislature  
16 notes that attaining as much of this resource as possible from the  
17 buildings sector can have a significant effect on state greenhouse  
18 gas emissions by deferring or displacing the need for natural gas-  
19 fired electricity generation and reducing the direct use of natural  
20 gas. Buildings represent the second largest source of greenhouse gas  
21 emissions in Washington and emissions from the buildings sector have  
22 grown by fifty percent since 1990, far outpacing all other emission  
23 sources.

24 (5) The legislature therefore determines that it is in the  
25 state's interest to maximize the full potential of energy efficiency  
26 standards, retrofit incentives, utility programs, and building codes  
27 to keep energy costs low and to meet statutory goals for increased  
28 building efficiency and reduced greenhouse gas emissions.

29 (6) It is the intent of this act to provide incentives and  
30 regulations that encourage greater energy efficiency in all aspects  
31 of new and existing buildings, including building design, energy  
32 delivery, and utilization and operations. This act:

33 (a) Establishes energy performance standards for larger existing  
34 commercial buildings;

35 (b) Provides financial incentives and technical assistance for  
36 building owners taking early action to meet these standards before  
37 they are required to be met;

38 (c) Enhances access to commercial building energy consumption  
39 data in order to assist with monitoring progress toward meeting  
40 energy performance standards;

1 (d) Authorizes local governments to voluntarily adopt energy  
2 codes for residential structures that achieve even greater energy  
3 savings and greenhouse gas reductions than the minimum state energy  
4 code; and

5 (e) Establishes efficiency performance requirements for natural  
6 gas distribution companies, recognizing the significant contribution  
7 of natural gas to the state's greenhouse gas emissions, the role that  
8 natural gas plays in heating buildings and powering equipment within  
9 buildings across the state, and the greenhouse gas reduction benefits  
10 associated with substituting renewable natural gas for fossil fuels.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27A  
12 RCW to read as follows:

13 The definitions in this section apply throughout sections 3  
14 through 6 of this act unless the context clearly requires otherwise.

15 (1) "Agricultural structure" means a structure designed and  
16 constructed to house farm implements, hay, grain, poultry, livestock,  
17 or other horticultural products, and that is not a place used by the  
18 public or a place of human habitation or employment where  
19 agricultural products are processed, treated, or packaged.

20 (2) "Baseline energy use intensity" means a building's weather  
21 normalized energy use intensity measured the previous year to making  
22 an application for an incentive under section 4 of this act.

23 (3) "Building owner" means an individual or entity possessing  
24 title to a building.

25 (4) "Building tenant" means a person or entity occupying or  
26 holding possession of a building or premises pursuant to a rental  
27 agreement.

28 (5) "Conditional compliance" means a temporary compliance method  
29 used by building owners that demonstrate the owner has implemented  
30 energy use reduction strategies required by the standard, but has not  
31 demonstrated full compliance with the energy use intensity target.

32 (6) "Consumer-owned utility" has the same meaning as defined in  
33 RCW 19.27A.140.

34 (7) "Covered commercial building" means a building where the sum  
35 of nonresidential, hotel, motel, and dormitory floor areas exceeds  
36 fifty thousand gross square feet, excluding the parking garage area.

37 (8) "Department" means the department of commerce.

38 (9) "Director" means the director of the department of commerce  
39 or the director's designee.

1 (10) "Electric utility" means a consumer-owned utility or an  
2 investor-owned utility.

3 (11) "Eligible building owner" means: (a) The owner of a covered  
4 commercial building required to comply with the standard established  
5 in section 3 of this act; or (b) the owner of a multifamily  
6 residential building where the floor area exceeds fifty thousand  
7 gross square feet, excluding the parking garage area.

8 (12) "Energy" includes: Electricity, including electricity  
9 delivered through the electric grid and electricity generated at the  
10 building premises using solar or wind energy resources; natural gas;  
11 district steam; district hot water; district chilled water; propane;  
12 fuel oil; wood; coal; or other fuels used to meet the energy loads of  
13 a building.

14 (13) "Energy use intensity" means a measurement that normalizes a  
15 building's site energy use relative to its size. A building's energy  
16 use intensity is calculated by dividing the total net energy consumed  
17 in one year by the gross floor area of the building, excluding the  
18 parking garage. "Energy use intensity" is reported as a value of  
19 thousand British thermal units per square foot per year.

20 (14) "Energy use intensity target" means the net energy use  
21 intensity of a covered commercial building that has been established  
22 for the purposes of complying with the standard established under  
23 section 3 of this act.

24 (15) "Gas company" includes every corporation, company,  
25 association, joint stock association, partnership, and person, their  
26 lessees, trustees, or receiver appointed by any court whatsoever, and  
27 every city or town owning, controlling, operating, or managing any  
28 gas plant within this state.

29 (16) "Greenhouse gas" includes carbon dioxide, methane, nitrous  
30 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

31 (17)(a) "Gross floor area" means the total number of square feet  
32 measured between the exterior surfaces of the enclosing fixed walls  
33 of a building, including all supporting functions such as offices,  
34 lobbies, restrooms, equipment storage areas, mechanical rooms, break  
35 rooms, and elevator shafts.

36 (b) "Gross floor area" does not include outside bays or docks.

37 (18) "Investor-owned utility" means a company owned by investors,  
38 that meets one of the definitions of RCW 80.04.010, and that is  
39 engaged in distributing electricity to more than one retail electric  
40 customer in the state.

1 (19) "Multifamily residential building" means a building  
2 containing sleeping units or more than two dwelling units where  
3 occupants are primarily permanent in nature.

4 (20) "Net energy use" means the sum of metered and bulk fuel  
5 energy entering the building, minus the sum of metered energy leaving  
6 the building.

7 (21) "Qualifying utility" means a consumer-owned or investor-  
8 owned gas or electric utility that serves more than twenty-five  
9 thousand customers in the state of Washington.

10 (22) "Savings-to-investment ratio" means the ratio of the present  
11 value savings to the present value costs of an energy or water  
12 conservation measure. The numerator of the ratio is the present value  
13 of net savings in energy or water and nonfuel or nonwater operation  
14 and maintenance costs attributable to the proposed energy or water  
15 conservation measure. The denominator of the ratio is the present  
16 value of the net increase in investment and replacement costs less  
17 salvage value attributable to the proposed energy or water  
18 conservation measure.

19 (23) "Standard" means the state energy performance standard for  
20 covered commercial buildings established under section 3 of this act.

21 (24) "Thermal energy company" has the same meaning as defined in  
22 RCW 80.04.550.

23 (25) "Weather normalized" means a method for modifying the  
24 measured building energy use in a specific weather year to energy use  
25 under normal weather conditions.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.27A  
27 RCW to read as follows:

28 (1) (a) By November 1, 2020, the department must establish by rule  
29 a state energy performance standard for covered commercial buildings.

30 (b) In developing energy performance standards, the department  
31 shall seek to maximize reductions of greenhouse gas emissions from  
32 the building sector. The standard must include energy use intensity  
33 targets by building type and methods of conditional compliance that  
34 include an energy management plan, operations and maintenance  
35 program, energy efficiency audits, and investment in energy  
36 efficiency measures designed to meet the targets. The department  
37 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for  
38 standard development. The department must update the standard by July  
39 1, 2029, and every five years thereafter. Prior to the adoption or

1 update of the standard, the department must identify the sources of  
2 information it relied upon, including peer-reviewed science.

3 (2) In establishing the standard under subsection (1) of this  
4 section, the department:

5 (a) Must develop energy use intensity targets that are no greater  
6 than the average energy use intensity for the covered commercial  
7 building occupancy type. The department must also develop energy use  
8 intensity targets for additional property types eligible for  
9 incentives in section 4 of this act. The department must consider  
10 regional and local building energy utilization data, such as existing  
11 energy star benchmarking data, in establishing targets for the  
12 standard. Energy use intensity targets must be developed for two or  
13 more climate zones and be representative of energy use in a normal  
14 weather year;

15 (b) May consider building occupancy classifications from ANSI/  
16 ASHRAE/IES standard 100-2018 and the United States environmental  
17 protection agency's energy star portfolio manager when developing  
18 energy use intensity targets;

19 (c) May implement lower energy use intensity targets for more  
20 recently built covered commercial buildings based on the state energy  
21 code in place when the buildings were constructed;

22 (d)(i) Must adopt a conditional compliance method that ensures  
23 that covered commercial buildings that do not meet the specified  
24 energy use intensity targets are taking action to achieve reduction  
25 in energy use, including investment criteria for conditional  
26 compliance that ensure that energy efficiency measures identified by  
27 energy audits are implemented to achieve a covered commercial  
28 building's energy use intensity target. The criteria must require  
29 that a building owner adopts all energy efficiency measures required  
30 to meet the energy use intensity target, or based on a thirty year  
31 life-cycle cost analysis, the building owner must adopt an optimized  
32 bundle of energy efficiency measures that provides maximum energy  
33 savings without resulting in a savings-to-investment ratio of less  
34 than 1.0, except as exempted in (d)(ii) of this subsection. The  
35 building owner's cost for implementing energy efficiency measures  
36 must be net cost, excluding the cost covered by utility or government  
37 grants;

38 (ii) For those buildings or structures that are listed in the  
39 state or national register of historic places; designated as a  
40 historic property under local or state designation law or survey;

1 certified as a contributing resource with a national register listed  
2 or locally designated historic district; or with an opinion or  
3 certification that the property is eligible to be listed on the  
4 national or state registers of historic places either individually or  
5 as a contributing building to a historic district by the state  
6 historic preservation officer or the keeper of the national register  
7 of historic places, no individual energy efficiency requirement need  
8 be met that would compromise the historical integrity of a building  
9 or part of a building.

10 (3) Based on records obtained from each county assessor and other  
11 available information sources, the department must create a database  
12 of covered commercial buildings and building owners required to  
13 comply with the standard established in accordance with this section.

14 (4) By July 1, 2021, the department must provide the owners of  
15 covered buildings with notification of compliance requirements.

16 (5) The department must develop a method for administering  
17 compliance reports from building owners.

18 (6) The department must provide a customer support program to  
19 building owners including, but not limited to, outreach and  
20 informational material, periodic training, phone and email support,  
21 and other technical assistance.

22 (7) The building owner of a covered commercial building must  
23 report the building owner's compliance with the standard to the  
24 department in accordance with the schedule established under  
25 subsection (8) of this section and every five years thereafter. For  
26 each reporting date, the building owner must submit documentation to  
27 demonstrate that:

28 (a) The weather normalized energy use intensity of the covered  
29 commercial building measured in the previous calendar year is less  
30 than or equal to the energy use intensity target; or

31 (b) The covered commercial building has received conditional  
32 compliance from the department based on energy efficiency actions  
33 prescribed by the standard; or

34 (c) The covered commercial building is exempt from the standard  
35 by demonstrating that the building meets one of the following  
36 criteria:

37 (i) The building did not have a certificate of occupancy or  
38 temporary certificate of occupancy for all twelve months of the  
39 calendar year prior to the building owner compliance schedule  
40 established under subsection (8) of this section;

1 (ii) The building did not have an average physical occupancy of  
2 at least fifty percent throughout the calendar year prior to the  
3 building owner compliance schedule established under subsection (8)  
4 of this section;

5 (iii) The sum of the buildings gross floor area minus  
6 unconditioned and semiconditioned spaces, as defined in the  
7 Washington state energy code, is less than fifty thousand square  
8 feet;

9 (iv) The primary use of the building is manufacturing or other  
10 industrial purposes, as defined under the following use designations  
11 of the international building code: (A) Factory group F; or (B) high  
12 hazard group H;

13 (v) The building is an agricultural structure; or

14 (vi) The building meets at least one of the following conditions  
15 of financial hardship: (A) The building had arrears of property taxes  
16 or water or wastewater charges that resulted in the building's  
17 inclusion, within the prior two years, on a city's or county's annual  
18 tax lien sale list; (B) the building has a court appointed receiver  
19 in control of the asset due to financial distress; (C) the building  
20 is owned by a financial institution through default by a borrower;  
21 (D) the building has been acquired by a deed in lieu of foreclosure  
22 within the previous twenty-four months; (E) the building has a senior  
23 mortgage subject to a notice of default; or (F) other conditions of  
24 financial hardship identified by the department by rule.

25 (8) A building owner of a covered commercial building must meet  
26 the following reporting schedule for complying with the standard  
27 established under this section:

28 (a) For a building with more than two hundred twenty thousand  
29 gross square feet, June 1, 2026;

30 (b) For a building with more than ninety thousand gross square  
31 feet but less than two hundred twenty thousand and one gross square  
32 feet, June 1, 2027; and

33 (c) For a building with more than fifty thousand gross square  
34 feet but less than ninety thousand and one square feet, June 1, 2028.

35 (9) The department may issue a notice of violation to a building  
36 owner for noncompliance with the requirements of this section. A  
37 determination of noncompliance may be made for any of the following  
38 reasons:

39 (a) Failure to submit a compliance report in the form and manner  
40 prescribed by the department;



1 (b) Failure to meet an energy use intensity target or failure to  
2 receive conditional compliance approval;

3 (c) Failure to provide accurate reporting consistent with the  
4 requirements of the standard established under this section; and

5 (d) Failure to provide a valid exemption certificate.

6 (10) The department is authorized to impose an administrative  
7 penalty upon a building owner for failing to submit documentation  
8 demonstrating compliance with the requirements of this section. The  
9 penalty may not exceed an amount equal to five thousand dollars plus  
10 an amount based on the duration of any continuing violation. The  
11 additional amount for a continuing violation may not exceed a daily  
12 amount equal to one dollar per year per gross square foot of floor  
13 area. The department may by rule increase the maximum penalty rates  
14 to adjust for the effects of inflation.

15 (11) Administrative penalties collected under this section must  
16 be deposited into the low-income weatherization and structural  
17 rehabilitation assistance account created in RCW 70.164.030.

18 (12) The department must adopt rules as necessary to implement  
19 this section, including but not limited to:

20 (a) Rules necessary to ensure timely, accurate, and complete  
21 reporting of building energy performance for all covered commercial  
22 buildings;

23 (b) Rules necessary to enforce the standard established under  
24 this section; and

25 (c) Rules that provide a mechanism for appeal of any  
26 administrative penalty imposed by the department under this section.

27 (13) Upon request by the department, each county assessor must  
28 provide property data from existing records to the department as  
29 necessary to implement this section.

30 (14) By January 15, 2022, and each year thereafter through 2029,  
31 the department must submit a report to the governor and the  
32 appropriate committees of the legislature on the implementation of  
33 the state energy performance standard established under this section.  
34 The report must include information regarding the adoption of the  
35 ANSI/ASHRAE/IES standard 100-2018 as an initial model, the financial  
36 impact to building owners required to comply with the standard, the  
37 amount of incentives provided under sections 4 and 5 of this act, and  
38 any other significant information associated with the implementation  
39 of this section.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 19.27A  
2 RCW to read as follows:

3        (1) The department must establish a state energy performance  
4 standard early adoption incentive program consistent with the  
5 requirements of this section.

6        (2) The department must adopt application and reporting  
7 requirements for the incentive program. Building energy reporting for  
8 the incentive program must be consistent with the energy reporting  
9 requirements established under section 3 of this act.

10       (3) Upon receiving documentation demonstrating that a building  
11 owner qualifies for an incentive under this section, the department  
12 must authorize each applicable entity administering incentive  
13 payments, as provided in section 6 of this act, to make an incentive  
14 payment to the building owner. When a building is served by more than  
15 one entity offering incentives or more than one type of fuel,  
16 incentive payments must be proportional to the energy use intensity  
17 reduction of each specific fuel provided by each entity.

18       (4) An eligible building owner may receive an incentive payment  
19 in the amounts specified in subsection (6) of this section only if  
20 the following requirements are met:

21       (a) The building is either: (i) A covered commercial building  
22 subject to the requirements of the standard established under section  
23 3 of this act; or (ii) a multifamily residential building where the  
24 floor area exceeds fifty thousand gross square feet, excluding the  
25 parking garage area;

26       (b) The building's baseline energy use intensity exceeds its  
27 applicable energy use intensity target by at least fifteen energy use  
28 intensity units;

29       (c) At least one electric utility, gas company, or thermal energy  
30 company providing or delivering energy to the covered commercial  
31 building is participating in the incentive program by administering  
32 incentive payments as provided in section 6 of this act; and

33       (d) The building owner complies with any other requirements  
34 established by the department.

35       (5) (a) An eligible building owner who meets the requirements of  
36 subsection (4) of this section may submit an application to the  
37 department for an incentive payment in a form and manner prescribed  
38 by the department. The application must be submitted in accordance  
39 with the following schedule:

1 (i) For a building with more than two hundred twenty thousand  
2 gross square feet, beginning July 1, 2021, through June 1, 2025;

3 (ii) For a building with more than ninety thousand gross square  
4 feet but less than two hundred twenty thousand and one gross square  
5 feet, beginning July 1, 2021, through June 1, 2026; and

6 (iii) For a building with more than fifty thousand gross square  
7 feet but less than ninety thousand and one gross square feet,  
8 beginning July 1, 2021, through June 1, 2027.

9 (b) The department must review each application and determine  
10 whether the applicant is eligible for the incentive program and if  
11 funds are available for the incentive payment within the limitation  
12 established in section 5 of this act. If the department certifies an  
13 application, it must provide verification to the building owner and  
14 each entity participating as provided in section 6 of this act and  
15 providing service to the building owner.

16 (6) An eligible building owner that demonstrates early compliance  
17 with the applicable energy use intensity target under the standard  
18 established under section 3 of this act may receive a base incentive  
19 payment of eighty-five cents per gross square foot of floor area,  
20 excluding parking, unconditioned, or semiconditioned spaces.

21 (7) The incentives provided in subsection (6) of this section are  
22 subject to the limitations and requirements of this section,  
23 including any rules or procedures implementing this section.

24 (8) The department must establish requirements for the  
25 verification of energy consumption by the building owner and each  
26 participating electric utility, gas company, and thermal energy  
27 company.

28 (9) The department must provide an administrative process for an  
29 eligible building owner to appeal a determination of an incentive  
30 eligibility or amount.

31 (10) By September 30, 2025, and every two years thereafter, the  
32 department must report to the appropriate committees of the  
33 legislature on the results of the incentive program under this  
34 section and may provide recommendations to improve the effectiveness  
35 of the program.

36 (11) The department may adopt rules to implement this section.

37 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.27A  
38 RCW to read as follows:

1 The department may not issue a certification for an incentive  
2 application under section 4 of this act if doing so is likely to  
3 result in total incentive payments under section 4 of this act in  
4 excess of seventy-five million dollars.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.27A  
6 RCW to read as follows:

7 (1)(a) Each qualifying utility must administer incentive payments  
8 for the state energy performance standard early adoption incentive  
9 program established in section 4 of this act on behalf of its  
10 customers who are eligible building owners of covered commercial  
11 buildings or multifamily residential buildings, consistent with the  
12 requirements of this section. Any thermal energy company, electric  
13 utility, or gas company not otherwise required to administer  
14 incentive payments may voluntarily participate by providing notice to  
15 the department in a form and manner prescribed by the department.

16 (b) Nothing in this subsection (1) requires a qualifying utility  
17 to administer incentive payments for which the qualifying utility is  
18 not allowed a credit against taxes due in accordance with section 8  
19 of this act.

20 (2) An entity that administers the payments for the incentive  
21 program under this section must administer the program in a manner  
22 that is consistent with the standard established and any rules  
23 adopted by the department under sections 3 and 4 of this act.

24 (3) Upon receiving notification from the department that a  
25 building owner has qualified for an incentive payment, each entity  
26 that administers incentive payments under this section must make  
27 incentive payments to its customers who are eligible building owners  
28 of covered commercial buildings or multifamily residential buildings  
29 who qualify as provided under this section and at rates specified in  
30 section 4(6) of this act. When a building is served by more than one  
31 entity administering incentive payments, incentive payments must be  
32 proportional to the energy use intensity reduction of the  
33 participating entities' fuel.

34 (4) The participation by an entity in the administration of  
35 incentive payments under this section does not relieve the entity of  
36 any obligation that may otherwise exist or be established to provide  
37 customer energy efficiency programs or incentives.

38 (5) An entity that administers the payments for the incentive  
39 program under this section is not liable for excess payments made in

1 reliance on amounts reported by the department as due and payable as  
2 provided under section 4 of this act, if such amounts are later found  
3 to be abnormal or inaccurate due to no fault of the business.

4 NEW SECTION. **Sec. 7.** This section is the tax preference  
5 performance statement for the tax preference contained in section 8,  
6 chapter . . ., Laws of 2019 (section 8 of this act). This performance  
7 statement is only intended to be used for subsequent evaluation of  
8 the tax preference. It is not intended to create a private right of  
9 action by any party or be used to determine eligibility for  
10 preferential tax treatment.

11 (1) The legislature categorizes this tax preference as one  
12 intended to induce implementation of building energy efficiency  
13 measures, as indicated in section 4 of this act.

14 (2) It is the legislature's specific public policy objective to  
15 increase energy efficiency and the use of renewable fuels that reduce  
16 the amount of greenhouse gas emissions in Washington. It is the  
17 legislature's intent to provide a credit against the taxes owing by  
18 utilities under chapter 82.16 RCW for the incentives provided for the  
19 implementation by eligible building owners of energy efficiency and  
20 renewable energy measures.

21 (3) If a review finds that measurable energy savings have  
22 increased in covered commercial buildings for which building owners  
23 are receiving an incentive payment from a qualifying utility, then  
24 the legislature intends to extend the expiration date of the tax  
25 preference.

26 (4) In order to obtain the data necessary to perform the review  
27 in subsection (3) of this section, the joint legislative audit and  
28 review committee may refer to the number of building owners receiving  
29 an incentive payment from qualifying utilities taking the public  
30 utility tax preference under section 8 of this act, the amount of the  
31 incentive payment, and the energy use intensity reduction of the  
32 buildings as a result of the incentive program, as reported by the  
33 department of commerce.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.16  
35 RCW to read as follows:

36 (1) Subject to the requirements of this section, a light and  
37 power business or a gas distribution business is allowed a credit  
38 against taxes due under this chapter in an amount equal to:

1 (a) Incentive payments made in any calendar year under section 4  
2 of this act; and

3 (b) Documented administrative cost not to exceed eight percent of  
4 the incentive payments.

5 (2) The credit must be taken in a form and manner as required by  
6 the department.

7 (3) Credit must be claimed against taxes due under this chapter  
8 for the incentive payments made and administrative expenses incurred.  
9 Credit earned in one calendar year may not be carried backward but  
10 may be claimed against taxes due under this chapter during the same  
11 calendar year and for the following two calendar years. The credit  
12 may not exceed the tax that would otherwise be due under this  
13 chapter. Refunds may not be granted in the place of a credit.

14 (4)(a) Except as provided in (c) of this subsection, any business  
15 that has claimed credit in excess of the amount of credit the  
16 business earned under subsection (1) of this section must repay the  
17 amount of tax against which the excess credit was claimed.

18 (b) The department must assess interest on the taxes due under  
19 this subsection. Interest must be assessed at the rate provided for  
20 delinquent excise taxes under chapter 82.32 RCW, retroactively to the  
21 date the credit was claimed, and accrues until the taxes against  
22 which the credit was claimed are repaid. The department must provide  
23 written notice of the amount due under this subsection and that the  
24 amount due must be paid within thirty days of the date of the notice.  
25 The department may not impose penalties as provided in chapter 82.32  
26 RCW on taxes due under this subsection unless the amount due is not  
27 paid in full by the due date in the notice.

28 (c) A business is not liable for excess credits claimed in  
29 reliance on amounts reported to the business by the department of  
30 commerce as due and payable as provided under section 4 of this act,  
31 if such amounts are later found to be abnormal or inaccurate due to  
32 no fault of the business.

33 (5) The amount of credit taken under this section and the  
34 identity of a business that takes the credit is not confidential  
35 taxpayer information under RCW 82.32.330 and is subject to  
36 disclosure.

37 (6) This section expires June 30, 2032.

38 **Sec. 9.** RCW 19.27A.140 and 2011 1st sp.s. c 43 s 245 are each  
39 amended to read as follows:

1 The definitions in this section apply to RCW 19.27A.130 through  
2 19.27A.190 and 19.27A.020 unless the context clearly requires  
3 otherwise.

4 (1) "Benchmark" means the energy used by a facility as recorded  
5 monthly for at least one year and the facility characteristics  
6 information inputs required for a portfolio manager.

7 (2) "Conditioned space" means conditioned space, as defined in  
8 the Washington state energy code.

9 (3) "Consumer-owned utility" includes a municipal electric  
10 utility formed under Title 35 RCW, a public utility district formed  
11 under Title 54 RCW, an irrigation district formed under chapter 87.03  
12 RCW, a cooperative formed under chapter 23.86 RCW, a mutual  
13 corporation or association formed under chapter 24.06 RCW, a port  
14 district formed under Title 53 RCW, or a water-sewer district formed  
15 under Title 57 RCW, that is engaged in the business of distributing  
16 electricity to one or more retail electric customers in the state.

17 (4) "Cost-effectiveness" means that a project or resource is  
18 forecast:

19 (a) To be reliable and available within the time it is needed;  
20 and

21 (b) To meet or reduce the power demand of the intended consumers  
22 at an estimated incremental system cost no greater than that of the  
23 least-cost similarly reliable and available alternative project or  
24 resource, or any combination thereof.

25 (5) "Council" means the state building code council.

26 (6) "Embodied energy" means the total amount of fossil fuel  
27 energy consumed to extract raw materials and to manufacture,  
28 assemble, transport, and install the materials in a building and the  
29 life-cycle cost benefits including the recyclability and energy  
30 efficiencies with respect to building materials, taking into account  
31 the total sum of current values for the costs of investment, capital,  
32 installation, operating, maintenance, and replacement as estimated  
33 for the lifetime of the product or project.

34 (7) "Energy consumption data" means the monthly amount of energy  
35 consumed by a customer as recorded by the applicable energy meter for  
36 the most recent twelve-month period.

37 (8) "Energy service company" has the same meaning as in RCW  
38 43.19.670.

39 (9) "Enterprise services" means the department of enterprise  
40 services.

1 (10) "Greenhouse gas" and "greenhouse gases" includes carbon  
2 dioxide, methane, nitrous oxide, hydrofluorocarbons,  
3 perfluorocarbons, and sulfur hexafluoride.

4 (11) "Investment grade energy audit" means an intensive  
5 engineering analysis of energy efficiency and management measures for  
6 the facility, net energy savings, and a cost-effectiveness  
7 determination.

8 (12) "Investor-owned utility" means a corporation owned by  
9 investors that meets the definition of "corporation" as defined in  
10 RCW 80.04.010 and is engaged in distributing either electricity or  
11 natural gas, or both, to more than one retail electric customer in  
12 the state.

13 (13) "Major facility" means any publicly owned or leased  
14 building, or a group of such buildings at a single site, having ten  
15 thousand square feet or more of conditioned floor space.

16 (14) "National energy performance rating" means the score  
17 provided by the energy star program, to indicate the energy  
18 efficiency performance of the building compared to similar buildings  
19 in that climate as defined in the United States environmental  
20 protection agency "ENERGY STAR® Performance Ratings Technical  
21 Methodology."

22 (15) "Net zero energy use" means a building with net energy  
23 consumption of zero over a typical year.

24 (16) "Portfolio manager" means the United States environmental  
25 protection agency's energy star portfolio manager or an equivalent  
26 tool adopted by the department of enterprise services.

27 (17) "Preliminary energy audit" means a quick evaluation by an  
28 energy service company of the energy savings potential of a building.

29 (18) "Qualifying public agency" includes all state agencies,  
30 colleges, and universities.

31 (19) "Qualifying utility" means a consumer-owned or investor-  
32 owned gas or electric utility that serves more than twenty-five  
33 thousand customers in the state of Washington.

34 (20) "Reporting public facility" means any of the following:

35 (a) A building or structure, or a group of buildings or  
36 structures at a single site, owned by a qualifying public agency,  
37 that exceed ten thousand square feet of conditioned space;

38 (b) Buildings, structures, or spaces leased by a qualifying  
39 public agency that exceeds ten thousand square feet of conditioned



1 space, where the qualifying public agency purchases energy directly  
2 from the investor-owned or consumer-owned utility;

3 (c) A wastewater treatment facility owned by a qualifying public  
4 agency; or

5 (d) Other facilities selected by the qualifying public agency.

6 (21) "State portfolio manager master account" means a portfolio  
7 manager account established to provide a single shared portfolio that  
8 includes reports for all the reporting public facilities.

9 (22) "Building owner" has the same meaning as defined in section  
10 2 of this act.

11 (23) "Covered commercial building" has the same meaning as  
12 defined in section 2 of this act.

13 **Sec. 10.** RCW 19.27A.170 and 2009 c 423 s 6 are each amended to  
14 read as follows:

15 (1) On and after January 1, 2010, qualifying utilities shall  
16 maintain records of the energy consumption data of all nonresidential  
17 and qualifying public agency buildings to which they provide service.  
18 This data must be maintained for at least the most recent twelve  
19 months in a format compatible for uploading to the United States  
20 environmental protection agency's energy star portfolio manager.

21 (2) On and after January 1, 2010, upon the written authorization  
22 or secure electronic authorization of a nonresidential building owner  
23 or operator, a qualifying utility shall upload the energy consumption  
24 data for the accounts specified by the owner or operator for a  
25 building to the United States environmental protection agency's  
26 energy star portfolio manager in a form that does not disclose  
27 personally identifying information.

28 (3) In carrying out the requirements of this section, a  
29 qualifying utility shall use any method for providing the specified  
30 data in order to maximize efficiency and minimize overall program  
31 cost. Qualifying utilities are encouraged to consult with the United  
32 States environmental protection agency and their customers in  
33 developing reasonable reporting options.

34 (4) Disclosure of nonpublic nonresidential benchmarking data and  
35 ratings required under subsection (5) of this section will be phased  
36 in as follows:

37 (a) By January 1, 2011, for buildings greater than fifty thousand  
38 square feet; and

1 (b) By January 1, 2012, for buildings greater than ten thousand  
2 square feet.

3 (5) Based on the size guidelines in subsection (4) of this  
4 section, a building owner or operator, or their agent, of a  
5 nonresidential building shall disclose the United States  
6 environmental protection agency's energy star portfolio manager  
7 benchmarking data and ratings to a prospective buyer, lessee, or  
8 lender for the most recent continuously occupied twelve-month period.  
9 A building owner or operator, or their agent, who delivers United  
10 States environmental protection agency's energy star portfolio  
11 manager benchmarking data and ratings to a prospective buyer, lessee,  
12 or lender is not required to provide additional information regarding  
13 energy consumption, and the information is deemed to be adequate to  
14 inform the prospective buyer, lessee, or lender regarding the United  
15 States environmental protection agency's energy star portfolio  
16 manager benchmarking data and ratings for the most recent twelve-  
17 month period for the building that is being sold, leased, financed,  
18 or refinanced.

19 (6) Notwithstanding subsections (4) and (5) of this section,  
20 nothing in this section increases or decreases the duties, if any, of  
21 a building owner, operator, or their agent under this chapter or  
22 alters the duty of a seller, agent, or broker to disclose the  
23 existence of a material fact affecting the real property.

24 (7) An electric or gas utility that is not a qualifying utility  
25 must either offer the upload service specified in subsection (2) of  
26 this section or provide customers who are building owners of covered  
27 commercial buildings with consumption data in an electronic document  
28 formatted for direct upload to the United States environmental  
29 protection agency's energy star portfolio manager. Within sixty days  
30 of receiving a written or electronic request and authorization of a  
31 building owner, the utility must provide the building owner with  
32 monthly energy consumption data as required to benchmark the  
33 specified building.

34 (8) For any covered commercial building with three or more  
35 tenants, an electric or gas utility must, upon request of the  
36 building owner, provide the building owner with aggregated monthly  
37 energy consumption data without requiring prior consent from tenants.

38 (9) Each electric or gas utility must ensure that all data  
39 provided in compliance with this section does not contain personally

1 identifiable information or customer-specific billing information  
2 about tenants of a covered commercial building.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 80.28  
4 RCW to read as follows:

5 Each gas company must identify and acquire all conservation  
6 measures that are available and cost-effective. Each company must  
7 establish an acquisition target every two years and must demonstrate  
8 that the target will result in the acquisition of all resources  
9 identified as available and cost-effective. The cost-effectiveness  
10 analysis required by this section must include the costs of  
11 greenhouse gas emissions established in section 15 of this act. The  
12 targets must be based on a conservation potential assessment prepared  
13 by an independent third party and approved by the commission.  
14 Conservation targets must be approved by order by the commission. The  
15 initial conservation target must take effect by 2022.

16 NEW SECTION. **Sec. 12.** (1) The legislature finds and declares  
17 that:

18 (a) Renewable natural gas provides benefits to natural gas  
19 utility customers and to the public; and

20 (b) The development of renewable natural gas resources should be  
21 encouraged to support a smooth transition to a low carbon energy  
22 economy in Washington.

23 (2) It is the policy of the state to provide clear and reliable  
24 guidelines for gas companies that opt to supply renewable natural gas  
25 resources to serve their customers and that ensure robust ratepayer  
26 protections.

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 80.28  
28 RCW to read as follows:

29 (1) A natural gas company may propose a renewable natural gas  
30 program under which the company would supply renewable natural gas  
31 for a portion of the natural gas sold or delivered to its retail  
32 customers. The renewable natural gas program is subject to review and  
33 approval by the commission. The customer charge for a renewable  
34 natural gas program may not exceed five percent of the amount charged  
35 to retail customers for natural gas.

36 (2) The environmental attributes of renewable natural gas  
37 provided under this section must be retired using procedures

1 established by the commission and may not be used for any other  
2 purpose. The commission must approve procedures for banking and  
3 transfer of environmental attributes.

4 (3) As used in this section, "renewable natural gas" includes  
5 renewable natural gas as defined in RCW 54.04.190. The commission may  
6 approve inclusion of other sources of gas if those sources are  
7 produced without consumption of fossil fuels.

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 80.28  
9 RCW to read as follows:

10 (1) Each gas company must offer by tariff a voluntary renewable  
11 natural gas service available to all customers to replace any portion  
12 of the natural gas that would otherwise be provided by the gas  
13 company. The voluntary renewable natural gas service must include  
14 delivery to the customer of all environmental attributes associated  
15 with the renewable natural gas.

16 (2) For the purposes of this section, "renewable natural gas"  
17 includes renewable natural gas as defined in RCW 54.04.190. The  
18 commission may approve inclusion of other sources of gas if those  
19 sources are produced without consumption of fossil fuels.

20 NEW SECTION. **Sec. 15.** A new section is added to chapter 80.28  
21 RCW to read as follows:

22 For the purposes of section 11 of this act, the cost of  
23 greenhouse gas emissions resulting from the use of natural gas,  
24 including the effect of emissions occurring in the gathering,  
25 transmission, and distribution of natural gas to the end user is  
26 equal to the cost per metric ton of carbon dioxide emissions, using  
27 the two and one-half percent discount rate, listed in table 2,  
28 Technical Support Document: Technical update of the social cost of  
29 carbon for regulatory impact analysis under Executive Order 12866,  
30 published by the interagency working group on social cost of  
31 greenhouse gases of the United States government, August 2016. The  
32 commission must adjust the costs established in this section to  
33 reflect the effect of inflation.

34 NEW SECTION. **Sec. 16.** A new section is added to chapter 80.28  
35 RCW to read as follows:

36 The commission must monitor the greenhouse gas emissions  
37 resulting from natural gas and renewable natural gas delivered by

1 each gas company to its customers, relative to a proportionate share  
2 of the state's greenhouse gas emissions reduction goal. The  
3 commission must report to the governor by January 1, 2020, and every  
4 three years thereafter, an assessment of whether the gas companies  
5 are on track to meet a proportionate share of the state's greenhouse  
6 gas emissions reduction goal. The commission may rely on reports  
7 submitted by gas companies to the United States environmental  
8 protection agency or other governmental agencies in complying with  
9 this section.

10 **Sec. 17.** RCW 19.27A.015 and 1990 c 2 s 2 are each amended to  
11 read as follows:

12 Except as provided in RCW 19.27A.020(~~(+7)~~) (6), the Washington  
13 state energy code for residential buildings shall be the (~~maximum~~  
14 ~~and~~) minimum energy code for residential buildings in each city,  
15 town, and county and shall be enforced by each city, town, and county  
16 no later than July 1, 1991. The Washington state energy code for  
17 nonresidential buildings shall be the minimum energy code for  
18 nonresidential buildings enforced by each city, town, and county.

19 **Sec. 18.** RCW 19.27A.025 and 1991 c 122 s 3 are each amended to  
20 read as follows:

21 (1) The minimum state energy code for new nonresidential  
22 buildings shall be the Washington state energy code, 1986 edition, as  
23 amended. The state building code council may, by rule adopted  
24 pursuant to chapter 34.05 RCW, amend that code's requirements for new  
25 nonresidential buildings provided that:

26 (a) Such amendments increase the energy efficiency of typical  
27 newly constructed nonresidential buildings; and

28 (b) Any new measures, standards, or requirements adopted must be  
29 technically feasible, commercially available, and (~~cost-effective to~~  
30 ~~building owners and tenants~~) developed to yield the lowest overall  
31 cost to the building owner and occupant while meeting the energy  
32 reduction goals established under RCW 19.27A.160.

33 (2) In considering amendments to the state energy code for  
34 nonresidential buildings, the state building code council shall  
35 establish and consult with a technical advisory committee including  
36 representatives of appropriate state agencies, local governments,  
37 general contractors, building owners and managers, design  
38 professionals, utilities, and other interested and affected parties.

1 (3) Decisions to amend the Washington state energy code for new  
2 nonresidential buildings shall be made prior to December 15th of any  
3 year and shall not take effect before the end of the regular  
4 legislative session in the next year. Any disputed provisions within  
5 an amendment presented to the legislature shall be approved by the  
6 legislature before going into effect. A disputed provision is one  
7 which was adopted by the state building code council with less than a  
8 two-thirds majority vote. Substantial amendments to the code shall be  
9 adopted no more frequently than every three years.

10 **Sec. 19.** RCW 19.27.540 and 2009 c 459 s 16 are each amended to  
11 read as follows:

12 (1) The building code council shall adopt rules for electric  
13 vehicle infrastructure requirements. Rules adopted by the state  
14 building code council must consider applicable national and  
15 international standards and be consistent with rules adopted under  
16 RCW 19.28.281.

17 (2)(a) Except as provided in (b) of this subsection, the rules  
18 adopted under this section must require electric vehicle charging  
19 capability at all new buildings that provide on-site parking. Where  
20 parking is provided, the greater of one parking space or ten percent  
21 of parking spaces, rounded to the next whole number, must be provided  
22 with wiring or raceway sized to accommodate 208/240 V 40-amp or  
23 equivalent electric vehicle charging. Electrical rooms serving  
24 buildings with on-site parking must be sized to accommodate the  
25 potential for electrical equipment and distribution required to serve  
26 a minimum of fifty percent of the total parking spaces with 208/240 V  
27 40-amp or equivalent electric vehicle charging. Load management  
28 infrastructure may be used to adjust the size and capacity of the  
29 required building electric service equipment and circuits on the  
30 customer facilities, as well as electric utility owned  
31 infrastructure, as allowed by applicable local and national  
32 electrical code. For accessible parking spaces, the greater of one  
33 parking space or ten percent of accessible parking spaces, rounded to  
34 the next whole number, must be provided with electric vehicle  
35 charging infrastructure that may also serve adjacent parking spaces  
36 not designated as accessible parking.

37 (b) For occupancies classified as assembly or mercantile, the  
38 requirements of this section apply only to employee parking spaces.

1 The requirements of this section do not apply to occupancies  
2 classified as residential R-3, utility, or miscellaneous.

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