

2SHB 1278 - H AMD 627

By Representative Fitzgibbon

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that reducing  
4 the energy use of buildings will save money for utility customers  
5 while achieving other important public benefits. Just like a miles-  
6 per-gallon rating provides important information for prospective car  
7 buyers, meaningful, enforceable energy use disclosure requirements  
8 for buildings creates an important signal to building owners,  
9 prospective building owners, tenants, and others in real estate  
10 markets about the quantifiable environmental and financial costs  
11 associated with the use of that building. The disclosure of this  
12 information allows real estate market participants to make decisions  
13 that will save them money by lowering their utility bills and can  
14 provide an important incentive for real estate market participants to  
15 invest in emissions-reducing and energy-saving upgrades. Energy  
16 benchmarking also allows utilities and governments to connect  
17 inefficient buildings with the variety of energy efficiency programs,  
18 incentives, and funding sources that are currently available but  
19 underutilized.

20 (2) Real-world experience confirms that the addition of building  
21 energy use information to real estate markets provides incentive for  
22 buildings to lower their energy use: Analysis by the United States  
23 environmental protection agency has shown that commercial buildings  
24 that participate in a benchmarking program achieve a seven percent  
25 reduction in energy use over their first three years in the program.  
26 Several other recent studies show that nationwide, cities that have  
27 adopted energy benchmarking ordinances have also subsequently  
28 experienced measurable reductions in building energy use that saved  
29 ratepayers hundreds of millions of dollars; New York City, for  
30 example, realized a nearly six percent energy savings in the first  
31 four years of benchmarking, equating to an energy cost savings of  
32 over two hundred sixty-seven million dollars. By simply providing

1 information to real estate markets through required disclosure, the  
2 state will achieve substantial greenhouse gas emission reductions by  
3 reducing the energy use of buildings.

4 (3) In 2009, the legislature established requirements that  
5 certain nonresidential building owners maintain information about  
6 their building energy use at the time of sale. In the years following  
7 the 2009 legislature's enactment of the current building energy use  
8 disclosure requirements, local governments in Washington and  
9 elsewhere have built upon the lessons learned from the state's  
10 implementation of its groundbreaking benchmarking efforts. These  
11 jurisdictions have been able to introduce more complete benchmarking  
12 information across their real estate markets by requiring procedures  
13 to support the consistent submission of building energy use  
14 information, including the establishment of penalties for violations  
15 of energy use disclosure requirements.

16 (4) In recognition of the benefits of establishing compliance  
17 mechanisms to accompany benchmarking requirements, the state energy  
18 strategy recommends improvements to the state's benchmarking law.  
19 This strategic energy report includes a recommendation that the state  
20 receive energy benchmarking data to assess the impact of the program  
21 and to better ensure statewide compliance with building energy  
22 benchmarking requirements. This act moves the state towards meeting  
23 the goals laid out in the state energy strategy by encouraging  
24 market-wide participation in the energy benchmarking program and by  
25 encouraging the consideration of building energy use information  
26 during market transactions.

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

29 (1)(a) The proprietor of each reporting building shall establish  
30 a United States environmental protection agency portfolio manager  
31 account and shall request that a qualifying utility servicing the  
32 reporting building provide the proprietor with energy consumption and  
33 energy cost data for all utility accounts associated with the  
34 reporting building. The proprietor shall identify to the qualifying  
35 utility the accounts associated with each reporting building.

36 (b) Until September 1, 2019, a proprietor of a reporting building  
37 shall disclose the United States environmental protection agency's  
38 energy star statement of energy performance produced using a  
39 portfolio manager account for the preceding calendar year to a

1 prospective buyer, lessee, or lender. A proprietor who delivers the  
2 United States environmental protection agency's energy star statement  
3 of energy performance to a prospective buyer, lessee, or lender is  
4 not required to provide additional information regarding energy  
5 consumption and the statement of energy performance is deemed to be  
6 adequate, for purposes of this section, to inform the prospective  
7 buyer, lessee, or lender regarding the United States environmental  
8 protection agency's energy star statement of energy performance the  
9 preceding calendar year for the building that is being sold, leased,  
10 financed, or refinanced.

11 (2) By April 1, 2018, and April 1st of each year thereafter, the  
12 proprietor of a reporting building must transfer the following  
13 information to the commerce portfolio manager account using the  
14 portfolio manager sharing feature or an alternate data transfer  
15 method adopted by the department:

16 (a) The United States environmental protection agency's energy  
17 star portfolio manager building characteristics;

18 (b) Energy consumption data for each utility billing period of  
19 the preceding calendar year; and

20 (c) Energy cost data for each utility billing period of the  
21 preceding calendar year.

22 (3) At the time of transfer or within a reasonable time of  
23 transferring data, the proprietor may include an explanatory comment  
24 for each reporting building for the purpose of identifying specific  
25 energy variations, such as occupancy variances or high energy use  
26 tenants.

27 (4) If any proprietor of a reporting building discloses  
28 information in good faith concerning a building's energy consumption,  
29 energy cost, or other benchmarking data in accordance with this  
30 chapter, no cause of action shall arise from the disclosure and the  
31 proprietor is not liable to others for the disclosure or its  
32 consequences.

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

35 (1) The department shall establish a United States environmental  
36 protection agency energy star portfolio manager account that  
37 facilitates benchmarking data transfers from proprietors to the  
38 department.

1 (2) By December 1, 2018, and annually thereafter, the department  
2 shall publish a report including the following information:

3 (a) Aggregated statistics of the benchmarking information  
4 provided to the department by proprietors.

5 (b) Summary statistics on overall compliance with this chapter,  
6 an assessment of accuracy and issues affecting accuracy, summary  
7 energy consumption statistics, and trends observed across the  
8 portfolio of reporting buildings over time.

9 (3) The department shall make available on a public web site by  
10 December 1, 2019, and annually thereafter key metrics, including but  
11 not limited to ratings, site energy use intensity, energy cost  
12 information, and floor area, from the most recent benchmarking output  
13 information for each reporting building required to report in the  
14 previous calendar year. The department must make available any  
15 explanatory comments received under section 2(2) of this act.

16 (4) The department may provide data from benchmarking submissions  
17 to the energy utility serving a reporting building.

18 (5) Beginning September 1, 2018, and by September 1st of each  
19 subsequent year, the department shall analyze the data sharing  
20 transfers from proprietors and other supporting information to  
21 determine:

22 (a) Which reporting buildings in Washington have disclosed and  
23 transferred the information required by section 2 of this act during  
24 the preceding calendar year; and

25 (b) Which reporting buildings in Washington have failed to  
26 disclose and transfer the information required by section 2 of this  
27 act.

28 (6)(a) A proprietor may request that the department withhold from  
29 publishing benchmarking or energy use information related to a  
30 building or utility account. In support of a request under this  
31 subsection (6), the proprietor may provide documentation to  
32 substantiate the request or otherwise assist the department in  
33 determining whether to grant the request.

34 (b)(i) If the department determines that strict compliance with  
35 the disclosure requirements of this section would cause undue harm to  
36 the business interests of a building occupant or to the public  
37 interest, the department may withhold benchmarking or energy use  
38 information from publication or may aggregate the information  
39 sufficiently to eliminate the harm to a building occupant or the  
40 public interest.

1 (ii) Upon the request of a proprietor of a building with one or  
2 two utility customers, the department either must withhold  
3 benchmarking or energy use information or it must aggregate the  
4 information sufficiently to eliminate the harm to a building occupant  
5 or the public interest prior to publication.

6 (c) Any determination to withhold information from public  
7 disclosure by the department must be limited to information contained  
8 in a specific submission by a proprietor, and does not apply to past  
9 or future submissions by the proprietor.

10 (7) If the department makes publicly available reporting building  
11 energy consumption, energy cost data, or other benchmarking data or  
12 information in good faith in accordance with this chapter and chapter  
13 42.56 RCW, no cause of action shall arise from the disclosure and the  
14 department is not liable to others for the disclosure or its  
15 consequences.

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

18 (1)(a) The department is authorized to enforce the disclosure  
19 requirements for proprietors under RCW 19.27A.170 and section 2 of  
20 this act. The department is authorized to investigate and determine  
21 if a proprietor or a qualifying utility that is a consumer-owned  
22 utility has not complied with the requirements of RCW 19.27A.170 or  
23 section 2 of this act. The department shall work with qualifying  
24 consumer-owned utilities and proprietors to come into compliance with  
25 the energy benchmarking requirements of this chapter.

26 (b) The department must determine, via the issuance of guidance,  
27 the particular type of energy cost data that utilities and  
28 proprietors must provide under this chapter. The guidance issued by  
29 the department must, to the maximum extent practicable, allow for the  
30 provision of types of energy cost data that existing utility billing  
31 systems are able to currently provide. The guidance must also, to the  
32 maximum extent practicable, establish a common metric for energy cost  
33 comparisons across buildings served by different utilities. The types  
34 of energy cost information that the department guidance may specify  
35 disclosure of includes, but is not limited to, the direct energy cost  
36 or the total energy cost of energy service inclusive of fees, taxes,  
37 and other charges.

38 (2) The commission may adopt rules to ensure the proper  
39 implementation and enforcement of RCW 19.27A.170 as applied to

1 investor-owned utilities. The commission may coordinate with the  
2 department to ensure that information provided by investor-owned  
3 utilities is consistent with the goals of the state energy strategy.

4 **Sec. 5.** RCW 19.27A.140 and 2011 1st sp.s. c 43 s 245 are each  
5 amended to read as follows:

6 The definitions in this section apply to RCW 19.27A.130 through  
7 19.27A.190 (~~and~~), 19.27A.020, and sections 2, 3, and 4 of this act  
8 unless the context clearly requires otherwise.

9 (1) "Benchmark" means the energy used by a facility as recorded  
10 (~~monthly~~) each utility billing period for at least one year and the  
11 facility characteristics information inputs required for a portfolio  
12 manager account.

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

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

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

25 (a) To be reliable and available within the time it is needed;  
26 and

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

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

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

1 (7) "Energy consumption data" means the (~~monthly~~) amount of  
2 energy consumed by a customer as recorded by the applicable energy  
3 meter during each billing period for the most recent (~~twelve-month~~  
4 ~~period~~) calendar year.

5 (8) "Energy service company" has the same meaning as in RCW  
6 43.19.670.

7 (9) "Enterprise services" means the department of enterprise  
8 services.

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

12 (11) "Investment grade energy audit" means an intensive  
13 engineering analysis of energy efficiency and management measures for  
14 the facility, net energy savings, and a cost-effectiveness  
15 determination.

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

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

24 (14) "National energy performance rating" means the score  
25 provided by the energy star program, to indicate the energy  
26 efficiency performance of the building compared to similar buildings  
27 in that climate as defined in the United States environmental  
28 protection agency "ENERGY STAR® Performance Ratings Technical  
29 Methodology."

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

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

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

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

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

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

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

8 (b) Buildings, structures, or spaces leased by a qualifying  
9 public agency that exceeds ten thousand square feet of conditioned  
10 space, where the qualifying public agency purchases energy directly  
11 from the investor-owned or consumer-owned utility;

12 (c) A wastewater treatment facility owned by a qualifying public  
13 agency; or

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

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

18 (22) "Building characteristics" means the building size, age,  
19 primary function, address, and other information required to create a  
20 statement of energy performance.

21 (23) "Commerce portfolio manager account" means the portfolio  
22 manager master account created by the department pursuant to section  
23 3 of this act.

24 (24) "Commission" means the utilities and transportation  
25 commission.

26 (25) "Department" means the department of commerce.

27 (26) "Energy cost" means the energy cost information determined  
28 in department guidance pursuant to section 4 of this act.

29 (27) "Proprietor" means the owner or operator of a building or an  
30 agent acting on behalf of the owner or operator of a building.

31 (28) "Reporting building" means a building that exceeds twenty  
32 thousand square feet of conditioned space except for a building that:

33 (a) Is a factory group F building, a residential group R building  
34 other than a group R-2 building containing five or more dwelling  
35 units, or a miscellaneous and utility group U building, as defined in  
36 the 2012 Washington state building code; or

37 (b) Does not receive gas or electric service from a utility that  
38 is not a qualifying utility.

39 (29) "Site energy use intensity" means the energy use per square  
40 foot of gross floor area.

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

3       (1) ~~((On and after January 1, 2010,))~~ Qualifying utilities shall  
4 maintain records of the energy consumption data of all  
5 ((nonresidential and qualifying public agency buildings)) customer  
6 accounts to which they provide service. This data must be maintained  
7 ((for at least the most recent twelve months)) in a format compatible  
8 for uploading to the United States environmental protection agency's  
9 energy star portfolio manager. In carrying out the requirements of  
10 this section, qualifying utilities shall update energy consumption  
11 and energy cost data at least quarterly for each billing period. The  
12 data updated by qualifying utilities must be continuous and date back  
13 to no later than January 1, 2017.

14       (2) ~~((On and after January 1, 2010, upon the written~~  
15 ~~authorization or secure electronic authorization of a nonresidential~~  
16 ~~building owner or operator,))~~ A qualifying utility shall upload the  
17 energy consumption and energy cost data for the accounts specified by  
18 the ~~((owner or operator))~~ proprietor for a building to the United  
19 States environmental protection agency's energy star portfolio  
20 manager in a form that does not disclose personally identifying  
21 information.

22       (a) For reporting buildings with three or more active utility  
23 accounts, the qualifying utility shall deliver information showing  
24 the aggregated energy usage data of all utility customers in the same  
25 building for each billing period. Energy usage data aggregated in  
26 this manner is not confidential, proprietary, or private customer  
27 information or usage information for purposes of delivery by the  
28 utility to the proprietor of a building.

29       (b)(i) For reporting buildings with one or two active utility  
30 accounts, the proprietor must obtain the written consent of the  
31 holder of the utility account prior to requesting that a qualifying  
32 utility deliver building energy use information to the proprietor. If  
33 there are two utility customers in a building, a qualifying utility  
34 shall deliver information showing the aggregated energy usage data of  
35 the two utility customers for each billing period; if there is one  
36 utility customer associated with a building, the qualifying utility  
37 shall deliver the energy usage data of the customer to the  
38 proprietor.

39       (ii) Upon the request of the proprietor, a utility customer in a  
40 building with one or two active utility accounts must provide consent

1 to the qualifying utility transferring the energy use information  
2 associated with the account to the proprietor. As a condition of  
3 providing this consent, the tenant may require that the proprietor  
4 make a request to the department to withhold the information from  
5 publication under section 3(6) of this act.

6 (3) Until January 1, 2018, in carrying out the requirements of  
7 this section, a qualifying utility shall use any method for providing  
8 the specified data in order to maximize efficiency and minimize  
9 overall program cost. Qualifying utilities are encouraged to consult  
10 with the United States environmental protection agency and their  
11 customers in developing reasonable reporting options. After January  
12 1, 2018, qualifying utilities shall upload the reporting building  
13 energy consumption and energy cost data by using energy star  
14 portfolio manager web services in order to automatically upload the  
15 specified data to the United States environmental protection agency's  
16 energy star portfolio manager.

17 ~~(4) ((Disclosure of nonpublic nonresidential benchmarking data~~  
18 ~~and ratings required under subsection (5) of this section will be~~  
19 ~~phased in as follows:~~

20 ~~(a) By January 1, 2011, for buildings greater than fifty thousand~~  
21 ~~square feet; and~~

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

24 ~~(5) Based on the size guidelines in subsection (4) of this~~  
25 ~~section, a building owner or operator, or their agent, of a~~  
26 ~~nonresidential building shall disclose the United States~~  
27 ~~environmental protection agency's energy star portfolio manager~~  
28 ~~benchmarking data and ratings to a prospective buyer, lessee, or~~  
29 ~~lender for the most recent continuously occupied twelve-month period.~~  
30 ~~A building owner or operator, or their agent, who delivers United~~  
31 ~~States environmental protection agency's energy star portfolio~~  
32 ~~manager benchmarking data and ratings to a prospective buyer, lessee,~~  
33 ~~or lender is not required to provide additional information regarding~~  
34 ~~energy consumption, and the information is deemed to be adequate to~~  
35 ~~inform the prospective buyer, lessee, or lender regarding the United~~  
36 ~~States environmental protection agency's energy star portfolio~~  
37 ~~manager benchmarking data and ratings for the most recent twelve-~~  
38 ~~month period for the building that is being sold, leased, financed,~~  
39 ~~or refinanced.~~

1 ~~(6) Notwithstanding subsections (4) and (5) of this section,)~~  
2 ~~Nothing in this section ((increases or decreases the duties, if any,~~  
3 ~~of a building owner, operator, or their agent under this chapter)) or~~  
4 ~~section 2 of this act~~ alters the duty of a seller, agent, or broker  
5 to disclose the existence of a material fact affecting the real  
6 property.

7 (5) Nothing in this section or section 3 of this act changes or  
8 limits the authority of a public entity to adopt building energy use  
9 disclosure requirements that are in addition to the requirements  
10 imposed by this chapter. However, any building energy use disclosure  
11 requirements adopted by a public entity must build upon, incorporate,  
12 and not conflict with the requirements of this chapter. The adoption  
13 of building energy use disclosure requirements that are in addition  
14 to the requirements of this chapter by a public entity does not  
15 affect the obligation of a utility or proprietor to comply with the  
16 requirements of this chapter.

17 (6) If any qualifying utility discloses information in good faith  
18 concerning energy consumption, energy cost, or other benchmarking  
19 data in accordance with this chapter and in compliance with other  
20 applicable laws and rules concerning disclosure of customer  
21 information, the qualifying utility is not liable to its customer or  
22 others for the consequences of the disclosure.

23 NEW SECTION. Sec. 7. A new section is added to chapter 19.27A  
24 RCW to read as follows:

25 (1)(a) If the department determines that a proprietor is not in  
26 compliance with the disclosure requirements of RCW 19.27A.170 or  
27 section 2 of this act, the department may issue a written notice of  
28 violation to the proprietor. The notice must state the requirement  
29 that was violated and any penalties imposed as a result of the  
30 violation.

31 (b) The department may impose the following penalties on a  
32 proprietor for the failure to disclose and transfer the building  
33 energy use benchmarking data as required by section 2 of this act:

34 (i) If the proprietor is not in compliance with the disclosure  
35 requirements of section 2 of this act within ninety days of receipt  
36 of the notice of violation, the department may impose a penalty of up  
37 to five hundred dollars;

38 (ii) If the proprietor is not in compliance with the disclosure  
39 requirements of section 2 of this act within one hundred eighty days

1 of receipt of the notice of violation, the department may impose a  
2 total cumulative penalty of up to one thousand dollars;

3 (iii) If the proprietor is not in compliance with the disclosure  
4 requirements of section 2 of this act within two hundred seventy days  
5 of receipt of the notice of violation, the department may impose a  
6 total cumulative penalty of up to two thousand dollars; and

7 (iv) If the proprietor is not in compliance with the disclosure  
8 requirements of section 2 of this act within three hundred sixty days  
9 of receipt of the notice of violation, the department may impose a  
10 total cumulative penalty of up to four thousand dollars.

11 (2) In addition to the penalties authorized in subsection (1) of  
12 this section, the department may concurrently impose a separate and  
13 additional fine of up to five hundred dollars if the proprietor has  
14 previously been served with a notice of violation associated with the  
15 building under this chapter.

16 (3) If the department determines that the proprietor has complied  
17 with the disclosure requirements of section 2 of this act within  
18 ninety days of receipt of the notice of violation and the proprietor  
19 has not previously been served with a notice of violation by the  
20 department, the department must waive the penalty for the violation.  
21 The department may consider any technical difficulties experienced by  
22 a proprietor with the portfolio manager system in determining whether  
23 to assess or waive a penalty under this section.

24 (4) The authority of the department to issue penalties pursuant  
25 to this section is phased in as follows:

26 (a) After October 1, 2018, for violations associated with  
27 buildings greater than fifty thousand square feet that took place in  
28 calendar year 2017 or later; and

29 (b) After April 1, 2018, for violations associated with buildings  
30 greater than twenty thousand square feet that took place in calendar  
31 year 2018 or later.

32 (5) A proprietor may appeal any penalties imposed pursuant to  
33 this section to the pollution control hearings board pursuant to the  
34 procedures established by chapter 43.21B RCW.

35 (6) All penalties recovered under this section shall be paid into  
36 the state treasury and credited to the general fund.

37 **Sec. 8.** RCW 43.21B.110 and 2013 c 291 s 33 are each amended to  
38 read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and  
2 decide appeals from the following decisions of the department, the  
3 director, local conservation districts, the air pollution control  
4 boards or authorities as established pursuant to chapter 70.94 RCW,  
5 local health departments, the department of natural resources, the  
6 department of fish and wildlife, the parks and recreation commission,  
7 and authorized public entities described in chapter 79.100 RCW:

8 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
9 70.94.431, section 7 of this act, 70.105.080, 70.107.050, 76.09.170,  
10 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
11 90.56.310, 90.56.330, and 90.64.102.

12 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
13 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
14 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

15 (c) A final decision by the department or director made under  
16 chapter 183, Laws of 2009.

17 (d) Except as provided in RCW 90.03.210(2), the issuance,  
18 modification, or termination of any permit, certificate, or license  
19 by the department or any air authority in the exercise of its  
20 jurisdiction, including the issuance or termination of a waste  
21 disposal permit, the denial of an application for a waste disposal  
22 permit, the modification of the conditions or the terms of a waste  
23 disposal permit, or a decision to approve or deny an application for  
24 a solid waste permit exemption under RCW 70.95.300.

25 (e) Decisions of local health departments regarding the grant or  
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27 (f) Decisions of local health departments regarding the issuance  
28 and enforcement of permits to use or dispose of biosolids under RCW  
29 70.95J.080.

30 (g) Decisions of the department regarding waste-derived  
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
32 decisions of the department regarding waste-derived soil amendments  
33 under RCW 70.95.205.

34 (h) Decisions of local conservation districts related to the  
35 denial of approval or denial of certification of a dairy nutrient  
36 management plan; conditions contained in a plan; application of any  
37 dairy nutrient management practices, standards, methods, and  
38 technologies to a particular dairy farm; and failure to adhere to the  
39 plan review and approval timelines in RCW 90.64.026.

1 (i) Any other decision by the department or an air authority  
2 which pursuant to law must be decided as an adjudicative proceeding  
3 under chapter 34.05 RCW.

4 (j) Decisions of the department of natural resources, the  
5 department of fish and wildlife, and the department that are  
6 reviewable under chapter 76.09 RCW, and the department of natural  
7 resources' appeals of county, city, or town objections under RCW  
8 76.09.050(7).

9 (k) Forest health hazard orders issued by the commissioner of  
10 public lands under RCW 76.06.180.

11 (l) Decisions of the department of fish and wildlife to issue,  
12 deny, condition, or modify a hydraulic project approval permit under  
13 chapter 77.55 RCW.

14 (m) Decisions of the department of natural resources that are  
15 reviewable under RCW 78.44.270.

16 (n) Decisions of an authorized public entity under RCW 79.100.010  
17 to take temporary possession or custody of a vessel or to contest the  
18 amount of reimbursement owed that are reviewable by the hearings  
19 board under RCW 79.100.120.

20 (2) The following hearings shall not be conducted by the hearings  
21 board:

22 (a) Hearings required by law to be conducted by the shorelines  
23 hearings board pursuant to chapter 90.58 RCW.

24 (b) Hearings conducted by the department pursuant to RCW  
25 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
26 90.44.180.

27 (c) Appeals of decisions by the department under RCW 90.03.110  
28 and 90.44.220.

29 (d) Hearings conducted by the department to adopt, modify, or  
30 repeal rules.

31 (3) Review of rules and regulations adopted by the hearings board  
32 shall be subject to review in accordance with the provisions of the  
33 administrative procedure act, chapter 34.05 RCW.

34 **Sec. 9.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
35 read as follows:

36 (1) The hearings board shall only have jurisdiction to hear and  
37 decide appeals from the following decisions of the department, the  
38 director, local conservation districts, the air pollution control  
39 boards or authorities as established pursuant to chapter 70.94 RCW,

1 local health departments, the department of natural resources, the  
2 department of fish and wildlife, the parks and recreation commission,  
3 and authorized public entities described in chapter 79.100 RCW:

4 (a) Civil penalties imposed pursuant to RCW 18.104.155,  
5 70.94.431, section 7 of this act, 70.105.080, 70.107.050, 76.09.170,  
6 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
7 90.56.310, 90.56.330, and 90.64.102.

8 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
9 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
10 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

11 (c) Except as provided in RCW 90.03.210(2), the issuance,  
12 modification, or termination of any permit, certificate, or license  
13 by the department or any air authority in the exercise of its  
14 jurisdiction, including the issuance or termination of a waste  
15 disposal permit, the denial of an application for a waste disposal  
16 permit, the modification of the conditions or the terms of a waste  
17 disposal permit, or a decision to approve or deny an application for  
18 a solid waste permit exemption under RCW 70.95.300.

19 (d) Decisions of local health departments regarding the grant or  
20 denial of solid waste permits pursuant to chapter 70.95 RCW.

21 (e) Decisions of local health departments regarding the issuance  
22 and enforcement of permits to use or dispose of biosolids under RCW  
23 70.95J.080.

24 (f) Decisions of the department regarding waste-derived  
25 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
26 decisions of the department regarding waste-derived soil amendments  
27 under RCW 70.95.205.

28 (g) Decisions of local conservation districts related to the  
29 denial of approval or denial of certification of a dairy nutrient  
30 management plan; conditions contained in a plan; application of any  
31 dairy nutrient management practices, standards, methods, and  
32 technologies to a particular dairy farm; and failure to adhere to the  
33 plan review and approval timelines in RCW 90.64.026.

34 (h) Any other decision by the department or an air authority  
35 which pursuant to law must be decided as an adjudicative proceeding  
36 under chapter 34.05 RCW.

37 (i) Decisions of the department of natural resources, the  
38 department of fish and wildlife, and the department that are  
39 reviewable under chapter 76.09 RCW, and the department of natural

1 resources' appeals of county, city, or town objections under RCW  
2 76.09.050(7).

3 (j) Forest health hazard orders issued by the commissioner of  
4 public lands under RCW 76.06.180.

5 (k) Decisions of the department of fish and wildlife to issue,  
6 deny, condition, or modify a hydraulic project approval permit under  
7 chapter 77.55 RCW.

8 (l) Decisions of the department of natural resources that are  
9 reviewable under RCW 78.44.270.

10 (m) Decisions of an authorized public entity under RCW 79.100.010  
11 to take temporary possession or custody of a vessel or to contest the  
12 amount of reimbursement owed that are reviewable by the hearings  
13 board under RCW 79.100.120.

14 (2) The following hearings shall not be conducted by the hearings  
15 board:

16 (a) Hearings required by law to be conducted by the shorelines  
17 hearings board pursuant to chapter 90.58 RCW.

18 (b) Hearings conducted by the department pursuant to RCW  
19 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
20 90.44.180.

21 (c) Appeals of decisions by the department under RCW 90.03.110  
22 and 90.44.220.

23 (d) Hearings conducted by the department to adopt, modify, or  
24 repeal rules.

25 (3) Review of rules and regulations adopted by the hearings board  
26 shall be subject to review in accordance with the provisions of the  
27 administrative procedure act, chapter 34.05 RCW.

28 NEW SECTION. **Sec. 10.** Section 8 of this act expires June 30,  
29 2019.

30 NEW SECTION. **Sec. 11.** Section 9 of this act takes effect June  
31 30, 2019."

32 Correct the title.

EFFECT: Makes the following changes to the second substitute  
bill:

(1) Transfers oversight of the benchmarking-related activities of  
investor-owned utilities from the department of commerce to the  
utilities and transportation commission.

(2) Directs the department of commerce to determine the type of energy cost data that utilities and building owners must provide, taking into account existing utility billing systems and the ability to establish a common energy cost metric across utilities.

(3) Clarifies that the disclosure of energy use information by utilities to building owners may occur on a per-billing period basis, rather than a monthly basis.

(4) Eliminates, effective in 2019, the requirement in current state law that building owners provide building energy use information to prospective lessees and purchasers during real estate transactions.

(5) Directs utilities to aggregate the energy use information of buildings that have three or more associated utility accounts, rather than disclosing to the building owner the energy use information associated with each of the individual accounts.

(6) Requires utility customers in buildings with one or two utility accounts to provide consent to building owners for the building owner to obtain building energy use information.

(7) Eliminates the exemption from public disclosure for buildings occupied by a building owner or a single tenant with proprietary energy use information, and instead authorizes building owners to request that the department of commerce withhold building energy information if disclosure would cause undue harm to a building occupant's business interests or to the public interest.

(8) Requires, upon building owner request, the department of commerce to aggregate the energy use information of buildings with one or two utility accounts prior to publication.

(9) Specifies that the department of commerce must publish an annual report regarding building energy use and the implementation of benchmarking requirements.

(10) Eliminates campuses of buildings that exceed 20,000 square feet in conditioned space from benchmarking requirements.

(11) Changes the implementation timeline of penalties for benchmarking violations by applying penalties to buildings of over 50,000 square feet of conditioned space beginning in calendar year 2017 and buildings of over 20,000 square feet in 2018.

(12) Requires any public entities that adopt building energy use disclosure requirements to build upon, incorporate, and not conflict with the statewide building energy use disclosure requirements.

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