

2 SB 5692 - S AMD

3 By Senators Sutherland and Hochstatter

4 ADOPTED 2/11/94

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** Unless the context clearly requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

10 (1) "Bondable conservation investment" means all expenditures made
11 by electrical, gas, or water companies with respect to energy or water
12 conservation measures and services intended to improve the efficiency
13 of electricity, gas, or water end use, including related carrying costs
14 if:

15 (a) The conservation measures and services do not produce assets
16 that would be bondable utility property under the general utility
17 mortgage of the electrical, gas, or water company;

18 (b) The commission has determined that the expenditures were
19 incurred in conformance with the terms and conditions of a conservation
20 service tariff in effect with the commission at the time the costs were
21 incurred, and at the time of such determination the commission finds
22 that the company has proven that the costs were prudent, that the terms
23 and conditions of the financing are reasonable, and that financing
24 under this chapter is more favorable to the customer than other
25 reasonably available alternatives;

26 (c) The commission has approved inclusion of the expenditures in
27 rate base and has not ordered that they be currently expensed; and

28 (d) The commission has not required that the measures demonstrate
29 that energy savings have persisted at a certain level for a certain
30 period before approving the cost of these investments as bondable
31 conservation investment.

32 (2) "Conservation bonds" means bonds, notes, certificates of
33 beneficial interests in trusts, or other evidences of indebtedness or
34 ownership that:

1 (a) The commission determines at or before the time of issuance are
2 issued to finance or refinance bondable conservation investment by an
3 electrical, gas or water company; and

4 (b) Rely partly or wholly for repayment on conservation investment
5 assets and revenues arising with respect thereto.

6 (3) "Conservation investment assets" means the statutory right of
7 an electrical, gas, or water company:

8 (a) To have included in rate base all of its bondable conservation
9 investment and related carrying costs; and

10 (b) To receive through rates revenues sufficient to recover the
11 bondable conservation investment and the costs of equity and debt
12 capital associated with it, including, without limitation, the payment
13 of principal, premium, if any, and interest on conservation bonds.

14 (4) "Finance subsidiary" means any corporation, company,
15 association, joint stock association, or trust that is beneficially
16 owned, directly or indirectly, by an electrical, gas, or water company,
17 or in the case of a trust issuing conservation bonds consisting of
18 beneficial interests, for which an electrical, gas, or water company or
19 a subsidiary thereof is the grantor, or an unaffiliated entity formed
20 for the purpose of financing or refinancing approved conservation
21 investment, and that acquires conservation investment assets directly
22 or indirectly from such company in a transaction approved by the
23 commission.

24 NEW SECTION. Sec. 2. (1) An electrical, gas, or water company may
25 file a conservation service tariff with the commission. The tariff
26 shall provide:

27 (a) The terms and conditions upon which the company will offer the
28 conservation measures and services specified in the tariff;

29 (b) The period of time during which the conservation measures and
30 services will be offered; and

31 (c) The maximum amount of expenditures to be made during a
32 specified time period by the company on conservation measures and
33 services specified in the tariff.

34 (2) The commission has the same authority with respect to a
35 proposed conservation service tariff as it has with regard to any other
36 schedule or classification the effect of which is to change any rate or
37 charge, including, without limitation, the power granted by RCW
38 80.04.130 to conduct a hearing concerning a proposed conservation

1 service tariff and the reasonableness and justness thereof, and pending
2 such hearing and the decision thereon the commission may suspend the
3 operation of the tariff for a period not exceeding ten months from the
4 time the tariff would otherwise go into effect.

5 (3) An electrical, gas, or water company may from time to time
6 apply to the commission for a determination that specific expenditures
7 may under its tariff constitute bondable conservation investment. A
8 company may request this determination by the commission in separate
9 proceedings for this purpose or in connection with a general rate case.
10 The commission may designate the expenditures as bondable conservation
11 investment as defined in section 1(1) of this act if it finds that such
12 designation is in the public interest.

13 (4) The commission shall include in rate base all bondable
14 conservation investment. The commission shall approve rates for
15 service by electrical, gas, and water companies at levels sufficient to
16 recover all of the expenditures of the bondable conservation investment
17 included in rate base and the costs of equity and debt capital
18 associated therewith, including, without limitation, the payment of
19 principal, premium, if any, and interest on conservation bonds. The
20 rates so determined may be included in general rate schedules or may be
21 expressed in one or more separate rate schedules. The commission shall
22 not revalue bondable conservation investment for rate-making purposes,
23 to determine that revenues required to recover bondable conservation
24 investment and associated equity and debt capital costs are unjust,
25 unreasonable, or in any way impair or reduce the value of conservation
26 investment assets or that would impair the timing or the amount of
27 revenues arising with respect to conservation investment assets that
28 have been pledged to secure conservation bonds.

29 (5) Nothing in this chapter precludes the commission from adopting
30 or continuing other conservation policies and programs intended to
31 provide incentives for and to encourage utility investment in improving
32 the efficiency of energy or water end use. However, the policies or
33 programs shall not impair conservation investment assets. This chapter
34 is not intended to be an exclusive or mandatory approach to
35 conservation programs for electrical, gas, and water companies, and no
36 such company is obligated to file conservation service tariffs under
37 this chapter, to apply to the commission for a determination that
38 conservation costs constitute bondable conservation investment within
39 the meaning of this chapter, or to issue conservation bonds.

1 (6)(a) If a customer of an electrical, gas, or water company for
2 whose benefit the company made expenditures for conservation measures
3 or services ceases to be a customer of such company for one or more of
4 the following reasons, the commission may require that the portion of
5 such conservation expenditures that had been included in rate base but
6 not theretofore recovered in the rates of such company be removed from
7 the rate base of the company:

8 (i) The customer ceases to be a customer of the supplier of energy
9 or water, and the customer repays to the company the portion of the
10 conservation expenditures made for the benefit of such customer that
11 has not theretofore been recovered in rates of the company; or

12 (ii) The company sells its property used to serve such customer and
13 the customer ceases to be a customer of the company as a result of such
14 action.

15 (b) An electrical, gas, or water company may include in a contract
16 for a conservation measure or service, and the commission may by rule
17 or order require to be included in such contracts, a provision
18 requiring that, if the customer ceases to be a customer of that
19 supplier of energy or water, the customer shall repay to the company
20 the portion of the conservation expenditures made for the benefit of
21 such customer that has not theretofore been recovered in rates of the
22 company.

23 NEW SECTION. **Sec. 3.** (1) Electrical, gas, and water companies, or
24 finance subsidiaries, may issue conservation bonds upon approval by the
25 commission.

26 (2) Electrical, gas, and water companies, or finance subsidiaries
27 may pledge conservation investment assets as collateral for
28 conservation bonds by obtaining an order of the commission approving an
29 issue of conservation bonds and providing for a security interest in
30 conservation investment assets. A security interest in conservation
31 investment assets is created and perfected only upon entry of an order
32 by the commission approving a contract governing the granting of the
33 security interest and the filing with the department of licensing of a
34 UCC-1 financing statement, showing such pledgor as "debtor" and
35 identifying such conservation investment assets and the bondable
36 conservation investment associated therewith. The security interest is
37 enforceable against the debtor and all third parties, subject to the
38 rights of any third parties holding security interests in the

1 conservation investment assets perfected in the manner described in
2 this section, if value has been given by the purchasers of conservation
3 bonds. An approved security interest in conservation investment assets
4 is a continuously perfected security interest in all revenues and
5 proceeds arising with respect to the associated bondable conservation
6 investment, whether or not such revenues have accrued. Upon such
7 approval, the priority of such security interest shall be as set forth
8 in the contract governing the conservation bonds. Conservation
9 investment assets constitute property for the purposes of contracts
10 securing conservation bonds whether or not the related revenues have
11 accrued.

12 (3) The relative priority of a security interest created under this
13 section is not defeated or adversely affected by the commingling of
14 revenues arising with respect to conservation investment assets with
15 other funds of the debtor. The holders of conservation bonds shall
16 have a perfected security interest in all cash and deposit accounts of
17 the debtor in which revenues arising with respect to conservation
18 investment assets pledged to such holders have been commingled with
19 other funds, but such perfected security interest is limited to an
20 amount not greater than the amount of such revenues received by the
21 debtor within twelve months before (a) any default under the
22 conservation bonds held by the holders or (b) the institution of
23 insolvency proceedings by or against the debtor, less payments from
24 such revenues to the holders during such twelve-month period. If an
25 event of default occurs under an approved contract governing
26 conservation bonds, the holders of conservation bonds or their
27 authorized representatives, as secured parties, may foreclose or
28 otherwise enforce the security interest in the conservation investment
29 assets securing the conservation bonds, subject to the rights of any
30 third parties holding prior security interests in the conservation
31 investment assets perfected in the manner provided in this section.
32 Upon application by the holders of their representatives, without
33 limiting their other remedies, the commission shall order the
34 sequestration and payment to the holders or their representatives of
35 revenues arising with respect to the conservation investment assets
36 pledged to such holders. Any such order shall remain in full force and
37 effect notwithstanding any bankruptcy, reorganization, or other
38 insolvency proceedings with respect to the debtor. Any surplus in
39 excess of amounts necessary to pay principal, premium, if any,

1 interest, and expenses arising under the contract governing the
2 conservation bonds shall be remitted to the debtor electrical, gas, or
3 water company or the debtor finance subsidiary.

4 (4) The granting, perfection, and enforcement of security interests
5 in conservation investment assets to secure conservation bonds is
6 governed by this chapter rather than by chapter 62A.9 RCW

7 (5) A transfer of conservation investment assets by an electrical,
8 gas, or water company to a finance subsidiary, which such parties have
9 in the governing documentation expressly stated to be a sale or other
10 absolute transfer, in a transaction approved in an order issued by the
11 commission and in connection with the issuance by such finance
12 subsidiary of conservation bonds, shall be treated as a true sale, and
13 not as a pledge or other financing, of such conservation investment
14 assets. According the holders of conservation bonds a preferred right
15 to revenues of the electrical, gas, or water company, or the provision
16 by such company of other credit enhancement with respect to
17 conservation bonds, does not impair or negate the characterization of
18 any such transfer as a true sale.

19 (6) Any successor to an electrical, gas, or water company pursuant
20 to any bankruptcy, reorganization, or other insolvency proceeding shall
21 perform and satisfy all obligations of the company under an approved
22 contract governing conservation bonds, in the same manner and to the
23 same extent as such company before any such proceeding, including,
24 without limitation, collecting and paying to the bondholders or their
25 representatives revenues arising with respect to the conservation
26 investment assets pledged to secure the conservation bonds.

27 NEW SECTION. **Sec. 4.** (1) Costs incurred before the effective date
28 of this section by electrical, gas, or water companies with respect to
29 energy or water conservation measures and services intended to improve
30 the efficiency of energy or water end use shall constitute bondable
31 conservation investment for purposes of sections 1 through 4 of this
32 act, if:

33 (a) The commission has previously issued a rate order authorizing
34 the inclusion of such costs in rate base; and

35 (b) The commission authorizes the issuance of conservation bonds
36 secured by conservation investment assets associated with such costs.

37 (2) If costs incurred before the effective date of this section by
38 electrical, gas, or water companies with respect to energy or water

1 conservation measures intended to improve the efficiency of energy or
2 water end use have not previously been considered by the commission for
3 inclusion in rate base, an electrical, gas, or water company may apply
4 to the commission for approval of such costs. If the commission finds
5 that the expenditures are a bondable conservation investment, the
6 commission shall by order designate such expenditures as bondable
7 conservation investment, which shall be subject to sections 1 through
8 4 of this act.

9 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act are each
10 added to chapter 80.28 RCW."

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13 ADOPTED 2/11/94

14 On page 1, line 2 of the title, after "companies;" strike the
15 remainder of the title and insert "and adding new sections to chapter
16 80.28 RCW."

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