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**SUBSTITUTE SENATE BILL 5692**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Energy & Utilities (originally sponsored by Senators Sutherland, Moore, Prentice, Jesernig, Williams, A. Smith, Amondson, Hochstatter, Roach, West and Oke)

Read first time 01/28/94.

1 AN ACT Relating to electrical, gas, and water companies; providing  
2 for financing and rate regulation of investment in conservation  
3 measures and services; and adding new sections to chapter 80.28 RCW.

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

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
6 otherwise, the definitions in this section apply throughout sections 2  
7 through 5 of this act.

8 (1) "Approved conservation investment" means all costs incurred by  
9 electrical, gas, or water companies with respect to energy or water  
10 conservation measures and services intended to improve the efficiency  
11 of energy or water end use, if:

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

15 (b) The commission has determined that the costs were incurred in  
16 conformance with the terms and conditions of a conservation service  
17 tariff in effect with the commission at the time the costs were  
18 incurred, unless at the time of such determination the commission  
19 disallows the costs as imprudent.

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

4 (a) The commission determines at or before the time of issuance are  
5 issued to finance or refinance approved conservation investment by an  
6 electrical, gas, or water company; and

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

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

11 (a) To have included in the rate base all of its approved  
12 conservation investment and related carrying costs; and

13 (b) To receive through rates revenues sufficient to recover the  
14 approved conservation investment and the costs of equity and debt  
15 capital associated with it, using the capital structure of the  
16 electrical, gas, or water company including finance subsidiaries of the  
17 company, including, without limitation, the payment of principal,  
18 premium, if any, and interest on conservation bonds.

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

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

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

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

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

1 (2) The commission shall have the same authority with respect to a  
2 proposed conservation service tariff as it has with regard to any other  
3 schedule or classification the effect of which is to change any rate or  
4 charge, including, without limitation, the power granted by RCW  
5 80.04.130 to conduct a hearing concerning a proposed conservation  
6 service tariff and the reasonableness and justness of the tariff, and  
7 pending the hearing and the decision on the hearing the commission may  
8 suspend the operation of the tariff for a period not exceeding ten  
9 months from the time the same would otherwise go into effect.

10 (3) An electrical, gas, or water company may from time to time  
11 apply to the commission for a determination that specific costs  
12 constitute approved conservation investment. A company may request  
13 this determination by the commission in separate proceedings for this  
14 purpose or in connection with rate proceedings, including both general  
15 rate cases and periodic rate adjustment proceedings. The commission  
16 shall designate the costs as approved conservation investment if it  
17 finds that the costs were incurred in conformance with the terms and  
18 conditions of a conservation service tariff, unless at the time of the  
19 determination the commission disallows the costs as imprudent.

20 (4) The commission shall include in the rate base all approved  
21 conservation investment and related carrying costs. The commission  
22 shall approve rates for service by electrical, gas, and water companies  
23 at levels sufficient to recover all of the costs of the approved  
24 conservation investment included in the rate base and the costs of  
25 equity and debt capital associated therewith, using the capital  
26 structure of the electrical, gas, or water company including finance  
27 subsidiaries of the company, including, without limitation, the payment  
28 of principal, premium, if any, and interest on conservation bonds. The  
29 rates so determined may be included in general rate schedules or may be  
30 expressed in one or more separate rate schedules. The commission shall  
31 not have authority to revalue approved conservation investment for  
32 rate-making purposes, to determine that revenues required to recover  
33 approved conservation investment and associated equity and debt capital  
34 costs are unjust, unreasonable, or in any way in violation of law, or  
35 to take any other action that would impair or reduce the value of  
36 conservation investment assets or that would impair the timing or the  
37 amount of revenues arising with respect to conservation investment  
38 assets that have been pledged to secure conservation bonds.

1 (5) Nothing in sections 2 through 5 of this act shall preclude the  
2 commission from adopting or continuing other conservation policies and  
3 programs intended to provide incentives for and to encourage utility  
4 investment in improving the efficiency of energy or water and use;  
5 provided, that the policies or programs shall not impair conservation  
6 investment assets. Sections 2 through 5 of this act are not intended  
7 to be an exclusive or mandatory approach to conservation programs for  
8 electrical, gas, and water companies, and no such company is obligated  
9 to file conservation service tariffs under sections 2 through 5 of this  
10 act, to apply to the commission for a determination that conservation  
11 costs constitute approved conservation investment within the meaning of  
12 sections 2 through 5 of this act, or to issue conservation bonds.

13 NEW SECTION. **Sec. 3.** (1) Electrical, gas, and water companies, or  
14 finance subsidiaries, may issue conservation bonds upon approval by the  
15 commission of an application for authorization under RCW 80.08.040.

16 (2) Electrical, gas, and water companies, or finance subsidiaries,  
17 may pledge conservation investment assets as collateral for  
18 conservation bonds by obtaining an order of the commission approving an  
19 issue of conservation bonds and providing for a security interest in  
20 conservation investment assets. A security interest in conservation  
21 investment assets is created and perfected only upon entry of an order  
22 by the commission approving a contract governing the granting of the  
23 security interest and the filing with the department of financial  
24 institutions of a UCC-1 financing statement, showing such pledgor as  
25 "debtor" and identifying such conservation investment assets and the  
26 approved conservation investment associated therewith. The security  
27 interest is enforceable against the debtor and all third parties,  
28 subject to the rights of any third parties holding security interests  
29 in such conservation investment assets perfected in the manner  
30 described herein, when value has been given by the purchasers of  
31 conservation bonds. An approved security interest in conservation  
32 investment assets is a continuously perfected security interest in all  
33 revenues and proceeds arising with respect to the associated approved  
34 conservation investment, whether or not such revenues have accrued.  
35 Upon such approval, the priority of such security interest shall be as  
36 set forth in the contract governing the conservation bonds.  
37 Conservation investment assets shall constitute property for the

1 purposes of contracts securing conservation bonds whether or not the  
2 related revenues have accrued.

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

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

37 (5) A transfer of conservation investment assets by an electrical,  
38 gas, or water company to a finance subsidiary, which such parties have  
39 in the governing documentation expressly stated to be a sale or other

1 absolute transfer, in a transaction approved in an order issued by the  
2 commission and in connection with the issuance by such finance  
3 subsidiary of conservation bonds, shall, notwithstanding any other  
4 provision or principle of Washington law, be treated as a true sale,  
5 and not as a pledge or other financing, of such conservation investment  
6 assets. According the holders of conservation bonds a preferred right  
7 to revenues of the electrical, gas, or water company, or the provision  
8 by such company of other credit enhancement with respect to  
9 conservation bonds, shall not impair or negate the characterization of  
10 any such transfer as a true sale.

11 (6) Any successor to an electrical, gas, or water company pursuant  
12 to any bankruptcy, reorganization, or other insolvency proceeding shall  
13 perform and satisfy all obligations of such company under an approved  
14 contract governing conservation bonds, in the same manner and to the  
15 same extent as such company prior to any such proceeding, including,  
16 without limitation, collecting and paying to the bondholders or their  
17 representatives revenues arising with respect to the conservation  
18 investment assets pledged to secure the conservation bonds.

19 NEW SECTION. **Sec. 4.** (1) Costs incurred prior to the effective  
20 date of this act by electrical, gas, or water companies with respect to  
21 energy or water conservation measures and services intended to improve  
22 the efficiency of energy or water end use shall constitute approved  
23 conservation investment for purposes of sections 1 through 3 of this  
24 act, if:

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

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

29 (2) If costs incurred prior to the effective date of this act by  
30 electrical, gas, or water companies with respect to energy or water  
31 conservation measures intended to improve the efficiency of energy or  
32 water end use have not previously been considered by the commission for  
33 inclusion in the rate base, an electrical, gas, or water company may  
34 apply to the commission for approval of such costs. If the commission  
35 finds that the costs were incurred in conformance with the terms and  
36 conditions of a conservation service tariff in effect with the  
37 commission at the time, the commission shall by order designate such  
38 costs as approved conservation investment that are subject to the

1 provisions of sections 1 through 5 of this act, unless at the time of  
2 such determination the commission disallows the costs as imprudent.

3 NEW SECTION. **Sec. 5.** In order to assure that rates are not made  
4 unjust, unreasonable, unjustly discriminatory, or unduly preferential  
5 by reason of unrecovered investment in measures intended to improve the  
6 efficiency of energy end use, the commission may adopt rules specifying  
7 the kinds of measures that may be offered only under a contract that  
8 provides for recovery of unamortized investment if the customer ceases  
9 to purchase energy from the company for the use to which the measure  
10 relates. The rules may also provide for threshold levels of investment  
11 below which a contract is not required. After adoption of the rules,  
12 no gas company or electrical company may invest in such measures except  
13 in compliance with such regulations.

14 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each  
15 added to chapter 80.28 RCW.

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