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ENGROSSED SENATE BILL 5692

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By Senators Sutherland, Moore, Prentice, Jesernig, Williams, A. Smith, Amondson, Hochstatter, Roach, West and Oke

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1 AN ACT Relating to financing conservation investment by electrical,  
2 gas, and water companies; and adding new sections to chapter 80.28 RCW.

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

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
5 otherwise, the definitions in this section apply throughout this  
6 chapter.

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

15 (b) The commission has determined that the expenditures were  
16 incurred in conformance with the terms and conditions of a conservation  
17 service tariff in effect with the commission at the time the costs were  
18 incurred, and at the time of such determination the commission finds  
19 that the company has proven that the costs were prudent, that the terms

1 and conditions of the financing are reasonable, and that financing  
2 under this chapter is more favorable to the customer than other  
3 reasonably available alternatives;

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

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

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

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

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

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

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

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

26 (4) "Finance subsidiary" means any corporation, company,  
27 association, joint stock association, or trust that is beneficially  
28 owned, directly or indirectly, by an electrical, gas, or water company,  
29 or in the case of a trust issuing conservation bonds consisting of  
30 beneficial interests, for which an electrical, gas, or water company or  
31 a subsidiary thereof is the grantor, or an unaffiliated entity formed  
32 for the purpose of financing or refinancing approved conservation  
33 investment, and that acquires conservation investment assets directly  
34 or indirectly from such company in a transaction approved by the  
35 commission.

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

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

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

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

8 (2) The commission has the same authority with respect to a  
9 proposed conservation service tariff as it has with regard to any other  
10 schedule or classification the effect of which is to change any rate or  
11 charge, including, without limitation, the power granted by RCW  
12 80.04.130 to conduct a hearing concerning a proposed conservation  
13 service tariff and the reasonableness and justness thereof, and pending  
14 such hearing and the decision thereon the commission may suspend the  
15 operation of the tariff for a period not exceeding ten months from the  
16 time the tariff would otherwise go into effect.

17 (3) An electrical, gas, or water company may from time to time  
18 apply to the commission for a determination that specific expenditures  
19 may under its tariff constitute bondable conservation investment. A  
20 company may request this determination by the commission in separate  
21 proceedings for this purpose or in connection with a general rate case.  
22 The commission may designate the expenditures as bondable conservation  
23 investment as defined in section 1(1) of this act if it finds that such  
24 designation is in the public interest.

25 (4) The commission shall include in rate base all bondable  
26 conservation investment. The commission shall approve rates for  
27 service by electrical, gas, and water companies at levels sufficient to  
28 recover all of the expenditures of the bondable conservation investment  
29 included in rate base and the costs of equity and debt capital  
30 associated therewith, including, without limitation, the payment of  
31 principal, premium, if any, and interest on conservation bonds. The  
32 rates so determined may be included in general rate schedules or may be  
33 expressed in one or more separate rate schedules. The commission shall  
34 not revalue bondable conservation investment for rate-making purposes,  
35 to determine that revenues required to recover bondable conservation  
36 investment and associated equity and debt capital costs are unjust,  
37 unreasonable, or in any way impair or reduce the value of conservation  
38 investment assets or that would impair the timing or the amount of

1 revenues arising with respect to conservation investment assets that  
2 have been pledged to secure conservation bonds.

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

14 (6)(a) If a customer of an electrical, gas, or water company for  
15 whose benefit the company made expenditures for conservation measures  
16 or services ceases to be a customer of such company for one or more of  
17 the following reasons, the commission may require that the portion of  
18 such conservation expenditures that had been included in rate base but  
19 not theretofore recovered in the rates of such company be removed from  
20 the rate base of the company:

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

25 (ii) The company sells its property used to serve such customer and  
26 the customer ceases to be a customer of the company as a result of such  
27 action.

28 (b) An electrical, gas, or water company may include in a contract  
29 for a conservation measure or service, and the commission may by rule  
30 or order require to be included in such contracts, a provision  
31 requiring that, if the customer ceases to be a customer of that  
32 supplier of energy or water, the customer shall repay to the company  
33 the portion of the conservation expenditures made for the benefit of  
34 such customer that has not theretofore been recovered in rates of the  
35 company.

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

1       (2) Electrical, gas, and water companies, or finance subsidiaries  
2 may pledge conservation investment assets as collateral for  
3 conservation bonds by obtaining an order of the commission approving an  
4 issue of conservation bonds and providing for a security interest in  
5 conservation investment assets. A security interest in conservation  
6 investment assets is created and perfected only upon entry of an order  
7 by the commission approving a contract governing the granting of the  
8 security interest and the filing with the department of licensing of a  
9 UCC-1 financing statement, showing such pledgor as "debtor" and  
10 identifying such conservation investment assets and the bondable  
11 conservation investment associated therewith. The security interest is  
12 enforceable against the debtor and all third parties, subject to the  
13 rights of any third parties holding security interests in the  
14 conservation investment assets perfected in the manner described in  
15 this section, if value has been given by the purchasers of conservation  
16 bonds. An approved security interest in conservation investment assets  
17 is a continuously perfected security interest in all revenues and  
18 proceeds arising with respect to the associated bondable conservation  
19 investment, whether or not such revenues have accrued. Upon such  
20 approval, the priority of such security interest shall be as set forth  
21 in the contract governing the conservation bonds. Conservation  
22 investment assets constitute property for the purposes of contracts  
23 securing conservation bonds whether or not the related revenues have  
24 accrued.

25       (3) The relative priority of a security interest created under this  
26 section is not defeated or adversely affected by the commingling of  
27 revenues arising with respect to conservation investment assets with  
28 other funds of the debtor. The holders of conservation bonds shall  
29 have a perfected security interest in all cash and deposit accounts of  
30 the debtor in which revenues arising with respect to conservation  
31 investment assets pledged to such holders have been commingled with  
32 other funds, but such perfected security interest is limited to an  
33 amount not greater than the amount of such revenues received by the  
34 debtor within twelve months before (a) any default under the  
35 conservation bonds held by the holders or (b) the institution of  
36 insolvency proceedings by or against the debtor, less payments from  
37 such revenues to the holders during such twelve-month period. If an  
38 event of default occurs under an approved contract governing  
39 conservation bonds, the holders of conservation bonds or their

1 authorized representatives, as secured parties, may foreclose or  
2 otherwise enforce the security interest in the conservation investment  
3 assets securing the conservation bonds, subject to the rights of any  
4 third parties holding prior security interests in the conservation  
5 investment assets perfected in the manner provided in this section.  
6 Upon application by the holders of their representatives, without  
7 limiting their other remedies, the commission shall order the  
8 sequestration and payment to the holders or their representatives of  
9 revenues arising with respect to the conservation investment assets  
10 pledged to such holders. Any such order shall remain in full force and  
11 effect notwithstanding any bankruptcy, reorganization, or other  
12 insolvency proceedings with respect to the debtor. Any surplus in  
13 excess of amounts necessary to pay principal, premium, if any,  
14 interest, and expenses arising under the contract governing the  
15 conservation bonds shall be remitted to the debtor electrical, gas, or  
16 water company or the debtor finance subsidiary.

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

20 (5) A transfer of conservation investment assets by an electrical,  
21 gas, or water company to a finance subsidiary, which such parties have  
22 in the governing documentation expressly stated to be a sale or other  
23 absolute transfer, in a transaction approved in an order issued by the  
24 commission and in connection with the issuance by such finance  
25 subsidiary of conservation bonds, shall be treated as a true sale, and  
26 not as a pledge or other financing, of such conservation investment  
27 assets. According the holders of conservation bonds a preferred right  
28 to revenues of the electrical, gas, or water company, or the provision  
29 by such company of other credit enhancement with respect to  
30 conservation bonds, does not impair or negate the characterization of  
31 any such transfer as a true sale.

32 (6) Any successor to an electrical, gas, or water company pursuant  
33 to any bankruptcy, reorganization, or other insolvency proceeding shall  
34 perform and satisfy all obligations of the company under an approved  
35 contract governing conservation bonds, in the same manner and to the  
36 same extent as such company before any such proceeding, including,  
37 without limitation, collecting and paying to the bondholders or their  
38 representatives revenues arising with respect to the conservation  
39 investment assets pledged to secure the conservation bonds.

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

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

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

11        (2) If costs incurred before the effective date of this section by  
12 electrical, gas, or water companies with respect to energy or water  
13 conservation measures intended to improve the efficiency of energy or  
14 water end use have not previously been considered by the commission for  
15 inclusion in rate base, an electrical, gas, or water company may apply  
16 to the commission for approval of such costs. If the commission finds  
17 that the expenditures are a bondable conservation investment, the  
18 commission shall by order designate such expenditures as bondable  
19 conservation investment, which shall be subject to sections 1 through  
20 4 of this act.

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

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