

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5692

Chapter 268, Laws of 1994

53rd Legislature
1994 Regular Session

CONSERVATION INVESTMENT BY PUBLIC UTILITIES

EFFECTIVE DATE: 6/9/94

Passed by the Senate February 11, 1994
YEAS 46 NAYS 3

JOEL PRITCHARD

President of the Senate

Passed by the House March 2, 1994
YEAS 94 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5692** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 2:16 p.m.

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5692

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

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

Read first time 02/09/93. Referred to Committee on Energy & Utilities.

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.

Passed the Senate February 11, 1994.

Passed the House March 2, 1994.

Approved by the Governor April 1, 1994.

Filed in Office of Secretary of State April 1, 1994.