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**HOUSE BILL 1278**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Fitzgibbon, Dunshee, Farrell, S. Hunt, Peterson, Fey, and Tarleton

AN ACT Relating to building energy use disclosure requirements; amending RCW 19.27A.140, 19.27A.170, 43.21B.110, 43.21B.110, 19.29A.030, 19.29A.040, 19.29A.010, and 80.28.010; reenacting and amending RCW 42.56.270; adding new sections to chapter 70.94 RCW; creating a new section; prescribing penalties; providing effective dates; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that reducing the energy use of buildings is an important component of the state's effort to meet its greenhouse gas emissions reduction obligations required by state law. Recent analysis considered by the 2014 climate change task force established by executive order indicates that more than one-third of the state's greenhouse gas emissions are attributable to sources that are associated with building energy use: Electricity generation and residential, commercial, and industrial uses of oil, coal, and natural gas.

(2) The establishment of meaningful, enforceable requirements for buildings to disclose their energy use data creates an important signal to building owners, prospective building owners, tenants, and others in real estate markets about the true environmental and financial costs associated with the use of that building. The disclosure of this information allows real estate market participants to make decisions that will save them money by lowering their utility bills and can provide an important incentive for real estate market participants to invest in emissions-reducing and energy-saving upgrades. Real-world experience confirms that the addition of building energy use information to real estate markets provides incentive for buildings to lower their energy use and associated greenhouse gas emissions: Analysis by the United States environmental protection agency has shown that commercial buildings that participate in a benchmarking program achieve a seven percent reduction in energy use over their first three years in the program. By simply providing information to real estate markets through required disclosure, the state will achieve substantial greenhouse gas emission reductions by reducing the energy use of buildings.

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

(4) In recognition of the benefits of establishing compliance mechanisms to accompany benchmarking requirements, the state energy strategy recommends improvements to the state's benchmarking law. This strategic energy report includes a recommendation that the state receive energy benchmarking data to assess the impact of the program and to better ensure statewide compliance with building energy benchmarking requirements. This act moves the state towards meeting the goals laid out in the state energy strategy by encouraging market-wide participation in the energy benchmarking program and by encouraging the consideration of building energy use information during market transactions. This act also requires the disclosure of important energy use information on utility bills in order to allow energy consumers to track changes in their energy use over time and to compare the energy use of their buildings against the energy use of other utility customers.

NEW SECTION. **Sec.**  A new section is added to chapter 70.94 RCW to read as follows:

(1)(a) The proprietor of each benchmarked building shall establish a United States environmental protection agency portfolio manager account and shall request that a qualifying utility servicing the benchmarked building provide the proprietor with energy consumption data for all accounts associated with the benchmarked building. The proprietor shall identify to the qualifying utility the accounts associated with each benchmarked building.

(b) A proprietor of a benchmarked building shall disclose the United States environmental protection agency's energy star portfolio manager benchmarking data and ratings to a prospective buyer, lessee, or lender for the preceding calendar year. A proprietor who delivers United States environmental protection agency's energy star portfolio manager benchmarking data and ratings to a prospective buyer, lessee, or lender is not required to provide additional information regarding energy consumption, and the information is deemed to be adequate to inform the prospective buyer, lessee, or lender regarding the United States environmental protection agency's energy star portfolio manager benchmarking data and ratings for each month of the preceding calendar year for the building that is being sold, leased, financed, or refinanced.

(2) By October 1, 2016, and April 1st of each year thereafter, the proprietor of a benchmarked building must transfer the United States environmental protection agency energy star portfolio manager benchmarking data and ratings for each month of the preceding calendar year to the department using an energy star portfolio manager sharing feature.

NEW SECTION. **Sec.**  A new section is added to chapter 70.94 RCW to read as follows:

(1) The department shall establish a United States environmental protection agency energy star portfolio manager account to support data-sharing transfers from proprietors.

(2)(a) The department shall make available benchmarks and energy consumption data for benchmarked buildings as follows:

(i) For benchmarks and data generated until December 31, 2019, all building energy use and benchmark information made available by the department must be aggregated.

(ii) For data generated beginning January 1, 2020, the department may make available the annual energy consumption, energy cost, and benchmarks of individual benchmarked buildings.

(b) For each benchmarked building, the department shall identify the city, county, and qualifying utility that provides service to the benchmarked building. The department must periodically update the energy consumption data and benchmarks that it makes available under this subsection.

(3) Beginning June 1, 2017, by June 1st of each subsequent year, the department shall analyze the data-sharing transfers from proprietors and other supporting information to determine:

(a) Which benchmarked buildings in Washington have disclosed and transferred their energy consumption data and benchmark ratings as required by section 2 of this act during the preceding calendar year; and

(b) Which benchmarked buildings in Washington have failed to disclose and transfer the energy consumption data and benchmark ratings as required by section 2 of this act.

(4) Until December 31, 2019, the department, consistent with RCW 42.56.270, shall treat individual benchmarked building energy use disclosure data and benchmarking information as confidential. Prior to the disclosure or publication of building energy use benchmarking and data in public documents, the department must aggregate the information sufficiently to conceal detection of individual nonpublic benchmarked building energy use.

NEW SECTION. **Sec.**  A new section is added to chapter 70.94 RCW to read as follows:

(1) The department is authorized to enforce the disclosure requirements of RCW 19.27A.170 and section 2 of this act. The department is authorized to investigate and determine if a qualifying utility or proprietor has not complied with the requirements of RCW 19.27A.170 or section 2 of this act. The department shall work with qualifying utilities to come into compliance with the energy benchmarking requirements of this chapter.

(2)(a) The department may designate a nonprofit organization to assist in the implementation and administration of its energy benchmarking responsibilities under this chapter.

(b) The department or a nonprofit organization designated under this subsection may offer or contract for programs to provide outreach and technical assistance to proprietors of buildings with inefficient performance or above average energy use as identified in the annual analysis required under section 3(3) of this act. The department may encourage and facilitate the use of existing energy efficiency and energy use incentive programs by proprietors of buildings with inefficient performance or above average energy use.

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

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

(1) "Benchmark" means the energy used by a facility as recorded monthly for at least one year and the facility characteristics information inputs required for a portfolio manager account.

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

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

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

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

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

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

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

(7) "Energy consumption data" means the monthly amount of energy consumed by a customer as recorded by the applicable energy meter for the most recent twelve-month period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) "Benchmarked building" means:

(a) A building that exceeds ten thousand square feet of conditioned space that is not a factory group F building, a residential group R building other than a group R-2 building containing five or more dwelling units, or a miscellaneous and utility group U building, as defined in the 2012 Washington state building code;

(b) A campus of buildings that are served by a single energy utility account and together exceed ten thousand square feet of conditioned space, but that are not comprised exclusively of any combination of factory group F, residential group R buildings other than a group R-2 building containing five or more dwelling units, or miscellaneous and utility group U buildings, as defined in the 2012 Washington state building code.

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

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

(1) ((~~On and after January 1, 2010,~~))Qualifying utilities shall maintain records of the energy consumption data of all ((~~nonresidential and qualifying public agency~~)) buildings to which they provide service. This data must be maintained ((~~for at least the most recent twelve months~~)) in a format compatible for uploading to the United States environmental protection agency's energy star portfolio manager. In carrying out the requirements of this section, qualifying utilities shall disclose and update energy consumption data and benchmark inputs each month and shall update and maintain historical energy consumption data and benchmark inputs for each month. The data disclosed and updated by qualifying utilities must be continuous and date back to no later than January 1, 2016.

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

(b) Upon the request of the benchmarked building proprietor, a qualifying utility must provide the proprietor with energy consumption data for all accounts associated with the benchmarked building. If there are two or more accounts associated with the benchmarked building, the utility must provide the proprietor with energy consumption data that has been aggregated from all accounts associated with the benchmarked building.

(3) Until January 1, 2017, in carrying out the requirements of this section, a qualifying utility shall use any method for providing the specified data in order to maximize efficiency and minimize overall program cost. Qualifying utilities are encouraged to consult with the United States environmental protection agency and their customers in developing reasonable reporting options. After January 1, 2017, qualifying utilities shall upload the benchmarked building energy consumption data and other data inputs necessary to benchmark by using energy star portfolio manager web services in order to automatically upload the specified data to the United States environmental protection agency's energy star portfolio manager.

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

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

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

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

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

(5) Nothing in this section or section 3 of this act changes or limits the authority of a public entity to adopt building energy use disclosure requirements that are different from or in addition to the requirements imposed by this section.

NEW SECTION. **Sec.**  A new section is added to chapter 70.94 RCW to read as follows:

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

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

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

(ii) If the proprietor is not in compliance with the disclosure requirements of section 2 of this act within one hundred eighty days of receipt of the notice of violation, the department may impose a total cumulative penalty of up to one thousand dollars;

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

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

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

(3)(a) If the department determines that the proprietor has complied with the disclosure requirements of section 2 of this act within ninety days of receipt of the notice of violation and the proprietor has not previously been served with a notice of violation by the department, the department must waive the penalty for the violation.

(b) The department may not impose a penalty under subsection (1) or (2) of this section if the department determines that the failure of the proprietor to disclose and transfer the information required by section 2 of this act is due to the failure of a qualifying utility to provide the required information.

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

(a) After October 1, 2017, for violations associated with buildings greater than seventy-five thousand square feet that took place in calendar year 2016 or later;

(b) After April 1, 2018, for violations associated with buildings greater than fifty thousand square feet that took place in calendar year 2017 or later;

(c) After April 1, 2019, for violations associated with buildings greater than twenty thousand square feet that took place in calendar year 2018 or later; and

(d) After April 1, 2021, for violations associated with buildings greater than ten thousand square feet that took place in calendar year 2020 or later.

(5) A proprietor may appeal any penalties imposed pursuant to this section to the pollution control hearings board pursuant to the procedures established by RCW 43.21B.300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and 2014 c 144 s 6 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; ((~~and~~))

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4); ((~~and~~))

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities; and

(23) Until December 31, 2019, and consistent with section 3 of this act, unaggregated building energy use benchmarking and data pertaining to the energy use of an individual nonpublic benchmarked building or associated utility account transferred or disclosed to the department of ecology pursuant to section 2 of this act.

**Sec.**  RCW 19.29A.030 and 1998 c 300 s 4 are each amended to read as follows:

Except as otherwise provided in RCW 19.29A.040, an electric utility shall:

(1) Provide notice to all of its retail electric customers that the disclosures required in RCW 19.29A.020 are available without charge upon request. Such notice shall be provided at the time service is established and either included as a prominent part of each customer's bill or in a ((~~written~~)) notice ((~~mailed~~))sent to each customer at least once a year ((~~thereafter~~)). Required disclosures shall be provided without charge, ((~~in writing~~)) using plain language that is understandable to an ordinary customer, and presented in a form that is clear and conspicuous.

(2) Disclose the following information in a prominent manner on all billing statements sent to retail electric customers, or by a separate ((~~written~~)) notice ((~~mailed~~))sent to all retail electric customers at least quarterly and at the same time as a billing statement: "YOUR BILL INCLUDES CHARGES FOR ELECTRICITY, DELIVERY SERVICES, GENERAL ADMINISTRATION AND OVERHEAD, METERING, TAXES, CONSERVATION EXPENSES, AND OTHER ITEMS."

(3) Disclose the following information in a prominent manner on all billing statements sent to retail electric customers or by a separate notice sent to all retail electric customers at least quarterly and at the same time as a billing statement:

(a) The retail electric customer's electricity consumption for:

(i) The current billing period;

(ii) Each of the eleven previous billing periods; and

(iii) The total for the twelve consecutive billing periods in (a)(i) and (ii) of this subsection.

(b) The sum cost to a retail electric customer, including all fees and taxes, of the customer's electricity consumption for:

(i) The current billing period;

(ii) Each of the eleven previous billing periods; and

(iii) The total for the twelve consecutive billing periods in (b)(i) and (ii) of this subsection.

(c) A statement, chart, or graph comparing the retail electric customer's electricity consumption and sum cost of electricity consumption for the total of the twelve consecutive billing periods with the average electricity consumption and average sum cost of electricity consumption of similarly situated customers during the same time period.

(4) Upon the request of the proprietor of a building associated with a retail electric customer account, disclose to the proprietor the information provided under subsection (3) of this section. The proprietor may request that the information provided under subsection (3) of this section be disclosed each billing period.

**Sec.**  RCW 19.29A.040 and 2001 c 214 s 29 are each amended to read as follows:

Except as provided in RCW 19.29A.030 (3) and (4), the provisions of RCW 19.29A.020, 19.29A.030, section 5, chapter 300, Laws of 1998, and RCW 19.29A.090 do not apply to a small utility. However, nothing in this section prohibits the governing body of a small utility from determining the utility should comply with any or all of the provisions of RCW 19.29A.020, 19.29A.030, section 5, chapter 300, Laws of 1998, and RCW 19.29A.090, which governing bodies are encouraged to do.

**Sec.**  RCW 19.29A.010 and 2000 c 213 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Biomass generation" means electricity derived from burning solid organic fuels from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(2) "Bonneville power administration system mix" means a generation mix sold by the Bonneville power administration that is net of any resource specific sales and that is net of any electricity sold to direct service industrial customers, as defined in section 3(8) of the Pacific Northwest electric power planning and conservation act (16 U.S.C. Sec. 839(a)(8)).

(3) "Coal generation" means the electricity produced by a generating facility that burns coal as the primary fuel source.

(4) "Commission" means the utilities and transportation commission.

(5) "Conservation" means an increase in efficiency in the use of energy use that yields a decrease in energy consumption while providing the same or higher levels of service. Conservation includes low-income weatherization programs.

(6) "Consumer-owned utility" means a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, or a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(7) "Declared resource" means an electricity source specifically identified by a retail supplier to serve retail electric customers. A declared resource includes a stated quantity of electricity tied directly to a specified generation facility or set of facilities either through ownership or contract purchase, or a contractual right to a stated quantity of electricity from a specified generation facility or set of facilities.

(8) "Department" means the department of ((~~community, trade, and economic development~~))commerce.

(9) "Electricity information coordinator" means the organization selected by the department under RCW 19.29A.080 to: (a) Compile generation data in the Northwest power pool by generating project and by resource category; (b) compare the quantity of electricity from declared resources reported by retail suppliers with available generation from such resources; (c) calculate the net system power mix; and (d) coordinate with other comparable organizations in the western interconnection.

(10) "Electric meters in service" means those meters that record in at least nine of twelve calendar months in any calendar year not less than two hundred fifty kilowatt-hours per month.

(11) "Electricity product" means the electrical energy produced by a generating facility or facilities that a retail supplier sells or offers to sell to retail electric customers in the state of Washington, provided that nothing in this title shall be construed to mean that electricity is a good or product for the purposes of Title 62A RCW, or any other purpose. It does not include electrical energy generated on-site at a retail electric customer's premises.

(12) "Electric utility" means a consumer-owned or investor-owned utility as defined in this section.

(13) "Electricity" means electric energy measured in kilowatt-hours, or electric capacity measured in kilowatts, or both.

(14) "Fuel mix" means the actual or imputed sources of electricity sold to retail electric customers, expressed in terms of percentage contribution by resource category. The total fuel mix included in each disclosure shall total one hundred percent.

(15) "Geothermal generation" means electricity derived from thermal energy naturally produced within the earth.

(16) "Governing body" means the council of a city or town, the commissioners of an irrigation district, municipal electric utility, or public utility district, or the board of directors of an electric cooperative or mutual association that has the authority to set and approve rates.

(17) "High efficiency cogeneration" means electricity produced by equipment, such as heat or steam used for industrial, commercial, heating, or cooling purposes, that meets the federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978.

(18) "Hydroelectric generation" means a power source created when water flows from a higher elevation to a lower elevation and the flow is converted to electricity in one or more generators at a single facility.

(19) "Investor-owned utility" means a company owned by investors that meets the definition of RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(20) "Landfill gas generation" means electricity produced by a generating facility that uses waste gases produced by the decomposition of organic materials in landfills.

(21) "Natural gas generation" means electricity produced by a generating facility that burns natural gas as the primary fuel source.

(22) "Northwest power pool" means the generating resources included in the United States portion of the Northwest power pool area as defined by the western systems coordinating council.

(23) "Net system power mix" means the fuel mix in the Northwest power pool, net of: (a) Any declared resources in the Northwest power pool identified by in-state retail suppliers or out-of-state entities that offer electricity for sale to retail electric customers; (b) any electricity sold by the Bonneville power administration to direct service industrial customers; and (c) any resource specific sales made by the Bonneville power administration.

(24) "Oil generation" means electricity produced by a generating facility that burns oil as the primary fuel source.

(25) "Proprietary customer information" means: (a) Information that relates to the source and amount of electricity used by a retail electric customer, a retail electric customer's payment history, and household data that is made available by the customer solely by virtue of the utility-customer relationship; and (b) information contained in a retail electric customer's bill.

(26) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(27) "Resale" means the purchase and subsequent sale of electricity for profit, but does not include the purchase and the subsequent sale of electricity at the same rate at which the electricity was purchased.

(28) "Retail electric customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(29) "Retail supplier" means an electric utility that offers an electricity product for sale to retail electric customers in the state.

(30) "Small utility" means any consumer-owned utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

(31) "Solar generation" means electricity derived from radiation from the sun that is directly or indirectly converted to electrical energy.

(32) "State" means the state of Washington.

(33) "Waste incineration generation" means electricity derived from burning solid or liquid wastes from businesses, households, municipalities, or waste treatment operations.

(34) "Wind generation" means electricity created by movement of air that is converted to electrical energy.

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

**Sec.**  RCW 80.28.010 and 2011 c 214 s 11 are each amended to read as follows:

(1) All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 must be deemed as prudent and necessary for the operation of a utility.

(2) Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company, wastewater company, or water company, affecting or pertaining to the sale or distribution of its product or service, must be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15th through March 15th if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of commerce, which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15th and to pay for continued utility service. If the past due bill is not paid by the following October 15th, the customer is not eligible for protections under this chapter until the past due bill is paid. The plan may not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15th through March 15th. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company shall disclose the following information in a prominent manner on all billing statements sent to customers or by a separate notice sent to all customers at least quarterly and at the same time as a billing statement:

(a) The customer's natural gas use in therms for:

(i) The current billing period;

(ii) Each of the eleven previous billing periods; and

(iii) The total for the twelve consecutive billing periods in (a)(i) and (ii) of this subsection.

(b) The sum cost to a customer, including all fees and taxes, of the customer's natural gas use for:

(i) The current billing period;

(ii) Each of the eleven previous billing periods; and

(iii) The total for the twelve consecutive billing periods in (b)(i) and (ii) of this subsection.

(c) A statement, chart, or graph comparing the customer's natural gas consumption and sum cost of natural gas consumption for the total of the twelve consecutive billing periods with the average natural gas consumption and average sum cost of natural gas consumption of similarly situated customers during the same time period.

(d) Upon the request of the proprietor of a building associated with a customer account, disclose to the proprietor the information provided under (a) and (b) of this subsection. The proprietor may request that the information provided under (a) and (b) of this subsection be disclosed each billing period.

(9) Every gas company, electrical company, wastewater company, and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product, or provision of its services, as will be efficient and safe to its employees and the public.

((~~(9)~~))(10) An agreement between the customer and the utility, whether oral or written, does not waive the protections afforded under this chapter.

((~~(10)~~))(11) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices.

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

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

NEW SECTION. **Sec.**  Sections 11 through 14 of this act take effect July 1, 2016.

**--- END ---**