S-1302.3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5293**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Carlyle, Nguyen, Palumbo, Das, Billig, Kuderer, Keiser, McCoy, Hunt, Liias, Frockt, Pedersen, and Wellman; by request of Governor Inslee)

AN ACT Relating to energy efficiency; amending RCW 19.27A.140, 19.27A.170, 19.27A.015, 19.27A.020, 19.27A.025, and 19.27.540; adding new sections to chapter 19.27A RCW; adding a new section to chapter 82.16 RCW; adding new sections to chapter 80.28 RCW; creating new sections; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that state policy encouraging energy efficiency has been extremely successful in reducing energy use, avoiding costly investment in new generating capacity, lowering customer energy bills, and reducing air pollution and greenhouse gas emissions. The state's 2019 biennial energy report indicates that utility conservation investments under chapter 19.285 RCW, the energy independence act, now save consumers more than seven hundred fifty million dollars annually, helping to keep Washington's electricity prices among the lowest in the nation.

(2) Studies by the Northwest power and conservation council and by individual Washington utilities repeatedly show that efficiency is the region's largest, cheapest, lowest risk energy resource; that without it, the Northwest would have needed to invest in additional natural gas-fired generation; and that, looking ahead, efficiency can approach the size of the region's hydropower system as a regional resource. The Northwest power and conservation council forecasts that with an aggressive new energy efficiency policy, the region can potentially meet one hundred percent of its electricity load growth over the next twenty years with energy efficiency.

(3) Energy efficiency investments that reduce energy use in buildings bring cobenefits that directly impact Washingtonians' quality of life. These benefits include improved indoor air quality, more comfortable homes and workplaces, and lower tenant energy bills. The legislature notes that according to the United States department of energy's energy and employment report, 2017, the energy efficiency sector has created more than sixty-five thousand jobs in the state, more than two-thirds of which are in the construction sector, and that the number continues to grow.

(4) Considering the benefits of and the need for additional energy efficiency to meet regional energy demand, the legislature notes that attaining as much of this resource as possible from the buildings sector can have a significant effect on state greenhouse gas emissions by deferring or displacing the need for natural gas-fired electricity generation and reducing the direct use of natural gas. Buildings represent the second largest source of greenhouse gas emissions in Washington and emissions from the buildings sector have grown by fifty percent since 1990, far outpacing all other emission sources.

(5) The legislature therefore determines that it is in the state's interest to maximize the full potential of energy efficiency standards, retrofit incentives, utility programs, and building codes to keep energy costs low and to meet statutory goals for increased building efficiency and reduced greenhouse gas emissions.

(6) It is the intent of this act to provide incentives and regulations that encourage greater energy efficiency in all aspects of new and existing buildings, including building design, energy delivery, and utilization and operations. This act:

(a) Establishes energy performance standards for larger existing commercial buildings;

(b) Provides financial incentives and technical assistance for building owners taking early action to meet these standards before they are required to be met;

(c) Enhances access to commercial building energy consumption data in order to assist with monitoring progress toward meeting energy performance standards;

(d) Authorizes local governments to voluntarily adopt energy codes for residential structures that achieve even greater energy savings and greenhouse gas reductions than the minimum state energy code; and

(e) Establishes efficiency performance requirements for natural gas distribution companies, recognizing the significant contribution of natural gas to the state's greenhouse gas emissions, the role that natural gas plays in heating buildings and powering equipment within buildings across the state, and the greenhouse gas reduction benefits associated with substituting renewable natural gas for fossil fuels.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27A RCW to read as follows:

The definitions in this section apply throughout sections 3 through 6 of this act unless the context clearly requires otherwise.

(1) "Agricultural structure" means a structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products, and that is not a place used by the public or a place of human habitation or employment where agricultural products are processed, treated, or packaged.

(2) "Baseline energy use intensity" means a building's weather normalized energy use intensity measured the previous calendar year to making an application for an incentive under section 4 of this act.

(3) "Building owner" means an individual or entity possessing title to a building.

(4) "Building tenant" means a person or entity occupying or holding possession of a building or premises pursuant to a rental agreement.

(5) "Conditional compliance" means a temporary compliance method used by building owners that demonstrate the owner has implemented energy use reduction strategies required by the standard, but has not demonstrated full compliance with the energy use intensity target.

(6) "Consumer-owned utility" has the same meaning as defined in RCW 19.27A.140.

(7) "Covered commercial building" means a building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds fifty thousand gross square feet, excluding the parking garage area.

(8) "Department" means the department of commerce.

(9) "Director" means the director of the department of commerce or the director's designee.

(10) "Electric utility" means a consumer-owned utility or an investor-owned utility.

(11) "Eligible building owner" means: (a) The owner of a covered commercial building required to comply with the standard established in section 3 of this act; or (b) the owner of a multifamily residential building where the floor area exceeds fifty thousand gross square feet, excluding the parking garage area.

(12) "Energy" includes: Electricity, including electricity delivered through the electric grid and electricity generated at the building premises using solar or wind energy resources; natural gas; district steam; district hot water; district chilled water; propane; fuel oil; wood; coal; or other fuels used to meet the energy loads of a building.

(13) "Energy use intensity" means a measurement that normalizes a building's site energy use relative to its size. A building's energy use intensity is calculated by dividing the total net energy consumed in one year by the gross floor area of the building, excluding the parking garage. "Energy use intensity" is reported as a value of thousand British thermal units per square foot per year.

(14) "Energy use intensity target" means the net energy use intensity of a covered commercial building that has been established for the purposes of complying with the standard established under section 3 of this act.

(15) "Gas company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receiver appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any gas plant within this state.

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

(17)(a) "Gross floor area" means the total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a building, including all supporting functions such as offices, lobbies, restrooms, equipment storage areas, mechanical rooms, break rooms, and elevator shafts.

(b) "Gross floor area" does not include outside bays or docks.

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

(19) "Multifamily residential building" means a building containing sleeping units or more than two dwelling units where occupants are primarily permanent in nature.

(20) "Net energy use" means the sum of metered and bulk fuel energy entering the building, minus the sum of metered energy leaving the building.

(21) "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.

(22) "Savings-to-investment ratio" means the ratio of the present value savings to the present value costs of an energy or water conservation measure. The numerator of the ratio is the present value of net savings in energy or water and nonfuel or nonwater operation and maintenance costs attributable to the proposed energy or water conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy or water conservation measure.

(23) "Standard" means the state energy performance standard for covered commercial buildings established under section 3 of this act.

(24) "Thermal energy company" has the same meaning as defined in RCW 80.04.550.

(25) "Weather normalized" means a method for modifying the measured building energy use in a specific weather year to energy use under normal weather conditions.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27A RCW to read as follows:

(1)(a) By November 1, 2020, the department must establish by rule a state energy performance standard for covered commercial buildings.

(b) In developing energy performance standards, the department shall seek to maximize reductions of greenhouse gas emissions from the building sector. The standard must include energy use intensity targets by building type and methods of conditional compliance that include an energy management plan, operations and maintenance program, energy efficiency audits, and investment in energy efficiency measures designed to meet the targets. The department shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for standard development. The department must update the standard by July 1, 2029, and every five years thereafter.

(2) In establishing the standard under subsection (1) of this section, the department:

(a) Must develop energy use intensity targets that are no greater than the average energy use intensity for the covered commercial building occupancy type. The department must also develop energy use intensity targets for additional property types eligible for incentives in section 4 of this act. The department must consider regional and local building energy utilization data, such as existing energy star benchmarking data, in establishing targets for the standard. Energy use intensity targets must be developed for two or more climate zones and be representative of energy use in a normal weather year;

(b) May consider building occupancy classifications from ANSI/ASHRAE/IES standard 100-2018 and the United States environmental protection agency's energy star portfolio manager when developing energy use intensity targets;

(c) May implement lower energy use intensity targets for more recently built covered commercial buildings based on the state energy code in place when the buildings were constructed;

(d)(i) Must adopt a conditional compliance method that ensures that covered commercial buildings that do not meet the specified energy use intensity targets are taking action to achieve reduction in energy use, including investment criteria for conditional compliance that ensure that energy efficiency measures identified by energy audits are implemented to achieve a covered commercial building's energy use intensity target. The criteria must require that a building owner adopts all energy efficiency measures required to meet the energy use intensity target, or based on a thirty year life-cycle cost analysis, the building owner must adopt an optimized bundle of energy efficiency measures that provides maximum energy savings without resulting in a savings-to-investment ratio of less than 1.0, except as exempted in (d)(ii) of this subsection. The building owner's cost for implementing energy efficiency measures must be net cost, excluding the cost covered by utility or government grants;

(ii) For those buildings or structures that are listed in the state or national register of historic places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a national register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the national or state registers of historic places either individually or as a contributing building to a historic district by the state historic preservation officer or the keeper of the national register of historic places, no individual energy efficiency requirement need be met that would compromise the historical integrity of a building or part of a building.

(3) Based on records obtained from each county assessor and other available information sources, the department must create a database of covered commercial buildings and building owners required to comply with the standard established in accordance with this section.

(4) By July 1, 2021, the department must provide the owners of covered buildings with notification of compliance requirements.

(5) The department must develop a method for administering compliance reports from building owners.

(6) The department must provide a customer support program to building owners including, but not limited to, outreach and informational material, periodic training, phone and email support, and other technical assistance.

(7) The building owner of a covered commercial building must report the building owner's compliance with the standard to the department in accordance with the schedule established under subsection (8) of this section and every five years thereafter. For each reporting date, the building owner must submit documentation to demonstrate that:

(a) The weather normalized energy use intensity of the covered commercial building measured in the previous calendar year is less than or equal to the energy use intensity target;

(b) The covered commercial building has received conditional compliance from the department based on energy efficiency actions prescribed by the standard; or

(c) The covered commercial building is exempt from the standard by demonstrating that the building meets one of the following criteria:

(i) The building did not have a certificate of occupancy or temporary certificate of occupancy for all twelve months of the calendar year prior to the building owner compliance schedule established under subsection (8) of this section;

(ii) The building did not have an average physical occupancy of at least fifty percent throughout the calendar year prior to the building owner compliance schedule established under subsection (8) of this section;

(iii) The sum of the buildings gross floor area minus unconditioned and semiconditioned spaces, as defined in the Washington state energy code, is less than fifty thousand square feet;

(iv) The primary use of the building is manufacturing or other industrial purposes, as defined under the following use designations of the international building code: (A) Factory group F; or (B) high hazard group H;

(v) The building is an agricultural structure; or

(vi) The building meets at least one of the following conditions of financial hardship: (A) The building had arrears of property taxes or water or wastewater charges that resulted in the building's inclusion, within the prior two years, on a city's or county's annual tax lien sale list; (B) the building has a court appointed receiver in control of the asset due to financial distress; (C) the building is owned by a financial institution through default by a borrower; (D) the building has been acquired by a deed in lieu of foreclosure within the previous twenty-four months; (E) the building has a senior mortgage subject to a notice of default; or (F) other conditions of financial hardship identified by the department by rule.

(8) A building owner of a covered commercial building must meet the following reporting schedule for complying with the standard established under this section:

(a) For a building with more than two hundred twenty thousand gross square feet, June 1, 2026;

(b) For a building with more than ninety thousand gross square feet but less than two hundred twenty thousand and one gross square feet, June 1, 2027; and

(c) For a building with more than fifty thousand gross square feet but less than ninety thousand and one square feet, June 1, 2028.

(9) The department may issue a notice of violation to a building owner for noncompliance with the requirements of this section. A determination of noncompliance may be made for any of the following reasons:

(a) Failure to submit a compliance report in the form and manner prescribed by the department;

(b) Failure to meet an energy use intensity target or failure to receive conditional compliance approval;

(c) Failure to provide accurate reporting consistent with the requirements of the standard established under this section; and

(d) Failure to provide a valid exemption certificate.

(10) The department is authorized to impose an administrative penalty upon a building owner for failing to submit documentation demonstrating compliance with the requirements of this section. The penalty may not exceed an amount equal to five thousand dollars plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to one dollar per year per gross square foot of floor area. The department may by rule increase the maximum penalty rates to adjust for the effects of inflation.

(11) Administrative penalties collected under this section must be deposited into the low-income weatherization and structural rehabilitation assistance account created in RCW 70.164.030.

(12) The department must adopt rules as necessary to implement this section, including but not limited to:

(a) Rules necessary to ensure timely, accurate, and complete reporting of building energy performance for all covered commercial buildings;

(b) Rules necessary to enforce the standard established under this section; and

(c) Rules that provide a mechanism for appeal of any administrative penalty imposed by the department under this section.

(13) Upon request by the department, each county assessor must provide property data from existing records to the department as necessary to implement this section.

(14) The department must report to the appropriate committees of the legislature on the implementation of the energy efficiency measures established under this section, by January 15, 2021, and annually thereafter until 2028. The report must include information regarding the adoption of the ANSI/ASHRAE/IES standard, the level of incentives provided under section 4 of this act, as well as any other significant issues associated with implementation of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27A RCW to read as follows:

(1) The department must establish a state energy performance standard early adoption incentive program consistent with the requirements of this section.

(2) The department must adopt application and reporting requirements for the incentive program. Building energy reporting for the incentive program must be consistent with the energy reporting requirements established under section 3 of this act.

(3) Upon receiving documentation demonstrating that a building owner qualifies for an incentive under this section, the department must authorize each applicable entity administering incentive payments, as provided in section 6 of this act, to make an incentive payment to the building owner. When a building is served by more than one entity offering incentives or more than one fuel, incentive payments must be proportional to the energy use intensity reduction of each specific fuel provided by each entity.

(4) An eligible building owner may receive an incentive payment in the amounts specified in subsection (6) of this section only if the following requirements are met:

(a) The building is either: (i) A covered commercial building subject to the requirements of the standard established under section 3 of this act; or (ii) a multifamily residential building where the floor area exceeds fifty thousand gross square feet, excluding the parking garage area;

(b) The building's baseline energy use intensity exceeds its applicable energy use intensity target by at least fifteen energy use intensity units;

(c) At least one electric utility, gas company, or thermal energy company providing or delivering energy to the covered commercial building or mulitfamily residential building is participating in the incentive program by administering incentive payments as provided in section 6 of this act; and

(d) The building owner complies with any other requirements established by the department.

(5)(a) An eligible building owner who meets the requirements of subsection (4) of this section may submit an application to the department for an incentive payment in a form and manner prescribed by the department. The application must be submitted in accordance with the following schedule:

(i) For a building with more than two hundred twenty thousand gross square feet, beginning July 1, 2021, through June 1, 2025;

(ii) For a building with more than ninety thousand gross square feet but less than two hundred twenty thousand and one gross square feet, beginning July 1, 2021, through June 1, 2026; and

(iii) For a building with more than fifty thousand gross square feet but less than ninety thousand and one gross square feet, beginning July 1, 2021, through June 1, 2027.

(b) The department must review each application and determine whether the applicant is eligible for the incentive program and if funds are available for the incentive payment within the limitation established in section 5 of this act. If the department certifies an application, it must provide verification to the building owner and each entity participating as provided in section 6 of this act and providing service to the building owner.

(6) An eligible building owner that demonstrates early compliance with the applicable energy use intensity target under the standard established under section 3 of this act may receive an incentive payment of eighty-five cents per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces.

(7) The incentives provided in subsection (6) of this section are subject to the limitations and requirements of this section, including any rules or procedures implementing this section.

(8) The department must establish requirements for the verification of energy consumption by the building owner and each participating electric utility, gas company, and thermal energy company.

(9) The department must provide an administrative process for an eligible building owner to appeal a determination of an incentive eligibility or amount.

(10) By September 30, 2025, and every two years thereafter, the department must report to the appropriate committees of the legislature on the results of the incentive program under this section and may provide recommendations to improve the effectiveness of the program.

(11) The department may adopt rules to implement this section.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27A RCW to read as follows:

The department may not issue a certification for an incentive application under section 4 of this act if doing so is likely to result in total incentive payments under section 4 of this act in excess of seventy-five million dollars.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27A RCW to read as follows:

(1)(a) Each qualifying utility must administer incentive payments for the state energy performance standard early adoption incentive program established in section 4 of this act on behalf of its customers who are eligible building owners of covered commercial buildings and multifamily residential buildings who qualify as provided under this section, consistent with the requirements of this section. Any thermal energy company, electric utility, or gas company not otherwise required to administer incentive payments may voluntarily participate by providing notice to the department in a form and manner prescribed by the department.

(b) Nothing in this subsection (1) requires a qualifying utility to administer incentive payments for the state energy performance standard early adoption incentive program established in section 4 of this act for which the qualifying utility is not allowed a credit against taxes due under this chapter.

(2) An entity that administers the payments for the incentive program under this section must administer the program in a manner that is consistent with the standard established and any rules adopted by the department under sections 3 and 4 of this act.

(3) Upon receiving notification from the department that a building owner has qualified for an incentive payment, each entity that administers incentive payments under this section must make incentive payments to its customers who are eligible building owners of covered commercial buildings and multifamily residential buildings who qualify as provided under this section and at rates specified in section 4(6) of this act. When a building is served by more than one entity administering incentive payments, incentive payments must be proportional to the energy use intensity reduction of the participating entities' fuel.

(4) The participation by an entity in the administration of incentive payments under this section does not relieve the entity of any obligation that may otherwise exist or be established to provide customer energy efficiency programs or incentives.

(5) An entity that administers the payments for the incentive program under this section is not liable for excess payments made in reliance on amounts reported by the department as due and payable as provided under section 4 of this act, if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

NEW SECTION. **Sec.**  This section is the tax preference performance statement for the tax preference contained in section 8, chapter . . ., Laws of 2019 (section 8 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to induce implementation of building energy efficiency measures, as indicated in section 4 of this act.

(2) It is the legislature's specific public policy objective to increase energy efficiency and the use of renewable fuels that reduce the amount of greenhouse gas emissions in Washington. It is the legislature's intent to provide a credit against the taxes owing by utilities under chapter 82.16 RCW for the incentives provided for the implementation by eligible building owners of energy efficiency and renewable energy measures.

(3) The joint legislative audit and review committee is not required to perform a tax preference review under chapter 43.136 RCW for the tax preference contained in section 8, chapter . . ., Laws of 2019 (section 8 of this act), and it is the intent of the legislature to allow the tax preferences to expire upon its scheduled expiration date.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) Subject to the requirements of this section, a light and power business or a gas distribution business is allowed a credit against taxes due under this chapter in an amount equal to:

(a) Incentive payments made in any calendar year under section 4 of this act; and

(b) Documented administrative cost not to exceed eight percent of the incentive payments.

(2) The credit must be taken in a form and manner as required by the department.

(3) Credit must be claimed against taxes due under this chapter for the incentive payments made and administrative expenses incurred. Credit earned in one calendar year may not be carried backward but may be claimed against taxes due under this chapter during the same calendar year and for the following two calendar years. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of a credit.

(4)(a) Except as provided in (c) of this subsection, any business that has claimed credit in excess of the amount of credit the business earned under subsection (1) of this section must repay the amount of tax against which the excess credit was claimed.

(b) The department must assess interest on the taxes due under this subsection. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid. The department must provide written notice of the amount due under this subsection and that the amount due must be paid within thirty days of the date of the notice. The department may not impose penalties as provided in chapter 82.32 RCW on taxes due under this subsection unless the amount due is not paid in full by the due date in the notice.

(c) A business is not liable for excess credits claimed in reliance on amounts reported to the business by the department of commerce as due and payable as provided under section 4 of this act, if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section and the identity of a business that takes the credit is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) This section expires June 30, 2032.

**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 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.

(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) "Building owner" has the same meaning as defined in section 2 of this act.

(23) "Covered commercial building" has the same meaning as defined in section 2 of this act.

**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.

(2) On and after January 1, 2010, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, a qualifying utility shall upload the energy consumption data for the accounts specified by the owner or operator 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.

(3) 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.

(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 alters the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property.

(7) An electric or gas utility that is not a qualifying utility must either offer the upload service specified in subsection (2) of this section or provide customers who are building owners of covered commercial buildings with consumption data in an electronic document formatted for direct upload to the United States environmental protection agency's energy star portfolio manager. Within sixty days of receiving a written or electronic request and authorization of a building owner, the utility must provide the building owner with monthly energy consumption data as required to benchmark the specified building.

(8) For any covered commercial building with three or more tenants, an electric or gas utility must, upon request of the building owner, provide the building owner with aggregated monthly energy consumption data without requiring prior consent from tenants.

(9) An electric or gas utility must ensure that all data provided in compliance with this section does not contain personally identifiable information or customer-specific billing information about tenants of a covered commercial building.

NEW SECTION. **Sec.**  (1) The legislature finds that natural gas is a fossil fuel, the burning of which produces carbon dioxide pollution, and the production, distribution, and transmission of which results in the leakage of methane, an extremely potent greenhouse gas. In 2014, the intergovernmental panel on climate change found that the global warming potential for methane gas is eighty-four times that of carbon dioxide over a twenty-year period and twenty-eight times that of carbon dioxide over a one hundred year period. Washington has adopted targets to reduce greenhouse gas emissions, in order to mitigate the impacts of climate change on the environment, economy, health, and livelihoods. Natural gas is used as a fuel in Washington to generate electricity, move vehicles and vessels, fuel industrial processes, and heat water and buildings. Under current policy, natural gas usage in Washington and associated greenhouse gas emissions have nearly doubled since 1990. Current state policy does not take recent scientific findings into account.

(2) It is the policy of the state to make progress toward limiting and reducing fossil-based natural gas consumption where cleaner options exist or can be developed. In order to reach short-term and long-term emissions goals, Washington needs to improve the efficiency of natural gas consumption, switch to cleaner options when they are available, and reduce the carbon intensity of natural gas.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

Each gas company must identify and acquire all conservation measures that are available and cost-effective. Each company must establish an acquisition target every two years and must demonstrate that the target will result in the acquisition of all resources identified as available and cost-effective. The cost-effectiveness analysis required by this section must include the costs of greenhouse gas emissions established in section 16 of this act. The targets must be based on a conservation potential assessment prepared by an independent third party. Conservation targets must be approved by order by the commission. The initial conservation target must take effect by 2022.

NEW SECTION. **Sec.**  (1) The legislature finds and declares that:

(a) Renewable natural gas provides benefits to natural gas utility customers and to the public; and

(b) The development of renewable natural gas resources should be encouraged to support a smooth transition to a low carbon energy economy in Washington.

(2) The policy of the state is to provide clear and reliable guidelines for gas companies that opt to procure or produce renewable natural gas resources to serve their customers and that ensure robust ratepayer protections.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

(1) A natural gas company may propose a renewable natural gas program under which the company would procure or produce renewable natural gas for a portion of the natural gas sold or delivered to its retail customers. The renewable natural gas program is subject to review and approval by the commission. The customer charge for a renewable natural gas program may not exceed five percent of the amount charged to retail customers for natural gas.

(2) The environmental attributes of renewable natural gas provided under this section must be retired using procedures established by the commission and may not be used for any other purpose. The commission must approve procedures for banking and transfer of environmental attributes.

(3) As used in this section, "renewable natural gas" includes renewable natural gas as defined in RCW 54.04.190. The commission may approve inclusion of other sources of gas if those sources are produced without consumption of fossil fuels.

NEW SECTION. **Sec.**  (1) Each gas company must offer by tariff a voluntary renewable natural gas service available to all customers to replace any portion of the natural gas that would otherwise be provided by the gas company. The tariff may provide reasonable limits on participation based on the availability of renewable natural gas and may use environmental attributes of renewable natural gas combined with natural gas. The voluntary renewable natural gas service must include delivery to, or the retirement on behalf of, the customer of all environmental attributes associated with the renewable natural gas.

(2) As used in this section, "renewable natural gas" includes renewable natural gas as defined in RCW 54.04.190. The commission may approve inclusion of other sources of gas if those sources are produced without consumption of fossil fuels.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

For the purposes of section 12 of this act, and for other purposes as the commission may prescribe, the cost of greenhouse gas emissions resulting from the use of natural gas, including the effect of emissions occurring in the gathering, transmission, and distribution of natural gas to the end user is equal to the cost per metric ton of carbon dioxide emissions, using the two and one-half percent discount rate, listed in table 2, Technical Support Document: Technical update of the social cost of carbon for regulatory impact analysis under Executive Order 12866, published by the interagency working group on social cost of greenhouse gases of the United States government, August 2016. The commission must adjust the costs established in this section to reflect the effect of inflation.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

The commission must monitor the greenhouse gas emissions resulting from natural gas and renewable natural gas delivered by each gas company to its customers, relative to a proportionate share of the state's greenhouse gas emissions reduction goal. The commission must report to the governor by January 1, 2020, and every five years thereafter, an assessment of whether the gas companies are on track to meet a proportionate share of the state's greenhouse gas emissions reduction goal. The commission may rely on reports submitted by gas companies to the United States environmental protection agency or other governmental agencies in complying with this section.

**Sec.**  RCW 19.27A.015 and 1990 c 2 s 2 are each amended to read as follows:

Except as provided in RCW 19.27A.020((~~(7)~~)) (6), the Washington state energy code for residential buildings shall be the ((~~maximum and~~)) minimum energy code for residential buildings in each city, town, and county and shall be enforced by each city, town, and county no later than July 1, 1991. The Washington state energy code for nonresidential buildings shall be the minimum energy code for nonresidential buildings enforced by each city, town, and county.

**Sec.**  RCW 19.27A.020 and 2018 c 207 s 7 are each amended to read as follows:

(1) The state building code council in the department of enterprise services shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to:

(a) Construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil-fuel greenhouse gas emission homes and buildings by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. One climate zone includes: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties. The other climate zone includes all other counties not listed in this subsection (3). The assignment of a county to a climate zone may not be changed by adoption of a model code or rule. Nothing in this section prohibits the council from adopting the same rules or standards for each climate zone.

(4) The Washington state energy code for residential buildings shall be the 2006 edition of the Washington state energy code, or as amended by rule by the council.

(5) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 2006 edition, or as amended by the council by rule.

(6)(a) ((~~Except as provided in (b) of this subsection,~~)) The Washington state energy code for residential structures shall ((~~preempt the~~)) be the minimum residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may ((~~not~~)) subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990, provided that such an amendment conforms with the requirements of this section.

(c) A city, town, or county may adopt additional residential energy code requirements as developed by the state building code council under subsection (9) of this section.

(7) The state building code council shall consult with the department of enterprise services as provided in RCW 34.05.310 prior to publication of proposed rules. The director of the department of enterprise services shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(8) The state building code council shall evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.

(9)(a) By December 1, 2019, the state building code council must adopt the following optional efficiency appendices and include them in the Washington state energy code for residential buildings:

(i) An optional appendix providing energy code provisions that will reduce energy use by an additional eight to ten percent compared to the minimum code; and

(ii) An optional appendix providing energy code provisions that will reduce energy use by an additional sixteen to twenty percent compared to the minimum code.

(b) The state building code council must amend the two optional appendices provided under (a) of this subsection whenever it amends the minimum code requirements in order to achieve the incremental savings prescribed in this section.

(10) The definitions in RCW 19.27A.140 apply throughout this section.

**Sec.**  RCW 19.27A.025 and 1991 c 122 s 3 are each amended to read as follows:

(1) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, amend that code's requirements for new nonresidential buildings provided that:

(a) Such amendments increase the energy efficiency of typical newly constructed nonresidential buildings; and

(b) Any new measures, standards, or requirements adopted must be technically feasible, commercially available, and ((~~cost-effective to building owners and tenants~~)) developed to yield the lowest overall cost to the building owner and occupant while meeting the energy reduction goals established under RCW 19.27A.160.

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory committee including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds majority vote. Substantial amendments to the code shall be adopted no more frequently than every three years.

**Sec.**  RCW 19.27.540 and 2009 c 459 s 16 are each amended to read as follows:

(1) The building code council shall adopt rules for electric vehicle infrastructure requirements. Rules adopted by the state building code council must consider applicable national and international standards and be consistent with rules adopted under RCW 19.28.281.

(2)(a) Except as provided in (b) of this subsection, the rules adopted under this section must require electric vehicle charging capability at all new buildings that provide on-site parking. Where parking is provided, the greater of one parking space or ten percent of parking spaces, rounded to the next whole number, must be provided with wiring or raceway sized to accommodate 208/240 V 40-amp electric vehicle charging. Electrical rooms serving buildings with on-site parking must be sized to accommodate the potential for electrical equipment and distribution required to serve a minimum of fifty percent of the total parking spaces with 208/240 V 40-amp electric vehicle charging. For accessible parking spaces, the greater of one parking space or ten percent of accessible parking spaces, rounded up to the next whole number, must be provided with electric vehicle charging infrastructure that may also serve adjacent parking spaces not designated as accessible parking.

(b) For occupancies classified as assembly or mercantile, the requirements of this section apply only to employee parking spaces. The requirements of this section do not apply to occupancies classified as residential R-3, utility, or miscellaneous.

**--- END ---**